

COPY

010839-006
Dec 13, 1999

**SIXTH AMENDMENT TO LEASE
BETWEEN
PORT OF SEATTLE AND AMERICAN PRESIDENT LINES, LTD.
TERMINAL 5
AND ASSIGNMENT OF LEASE FROM AMERICAN PRESIDENT
LINES, LTD.
TO EAGLE MARINE SERVICES, LTD.**



James R. Cook
Senior Property Manager
Terminal Services
Marine Services

Page 66
P.O. Box 222
Seattle, WA 98101-0222
206 465-3377
Fax 206 465-3382

TABLE OF CONTENTS

RECITALS	1
Section 1. DEFINITIONS.....	2
A. Actual Cost or Actual Costs.....	2
B. Affiliate or Affiliated	3
C. APL Controlled Train	3
D. Beneficial Use or Beneficially Usable	3
E. Basic Land and Improvements Rent	3
F. Business Day	3
G. Container Shift.....	3
H. Conservative Schedule	4
I. Contiguous Property or Contiguous Properties.....	4
J. Double Track.....	4
K. Drayage Move	5
L. Expansion Premises	5
M. Facility Component.....	5
N. Facility Component Completion.....	5
O. Fourth Berth	6
P. Intermodal Lift.....	6
Q. Intermodal Lift Fee.....	6
R. Intermodal Loading Yard	6
S. Intermodal Storage Yard	6
T. Intermodal Yard	6
U. Intermodal Yard (IY) Cranes	6
V. Intermodal Yard (IY) Facility Charge.....	6
W. IY Facilities	7
X. Lease.....	7
Y. Lockheed Storage Area.....	7
Z. New Container Yard	7
AA. Off-Premises Temporary Container Yard	7
BB. Option Premises	7
CC. Original Land and Improvements Rent.....	7
DD. Original Premises	7
EE. Overpass	7
FF. Preferred Schedule	7
GG. Premises	8
HH. Radio Towers	8
II. Rail Bridge	8
JJ. Railroad Storage Yard	8
KK. Salmon Terminals Storage Area.....	8
LL. Special Improvement or Special Improvements.....	8
MM. Special Improvements Rent	8
NN. Total Facility Completion	9

L-1648-6

Section 2. Amendments to Paragraph 1, Subparagraph (e)	
of the Basic Lease	9
(e)(i) Acquisition	9
(e)(ii) Development.....	10
(A) Facility Design	10
(B) New Container Yard.....	10
(1) Maintenance and Repair Facility.....	10
(2) Container Freight Station ("CFS")	10
(a) CFS Up to 80,000 Sq. Feet	10
(b) CFS Options	11
(c) Amortization	12
(3) Gatehouse/Entry	12
(C) Intermodal Loading Yard	13
(D) Off-Premises Improvements.....	13
(1) Intermodal Storage Yard ("ISY").....	13
(2) Railroad Storage Yard ("RSY")	13
(3) Off-Premises Temporary Container Yard.....	13
(4) Overpass.....	13
(5) Double Track.....	14
(6) Rail Bridge.....	14
(E) Original Premises	15
(F) Fill Alternative	15
(e)(iii) Equipment.....	15
(A) TY Cranes.....	15
(B) Container Cranes.....	19
(1) General	
(a) Acquisition and Rent	19
(b) Lessee Option to Purchase	20
(c) Lessee Election	20
(d) Mechanism to Establish Fair	
Market Value.	21
(e) Enhancements.....	21
(f) Maintenance and Repair;	
Secondary Use Rights.....	21
(2) Crane Raising.....	22
(e)(iv) Special Improvements - Cap on Costs	23
(e)(v) Approval of Plans and Specifications; Changes	23
(A) Definitions	23
(B) Period up to Completion of Conceptual Design	24
(C) Approval of Conceptual Design of Any Facility	
Component	25
(D) Period After Completion of Conceptual	
Design up to Final Design	26
(E) Approval of Final Design of Any	
Facility Component.....	28

(F) Period after final Design up to Facility Component Completion of any Facility Component.....	28
(G) Schedule Impacts	29
(H) Payments as a Result of a Change; Savings Pool	30
(1) Payments.....	30
(2) Savings Pool	31
(e)(vi) Extension of Time for Total Facility Completion.....	31

Section 3. Amendments to Paragraph 1 to Add New

Subparagraphs (h)-(m) to Basic Lease	33
(h) Off-Premises Temporary Container Yard Leasehold.....	33
(i) Options To Expand	34
(i) Options.....	34
(A) Option Premises Exclusive of Fourth Berth.....	34
(B) Option Premises Inclusive of Fourth Berth.....	35
(ii) Conditions	35
(j) Notification, Right of First Refusal and Option Regarding Contiguous Properties	37
(i) Right of First Refusal	37
(ii) Characterization of Option Premises	37
(iii) Lessee Option for Contiguous Properties	38
(iv) CEM Property	38
(k) Liquidated Damages and Port Guarantee Regarding Expansion Premises	39
(i) General.....	39
(ii) IY Facilities	39
(A) IYF Liquidated Damages	39
(B) IYF Liquidated Damages Adjustment	39
(C) TFC Liquidated Damages.....	40
(iii) Duration of IYF Liquidated Damages and/or TFC Liquidated Damages; Other Remedies.....	41
(A) Duration of Liquidated Damages	41
(B) Rights After Expiration of Liquidated Damages Period.....	41
(C) Right to Sublease after Expiration of Liquidated Damages Period.....	41
(iv) The Fourth Berth	44
(l) Equipment Training.....	44
(m) Rail Access and Related Issues.....	44
(i) Continuous Rail Access	45
(ii) Rail Bridge Reinforcement	45
(iii) Double Track.....	45
(iv) Switching	46
(v) Rail Access Charge.....	46
(vi) Rail Service Standards Liquidated Damages.....	48

(vii) Prohibition on Amendment or Assignment of Exhibit I and Lessee's Agreement to be Bound.....	49
Section 4. Amendment to Paragraph 2 (Term) to Add New Subparagraph (e) to Basic Lease	49
Section 5. Amendment to Paragraph 3(d) to Basic Lease	49
Section 6. Amendment to Paragraph 3 (Rent) to Add New Subparagraph (i) to Basic Lease	50
(i) Rent Under Sixth Amendment.....	50
(a) Original Premises	50
(b) Expansion Premises	50
(c) IY Facility Charge	51
(d) Intermodal Lift Fee	54
Section 7. New Paragraph 41 (Environmental)	54
Section 8. Amendment to Paragraph 28 (Arbitration)	56
Section 9. Amendment to Paragraph 3 (Rent) to replace subparagraph (h).....	58
Section 10. Exhibits.....	58
Section 11. Amendment to Paragraph 4 (Bond or Other Security) to Add New Subparagraph (e) to Basic Lease	59
Section 12. Amendment to Paragraph 8 to add new subparagraph (d).....	60
Section 13. Amendment to Paragraph 20 to add new subparagraph (b)(3).....	60
Section 14. Miscellaneous	60

**SIXTH AMENDMENT TO LEASE
BETWEEN
PORT OF SEATTLE AND AMERICAN PRESIDENT LINES, LTD.
TERMINAL 5
AND ASSIGNMENT OF LEASE FROM AMERICAN PRESIDENT LINES, LTD.
TO EAGLE MARINE SERVICES, LTD.**

THIS SIXTH AMENDMENT TO LEASE (hereinafter, along with any exhibits and attachments, referred to as the "Amendment") is entered into as of June 1, 1994 by and between the PORT OF SEATTLE, a Washington municipal corporation as Lessor, hereinafter referred to as the "Port" and EAGLE MARINE SERVICES, LTD., a Delaware corporation (and a wholly owned subsidiary of American President Lines, Ltd.), hereinafter referred to as "Lessee", as assignee of that certain Lease dated September 26, 1985, originally entered into by the Port and American President Lines, Ltd., a Delaware corporation (hereinafter "APL") of Premises at the Port's Terminal 5 (Federal Maritime Commission Agreement No. T-224-01839), hereinafter referred to as "the Basic Lease").

RECITALS:

A. WHEREAS, the Basic Lease dated September 26, 1985 (FMC Agreement No. T-224-01839) superseded the Port's prior leases to APL of Terminal 46 Premises dated April 14, 1981 (FMC Agreement T-3968), and of Terminal 25 Premises dated May 12, 1981 (FMC Agreement T-3968A) by providing for new Premises for APL at Terminal 5 to be reconstructed by the Port with major improvements to APL's specifications; and

B. WHEREAS, by First Amendment dated March 25, 1986, (FMC Agreement No. 224-010839-001) the parties provided for an extension of APL's occupancy at Terminal 46 until October 1986, and provided for certain construction modifications; and

C. WHEREAS, by Second Amendment dated August 11, 1987, (FMC Agreement No. 224-010839-002) the parties acknowledged that the Port provided a fifth Container Crane for APL's use in accordance with lease requirements and stated a minimum rental for use thereof; and

D. WHEREAS, by Third Amendment dated February 14, 1989, (FMC Agreement No. 224-010839-003) the parties enlarged the leased Premises by approximately six acres and provided for adjustment and subsequent modification of the Premises description, rental provisions and lease exhibits; and

E. WHEREAS, by Fourth Amendment dated August 8, 1989, (FMC Agreement No. 224-10839-004) the parties provided for substitution of three crane spreader beams and repayment of the costs to the Port by amortization by APL; and

F. WHEREAS, by Fifth Amendment dated August 11, 1992, (FMC Agreement No. 224-010839-005) the parties provided for APL to repay to the Port by amortizing the Port's \$455,325 cost for three container crane manlifts and to acknowledge APL's intent to move and install on the Premises a sixth container crane; and

G. WHEREAS, the parties now wish to amend the Basic Lease to increase the leased area by approximately seventy five (75) acres which shall include, among other things, an on-dock intermodal rail facility, with a corresponding increase in rental and extend the term in accordance with the terms of this Amendment; add an option to further increase the leased area by approximately thirty (30) additional acres, with a further corresponding increase in rent; grant Lessee a first right of refusal to all Contiguous Property (including any development alternatives which may involve in-water fills) as per the terms of this Amendment; document certain improvements, with amortization based rental payments added to the rental schedule; and other provisions; and

H. WHEREAS, the Port has agreed to undertake the development of the Premises as described herein, subject to the conditions and restrictions of the applicable environmental and land use laws and regulations, including review of all appropriate alternatives, their impacts and mitigation possibilities; and

I. WHEREAS, APL has assigned its interest under this Lease to Lessee concurrently with the execution of this Amendment and by an Assignment which is attached hereto.

Now therefore, the parties hereby agree as follows:

SECTION 1. DEFINITIONS. The following definitions are added to the text of the Basic Lease, as amended, before paragraph 1 thereof:

A. Actual Cost or Actual Costs: All costs for construction, outside services, management, and overhead relating to any Facility Component with respect to the completed construction project contemplated by this Amendment. These costs are more fully described as follows:

(1) Construction costs shall consist of amounts paid pursuant to construction contracts and change orders, taxes payable by the Port in connection with this project, and permit acquisition costs.

(2) Outside services, which shall consist of design services relating to the construction project.

(3) Management and overhead costs shall consist of Port engineering (prorated overhead), construction management, and project management.

Costs of outside services, management, and overhead described in A(2) and A(3) above shall be fixed at 15% of the construction costs specified in item (A)(1) of this definition, above.

B. Affiliate or Affiliated: Any entity directly or indirectly controlling, controlled by, or under common control with, Lessee. "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the direct ownership of voting securities or indirect control of any such voting securities by contract or otherwise.

C. APL Controlled Train: A train or that portion of a train accessing the Premises which contains containers for which APL (or its Affiliates) prepares or submits shipping orders and pays for transportation services for its own behalf or on behalf of others with any such rail carrier which directs the movement of any such container or containers.

D. Beneficial Use or Beneficially Usable: shall mean (i) when a particular Facility Component can be used or operated for its intended purpose at the Premises, or has been built to plans and specifications agreed to by the parties hereto (except for any minor items contained on a punch list which is mutually agreed to by both parties hereto); and (ii) there is adequate access with minimal disruption to overall operations to such Facility Component and such Facility Component can be operated in such a fashion that does not require additional labor, overtime or equipment beyond what would otherwise normally be required.

E. Basic Land and Improvements Rent: The rent for the Expansion Premises which is specified in Part I of Exhibit F. This rent does not include Special Improvements Rent or rent related to equipment.

F. Business Day: Any day other than a Saturday, Sunday or other day which is a Federal or Washington State holiday.

G. Container Shift: The re-routing of rail intermodal containers to the Port at the sole discretion of APL which would, prior to completion of the Intermodal Yard and New Container Yard, typically be routed through other West Coast ports.

H. Conservative Schedule: Accomplishment by the Port of (i) Facility Component Completion of the IV Facilities by December 29, 1997; and (ii) Total Facility Completion (exclusive of the Fourth Berth) by February 28, 1999, and (iii) accomplishment by the Port of Facility Component Completion of the Fourth Berth by November 13, 1999, provided Lessee gives the Port written notice exercising its option inclusive of the Fourth Berth by March 1, 1995 pursuant to Section 3, subparagraph (i)(i)(B) of this Amendment.

I. Contiguous Property or Contiguous Properties: Each a property and collectively any properties owned by the Port now or in the future (i) abutting the Premises; or (ii) abutting the Railroad Storage Yard; or (iii) which shall also include the remaining CEM Property described on Exhibit A-6 hereto. Contiguous Properties shall not include:

(1) Land which is or may be under lease to third parties as a condition of Port property acquisition from such parties relating to development of the Premises; or

(2) Pier 2 (as described on Exhibit A-6 hereto); or

(3) Land west of Harbor Avenue SW, land south of Spokane Street and land southeast of SW Hinds Street, all as depicted on Exhibit A-6.

J. Double Track: The Double Track shall collectively mean and be comprised of the following three (3) components: the "East Double Track", the "West Double Track" and the "Receiving and Departure Track". The completed Double Track is intended to minimize interference between rail traffic to and from Harbor Island and to and from the Premises area, to facilitate adequate access and switching west of the Rail Bridge and to facilitate arrival and/or departure of linehaul trains with road power such that an entire linehaul train can either arrive or depart as a single, complete unit west of the Rail Bridge. The East Double Track shall mean the railroad tracks to be constructed by the Port (or caused to be constructed by the Port) across Harbor Island, between the vicinity of East Marginal Way South and the vicinity of the east end of the Burlington Northern Rail Bridge at the southwest side of Harbor Island, parallel to the existing railroad tracks. The West Double Track shall mean the railroad tracks to be constructed by the Port (or caused to be constructed by the Port) between the Intermodal Yard and the vicinity of the west end of the Rail Bridge and parallel to the existing railroad tracks. The Receiving and Departure Track shall mean the railroad tracks to be constructed by the Port (or caused to be constructed by the Port) which shall extend from the vicinity of the west end of the Rail Bridge to the northwest end of the Elevator Yard and, including tail track, shall be of sufficient length to accommodate a twenty-eight (28) car doublestack train with road power up to nine thousand (9000) feet long. A portion of the 9000

foot length identified for the Receiving and Departure Track shall include a track which is laid to create the West Double Track.

K. Drayage Move: An empty container which is loaded to or discharged from vessels calling at the Premises and transported from or to the Off-Premises Temporary Container Yard.

L. Expansion Premises: The real property which is to be added to the Original Premises and which will thereafter become part of the Premises and consisting of both the New Container Yard and the Intermodal Loading Yard. The current apron area will be extended as part of the Expansion Premises approximately 400 feet to the north, to the vicinity of the southern boundary of the Option Premises by the Port at no cost to Lessee; provided however, Lessee shall pay Basic Land and Improvements Rent on this 400 foot apron extension. The Expansion Premises are approximately 75 acres and are depicted on Exhibit A-6.

M. Facility Component: Any individual facility or improvement required to be constructed in accordance with this Amendment (as same may be amended), with supporting plans, specifications, and other supporting documents.

N. Facility Component Completion: The point in time when any individual Facility Component contemplated by this Amendment and Exhibit H is determined by Lessee to be Beneficially Usable and in compliance with all plans and specifications required by or arising out of this Amendment (except for any minor items contained on a punch list which is mutually agreed to by both parties hereto) after written notice is received by Lessee from the Port to that effect. Within six (6) Business Days after receipt by Lessee of any such written notice by the Port, Lessee shall inspect any such Facility Component and notify the Port in writing should it disagree that Facility Component Completion has been achieved and supply its reasons therefore. In that event, either party may resolve this issue pursuant to Section 7, paragraph 28(b) of this Amendment. Notwithstanding the foregoing, upon written instruction from Lessee to the Port, the Port shall immediately take steps to remedy Lessee's objections (which shall be in accordance with any directions Lessee may include in such notice) whether or not an arbitration is pending. Should the Port not receive Lessee's list of written objections within such six Business Day period, Facility Component Completion will be deemed to have occurred with respect to such Facility Component; provided however, notwithstanding the foregoing, should an event occur during the construction period which, subsequent to Facility Component Completion and prior to Total Facility Completion causes Lessee to lose Beneficial Use of any Facility Component, it shall promptly notify the Port in writing with details of the problem and the Port shall thereafter rectify same within 5 Business Days. Should the situation not be resolved within said 5 Business Days, the Facility Component shall not be deemed to

have achieved Facility Component Completion for that period of time commencing with the date of Lessee's written notice to the Port and liquidated damages as per Section 3, paragraph (k) of this Amendment shall commence until Beneficial Use to Lessee is restored. Any disputes arising out of this provision shall be resolved pursuant to Section 7, paragraph 28(b) of this Amendment.

O. Fourth Berth: The berth and marine building (equivalent to the marine building currently situated on the southernmost existing berth) to be constructed along the west edge of the West Waterway and within the eastern boundary of the Option Premises, and to the north of the 400 foot apron extension, consisting of approximately 1,000 linear feet of apron space suitable for berthing APL's container ships. The location of the Fourth Berth is depicted on Exhibit A-6.

P. Intermodal Lift: The loading or unloading of a single container to or from a rail car at the Intermodal Loading Yard.

Q. Intermodal Lift Fee: The charge for a single Intermodal Lift, levied by Lessee on third party shipping lines or ship operators for the loading or unloading at the Intermodal Loading Yard of containers not owned or leased by APL (or any Affiliate of APL).

R. Intermodal Loading Yard: The area occupied by railroad tracks located on the Expansion Premises and used for the loading and unloading of containers to and from rail cars, the location of which is depicted on Exhibit A-6.

S. Intermodal Storage Yard: The area occupied by railroad tracks which are for the storage of loaded and empty rail cars in connection with Lessee's (and Lessee's Affiliates) operations on a preferential basis, and which are for other activities related thereto. Said area is located outside the Expansion Premises, the location of which is depicted on Exhibit A-6, on land owned by the Port and not under lease to Lessee and shall be operated pursuant to Section 3, paragraph (m) of this Amendment.

T. Intermodal Yard: The combined area of the Intermodal Storage Yard and the Intermodal Loading Yard.

U. Intermodal Yard (IY) Cranes: Any cranes owned by the Port to be used on and in conjunction with the operation of the Intermodal Loading Yard.

V. Intermodal Yard (IY) Facility Charge: The charge, hereafter called IY Facility Charge, per Intermodal Lift assessed against the railroad companies utilizing the Intermodal Loading Yard.

W. IY Facilities: Collectively, all of the following Facility Components: the Intermodal Yard, the Rail Bridge, the Double Track, the Overpass; and the IY Cranes after the IY Cranes are acquired, installed on the Premises and are operational if provided by the Port; and the rail access agreement between the Burlington Northern Railroad ("BN") and the Union Pacific Railroad ("UP") attached as an exhibit to Exhibit I has been executed by those two railroads and that said rail access agreement is in full force and unconditional effect and that such agreement complies with the requirements specified in Section 3(m) of this Amendment.

X. Lease: The Basic Lease, as amended (inclusive of this Amendment).

Y. Lockheed Storage Area: The area partially within both the Option Premises and the Expansion Premises which is currently leased to Lessee, and is depicted on Exhibit A-6.

Z. New Container Yard: The area within the Expansion Premises which is not part of the Intermodal Loading Yard, the location of which is depicted on Exhibit A-6.

AA. Off-Premises Temporary Container Yard: The Terminal 105 real property which is available to Lessee pursuant to this Amendment for the handling and storage of empty containers. The location and configuration of Terminal 105 is depicted on Exhibit G, including the schedule for availability of Terminal 105 with improvements as mutually agreed.

BB. Option Premises: The real property which is available to Lessee for future expansion, which includes the Fourth Berth pursuant to the terms of this Amendment, and the location of which is depicted on Exhibit A-6. Lessee's option on the Option Premises shall expire ten years after Total Facility Completion but in no event later than December 31, 2009.

CC. Original Land and Improvements Rent: Rent for the Original Premises. This rent does not include Special Improvements Rent.

DD. Original Premises: The real property as described in the Basic Lease and Amendments One through Five, and as depicted on Exhibit A-6. This area consists of approximately 83 acres.

EE. Overpass: The elevated roadway to be constructed in the vicinity of the southeast portion of the Premises and the approaches to the Spokane Street low level bridge, the location of which is depicted on Exhibit A-6.

FF. Preferred Schedule: Accomplishment by the Port of (i) Facility Component Completion of the IY Facilities by October 1, 1996; and (ii) Total Facility Completion (exclusive of the Fourth Berth) by December 5, 1997, and (iii) accomplishment by the Port of Facility Component Completion of the

Fourth Berth by October 3, 1998 provided Lessee gives the Port written notice exercising its option inclusive of the Fourth Berth by March 1, 1995 pursuant to Section 3, subparagraph (i)(i)(B) of this Amendment; provided however, should Lessee give the Port written notice exercising its option inclusive of the Fourth Berth by March 1, 1995, then the Preferred Schedule for Facility Component Completion of the Fourth Berth shall be October 3, 1998.

GG. Premises: The Original Premises and all or portions of the Expansion Premises and/or the Option Premises as they become part of the leasehold at later dates.

HH. Radio Towers: The three radio towers operated by KJR and KBLE, the appurtenances thereto and the building housing KJR radio station currently surrounded by the Original Premises to be removed by the Port.

II. Rail Bridge: The existing Burlington Northern dedicated railroad bridge across the Duwamish Waterway between Harbor Island and West Seattle.

JJ. Railroad Storage Yard: The area outside the Expansion Premises occupied by railroad tracks located to the west of the Intermodal Storage Yard, the location of which is depicted on Exhibit A-6. The Railroad Storage Yard is to be constructed for and used by Burlington Northern Railroad to compensate for the portion of the existing Burlington Northern railroad yard to be displaced by development of the Expansion Premises and Intermodal Storage Yard.

KK. Salmon Terminals Storage Area: The area partially within both the Expansion Premises and Option Premises which is currently leased to Lessee, including that adjacent portion of Southwest Florida Street currently occupied by Lessee under City of Seattle Street Use permit. Such area is depicted on Exhibit A-6.

LL. Special Improvement or Special Improvements: Those Facility Components specified in Exhibit F, Part II to this Amendment.

MM. Special Improvements Rent: Rent on the Special Improvements which shall not exceed Lessee's Maximum or Monthly amounts described in Exhibit F, Part II, and is distinct from Basic Land and Improvements Rent as described on Exhibit F, Part I. Such Special Improvements Rent is calculated on the basis of an amortization schedule designed to pay back to the Port, Lessee's Percentage Share of the Actual Cost of a Special Improvement specified on Exhibit F following Facility Component Completion. The amount of Special Improvements Rent to be paid by Lessee with respect to any Special Improvement shall be Lessee's Percentage Share specified on Part II of Exhibit F of the Actual Cost associated with such Special Improvement and which in any event shall not exceed the amount specified

as Lessee's Maximum Share in Part II of Exhibit F regardless of the Actual Costs incurred by the Port, subject to any Changes as provided in Section 2, paragraph (e)(v) of this Amendment. At the time of Facility Component Completion for any Special Improvement, the Port shall supply Lessee with a statement indicating the applicable Actual Cost and the Special Improvements Rent and such documents relating to Actual Costs that Lessee may reasonably request. Any disputes relating to Actual Cost or Special Improvements Rent shall be resolved by arbitration pursuant to Section 7, paragraph 28(b) of this Amendment.

NN. Total Facility Completion: When all Facility Components have achieved Facility Component Completion (including a survey to accurately determine the precise acreage of the Expansion Premises) and written notice has been received by Lessee from the Port which confirms Facility Component Completion of all Facility Components contemplated by this Amendment and Exhibit H and certifies full compliance with all plans and specifications required by or arising out of this Amendment, including the Option Premises exclusive of the Fourth Berth (provided Lessee exercises its option to expand in accordance with Section 3, subparagraph (i)(i)(A) of this Amendment on or prior to June 1, 1995), or the Option Premises inclusive of the Fourth Berth (provided Lessee notifies Port to include this improvement in the Option Premises and exercises its option to expand in accordance with Section 3, paragraph (i)(i)(B) of this Amendment on or prior to December 1, 1994). Lessee shall have six (6) Business Days after delivery of any such written notice from the Port to inspect any Facility Component to determine, in its sole opinion, whether Total Facility Completion has not occurred and provide the Port with written notice to that effect which specifies the incomplete items. In that event, either party may resolve the issue pursuant to Section 7, paragraph 28(b) of this Amendment. Notwithstanding the foregoing, upon written instruction from Lessee to the Port, the Port shall immediately take steps to remedy Lessee's objections (which shall be in accordance with any directions Lessee may include in such notice) whether or not an arbitration is pending. Within a reasonable time following Total Facility Completion, the Port shall supply Lessee with a single rental schedule which specifies all Special Improvements and the Special Improvements Rent due from Lessee.

SECTION 2. Amended Basic Lease paragraph 1 (LEASED PREMISES AND EQUIPMENT), subparagraph (e) is deleted in its entirety and replaced with the following in its place and stead:

(e)(i) ACQUISITION. The Port will acquire land for the Expansion Premises and Option Premises for development of the facilities described herein.

(e)(ii) DEVELOPMENT.

(A) FACILITY DESIGN. The conceptual plan for the project contemplated by this Amendment is outlined in Attachment 2 to Exhibit H hereto and the construction phasing is as per Attachment 3 to Exhibit H.

(B) NEW CONTAINER YARD. The Port will design and develop the New Container Yard. The development will include the following new facilities:

(1) MAINTENANCE AND REPAIR FACILITY.

A Maintenance and Repair facility of up to 42,000 square feet of shop and 5,200 square feet of office with building specifications relating to the quality of construction equivalent to those at the Terminal 46 maintenance and repair facility as of the date of this Amendment and as per Exhibit H. Lessee shall pay its percentage of the Actual Costs as Special Improvements Rent associated with the Maintenance and Repair facility amortized at 9.25% per year over thirty (30) years, provided however, notwithstanding the foregoing, the Special Improvements Rent Lessee is obligated to pay for this Special Improvement shall in no event exceed Lessee's Maximum Share specified in Part II of Exhibit F on a total or monthly basis. Lessee's obligations for the undepreciated book value and for the unamortized balance owing on the existing maintenance and repair facility shall expire once such existing facility is vacated by Lessee. Lessee's obligation to begin payment of the Special Improvements Rent for this Facility Component shall begin to accrue immediately following Facility Component Completion of this Facility Component and shall be payable by Lessee at the beginning of each month thereafter.

(2) CONTAINER FREIGHT STATION ("CFS").

Approximately One Hundred Twenty Thousand (120,000) square feet with building specifications relating to the quality of construction equivalent to those at the existing Terminal 5 container freight station as of the date of this Amendment and as per Exhibit H.

(a) CFS UP TO 80,000 SQ. FEET.

The Port shall construct and pay for up to an 80,000 square foot CFS at no cost to Lessee other than twenty percent (20%) of the Actual Cost of demolition of the existing container freight station facility as Special Improvements Rent, amortized at 9.25% per year over thirty (30) years, provided however, notwithstanding the foregoing, the Special Improvements Rent Lessee is obligated to pay for such demolition shall in no event exceed Lessee's Maximum Share specified on Part II of Exhibit F on a total or monthly basis. Lessee's obligation to begin

payment of the Special Improvements Rent for this Facility Component shall begin to accrue immediately following Facility Component Completion of this Facility Component and shall be payable by Lessee at the beginning of each month thereafter.

(b) CFS OPTIONS.

(1) Upon issuance of written notice to the Port, Lessee shall have a single option, at any time during the term of this Lease, to require the Port to expand the CFS after its Facility Component Completion. No expansion of the CFS shall include any other structure which may be attached or adjacent to the CFS (such as the Transit Shed) unless mutually agreed in writing by the parties. If the CFS as built prior to expansion is less than 80,000 square feet and Lessee requests an expansion of up to 80,000 square feet, the Port shall pay for the costs of said expansion up to the following amount: the total square footage of the requested expansion multiplied by the per square foot Actual Cost of the CFS as built prior to expansion, compounded annually by 4.5% for each year for the period from Facility Component Completion of the CFS as built prior to expansion, until receipt of Lessee's written request for said expansion. Any Actual Costs of expansion over this amount shall be paid by Lessee in the form of Special Improvements Rent based on a 9.25% per year amortization schedule over the lesser of thirty (30) years or the remaining term of this Lease.

(2) If the CFS as built prior to expansion is less than 80,000 square feet and Lessee requests in writing an expansion of the CFS that will bring the total area of the CFS to over 80,000 square feet, Actual Cost of the expansion will be pro rated on a per square foot basis between that portion of the Actual Cost of the expansion that will bring the total area of the CFS to 80,000 square feet and that portion of the Actual Cost of expansion that will bring the total area of the CFS to over 80,000 square feet. That portion of the Actual Cost of expansion that will bring the total area of the CFS to 80,000 square feet will be handled as specified in the preceding paragraph. That portion of the Actual Cost of the expansion that will bring the total area of the CFS to over 80,000 square feet shall be paid by Lessee in the form of Special Improvements Rent based on a 9.25%

per year amortization schedule over the lesser of thirty (30) years or the remaining term of this Lease.

(3) If the CFS as built prior to expansion is 80,000 square feet or greater, Actual Cost of expansion shall be paid by Lessee in the form of Special Improvements Rent based on a 9.25% per year amortization schedule over the lesser of thirty (30) years or the remaining term of this Lease.

(4) Lessee's obligation to begin payment of the Special Improvements Rent for any expansion to this Facility Component shall begin to accrue immediately following Facility Component Completion of any expansion to this Facility Component and shall be payable by Lessee at the beginning of each month thereafter.

(c) AMORTIZATION.

The existing container freight station will be demolished as part of the New Container Yard development. Lessee shall continue to pay for the cost of the existing container freight station under the terms of the amortization schedule previously established under the Basic Lease, as previously amended.

(3) GATEHOUSE/ENTRY.

The Port shall construct and pay for a Gatehouse up to 16,000 square feet in a two-story building and 15 lanes with building specifications relating to the quality of construction equivalent to those at the existing Terminal 5 gatehouse as of the date of this Amendment and as per Exhibit H. As part of the development of the new Gatehouse, the existing gatehouse will be demolished. Lessee shall pay the undepreciated value at time of demolition and demolition cost for the old gatehouse, and other improvements directly related thereto as Special Improvements Rent amortized at 9.25% per year over thirty (30) years. Lessee's obligation to begin payment of the Special Improvements Rent shall begin to accrue immediately following the demolition of the existing gatehouse and Facility Component Completion of the Gatehouse and shall be payable by Lessee at the beginning of each month thereafter. Provided however notwithstanding the foregoing, Lessee shall not pay any costs associated with the construction of the new Gatehouse subject to any Changes pursuant to Section 2, paragraph (e)(v) this Amendment. In addition to the development of a new Gatehouse, the Port agrees to participate in gate enhancements which incorporate new, advanced

technology to the extent such enhancements are applicable, useful, and also add value to Port facilities other than Terminal 5.

(C) INTERMODAL LOADING YARD.

The Port will design the Intermodal Loading Yard ("ILY") consistent with Exhibit H. The Port shall pay all costs associated with that portion of the ILY related to standards acceptable for normal container yard activities, which includes drainage, paving, lighting, fencing, striping, grading, pile foundation installation beneath runways to support rubber tire gantry cranes (except for pile foundations relating to the fifth and sixth runways which shall be paid for as Special Improvements Rent as per Part II of Exhibit F), and protection reinforcement (if necessary) for the Renton Effluent Transfer System sewage pipeline ("RETS") owned by the Municipality of Metropolitan Seattle. These container yard development costs will be included as part of the Basic Land and Improvements Rent. Lessee shall pay its percentage share of the Actual Cost specified in Exhibit F, Part II, as Special Improvements Rent, amortized at 9.25% per year for thirty (30) years, for all other development costs of the ILY which are consistent with Exhibit H and are in excess of the above referenced standards for normal container yard activities for the ILY. Lessee's obligation to begin payment of the Special Improvements Rent for this Facility Component shall begin to accrue immediately following Facility Component Completion of the IY Facilities and shall be payable by Lessee at the beginning of each month thereafter.

(D) OFF-PREMISES IMPROVEMENTS. The Port will construct the following improvements in locations outside the Expansion Premises:

(1) **INTERMODAL STORAGE YARD ("ISY").** The Port will design and construct the ISY consistent with Exhibit H and the Port shall pay for such design and construction costs. The Port shall maintain and repair the ISY or cause same to be maintained and repaired during the term of this Lease and the Port shall pay for such maintenance and repair costs.

(2) **RAILROAD STORAGE YARD ("RSY").** The Port shall design and construct the RSY which shall be paid for by the Port. The RSY will be constructed with the approval of Burlington Northern Railroad ("BN"). The Port and Lessee shall make their good faith efforts to encourage BN to make efficient use of existing and future trackage and thereby allow the Port to minimize the scale of the RSY.

(3) **OFF-PREMISES TEMPORARY CONTAINER YARD.** Development of T-105 is not considered a Special Improvement.

(4) **OVERPASS.** The Overpass is a Special Improvement which the Port shall design and construct consistent with Exhibit H and which the Port shall maintain and repair or cause same to be maintained and

repaired during the term of this Lease. The Port shall pay for such maintenance and repair costs. Actual Costs for the design and construction of the Overpass are considered as part of the Special Improvements Rent. Lessee shall pay its percentage shares of the Actual Costs specified on Exhibit F as Special Improvements Rent, each amortized at 9.25% per year for thirty (30) years, provided however, notwithstanding the foregoing, the Special Improvements Rent Lessee is obligated to pay for this Special Improvement shall in no event exceed the total of both components of Lessee's Maximum Share specified in Part II of Exhibit F on a total or monthly basis. In the event the Port obtains Federal, State, or local funding for construction of the Overpass, said funds shall be applied solely to the Port's share and shall not reduce the amount of or in any way affect Lessee's payment obligations under Special Improvements Rent unless any such funding exceeds the Port's share of this Special Improvement. In that event, the amount in excess of the Port's share shall first be applied to the Port's administrative costs solely and directly related to acquiring any such funds and secondly shall be applied to reduce Lessee's Special Improvements Rent. Lessee's obligation to begin payment of the Special Improvements Rent for this improvement shall begin to accrue immediately following Facility Component Completion of all of the following: the Overpass, the Entry (i.e. queuing lanes), and Gatehouse and shall be payable by Lessee at the beginning of each month thereafter. To promote public safety, the Port shall use good faith efforts (including reasonable attempts to modify any applicable ordinances) during the term of this Lease (as extended), to restrict traffic flow on the Overpass to commercial traffic required by Lessee's (and its Affiliates') business and commercial traffic required by such other tenants of the Port or other uses on private property whose proximity to said Overpass requires their use of the Overpass during times when access to/from West Marginal Way and Spokane Street is impeded due to train blockages.

(5) **DOUBLE TRACK.** The Port shall design and construct or cause to be designed and constructed the Double Track, consistent with Exhibit H and which the Port shall cause same to be maintained and repaired during the term of this Lease. The Port shall pay for such design and construction, and shall ensure maintenance and repair is accomplished at no cost to Lessee.

(6) **RAIL BRIDGE.** The Port shall cause the Rail Bridge to be modified in compliance with all Federal, State and local laws, regulations, ordinances and rules, to accept railroad locomotive power ("Road Power") sufficient to service the rail for the on dock rail capacity contemplated by this Amendment and to accept high cube containers as known in the industry as of the date hereof, all in

accordance with Exhibit H, at no cost to Lessee and which the Port shall cause to be maintained and repaired at no cost to Lessee during the term of this Lease to the standards described in Exhibit I. In the event the Rail Bridge suffers damage rendering it a constructive total loss or a total loss or is otherwise unusable, the Port shall work to a level of industry standard to return the Rail Bridge to service in an expeditious manner whether or not such damage is caused by a force majeure event to the standards described in Exhibit I.

(E) ORIGINAL PREMISES.

The Port will reinforce those surface areas of the Original Premises as approximately depicted on Exhibit A-6 on a mutually agreeable schedule. The reinforcement will be done to a level equivalent to that on pavement areas on the Original Premises which were reinforced in 1985 and which shall meet the criteria described in Exhibit H. The Port will pay for the cost of such reinforcement, provided, however, Lessee's rental obligations under the Basic Lease, as amended, for the areas being reinforced shall not be abated during the reinforcement work. Such reinforcement shall be done in four approximately equal sections to minimize disruption to Lessee's operations.

(F) FILL ALTERNATIVE.

With respect to the possibility of a fill alternative, the parties recognize that the Port is in the midst of an environmental impact review process which is analyzing a number of remedial action and redevelopment alternatives, involving the possibility for fill on the submerged lands to the north. Lessee acknowledges that such fill is only an alternative at this point and is currently subject to a full review of its impacts, mitigation possibilities, and approval from local, state, federal, and tribal authorities.

(e)(iii) EQUIPMENT.

(A) TY Cranes.

(1) Both parties acknowledge that decisions have not been made regarding the type and number of cranes to be initially used in the Intermodal Yard. Lessee shall select and the Port shall purchase, on a schedule to meet operational start up of the Intermodal Yard, any TY Cranes contemplated by this Amendment, having a cost charged by manufacturer plus the direct administrative and engineering costs, permitting and certification costs of the Port and sales tax, of up to \$20 million in 1992 dollars which amount shall be escalated at 4.5% per year, commencing December 31, 1992. The Port shall own such TY Cranes. Lessee shall pay rent on any such TY Cranes utilizing said \$20 million (or any portion thereof) equal to 50% of any such TY Crane's cost charged by manufacturer plus the direct administrative and engineering costs, permitting and certification costs of the Port and sales tax, amortized at 9.25% per year over 14 years commencing

upon Facility Component Completion of the IY Facilities. Lessee shall request the Port to acquire the initial IY Cranes no later than thirty (30) months prior to the expiration of the Preferred Schedule for the IY Facilities (as same may be extended), so as to deliver and install the initial IY Cranes on the Premises in a timely manner. If Lessee does not make such request within the stated time period, then the acquisition, installation and operation of the initial IY Cranes on the Premises shall not be considered a requirement of Facility Component Completion of the initial IY Facilities, as that concept is used in this Amendment. IY Crane rent related to any IY Crane, shall cease after the end of any amortization period.

(2) The parties agree the IY Cranes shall be replaced, refurbished, or modified by the Port, or additional IY Cranes shall be acquired by the Port (all as Lessee may direct), at any time upon written notice by Lessee to Port. In addition to the aforementioned \$20 million, as escalated, the Port shall make available at any time during the term of this Lease, only after the aforesaid \$20 million as escalated has been expended, up to an additional \$5 million, which amount shall be escalated at 4.5% per year commencing December 31, 1992, and which amount shall be available at Lessee's option upon written request of Lessee, for any IY Crane contemplated in this Amendment. Lessee shall amortize 100% of any portion of this \$5 million (as escalated) which Lessee may utilize, at 9.25% per year over the lesser of 14 years or the remaining term of this Lease. Said amortization shall be considered rent and that portion relating to any IY Crane utilizing said funds shall begin to accrue immediately following any such IY Crane's acquisition, installation on the Premises and after it is operational or after any modification or refurbishment, as applicable. Said rent shall be payable at the beginning of each month after its accrual. IY Crane rent related to any IY Crane, shall cease after the end of any amortization period.

(3) The parties agree the IY Cranes shall be replaced, refurbished, or modified by the Port, (all as Lessee may direct), at any time Lessee may direct upon written notice by Lessee to the Port. Upon issuance of Lessee's written notice, the Port shall make available up to an additional \$10 million (which amount shall escalate at 4.5% per year commencing December 31, 1992), which along with any remaining portion of the initial \$20 million as escalated and any remaining portion of the \$5 million as escalated, shall be available at Lessee's option, for any such replacement, refurbishment, modification of any IY Crane provided however, no portion of this \$10 million as escalated shall be available for acquisition of any IY Cranes which is not used to replace an existing IY Crane. Lessee shall amortize 100% of any such portion of this \$10 million as escalated which may be utilized, at 9.25% per year over the lesser of 14 years or the remaining

term of this Lease. Rent shall begin to accrue immediately following any such IY Crane's acquisition, installation on the Premises and after same is operational or after any modification or refurbishment, as applicable. Such rent shall be payable at the beginning of each month thereafter. IY Crane rent related to any IY Crane, shall cease after the end of any amortization period.

(4) For the portion of any replacement, refurbishment or modification, or additional acquisition costs which exceed all amounts specified in subparagraphs (A)(1)-(3) above (as escalated), payment of such excess amounts shall be for the account of Lessee or as otherwise mutually agreed to by the parties. Lessee shall continue to pay for the full amortization period(s) regardless of whether the applicable IY Cranes are sold or otherwise removed from service. Provided however:

(i) no IY Crane shall be removed from the Premises without Lessee's prior written consent; and

(ii) if any IY Crane is sold or leased by the Port, the net proceeds will be shared as follows:

(a) the net proceeds from the sale or lease of any IY Cranes, or portions thereof, that were purchased, replaced, refurbished, or modified with all or a portion of the first \$20 million (as escalated) specified in subparagraph (A)(1) above, shall be shared equally by the Port and Lessee;

(b) the net proceeds of any sale or lease of any IY Cranes, or portions thereof, that were purchased, replaced, refurbished, or modified with all or part of the funds specified in subparagraphs (A)(2) or (A)(3) above, or any funds Lessee contributes pursuant to this subparagraph (A)(4), shall be paid to Lessee; and

(c) solely with respect to funds which may be jointly invested by the Port and Lessee upon their mutual agreement pursuant to this subparagraph (A)(4), the net proceeds of any sale or lease of the IY Cranes, or portions thereof, that were purchased, replaced, refurbished, or modified with any such funds shall be paid to Lessee and the Port in the same proportion as the payments made by each party.

(d) For purposes of illustration, the following example is given: An IY Crane is purchased with \$1.5 million in

1997 dollars from the first \$20 million described in subparagraph (A)(1) and refurbished in 2002 dollars with \$500,000 from funds described in subparagraphs (A)(2) or (A)(3) above. If the TY Crane is sold, the proceeds will be shared in the proportions of 37.5% to the Port and 62.5% to Lessee, calculated as follows: the total investment equals \$2,000,000 (i.e. \$1,500,000 plus \$500,000); and the Port's share equals 37.5% (i.e. [0.5 multiplied times \$1,500,000], divided by \$2,000,000 equals 0.375).

(iii) any sale or lease of any TY Crane by the Port to a third party shall be at fair market value unless otherwise agreed to in writing by the parties hereto; and

(iv) Lessee shall have first right of refusal to purchase or lease any TY Crane; and

(v) on or after the issuance of a notice by Lessee to the Port to replace one or more TY Cranes, Lessee shall have the option to purchase any such existing TY Crane to be replaced. Lessee may exercise such option by issuing written notice promptly to the Port that it is exercising its option. The price shall be mutually agreed to by the parties. In the event the parties cannot reach an agreement on price within 60 calendar days after the date of such written notice, then fair market value shall be determined by the procedures described in subparagraph (A)(5) below.

(5) MECHANISM TO ESTABLISH FAIR MARKET VALUE.

Should the parties hereto fail to reach agreement on the fair market value within any time specified for such agreement, Lessee and the Port agree to jointly appoint an independent appraiser to determine such fair market value or values within fifteen (15) calendar days thereafter. Failing this joint action to appoint a single appraiser within such 15 calendar day period, the parties hereto shall each designate an independent appraiser within 15 calendar days after the expiration of the period to appoint a single joint appraiser. Both appraisers shall jointly appoint a third appraiser within an additional 15 calendar days. The failure of one party to appoint an appraiser within the prescribed time period shall be deemed a waiver of its right to appoint an appraiser and shall be deemed a joint appointment of the appraiser appointed by the other. The appraisal of the jointly appointed appraiser or a majority of the panel of appraisers, as appropriate, shall be binding and conclusive on both Lessee and the Port; provided however, if a majority of such a panel cannot reach concurrence, the appraisal which is neither the highest nor the lowest

shall be binding and conclusive on both parties hereto. Appraiser(s) shall be required to issue their decision thirty (30) calendar days after the appointment of the last appraiser or as soon thereafter as is practicable. The parties shall share any expenses of the appraisers equally.

(6) Lessee shall be responsible for maintenance and repair of the IY Cranes to the original manufacturer's specifications. Any dispute under this Section 2, paragraph (e)(iii), except for those pertaining to establishment of Fair Market Value (which shall be decided as provide in subparagraph (A)(5) above) shall be resolved by arbitration pursuant to Section 7, paragraph 28(b) of this Amendment.

(7) Unless Lessee agrees to buy and the Port agrees to sell any IY Crane to Lessee, then at the expiration of the term of this Lease (as same may be extended), Lessee shall be entitled to receive an amount from the Port , with respect to any IY Crane not sold to Lessee, equal to any amounts due Lessee had any IY Crane utilizing funds specified in subparagraphs (A)(1) through (A)(3) been sold as per subparagraphs (A)(4)(ii)(a) and (ii)(b) above at Fair Market Value determined either by mutual agreement or pursuant to (A)(5) above in the absence of mutual agreement. In the event the Port does not elect to keep any or all of the IY Cranes at the end of the term of this Lease (as it may be extended), Lessee shall have an option to purchase any IY Crane the Port does not keep, at a mutually agreed price upon issuance of written notice. If the parties cannot reach an agreement on price within 60 calendar days after the date of such written notice by Lessee, then fair market value shall be determined by the procedures contained in subparagraph (A)(5) above. The proceeds shall be distributed as per subparagraph (A)(4)(ii) above.

(B) CONTAINER CRANES.

(1) GENERAL

(a) ACQUISITION AND RENT.

Upon Lessee's written request, at any time during the first twenty (20) years of this Amendment following Total Facility Completion, the Port shall purchase up to two container cranes of Lessee's choice capable of efficiently working APL's current and future vessels. Such container cranes shall not have crane rail load requirements that exceed the load capabilities of the existing apron as of the date of this Amendment; provided however, notwithstanding the foregoing, this crane rail load limitation shall not apply to any container crane acquired at Lessee's request for purposes of operating on the Fourth Berth and the northernmost 400 feet of berth specified in the definition of Expansion Premises (such areas to have crane rail

load limitations as per Exhibit H). Lessee shall pay rent to the Port for the container crane(s) based on the cost charged by the manufacturer plus the direct administrative and engineering costs of the Port and permitting, certification costs and sales tax, amortized at a 9.25% per year, over 30 years commencing upon (i) the acquisition and installation of any such container crane and after any such container crane is operational; and (ii) only with respect to any such container crane which Lessee designates in writing shall be used for the Fourth Berth, then the earlier of Facility Component Completion of the Fourth Berth or Lessee's use of any such container crane. Such rent due from Lessee shall cease (whether fully amortized or not), upon the earlier of (i) termination of this Lease (and any extensions thereto); or (ii) after any such container crane has been fully amortized unless otherwise mutually agreed in writing by the parties. After any such container crane has been fully amortized, the parties hereto shall renegotiate the rent due on any such container crane at the then prevailing fair market value, or in the absence of such mutual agreement, the rent shall be decided pursuant to the arbitration procedure in Section 7, subparagraph 28(b) of this Amendment.

(b) LESSEE OPTION TO PURCHASE.

Lessee, upon the issuance of written notice to the Port at any time during the term of this Lease (or any extensions thereto) following fourteen (14) years after commencement of rent on any container crane contemplated in subparagraph (B)(1)(a) above, shall have the option to purchase any such container crane specified in subparagraph (B)(1)(a) above from the Port at the fair market value; provided however, the determination of fair market value of any such container crane shall not include any value added to any container crane by any future enhancements to the extent such enhancements were directly paid or amortized as rent by Lessee. Should the parties be unable to agree upon the fair market value within 60 calendar days after the date of any such written notice then the fair market value of any such container crane shall be determined in accordance with the appraisal procedure set forth in subparagraph (B)(1)(d) below and such sum shall be due within thirty (30) calendar days of such appraisal determination.

(c) LESSEE ELECTION.

Lessee may elect to supply one or more container cranes for the Premises instead of, or in addition to, any container cranes specified in subparagraph (B)(1)(a) above.

(d) MECHANISM TO ESTABLISH FAIR MARKET VALUE.

Should the parties hereto fail to reach agreement on the fair market value within any time specified for such agreement, Lessee and the Port agree to jointly appoint an independent appraiser to determine such fair market value or values within fifteen (15) calendar days hereafter. Failing this joint action to appoint a single appraiser within such 15 calendar day period, the parties hereto shall each designate an independent appraiser within 15 calendar days after the expiration of the period to appoint a single joint appraiser. Both appraisers shall jointly appoint a third appraiser within an additional 15 calendar days. The failure of one party to appoint an appraiser within the prescribed time period shall be deemed a waiver of its right to appoint an appraiser and shall be deemed a joint appointment of the appraiser appointed by the other. The appraisal of the jointly appointed appraiser or a majority of the panel of appraisers, as appropriate, shall be binding and conclusive on both Lessee and the Port; provided however, if a majority of such a panel cannot reach concurrence, the appraisal which is neither the highest nor the lowest shall be binding and conclusive on both parties hereto. Appraiser(s) shall be required to issue their decision thirty (30) calendar days after the appointment of the last appraiser or as soon thereafter as is practicable. The parties shall share any expenses of the appraisers equally.

(e) ENHANCEMENTS.

Upon Lessee's written request, future enhancements (except as provided in Section 2, paragraph (e)(iii)(B)(2) below pertaining to container crane raising) to any Port owned container crane shall be paid for by the Port, and Lessee shall pay rent on any such enhancements based on an amortization schedule of the enhancement costs (including the Port's direct administrative and engineering costs and permitting, certification costs and sales tax) with a rate of return equal to 9.25% per year applied over the remaining term of the Lease (as it may be extended) regardless of any sale. Lessee shall also have the right to make any such enhancements at its own cost and expense upon the written consent of the Port which shall not be unreasonably withheld.

(f) MAINTENANCE AND REPAIR; SECONDARY USE RIGHTS.

Lessee shall be responsible for maintenance and repair to the original manufacturer's specifications and fueling of the container cranes. If the Port constructs the Fourth Berth, and the Fourth Berth is not part of the Premises, Lessee shall have

secondary use rights for the Fourth Berth and to any container cranes installed for use on the Fourth Berth. In that event, Lessee shall pay the Port's tariff rate for use of such cranes and for all other charges connected to use of the Fourth Berth.

(2) CRANE RAISING.

Within 24 months of Lessee's written request, the Port will have completed increasing the height of the first of up to five existing Port-owned container cranes and the remainder of them in an expeditious manner by up to 20 feet in order to allow these container cranes to accommodate higher container stacks on container vessels which will dock at the Premises, subject to conformance with acceptable engineering standards and the following conditions:

(a) Cranes 61, 62 and/or 63 will be raised first upon Lessee's written request. The Port shall pay permitting, engineering, design, construction, certification, sales tax and the Port's direct administrative costs for raising of these cranes, and such costs shall be repaid to the Port by Lessee as rent based on a 9.25% amortization schedule over 30 years, or the remaining term of this Lease, whichever is less.

(b) Lessee shall have the following crane raising options with respect to container cranes 64 and/or 68:

(1) Cranes 64 and/or 68 will be raised following the raising of cranes 61, 62 and 63 upon Lessee's written request. The Port will pay for raising cranes 64 and/or 68. From the time crane 64 and/or 68 is raised, the total minimum annual guarantee for that particular crane (now at 625 hours) will be established as follows: 0-30 months 625 hours; 31-60 months 937 hours; 61 months to end of Lease term 1,250 hours; or

(2) Cranes 64 and/or 68 will be raised following the raising of cranes 61, 62 and 63 upon Lessee's written request. The Port shall pay permitting, engineering, design, construction, certification, sales tax and the Port's direct administrative costs for raising cranes 64 and/or 68 and such costs shall be repaid to the Port by Lessee as rent based on an amortization of 9.25% per year for the lesser of 30 years or the remaining term of this Lease; or

(3) Lessee may pay to raise either or both of Cranes 64 and 68 at its own cost and expense.

(e)(iv) SPECIAL IMPROVEMENTS - CAP ON COSTS.

(A) Exhibit F contains a list of Special Improvements to be constructed by the Port for which Special Improvements Rent shall be paid. The Actual Cost Caps are described in Exhibit F, Part II, and such Actual Cost Caps shall apply regardless of the Actual Costs of any Special Improvement, subject to any Changes pursuant to paragraph (e)(v) of this Section 2. Lessee's Maximum Share regardless of Actual Cost for each of the Special Improvements listed in Exhibit F, shall be capped and not exceed the amount derived by multiplying the percentage assigned in Exhibit F as Lessee's percentage share for each of the Special Improvement's Actual Cost, times the amount in the Actual Cost Cap column in Exhibit F for such improvements. Provided, however, if Lessee issues a written notice to the Port specifically requesting that construction of a Special Improvement be delayed beyond December 31, 1996, Lessee's Actual Cost Cap specified in Exhibit F would increase at a 4.5% annual compounded inflation factor between December 31, 1996 and the last month of the requested delay.

(B) If Actual Costs for any Special Improvement are less than the Actual Cost Cap contained on Exhibit F for such improvement, the actual lesser amount will be used as the basis for calculating Lessee's Special Improvement Rent payments.

(e)(v) APPROVAL OF PLANS AND SPECIFICATIONS; CHANGES.

The following provisions govern Changes and/or other modifications. This entire provision (including without limitation Lessee's right to challenge the Port's estimates) shall be subject to the arbitration procedure in Section 7, subparagraph 28(b) of this Amendment.

(A) DEFINITIONS.

For purposes of this Section 2, paragraph (e)(v), the following definitions shall apply:

(1) **Total Facility**—The collective sum of all Facility Components, which, when Total Facility Completion is achieved, provides Lessee with all of the physical elements of the facility required by this Amendment.

(2) **Conceptual Design**—The drawings, plans, specifications, and other materials which represent a level of detail equivalent to approximately fifteen percent (15%) completion of the design necessary to construct or otherwise improve a Facility Component in a good workmanlike manner and shall include an estimated Actual Cost based on Exhibit H. The materials used to describe the

Conceptual Design shall, at a minimum, identify and describe all major elements of the Facility Component.

(3) **Final Design**—The contract documents, including drawings and specifications, which represent a level of detail equivalent to one hundred percent (100%) completion of the design necessary to construct or otherwise improve the Facility Component in a good workmanlike manner and which includes a cost estimate.

(4) **Change**—Any modification requested in writing by Lessee to the scope or specifications of a Facility Component required by this Amendment (as amended, including supporting documents), which by mutual agreement or arbitration does affect the estimated Actual Cost at the time of the request and/or impacts the Actual Schedule as per subparagraph (G) below, for Facility Component Completion of the IX Facilities, Total Facility Completion, and/or Facility Component Completion of the Fourth Berth (if exercised by Lessee) as described under (G)(1) below.

(5) **Actual Schedule**—Detailed current schedule for expected Facility Component Completion of all Facility Components. Such schedule shall be made available to both parties and shall include a critical path for each of the following items: Facility Component Completion of the IX Facilities, Total Facility Completion, and Facility Component Completion of the Fourth Berth (if exercised by Lessee).

(6) **Completion**—For purposes of this paragraph (e)(v), the conclusion of any stage contemplated herein which is acceptable by either mutual agreement or by resolution pursuant to the arbitration procedure.

(B) PERIOD UP TO COMPLETION OF CONCEPTUAL DESIGN.

(1) Promptly after execution of this Amendment, the Port and Lessee shall each designate in writing Project Leaders to respond to issues arising herein. Each party shall also designate, in writing, Program Supervisors to oversee the Project Leaders.

(2) All issues regarding the Conceptual Design shall be reviewed pursuant to the following documents and information, in descending order of priority and importance:

(a) The Lease, as amended, including Exhibit H as amended.

(b) Facility Component equivalence to existing corresponding improvements at Terminal 5.

(c) Data and criteria developed and agreed to by the Port and Lessee during the period up to mutual approval of Conceptual Design.

(3) The Port shall develop a Conceptual Design for the Total Facility in accordance with the provisions of (B)(2) above.

(4) The Port's and Lessee's respective Project Leaders shall attempt to resolve any disagreement on Conceptual Design or on whether a proposed modification is a Change which arises during this period.

(5) Disagreements which cannot be resolved by the Project Leaders shall be referred to the two Program Supervisors who shall attempt to resolve the issue in accordance with the provisions of (B)(2) above.

(C) APPROVAL OF CONCEPTUAL DESIGN OF ANY FACILITY COMPONENT.

(1) The proposed Conceptual Design shall be submitted to Lessee for its approval (provided, however, no such approval shall relieve the Port of its obligation to comply with all applicable laws, regulations, ordinances, and other similar requirements). Lessee shall review the proposed Conceptual Design solely on the basis of whether or not the proposed Conceptual Design is consistent with the documents and information as described in subparagraph (B)(2) above. Within four (4) Business Days after receipt, Lessee shall, in writing, either approve the proposed Conceptual Design in whole or in part with details in writing of any objections or reject the proposed Conceptual Design in whole or in part with written detailed explanation thereof. If all or part of the proposed Conceptual Design is rejected, the Port shall resubmit same after responding to said objection(s) which shall then be subject to the same procedure. If the parties cannot agree as to whether the proposed Conceptual Design conforms with the scope and intent of the improvements as contemplated by this Amendment or whether any such aspect constitutes a Change after resubmission of the proposed Conceptual Design, then either party may call for the dispute to be resolved in accordance with the following procedures:

(a) The parties' Project Leaders shall immediately begin good faith negotiations to resolve any disagreement regarding the acceptability of the proposed Conceptual Design. Such negotiations shall not exceed four (4) Business Days.

(b) If the parties' Project Leaders cannot resolve such disagreements after the expiration of the preceding period, the dispute shall be immediately referred to the parties' Program

Supervisors, who shall thereafter attempt to resolve the dispute within five (5) Business Days.

(c) If the parties' Program Supervisors cannot resolve the dispute after the expiration of the preceding five Business Day period above, then the dispute may be referred by either party for arbitration pursuant to Section 7, subparagraph 28(b) of this Amendment. All correspondence, materials, drawings, and cost information relating to the modification will be available to the arbitrator for his or her review. Lessee may direct the Port in writing to proceed in accordance with Lessee's instructions regardless of the pendency of any dispute and the Port shall so comply.

(2) The Port shall be allowed to make revisions to the agreed Conceptual Design or the Final Design (and shall notify Lessee of any such revisions to the extent practicable) only if such proposed revisions:

(a) allow the Port to reduce Actual Cost or time by implementing more efficient building components, systems, and construction practices; and

(b) provide Facility Components which are functionally equivalent to the improvements as designed; and

(c) maintain the same quality level as specified in the applicable documents; and

(d) do not have an impact on the Actual Schedule completion dates and do not substantially increase the estimated Actual Costs.

The Port may implement such revisions for a Facility Component prior to Facility Component Completion. Port-proposed revisions which do not meet the above criteria may only be undertaken after Lessee gives its written permission. Disputes which arise with respect to this matter shall be subject to the resolution procedures in this subparagraph C.

(D) PERIOD AFTER COMPLETION OF CONCEPTUAL DESIGN UP TO FINAL DESIGN.

Proposed modifications to the agreed-upon Conceptual Design, up to approval of the Final Design, shall be handled as follows:

(1) A proposed modification will be reviewed by the Port Project Leader for impacts on labor, materials, equipment, cost, Actual

Schedule, and other direct impacts. Such impacts on estimated Actual Cost and Actual Schedule shall be quantified by the Port. The Port shall reply in writing to Lessee's Project Leader within four (4) Business Days from the date of receipt of the requested modification regarding the impacts on estimated Actual Cost and Actual Schedule and the Port's judgment as to whether or not the modification constitutes a Change.

(2) Lessee's Project Leader shall respond within four (4) Business Days after receipt of the above-referenced written communication to the Port with a decision to proceed with, modify, or reject the proposed modification.

(3) Lessee may direct the Port in writing to proceed with a proposed modification at any time and the Port shall do so; provided, however, if Lessee does not give such direction in writing at the time it initially proposes the modification to the Port, the period from the time such proposal is initially made until Lessee gives the Port notice to proceed in writing shall be included in the consideration of the impact on the Actual Schedule. The Port will isolate the cost and Actual Schedule impacts of such modification.

(4) The parties' project Leaders shall immediately begin good faith negotiations to resolve any disagreements regarding estimated Actual Cost and Actual Schedule impacts and/or whether such modification constitutes a Change. Such negotiations shall not exceed four (4) Business Days.

(5) If the parties' Project Leaders cannot resolve such disagreements after the expiration of the preceding period, the dispute shall be immediately referred to the parties' Program Supervisors, who shall thereafter attempt to resolve the dispute within five (5) additional Business Days.

(6) If the parties' Project Supervisors cannot resolve the dispute after the expiration of the preceding five Business Day period above, then the dispute may be referred by either party for arbitration pursuant to the Section 7, subparagraph 28(b) of this Amendment. All correspondence, materials, drawings, and cost information relating to the modification will be available to the arbitrator for his or her review.

(7) Lessee may direct the Port in writing to proceed in accordance with Lessee's instructions regardless of the pendency of any dispute and the Port shall so comply.

(E) APPROVAL OF FINAL DESIGN OF ANY FACILITY COMPONENT. The proposed Final Design of any Facility Component shall be submitted to Lessee for approval by Lessee (provided, however, no such approval shall relieve the Port of its obligation to comply with all applicable laws, regulations, ordinances, and other similar requirements). Lessee shall review the proposed Final Design on the basis of whether or not the proposed final design is consistent with the Conceptual Design, the documents and information specified in subparagraph B(2) above of this paragraph (e)(v), and other agreed to modifications or Changes made during the time leading up to submission of the Final Design for approval. Within ten (10) Business Days after receipt, Lessee shall, in writing, either approve the proposed Final Design in whole or in part with details in writing of any objections or reject the proposed Final Design in whole or in part with written detailed explanation thereof. If all or part of any proposed Final Design is rejected, the Port shall resubmit same after responding to said objection(s) which shall then be subject to the same procedure. If the parties cannot agree as to whether the proposed Final Design conforms with the scope and intent of the improvements as contemplated by this Amendment or whether any such aspect may constitute a Change (as asserted by either party) after resubmission of the proposed Final Design, then either party may call for the dispute to be resolved in accordance with the same procedures provided in subparagraph C above.

(F) PERIOD AFTER FINAL DESIGN UP TO FACILITY COMPONENT COMPLETION OF ANY FACILITY COMPONENT.

Proposed modifications by Lessee to the Final Design of any Facility Component as approved shall be handled as follows:

(1) A proposed modification will be reviewed by the Port Project Leader for impacts on labor, materials, equipment, estimated Actual Cost, Actual Schedule, and other direct impacts. Such impacts on estimated Actual Cost and Actual Schedule shall be quantified by the Port. The Port shall reply to Lessee's Project Leader within four (4) Business Days from the date of receipt of the requested change regarding the impacts on estimated Actual Cost and Actual Schedule and the Port's judgment as to whether or not such modification constitutes a Change.

(2) Lessee's Project Leader shall respond within four (4) Business Days to the Port with a decision to proceed with, modify, or reject the proposed modification.

(3) Lessee may direct the Port in writing to proceed with a proposed modification at any time and the Port shall do so; provided, however, if Lessee does not give such direction in writing at the time it initially proposes the modification to the Port, the period from the time such proposal is initially made until Lessee gives the Port notice to proceed

in writing shall be included in the consideration of the impact on the Actual Schedule. The Port will isolate the estimated cost and Actual Schedule impacts of such modification.

(4) The parties' Project Leaders shall immediately begin good faith negotiations to resolve any disagreements regarding estimated Actual Cost and Actual Schedule impacts and/or whether such modification constitutes a Change. Such negotiations shall not exceed four (4) Business Days.

(5) If the parties' Project Leaders cannot resolve such disagreements, the dispute shall be referred within two (2) Business Days after conclusion of the negotiations described in (4) above to the parties' Program Supervisors, who shall attempt to resolve such disagreements within three (3) Business Days,

(6) If the parties' Program Supervisors cannot resolve the dispute after the expiration of the preceding three Business Day period above, then the dispute may be referred by either party for arbitration pursuant to Section 7, subparagraph 28(b) of this Amendment. All correspondence, materials, drawings, and cost information relating to the modification will be available to the arbitrator for his or her review.

(7) Lessee may direct the Port in writing to proceed in accordance with Lessee's instructions regardless of the pendency of any dispute and the Port shall so comply.

(G) SCHEDULE IMPACTS.

(1) With respect to any modification or the cumulative effect of multiple modifications, the Port will quantify, using critical path analysis, any impact on the current Actual Schedule for inclusion in the submittals to Lessee required in this subparagraph (e)(v).

(a) If such impact does not extend the Actual Schedule beyond the Preferred Schedule, there will be no Change for purposes of schedule impacts.

(b) If such impact does extend the Actual Schedule and that extension (or portion thereof) goes beyond the Preferred Schedule, the modification will be deemed a Change based on the impact to the Actual Schedule and an equal extension of time (to the extent such extension goes beyond the Preferred Schedule) shall be applied to the Conservative Schedule for any or all of the following impacted items: Facility Component Completion of the IV Facilities; Total Facility Completion; and

Facility Component Completion of the Fourth Berth (if exercised by Lessee).

(c) If the Conservative Schedule has been extended under (1)((b)) above, and Lessee subsequently requests a Change which reduces the Actual Schedule for the IY Facilities, Total Facility Completion, and/or the Fourth Berth (if exercised by Lessee), an equal reduction of time shall be applied to the applicable Conservative Schedule dates; provided, however, in no event shall the Conservative Schedule dates be moved back to dates earlier than those given in Section 1.G.

(2) With respect to all Changes that affect the Actual Schedule, the Port will use its good faith efforts to prevent or minimize delays and ensure that the Conservative Schedule for the IY Facilities, Total Facility Completion, and the Fourth Berth (if exercised by Lessee) will be met.

(H) PAYMENTS AS A RESULT OF A CHANGE; SAVINGS POOL

(1) PAYMENTS.

(a) The estimated Actual Cost of a Change or series of Changes (whether a net increase or a net reduction) shall be determined based upon one of the following two applicable estimated Actual Costs: for the period prior to completion of Conceptual Design, the estimated Actual Cost of improvements consistent with Exhibit H at the time of execution of this Amendment (which is equal to the "Actual Cost Cap" specified in Part II of Exhibit F for Special Improvements); or, for the period following completion of Conceptual Design, the estimated Actual Cost of improvements consistent with the Conceptual Design as approved.

(b) If a Change for a Special Improvement results in a net increase in the Port's estimated Actual Cost for such Special Improvement, and the resultant estimated Actual Cost of the relevant Special Improvement is below the "Actual Cost Cap" specified on Part II of Exhibit F hereto, Lessee's rental payment obligation for such Change shall be based on Lessee's percentage share of the estimated Actual Cost of such Change specified as "Lessee's % Share" in Part II of Exhibit F. To the extent that such estimated net increase for a Special Improvement Change exceeds the "Actual Cost Cap," Lessee shall pay 100% of such amount over the Actual Cost Cap as rent (amortized over 30 years at 9.25%).

(c) If a Change for a Facility Component which is not a Special Improvement results in a net increase in the Port's estimated Actual Cost, Lessee shall pay 100% of such amount which is attributable to such Change as rent (amortized over 30 years at 9.25%). Any Change which results in a net decrease in the Port's estimated Actual Cost for such Facility Component (which is not a Special Improvement) shall accrue to the Port's benefit.

(2) SAVINGS POOL.

In the event Lessee chooses to make a Change which reduces the scope of work on any Special Improvement, and such Change results in a reduction of the estimated Actual Cost to complete said Special Improvement from the applicable estimated Actual Cost, the savings shall be multiplied by the "Port's % Share" specified in Part II of Exhibit F hereto. Such product shall be placed in a pool (the "Savings Pool"). Such Savings Pool may be used by Lessee in Lessee requested modifications or Changes which add to the estimated Actual Cost of any Special Improvement and the estimated Actual Cost for any such Special Improvement shall be reduced by the amount from the Savings Pool. Provided however, this shall not affect the Port's right to claim schedule impact if the Port believes such an impact will occur; and provided further, any amounts in the Savings Pool which have not been spent by the time of Total Facility Completion shall cease being available to Lessee. The parties agree that Savings Pool amounts which are created as a result of a deductive Change in the Gatehouse scope requested by Lessee shall be applied solely to the estimated Actual Costs of Changes for: an Intermodal Yard tower; CFS rail spur and associated turnout; CFS truck scale purchase and installation; a canopy at the Maintenance and Repair facility ("M & R"); "genset" mounting area under the M & R canopy; steam cleaning area under the M & R canopy; the slab under the M & R canopy; an intermodal yard maintenance building; and increases in the estimated Actual Costs to the Gatehouse. Lessee-requested reductions in the scope of the M & R do not create a savings pool.

(e)(vi) EXTENSION OF TIME FOR TOTAL FACILITY COMPLETION.

(A) If the Port provides Lessee with a written notice as hereinafter provided, the Port shall be entitled to an extension to the Conservative Schedule for Delay to the extent (i) there is a specific cause of delay which the Port can demonstrate will solely and directly delay Total Facility Completion or Facility Component Completion and such delay detrimentally affects the critical path of work; and (ii) such delay is one of the excusable causes set forth in subparagraph (vi)(B) below; and (iii) the Port demonstrates that it used its good faith efforts to prevent or minimize the actual delay, including without limitation performing other or additional

work contemplated by this Amendment; and (iv) but for such cause of delay, Total Facility Completion or, Facility Component Completion, as applicable, would have occurred on time. The amount of any such extension shall be the number of days by which the Port can demonstrate that Total Facility Completion or Facility Component Completion, as appropriate will be delayed solely and directly by such cause of delay. The Port shall at all times have the burden of proving each of the matters required to be established for excusable delay; and in the event that it is not possible to determine whether or to what extent any delay is attributable to causes excused by the terms hereof, the Port shall not be entitled to any extension for performance and Lessee shall be entitled to recover liquidated damages for the entire period of delay.

(B) The Port shall be entitled to an extension as provided in (vi)(A) above for any delay caused by Lessee (other than those caused by Lessee in exercising any of its rights or duties in accordance with this Amendment); by formal action of government prohibiting construction by war or preparation for war; by acts of God (other than ordinary storms or inclement weather conditions), earthquake, hurricanes, lightning, floods, or landslides or other acts of overwhelming force, explosions, fires, riots, insurrections, sabotage, blockages, embargoes or epidemics as are the result of causes reasonably beyond the Port's control, labor strikes or strife including lockouts. Notwithstanding anything to the contrary in this Lease, the Port shall not be entitled to excusable delay for (i) any cause of delay in existence as of the date of this Amendment; or (ii) for any delay to the extent caused by any environmental matter related to the Expansion Premises unless the Port demonstrates the delay caused by the environmental matter is caused by Lessee or other users of the Premises authorized by Lessee or, if timely exercised, the Option Premises.

(C) The Port shall deliver to Lessee written notice of a cause of delay pursuant to this subsection (vi) as soon as practicable but no later than 14 calendar days after the date which the Port had knowledge or should have had knowledge of such cause of delay. Within 14 calendar days after such cause of delay shall have ended, the Port shall deliver to Lessee written notice of the actual or estimated time of delay resulting from such cause which specifies the cause of the delay and any detailed documentation as is then available justifying such extension. Any further documentation thereafter becoming available shall promptly be provided to Lessee. On the basis of the Port's documentation, Lessee and the Port shall confer and attempt to agree upon the number of days of any extension for performance and if the parties cannot agree, any such extension shall be determined pursuant to Section 7, paragraph 28(b).

(D) No extension of time shall be granted pursuant to this paragraph (e)(vi) unless the Port shall have first delivered by fax or U.S. mail any

written notices and other documentation within the time limitations set forth in this paragraph (e)(vi).

SECTION 3. Subparagraphs (h), (i), (j), (k), (l), and (m) are hereby added to paragraph 1 (LEASED PREMISES AND EQUIPMENT) of the Basic Lease, as amended:

- (h) **OFF-PREMISES TEMPORARY CONTAINER YARD LEASEHOLD.**
- (i) The Off-Premises Temporary Container Yard ("OPTCY") for empty containers will be provided at Terminal 105 in the stages described on Exhibit G beginning with the start of construction of the Expansion Premises. Lessee shall continue to pay rent for the Salmon Terminals Storage Area and Lockheed Storage Area (as now leased pursuant to those certain leases between APL and the Port dated July 2, 1990 and February 26, 1991, hereinafter collectively the "Rental Agreements") during the period construction takes place within the Salmon Terminals Storage Area. The Rental Agreement for the Salmon Terminals Storage Area shall terminate upon Facility Component Completion of that area and Basic Land and Improvements Rent shall commence from that time. Lessee shall continue to pay rent for the Lockheed Storage Area and shall continue to use both the OPTCY without any charge and up to ten (10) acres of usable space on the Lockheed Storage Area until Total Facility Completion (excluding Facility Component Completion of the Option Premises, unless Lessee's option is exercised pursuant to Section 3, subparagraphs (i)(i)(A) or (i)(i)(B) of this Amendment). Lessee at its discretion may choose to discontinue use of both the OPTCY and the Lockheed Storage Area prior to Total Facility Completion (as limited above), in which event the Rental Agreement for the Lockheed Storage Area shall terminate. Should Lessee at its discretion decide to exercise its option for the Option Premises at a later date than those specified in Section 3, subparagraphs (i)(i)(A) or (i)(i)(B) of this Amendment, the Port shall provide as many usable acres in the Option Premises as feasible during stage construction of the Option Premises (subject to any lease by the Port with interim tenants which is in accordance with Section 3, subparagraph (i)(ii) of this Amendment).
- (ii) The parties agree that Lessee need not relocate its off-premises temporary storage at the OPTCY back to the Premises until Total Facility Completion (excluding Facility Component Completion of the Option Premises, unless Lessee's option is exercised pursuant to Section 3, subparagraphs (i)(i)(A) or (i)(i)(B) of this Amendment), provided Lessee may decide to relocate, in its sole discretion, prior to Total Facility Completion (excluding Facility Component Completion of the Option Premises, unless Lessee's option is exercised pursuant to Section 3, subparagraphs (i)(i)(A) or (i)(i)(B) of this Amendment).

After such time, Lessee shall pay at the then prevailing market rate should Lessee desire to continue to utilize the OPTCY. Any dispute arising out of this Section 3, subparagraphs (h)(i) and/or (h)(ii) shall be resolved by arbitration pursuant to Section 7, paragraph 28(b).

(iii) A share of Lessee's operating costs for using the OPTCY shall be paid by the Port to Lessee on the basis of the number of Drayage Moves. The Port's share of this cost shall be equal to a payment for each Drayage Move made to Lessee equal to 50% of the average dray cost for a Port truck and driver making at least two moves between the Premises and the OPTCY per hour. The Port's payments shall not exceed the cost for 10,000 Drayage Moves in a single year, or prorated at this rate for periods less than one year. Any such payments made pursuant to this subparagraph (iii) shall be made on a monthly basis with such supporting documentation as Lessee or the Port shall reasonably request and shall commence upon Lessee's startup of operations at the OPTCY.

(iv) The parties hereto agree that the Port's Terminal 105 tenant, Crowley Marine Services ("CMS") shall have the right of limited access to, and use of S.W. Idaho Street between West Marginal Way S.W. and the Duwamish Waterway for moving crawler cranes and lift trucks between the CMS equipment maintenance shop and the CMS apron area. Lessee shall be provided with reasonable prior written notice of the date and time of each move, and each move shall be scheduled to first accommodate Lessee's use of S.W. Idaho Street. The parties hereto estimate CMS activity of S.W. Idaho Street will consist of approximately five (5) round trips per year with crawler cranes, and two (2) round trips per month with lift trucks.

(i) OPTIONS TO EXPAND.

Lessee shall have the following options to expand the Premises to include the Option Premises (or "OP") at Lessee's sole discretion, subject to the following conditions stated below:

(i) **OPTIONS:** Lessee shall have the following two options related to the Option Premises which shall be exercisable by Lessee for the period from the effective date of this Amendment and shall continue for a ten year period following Total Facility Completion but in no event later than December 31, 2009:

(A) OPTION PREMISES EXCLUSIVE OF THE FOURTH BERTH. Lessee shall have an option to include the Option Premises (exclusive of the Fourth Berth) in the initial expansion. Upon issuance of written notice by Lessee on or before June 1, 1995, then the OP, (exclusive of the Fourth Berth) shall be included in the schedule for Total Facility Completion

within the Conservative Schedule. Should Lessee exercise this option, Lessee shall subsequently have, at any time during the Option Period, the option to require the Port to construct the Fourth Berth upon issuance of written notice to that effect.

(B) OPTION PREMISES INCLUSIVE OF THE FOURTH BERTH. Lessee shall have an option to include the Option Premises (inclusive of the Fourth Berth) in the initial expansion. Upon issuance of written notice by Lessee on or before March 1, 1995, then the OP (inclusive of the Fourth Berth) shall be included in the schedule for Total Facility Completion within the Conservative Schedule.

(ii) CONDITIONS:

(A) Should the Option Premises be developed, and added to the Premises, the Lease rental rate will be the same as the then prevailing Basic Land and Improvements Rent for the Expansion Premises, as shown in Part I of Exhibit F, through the end of the Lease term. The Port reserves approximately 1.5 acres of land abutting the north side of the Option Premises, as shown on Exhibit A-6, to be used for access and support of the piers extending north from the shoreline. If the Port decides not to utilize the piers by completion of Final Design for the Option Premises (exclusive of the Fourth Berth), the Port shall notify Lessee of the availability of the 1.5 acres and shall include it as part of the Option Premises.

(B) Lessee's options are subject to any lease with an interim tenant(s). Until Lessee exercises either of its options for the OP, the Port retains the sole right to determine when to develop the Option Premises and to choose interim tenants (at whatever level of development). Any lease with an interim tenant(s) shall not be of a length in excess of 3 years (inclusive of any options to renew), unless a longer term is mutually agreed to by the Port and Lessee in writing and shall not deprive Lessee of its ten (10) acres of the Lockheed Storage Area prior to Total Facility Completion as per Section 3, subparagraph (h) of this Amendment. Lessee's option to exercise its rights with respect to the OP shall be subject to the following provisions:

(1) In the event that the Option Premises have not been developed to the standards of the improved Salmon Terminals Storage Area, with the Fourth Berth in place, and an interim tenant is leasing the Option Premises, the Port shall have no more than 36 months beyond the expiration of any lease of any interim tenant (plus any

additional time solely and directly related to obtaining necessary land use and environmental permits which the Port undertakes to obtain as expeditiously as possible) to develop the area as required for Lessee's operation. (The 36-plus months will be reduced to the extent that the remaining period on an interim tenant's lease can be used to begin the development process).

(2) In the event that the Option Premises are not under lease to an interim tenant at the time of Lessee exercising its option, the Port shall have no more than 36 months (plus any additional time required for obtaining necessary land use and environmental permits) to develop the area for Lessee's use as contemplated in Exhibit H.

(C) OTHER CONDITIONS

(1) Should the Port lease the Option Premises to an interim non-container terminal tenant(s), and choose not to fully develop the area to the standards of the improved Salmon Terminals Storage Area, the Port will provide (and Lessee will cooperate in providing) the interim tenant with access to the Option Premises along the north boundary, which may require vehicle right-of-way and movement across the Intermodal Yard tail track and other connected areas as needed for workable interim tenant(s) access. To the degree feasible, this access will also serve as the means of access for construction equipment in the event of development of the Option Premises at any future date.

(2) During any interim period prior to Lessee taking over the Option Premises, but subsequent to the Port developing the Option Premises to the standards of the improved Salmon Terminals Storage Area, Lessee will cooperate in providing for joint gate facilities and common access to the Option Premises off the Overpass and for joint use of the Intermodal Yard by any independent container operator tenant using the Option Premises, unless mutually agreed otherwise. Lessee will provide gate receipt/delivery and on-dock rail operational services on a contract basis (at then prevailing market rates) to any independent container operator on interim lease on the Option Premises utilizing Lessee's gate/entry and the Intermodal Yard. Any interim container terminal tenants will berth their vessels at the Fourth Berth and will be allowed

secondary use of the berth and container cranes south of the Fourth Berth when available. The Port shall have the right to charge such interim tenants the Port's tariff rate for use of the cranes and for all other charges connected to the secondary use of said berth, provided however, with respect to container cranes owned by the Port, Lessee shall be entitled to charge the secondary user Lessee's then current tariff relating to maintenance and fuel not to exceed the Port's tariff for those items. With respect to any container cranes owned by Lessee (or any Affiliate of Lessee), Lessee shall be entitled to charge and collect for Lessee's own account, any and all fees relating to use of such container cranes including without limitation fees for such container crane's use, fuel, and maintenance not to exceed the Port's tariff for all such items.

(j) NOTIFICATION, RIGHT OF FIRST REFUSAL AND OPTION REGARDING CONTIGUOUS PROPERTIES.

(i) RIGHT OF FIRST REFUSAL.

The Port agrees to notify Lessee in writing 60 calendar days in advance of the Port's intention to lease to a tenant(s) identified in such notice any Contiguous Property. Lessee thereafter has 90 calendar days to notify the Port in writing of its intention to exercise Lessee's right of first refusal to lease such Contiguous Property and 90 additional calendar days to execute a lease amendment on the same terms and conditions of this Lease with the Port providing for rent at the then current Basic Land and Improvements Rent to commence once the subject property has been developed to the standards of the improved Salmon Terminals Storage Area. If Lessee fails to so notify the Port, the Port may then lease any such Contiguous Properties to any party it chooses. Should the Port ultimately lease any such Contiguous Properties wherein Lessee fails to exercise its right of first refusal, and should any such lease expire, then Lessee's right of first refusal shall continue to be effective as to such Contiguous Properties.

(ii) CHARACTERIZATION OF OPTION PREMISES.

Following the expiration of Lessee's option for the Option Premises pursuant to Section 3, subparagraph (i) of this Amendment, the area now encompassed by the Option Premises, regardless of its stage of development, will be considered Contiguous Property subject to Lessee's rights. If a fill area is selected as a development alternative, any such area shall be considered Contiguous Property (provided Lessee has leased or given notice to lease the area of the Option Premises).

(iii) LESSEE OPTION FOR CONTIGUOUS PROPERTIES.

Lessee shall have the option to lease any Contiguous Properties upon written notice to the Port to that effect, for such Contiguous Properties which are not under lease pursuant to subparagraph (j)(i) above. The Port shall promptly develop any such Contiguous Property to the standards of the improved Salmon Terminals Storage Area, after which Lessee shall begin paying the then current Basic Land and Improvements Rent relating to said Contiguous Property.

(iv) CEM PROPERTY.

(A) The CEM Property is part of the Contiguous Properties. The CEM Property which is available for development as Contiguous Property will be the area remaining after property area is deleted or has been designated for the following purposes:

(1) a strip of land to be developed as a "buffer" zone between nearby properties and the Premises, pursuant to state and/or local laws, ordinances, regulations, or permits; and

(2) property transferred to or otherwise made available for use by industries and companies directly affected by the development of the Expansion Premises.

(B) The parties acknowledge that development of the CEM Property to the standards of the improved Salmon Terminals Storage Area may not be technically or economically reasonable. If, however, Lessee exercises any of its Contiguous Property rights with respect to leasing the CEM Property, then the Port agrees to develop such property to a standard capable of sustaining the weight of any loaded container (as presently known in the industry as of the effective date of this Agreement) on a chassis, or three stacked empty containers (of any size), whichever is greater. Lessee shall pay rent for the CEM Property developed to such standard at 85% of the then current Basic Land and Improvements Rent. Provided, however, if Lessee and the Port agree to rental terms for the CEM Property which makes development economically feasible, the Port shall develop the CEM Property to normal container yard standards at Lessee's request. In any event, if the Port chooses to develop to full container yard standards, Lessee shall pay rent for the CEM Property at the then current Basic Lands and Improvements Rent for those portions so developed.

(k) LIQUIDATED DAMAGES AND PORT GUARANTEE REGARDING EXPANSION PREMISES.

(i) GENERAL.

The parties acknowledge Lessee and its Affiliates have a need for timely completion on or prior to expiration of the Conservative Schedule of (i) Facility Component Completion of the IY Facilities; and (ii) Total Facility Completion (exclusive of the Fourth Berth) of the Expansion Premises; and (iii) Facility Component Completion of the Fourth Berth (if Lessee's option is timely exercised), (i.e., time is of the essence). Lessee (and APL) require the ability to shift to Seattle intermodal cargo which is presently loaded and unloaded in other West Coast ports and bound for or arriving from other locations in the United States. Failure to complete IY Facilities, Expansion Premises or the Fourth Berth, as applicable, within the Conservative Schedule required by this Amendment shall cause adverse financial impacts to Lessee (and APL). These impacts are very difficult, at this time, to ascertain and quantify as actual damages. The parties therefore agree to provide for liquidated damages in the following manner and subject to the following conditions and the parties have further agreed that the calculations and assumptions for liquidated damages are fair and reasonable as of the date of this Amendment. Any such payments shall be made to Lessee by the Port on a monthly basis. Lessee agrees that, during the period when liquidated damages can be assessed, assessment of liquidated damages shall be Lessee's sole remedy.

(ii) IY FACILITIES.

(A) IYF LIQUIDATED DAMAGES.

The Port agrees to pay as liquidated damages Fifteen Thousand Two Hundred Forty Dollars (\$15,240) per day for each full day beyond the Conservative Schedule wherein Facility Component Completion of the IY Facilities has not occurred ("IYF Liquidated Damages")

(B) IYF LIQUIDATED DAMAGES ADJUSTMENT

Provided however, with respect to IYF Liquidated Damages only, an adjustment shall be made so that Lessee shall be obligated to repay to the Port or the Port shall be required to pay Lessee an additional amount (as applicable), based on the following formula: the number of rail intermodal containers owned or leased by APL or its Affiliates which are handled by Lessee at the Premises for the one year period prior to Facility Component Completion of the IY Facilities, subtracted from the number of rail intermodal containers owned or leased by APL or its Affiliates handled by Lessee at the Premises for the one year period beginning ninety days after Facility Component Completion of the IY Facilities, shall be calculated and referred

to as the "Actual Intermodal Rail Volume Shifted" for purposes of this calculation of the adjustment to IYF Liquidated Damages.

(1) Should the Actual Intermodal Rail Volume Shifted be less than 75,000 containers (i.e. said 75,000 containers is an assumed Container Shift volume the parties agree is reasonable for the calculation of IYF Liquidated Damages above as of the date of this Amendment), then Lessee shall owe the Port a sum to be determined as follows: the Actual Intermodal Rail Volume Shifted shall first be subtracted from 75,000. The difference shall be multiplied by \$48 (i.e. said \$48 is an assumed amount per Intermodal Lift that the parties agree is reasonable for the calculation of IYF Liquidated Damages above as of the date of this Amendment). The product shall be divided by 365 days and then multiplied by the number of days which were subject to IYF Liquidated Damages. The final amount as calculated herein shall be the amount Lessee shall be required to pay to the Port.

(2) Should the Actual Intermodal Rail Volume Shifted be greater than 75,000 then the Port shall owe Lessee a sum to be determined as follows: 75,000 shall be subtracted from the lesser of (i) the Actual Intermodal Rail Volume Shifted, or (ii) One Hundred Thousand (100,000). The difference shall be multiplied by \$48 . The product shall be divided by 365 days and then multiplied by the number of days which were subject to IYF Liquidated Damages. The final amount as calculated herein shall be the amount the Port shall be required to pay to the Lessee.

(C) TFC LIQUIDATED DAMAGES.

The Port agrees to pay as liquidated damages One Thousand Five Hundred Dollars (\$1,500) per day for each full day beyond the Conservative Schedule wherein Total Facility Completion of the Expansion Premises (exclusive of the Fourth Berth) has not occurred ("TFC Liquidated Damages"). This is intended to cover Lessee's assumed damages resulting from increased costs relating to operating the Premises without the promised space and/or facilities and covers assumed expenses such as increased drayage costs, additional labor and equipment which the parties agree are reasonable as of the date hereof.

(iii) DURATION OF IYF LIQUIDATED DAMAGES AND/OR TFC LIQUIDATED DAMAGES; OTHER REMEDIES.

(A) DURATION OF LIQUIDATED DAMAGES.

Once (i) Facility Component Completion of the IY Facilities occurs; or (ii) Total Facility Completion (exclusive of the Fourth Berth) of the Expansion Premises occurs, the assessment of IYF Liquidated Damages or TFC Liquidated Damages, as applicable, shall cease. Provided however, notwithstanding the foregoing, each of these two types of liquidated damages shall cease to accrue thirty-six (36) months after each of them first becomes due and payable.

(B) RIGHTS AFTER EXPIRATION OF LIQUIDATED DAMAGES PERIOD.

Upon the expiration of either 36 month period for liquidated damages, should either Total Facility Completion (exclusive of the Fourth Berth) of the Expansion Premises not have occurred or Facility Component Completion of the IY Facilities not have occurred, as applicable, Lessee shall be entitled, at its sole discretion, to the following rights in addition to such other rights granted by subparagraph (k)(iii): (i) to stay at the Original Premises and accept the portion of the Expansion Premises which can be made available (subject to the applicable terms of this Amendment at the appropriate pro rated amount) provided however the Port shall continue to exercise good faith efforts to achieve Total Facility Completion (exclusive of the Fourth Berth) as quickly as possible; or (ii) to refuse acceptance of the Expansion Premises, terminate this Amendment, revert to the Basic Lease as amended prior to this Amendment (including without limitation, the provision of the Basic Lease relating to the original term of the Basic Lease) and return to the Port any part of the Expansion Premises being used, provided however, notwithstanding the foregoing, to the extent facilities on the Original Premises have been demolished or are otherwise not Beneficially Usable, Lessee shall be entitled to maintain possession of the equivalent portion of the Expansion Premises, on the same terms and conditions contained in the Basic Lease (including, without limitation, rental amounts) or any applicable amendment to the Basic Lease which was entered into prior to the date of this Amendment.

(C) RIGHT TO SUBLEASE AFTER EXPIRATION OF LIQUIDATED DAMAGES PERIOD.

Lessee shall also be entitled to sublease to one or more prospective tenants (except for any such prospective tenants

which may be otherwise lawfully restricted by public or Port Commission resolutions and such resolutions are for general application to all Port properties and are not proposed solely for application to the Premises), all or a portion of the Original Premises and those portions of the Expansion Premises which are made available to Lessee because the Original Premises is not Beneficially Usable (pursuant to subparagraph (k)(iii)(B)(ii) of this Section 3 above), without the prior written consent of the Port after the expiration of either 36 month period for liquidated damages specified in subparagraph (k)(iii)(A) of this Section 3. Provided however, any such sublease terms shall be consistent with the terms of the Basic Lease as amended, and the per acre rent on said sublease shall not be less than the then current weighted average Basic Land and Improvements Rent per acre (for the Expansion Premises) and rent per acre for the Original Premises. Weighted average shall mean the total acres constituting the Original Premises multiplied by the then current rent per acre plus the total acres constituting the Expansion Premises made available to Lessee pursuant to subparagraph (k)(iii)(B)(ii) of this Section 3 above, multiplied by the then current Basic Land and Improvements Rent (specified in Part I of Exhibit F), divided by total acres constituting the Premises. And further provided, Lessee's right to sublease without the Port's consent is subject to the following provisions:

(1) At any time following the event described in subparagraph (k)(iii)(C) above, Lessee may provide the Port with written notice of its intent to relocate its operations from the Port. Such notice shall identify the date by which the Premises will be vacated, which shall be no earlier than 12 months and no later than 36 months from the delivery of said notice.

(2) If Lessee successfully negotiates the terms of a sublease with any proposed subtenant, Lessee shall provide the Port with the terms and conditions of such sublease at which time the Port shall have 30 calendar days after which the Port shall:

(a) Accept the proposed party as a direct lessee under the terms and conditions presented and terminate such portion of Lessee's Basic Lease, as amended, as relates to any such sublease presented, with no liability or obligations by Lessee to the Port for such portion of the

Premises beyond that which has accrued on or before the date of termination; or

(b) Reject the terms of the sublease as presented by Lessee and terminate such portion of Lessee's Lease obligation relating to any such sublease, with no liability or obligations by Lessee to the Port with respect to that portion of the Premises beyond that which has accrued on or before the date of termination; or

(c) If neither (a) or (b) above is timely exercised by the Port, the sublease shall automatically become effective.

(3) After Lessee issues its notice of intent to relocate pursuant to subparagraph (k)(iii)(C)(1) of this Section 3 above, upon at least six (6) months written notice, the Port may advise Lessee that it shall terminate the Basic Lease, as amended, effective concurrently with Lessee's vacation of the Premises (and subject to any sublease), after which there shall be no further liability or obligations accruing to Lessee for such termination.

(4) In the event the Port elects not to terminate the Basic Lease as amended pursuant to (ii) above, nothing shall prevent the Port from entering into a direct lease with its own tenant for the Premises ("Direct Lease"), after which it must give Lessee notice of the commencement date of the Direct Lease at least 6 months prior to Lessee's vacation of the Premises or 6 months prior to the expiration of any sublease then currently in place. Should Lessee no longer occupy the Premises and no sublease for the Premises is in place at the time the Port enters into a Direct Lease, the Direct Lease may commence upon notice to Lessee. Should Lessee occupy the Premises but have less than six months of occupancy left at the time the Port enters into the Direct Lease, the required notice of the commencement date of the Direct Lease shall be the remaining period of Lessee's occupancy. Should a sublease on the Premises be currently in place but less than six months remain prior to expiration of the term at the time the Port enters into the Direct Lease, the required notice of the commencement date of the Direct Lease shall be the remaining term of the sublease. The commencement date shall not be prior to Lessee's vacation of the

Premises or the expiration of any sublease then currently in place without the written consent of Lessee. The Basic Lease shall terminate for the portion of the Premises which is subject to a Direct Lease on the day prior to the commencement date of any such Direct Lease.

(5) Should any sublease expire, Lessee's right to sublease under the terms above shall remain in place for any remaining term of the Basic Lease as Amended.

(iv) THE FOURTH BERTH.

If the Port fails to achieve Facility Component Completion of the Fourth Berth by November 13, 1999 (provided Lessee has exercised its option pursuant to subparagraph (i)(i)(B) of this Section 3 above), the Port shall pay liquidated damages to Lessee of Five Hundred Dollars (\$500) per day, which the parties agree reasonably represents a portion of Lessee's estimated damages for the unavailability of the Fourth Berth, for a period of two (2) years from such date. The Port shall make good faith efforts to pursue Facility Component Completion of the Fourth Berth during the period when liquidated damages are being assessed. After the expiration of said two year period, should Facility Component Completion of the Fourth Berth not be achieved, Lessee shall be entitled to a reduction in the Basic Land and Improvements Rent for the Option Premises in a mutually agreed amount until Facility Component Completion of the Fourth Berth. If the parties cannot agree on such rental reduction within sixty (60) calendar days after expiration of the two year period, either party may submit the amount of reduction Lessee is entitled to for arbitration pursuant to Section 7, subparagraph 28(b) of this Amendment.

(l) EQUIPMENT TRAINING.

The Port will participate with Lessee for the training of ILWU personnel in the use of equipment which may be introduced in the future for container handling on the Premises and is not in general use at the Port, providing the Pacific Maritime Association (PMA) will not perform such training. In such event, the Port's participation would include the Port's cost to provide training equipment (including maintenance), training aids (excepting the cost of trainers and the direct payroll costs of personnel being trained) and input into the management of the program as deemed necessary.

(m) RAIL ACCESS AND RELATED ISSUES.

The parties recognize Lessee and its Affiliates are engaged in a highly service oriented, intermodal transportation enterprise, and as such require the Port to maintain or cause to be maintained certain standards, conditions and

assets, as described below, which are essential for the successful operation of the Intermodal Yard in particular, and the Expansion Premises in general.

(i) CONTINUOUS RAIL ACCESS.

Lessee (and its Affiliates) have a need for continuous rail access by more than one rail carrier to the Premises during the term of this Lease and any extensions thereto. Burlington Northern Railroad ("BN") currently holds the rights for rail access to the Premises. The Port therefore undertakes to have arranged, effective upon the date of this Amendment, access for the Union Pacific Railroad to the Premises for the term of this Lease (and any extensions thereto) by way of the existing Rail Bridge at rates that are normal and customary within the industry. The agreement for such access is attached as Exhibit I. The Port further undertakes to maintain UP rail access during the term of this Lease (and any extensions thereto). The Port and Lessee agree to work cooperatively to permit similar access to the Premises by other railroad carriers. The Port agrees to work cooperatively with the BN to attempt to ensure that any access charges negotiated between the BN and other rail carriers shall not exceed levels that are normal and customary within the industry. APL shall use good faith efforts to assist the Port to effect this railroad access arrangement pursuant to the terms of this subparagraph.

(ii) RAIL BRIDGE REINFORCEMENT.

The Port shall cause the BN to reinforce and modify the existing Rail Bridge in accordance with Exhibit H and Exhibit I. In the event BN fails to perform this obligation, the Port shall pay for the costs of such reinforcement and modification and shall complete same as part of Total Facility Completion prior to the expiration of the Conservative Schedule for Total Facility Completion. The Port further undertakes to arrange for the maintenance and repair of the Rail Bridge as modified, at no cost to Lessee, during the term of this Lease and any extensions thereto to the standards described in Exhibit I attached hereto. The Port shall make good faith efforts to evaluate the feasibility of construction of a relocated replacement for the Rail Bridge over the Duwamish Waterway serving the West Seattle area.

(iii) DOUBLE TRACK.

To facilitate adequate access and switching to the Premises, the Port shall design and construct or cause to be designed and constructed the Double Track consistent with Exhibit H and the requirements of the BN in coordination with the Union Pacific Railroad at no direct cost to Lessee and the Port shall either keep the Double Track in good order and repair or cause same to be maintained and repaired during

the term of this Lease and any extensions thereof in accordance with Exhibit I.

(iv) SWITCHING.

As the switching of railcars from and to the Intermodal Yard is critical to Lessee in its ability to provide a high level of service to its customers, the Port shall ensure adequate switching service is provided to the Premises during the term of the Agreement and any extensions thereto in accordance with Exhibit I hereto. The Port undertakes that charges for such switching services shall not exceed levels that are normal and customary within the industry.

(v) RAIL ACCESS CHARGE.

A. ACCESS CHARGE:

UP access to the Tracks (as that term is defined in Section B of Exhibit I hereto), will be based on an access charge of \$20.50 per container, to or from the IY Facilities, loaded or empty, assessed by BN to UP (the "Access Charge") pursuant to an access agreement between the UP and BN which is appended as Exhibit I-6 to Exhibit I (the "Access Agreement"). The Access Charge will be divided into two portions: Maintenance and Operations Fee ("MOF") and Terminal Entrance Fee ("TEF"). The MOF shall be set initially at \$4.25 per container and the TEF shall be initially set at \$16.25 per container. Both the MOF and the TEF shall be adjusted annually thereafter as per the indexing procedures described in Exhibit I-7 which is appended to Exhibit I of this Lease. BN shall inform the Port when any adjustment of the level of TEF and/or MOF is made and the Port shall promptly inform Lessee in writing thereafter. The Port and Lessee understand and agree that the UP is willing to be ultimately responsible for only a portion of this Access Charge. Therefore, subject to Subsection B below, the Port shall pay Lessee, on a monthly basis, an amount equal to the then current TEF less \$16.25 plus \$2.625 for every container subject to this Access Charge.

B. UP's share of the TEF shall ultimately be decreased by \$6 for each container subject to the Access Charge on an APL Controlled Train carried by the UP once a volume of seventy-five thousand five hundred (75,500) of such containers has been achieved. The Port and Lessee agree to share the \$6.00 per container reduction equally and, in addition to the amounts in subsection A above, the Port will pay its \$3.00 share to the Lessee for each such container. Payments shall be made on a monthly basis.

C. REDUCTIONS BY RAILROADS.

(1) UNION PACIFIC REDUCTIONS.

(a) If UP provides to Lessee a reduction up to \$2.625 per container (applied to all containers subject to the Access Charge brought to or from the Premises on UP trains), Lessee shall keep such reduction. If the reduction exceeds \$2.625 per container, then Lessee shall pass on such excess reduction amount up to a total of an additional \$2.625 per container to the Port. Any other additional reduction amounts beyond this point shall be kept by Lessee.

(b) If UP provides to Lessee a reduction up to an additional \$3.00 per container (applied to all containers subject to the Access Charge brought to or from the Premises on APL Controlled Trains carried by UP) after the volume level described in Section 3, subparagraph (m)(v)(B) above ("Volume Break") has been surpassed, Lessee shall keep such reduction. If such additional reduction exceeds \$3.00 per container after the Volume Break, then Lessee shall pass on such excess reduction amount up to a total of an additional \$3.00 per container to the Port. All reduction amounts after the Volume Break beyond this point shall be kept by Lessee.

(2) BURLINGTON NORTHERN REDUCTIONS.

(a) If BN provides to the Port a reduction up to \$2.625 plus the TEF escalation amount (equal to TEF minus \$16.25) per container (applied to all containers subject to the Access Charge brought to or from the Premises on UP trains), then the Port shall keep such reduction. If the reduction exceeds \$2.625 per container plus the TEF escalation amount, then the Port shall pass on such excess reduction amount to Lessee up to a total of an additional \$2.625 per container. Any other additional reduction amounts beyond this point shall be kept by the Port.

(b) If BN provides to the Port a reduction up to an additional \$3.00 per container (applied to all containers subject to the Access Charge brought to or from the Premises on APL Controlled Trains

carried by UP) after the Volume Break has been achieved, then the Port shall keep such reduction. If the additional reduction exceeds \$3.00 per container after the Volume Break, then the Port shall pass on such excess reduction amount up to a total of an additional \$3.00 per container to the Lessee. Any other additional reduction amounts after the Volume Break beyond this point shall be kept by the Port.

(vi) RAIL SERVICE STANDARDS LIQUIDATED DAMAGES.

Lessee shall be entitled to collect, directly from the Port, the liquidated damages described hereinafter, for failures relating to the Rail Services Standards (as that term is described in Exhibit I). To the extent that any such failures relating to the Rail Services Standards are subsequently determined pursuant to Exhibit I, to have been caused in whole or in part by Lessee, then Lessee shall be required to return the proportionate amount of the Rail Services Liquidated Damages described hereinafter.

(A) For purposes of this Lease only, measurement of the required performance shall be for a measurement period which will encompass the previous fourteen (14) consecutive calendar days measured from the end of each Friday and will be calculated on the basis of the total activities under Rail Services Standards requirements over each such 14 day period.

(B) The parties agree that in the event that the Rail Services Standards as measured in subparagraph (A) above (i) falls below eighty-five percent (85%) on any Friday; and (ii) the previous Friday performance has fallen below ninety-five percent (95%), then the Port shall pay to Lessee the TEF for every container subject to the TEF for the prior seven days.

(C) In addition to the liquidated damages contained in subparagraph (B) above, Lessee shall be entitled to an amount equal to the Port's share of the Facility Charge for each week that the liquidated damages contemplated in subparagraph (B) above are due, and Lessee shall be entitled to withhold the Port's share of the Facility Charge in satisfaction of this payment.

(D) The 85% performance level referenced in subparagraph (B) above shall be raised to ninety percent (90%) five (5) years after the commencement of operations of the Intermodal Loading Yard.

(E) The parties agree to discuss possible modifications to the application of required performance levels and/or the monetary consequences described above when requested by either party.

(vii) PROHIBITION ON AMENDMENT OR ASSIGNMENT OF EXHIBIT I AND LESSEE'S AGREEMENT TO BE BOUND.

The Port shall not amend, modify, or permit any assignment of its rights or the BN's rights of Exhibit I without the prior written consent of Lessee. Provided, however, this subsection shall not apply to Section 3, subparagraph (m)(v)(C) above. Lessee acknowledges and agrees to be bound by the terms of Sections A(2), C, D, E(1), F, G, H, I(2), J, K, L, N and O of Exhibit I (and any related exhibits thereto).

SECTION 4. A new subparagraph (e) is hereby added to paragraph 2 (TERM) of the Lease:

(e) Notwithstanding anything herein to the contrary, upon the occurrence of Total Facility Completion of the Expansion Premises, the Lease Term shall be extended so that it shall be 30 years from the date of Total Facility Completion of the Expansion Premises (exclusive of completion of the Fourth Berth, whether Lessee has exercised its option with respect to the Fourth Berth or not). Such 30-year extension shall apply coterminously to the Original Premises and the Expansion Premises so that the term for both shall run concurrently and expire on the same date.

SECTION 5. The following language shall be added to the end of subparagraph (d) of paragraph 3 of the Basic Lease:

"Lessee shall also give to the Port on a monthly basis (or if not available monthly, at other reasonable intervals) such other additional information in a form reasonably acceptable to the Port related to Lessee's activities at the Intermodal Loading Yard (including but not limited to rail volumes) which enables the Port to verify the accuracy of the related obligations imposed on or by the parties under the terms of this Lease. The Port has the right to conduct an audit of such data and Lessee shall cooperate and make available to the Port all reasonable information to assist the Port in such audit."

SECTION 6. A new subparagraph (i) is added to paragraph 3 (RENT) of the Lease. Lessee shall pay such rents and charges described herein on a monthly basis at the Port's address in advance on or before the first day of each month, in the amounts set forth in Exhibit C to the Fifth Amendment (Rev. 1-3-92) and in Exhibit F, Part I of this Amendment:

(i) RENT UNDER SIXTH AMENDMENT

(a) ORIGINAL PREMISES.

Unless otherwise modified specifically herein, the rent and amortizations for the Original Premises as described in the Basic Lease through the Fifth Amendment shall continue as described therein. The Original Land and Improvements Rent shown in Section 3(a) of the Basic Lease, shall be increased by 34.61%, effective January 1, 2016, and be increased by 34.61 % every 60 months thereafter for the remainder of the term of this Lease.

(b) EXPANSION PREMISES.

Lessee shall pay the following items pursuant to the terms of this Sixth Amendment:

- (1) Basic Land and Improvements Rent for the Expansion Premises (per Exhibit F, Part I);**
- (2) Special Improvements Rent;**
- (3) TY Crane rental (per Section 2, (e)(iii)(A));**
- (4) Rent on new container cranes purchased by the Port (per Section 2, (e)(iii)(B)(1));**
- (5) Costs for raising container cranes (per Section 2, (e)(iii)(B)(2));**
- (6) TY Lift Fee for third parties collected by Lessee (per Section 5, (i) (d));**
- (7) Rent for Off-Premises Temporary Container Yard Area(per Section 3,(f)).**

Basic Land and Improvements Rent for the Expansion Premises shall increase by 34.61% every five years with the first increase occurring January 1, 1998.

(c) IY FACILITY CHARGE

(1) GENERAL.

Lessee and the Port have agreed that the IY Facility Charge will be assessed by Lessee and shall be as described hereinafter. Lessee and the Port will share equally in the IY Facility Charges received. Any such IY Facility Charge may become an item in the Port's Tariff; provided however, it is understood and agreed this Lease contains all charges that Lessee and any party using or serving the Premises are obligated to pay during the term of this Lease and the Port shall not have the right to unilaterally impose any additional charges or tariffs of any kind relating to the Premises, against Lessee, any railroad serving the Premises or any other party using or serving the Premises (including, without limitation, Lessee's customers, agents and Affiliates) without Lessee's prior written consent. Provided however, notwithstanding the foregoing, the Port shall have the ability to assess any fees or charges to the extent such charges or fees are imposed against the Premises or Lessee's activities on the Premises pursuant to any local (non-Port), State, or Federal law, ordinance, regulation or rule and to the extent such charges or fees will apply Port-wide to all other similarly situated premises and activities.

(2) IY FACILITY CHARGE FOR APL CONTROLLED TRAINS.

(i) The IY Facility Charge assessed against containers on APL Controlled Trains for the annual periods commencing upon Facility Component Completion of the IY Facilities (unless earlier mutually agreed by the parties) shall be:

**Year 1: Nine Dollars (\$9) per Intermodal Lift;
Year 2: Twelve Dollars (\$12) per Intermodal Lift;
Year 3: Eighteen Dollars (\$18) per Intermodal Lift;
Years 4 and beyond: The IY Facility Charge for the prior year plus an adjustment factor (hereinafter the "Adjustment Factor") equal to the lesser of either: (i) fifty percent (50%) of the Average Annual Compounded Change ("AACC") percentage, as defined hereinafter, or (ii) an annual cap as follows:**

Years 4-9: 25%

Years 10-14: 3%

Years 15-19: 3.5%

Years 20 and beyond: 4%

The AACC shall be calculated at each five year interval commencing the beginning of the fourth year following commencement of operations of

the IY Facilities and is derived by the following mathematical formula: $AACC = 100 \times ((RCAF_5/RCAF_1)^{1/5} - 1)$, where "RCAF₅" equals the then current RCAF (as RCAF is defined hereinafter) and "RCAF₁" equals the RCAF in effect for the period five years prior to RCAF₅. "RCAF" refers to the American Association of Railroad's unadjusted Rail Cost Adjustment Factor.

By way of example, assume Facility Component Completion of the IY Facilities occurs on January 1, 1996. Further assume the RCAF as of December 31, 1993 is 100 and the RCAF as of December 31, 1998 is 132. The first year's (i.e. 1996) IY Facility Charge shall be Nine Dollars and shall increase annually as stated above. At commencement of year four (i.e. 1/1/99) the Adjustment Factor must be calculated by determining 50% of AACC and comparing it to the cap for the relevant time period. The AACC for this example is calculated as follows: $100 \times ((132/100)^{1/5} - 1) = 5.7\%$. Fifty percent of the AACC is 2.85% which exceeds the relevant existing cap of 2.5%, resulting in an Adjustment Factor of 2.5% for the years 1999 through the end of 2003; at which point the Adjustment Factor is recalculated for the period commencing January 1, 2004 through the end of 2008 based upon lesser of 50% of the recalculated AACC and the then relevant cap of 3%.

(ii) In the event the Port and BN agree to use an index or indices in Exhibit I-7 to Exhibit I hereto other than the RCAF index to escalate the MOF and/or the TEF (as those terms are defined in Section 3, subparagraph (m)(v) of this Lease), Lessee, at Lessee's option, may switch from the RCAF to any such index to apply to the Facility Charge escalation in accordance with the terms described herein at any time during the term of this Lease upon thirty (30) days prior written notice to the Port.

(3) IY FACILITY CHARGE FOR OTHER THAN APL CONTROLLED TRAINS.

Lessee and Port agree that it is the intent of the Lessee to maximize the use of the IY Facilities by providing on-dock rail

intermodal services to all customers including those not utilizing APL Controlled Trains. Additionally, the parties agree that the IY Facility Charge assessed by Lessee against containers on other than APL Controlled Trains will be set at the usual and customary level for such charges, but in no event will that charge be less than that established under paragraph (2) above unless mutually agreed in writing by the Port's Managing Director of the Marine Division and APL's authorized representative.

(4) ANNUAL MINIMUM GUARANTEE VOLUME FOR INTERMODAL LIFTS

Lessee agrees to guarantee each year a minimum number of Intermodal Lifts in accordance with the following conditions:

(i) The annual minimum guarantee volume for the term of this Lease (and any extensions thereto) shall be the highest volume of all APL owned or leased intermodal containers, excluding domestic intermodal containers, which have passed through any intermodal rail yard in Seattle during any twelve (12) consecutive month period following execution of this Amendment and prior to the earlier of Facility Component Completion of the IY Facilities or commencement of operations at the IY Facilities. For purposes of this subsection 4(i) only, "domestic intermodal containers" shall mean all loaded intermodal containers, the loads of which originate and reach final destination within the United States.

(ii) Application of the annual minimum guarantee volume shall commence on the first day of the calendar year following the earlier of Facility Component Completion of the Intermodal Yard Facilities or commencement of operations at the IY Facilities. Volumes counted to satisfy the annual minimum guarantee volume will include all Intermodal Lifts handled at T-5 during each such calendar year.

(iii) If such annual minimum guarantee volume is not achieved in any calendar year, Lessee shall pay to the Port 50% of the Port's share of the IY Facility Charge on the difference between the actual volume of all Intermodal Lifts and the annual minimum guarantee volume for that year.

(d) INTERMODAL LIFT FEE.

Lessee shall pay the Port a portion of the Intermodal Lift Fee as calculated hereinafter, accruing upon Facility Component Completion of the IY Facilities. The portion of the Intermodal Lift Fee due to the Port shall be calculated by multiplying the actual Intermodal Lift Fee charged by Lessee times the "Third Party Percentage Share" as that term is used hereinafter. During the first year such amounts are owed, it shall be due and payable to the Port 30 days following computation of the initial Third Party Percentage Share. During subsequent years such amounts owed shall be due and payable on a monthly basis.

"Third Party Percentage Share" shall mean the percentage calculated by dividing the Port's annual share of IY Crane costs charged by the manufacturer plus the Port's direct administrative and engineering costs and permitting, certification costs and sales tax (which is derived by amortizing such costs at 9.25% per year for 14 years), by the total annual cost of loading and unloading containers at the Intermodal Loading Yard. Such total annual costs include but are not limited to Lessee's share of all IY Crane costs charged by the manufacturer plus direct administrative and engineering costs, and permitting, certification costs and sales tax; and the Port's share of any IY Crane costs charged by the manufacturer plus the Port's direct administrative and engineering costs and permitting, certification costs and sales tax, as described herein, and maintenance, fuel, labor and overhead directly related to the Intermodal Lift portion of the operation of the Intermodal Loading Yard. The initial Third Party Percentage Share shall be based on actual costs incurred during the one year period following Facility Component Completion of the IY Facilities. The resulting initial Third Party Percentage Share shall apply for activity occurring during the first three year period following the completion of the IY Facilities. The Third Party Percentage Share shall be recalculated every three years following Facility Component Completion of the IY Facilities thereafter, using actual cost experience in the third, sixth, ninth, twelfth years etc., for application beginning during the fourth, seventh, tenth, thirteenth years, etc., respectively.

SECTION 7. A new paragraph 41 is hereby added:

41. Environmental Standards:

(a) "Law or Regulation" as used herein shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. "Hazardous Substances" as used herein shall mean any substance or

material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by Law or Regulation.

(b) Lessee shall not allow any Hazardous Substances to migrate off the Premises, or the release from the Premises of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Lessee shall provide the Port with Lessee's USEPA Waste Generator Number, Generator Annual Dangerous Waste Reports (if any), environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Lessee receives from, or provides to, any governmental unit or agency in connection with Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises. Notwithstanding anything in this Lease to the contrary, the parties acknowledge that all or a portion of the Expansion Premises contains Hazardous Substances and a portion is or will be classified as a federal Superfund site. Notwithstanding anything in this Lease to the contrary, the Port shall be responsible at its cost for the cleanup and removal of all such Hazardous Substances, and will remain responsible under this Lease with respect to any and all such Hazardous Substances remaining after Lessee takes possession of the Expansion Premises. The Port shall bear the burden of proof to establish that any such Hazardous Substances were not existing prior to Lessee's occupancy. The Port shall supply Lessee with all environmental reports, surveys, audits and other similar data relating to the Expansion Premises.

(c) If either party causes a release on the Premises, or is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances in connection with the Premises, that party shall promptly take such action as is necessary for cleanup and restoration of the Premises and to mitigate and correct the violation. If such party does not commence or diligently pursue appropriate actions to cleanup and restore the Premises and mitigate and correct the violation in a manner consistent with applicable law, then after 5 Business Days' prior written notice to such party, the other party shall have the right, but not the obligation, to enter onto the Premises, and to take such actions as are necessary to cleanup and restore the Premises and ensure compliance or mitigate the violation in accordance with applicable law. All reasonable costs and expenses incurred in connection with any such actions shall become immediately due and payable by the party responsible therefore.

(d) The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Lessee shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense.

Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent, which consent shall not be unreasonably withheld. The Port shall promptly inform Lessee of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises, and the Port shall provide copies to Lessee. Lessee shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Lessee, and Lessee shall provide copies to the Port.

(e) Prior to vacation of the Premises, in addition to all other requirements under this Lease, Lessee shall remove any Hazardous Substances placed on the Premises by Lessee (or its invitees, agents, contractors, employees or Affiliates) during the term of this Lease or Lessee's possession of the premises, and shall effect such removal in accordance with applicable law. This removal shall be a condition precedent to the Port's payment of any Lease Security to Lessee upon termination or expiration of this Lease .

(f) No remedy provided herein shall be deemed exclusive.

(g) In addition to all other indemnities provided in this Lease, Lessee agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the release by Lessee (or its invitees, agents, contractors, employees or Affiliates) of any Hazardous Substance on the Premises, or the migration of any Hazardous Substances released by Lessee (or its invitees, agents, contractors, employees or Affiliates) from the Premises to other properties or into the surrounding environment, whether (i) made, commenced or incurred during the term of this Lease, or (ii) made, commenced or incurred after the expiration or termination of this Lease if arising out of events occurring during the term of this Lease.

SECTION 8. Paragraph 28 of the Basic Lease is hereby amended to renumber the first subparagraph as "(a)" and to add the following new subparagraph "(b)" at the end thereof:

(b) With respect only to issues arising out of, or relating to the improvements and facilities required by this Amendment No. 6 to this Basic Lease, the parties intend to resolve any disputes by the arbitration procedure specified hereinafter. Said arbitration shall be binding and shall only apply to those provisions of the Amendment which specify the use of this

arbitration provision; provided, however, that any party may seek prohibitory injunctive relief without first submitting a controversy to arbitration. Either party may request a meeting to be attended by the other parties for the purpose of resolving any such dispute. Said meeting must be held, either by telephone or in person, within five Business Days of receipt of written notice following said meeting. If the matter is not resolved at such meeting, or the meeting is not held, either party may make a written demand to resolve such dispute by arbitration. The parties hereby shall mutually agree to designate a single arbiter (the "designated arbitrator") within 60 calendar days after signing this Amendment, as the arbitrator to decide all matters subject to arbitration under this Section 28(b); provided, however, that if the parties do not appoint a single arbiter, or if the designated arbitrator is unable or unwilling to act as arbitrator for the matter then submitted to arbitration, then the following provisions shall apply with respect to the selection and decision of substitute arbitrators:

(1) Within ten (10) calendar days from the date of receipt of a written request for arbitration, each party shall select an arbitrator. If either party fails to select an arbitrator, then an arbitrator shall be appointed by the Presiding Judge of the King County Superior Court, King County, Washington, at the request of either party;

(2) If the parties are unable to agree to a resolution of their dispute within five (5) calendar days after the last arbitrator is selected, an additional arbitrator shall be selected by the designated arbitrators;

(3) If such arbitrators are unable to select such an arbitrator, such arbitrator shall be appointed by the Presiding Judge of the King County Superior Court, King County, Washington, at the request of either party;

(4) The selection and appointment of all arbitrators shall be in writing and shall be delivered to the other party. The arbitrators shall have substantial experience in the subject matter of the arbitration; and

(5) Within ten (10) days from the appointment of all three arbitrators, all arbitrators shall meet or otherwise confer as they deem necessary to resolve the dispute. The arbitrators shall resolve the dispute and all questions pertaining thereto as soon as possible and in any event within twenty (20) days from the date of selection of the third arbitrator. A majority decision of the arbitrators shall be final and binding upon the parties. For arbitration matters submitted to a single designated arbitrator mutually agreed to by the parties as specified above, the designated arbitrator shall resolve the dispute and all questions pertaining thereto as soon as possible, and in any event within twenty (20) days from the date of the written request for

arbitration. A decision by the designated arbitrator shall be final and binding upon the parties.

The decision of either the designated arbitrator or panel of three arbitrators shall be written and signed by the designated arbitrator or, as applicable, all arbitrators concurring therein and shall be served on each party in the manner provided in Section 32 of the Basic Lease. The decision of the designated arbitrator or panel of three arbitrators may be entered as a judgment in a court of competent jurisdiction.

All arbitration conducted under this Section shall be in accordance with the rules of the American Arbitration Association, to the extent such rules do not conflict with the procedures herein set forth. Each party shall bear its own expense except that relating to the selection and services of the additional arbitrator, if necessary (or single arbitrator when agreed to by the parties), which shall be borne equally by the parties. The arbitrator or panel of arbitrators may award costs in its discretion.

SECTION 9. Subparagraph (h) of paragraph 3 (RENT) of the Basic Lease (as previously stated in the Fifth Amendment) is hereby deleted in its entirety and replaced with the following:

"3(h)With the addition of the sixth container crane, owned by APL and placed on the Premises in 1992, and the resulting increased intensity of use on the apron area, Lessee will be charged a monthly land rent on the aprons in addition to the rent specified in paragraph 3(a) of the Basic Lease as amended. Said additional rent shall be \$24,619.84 per month over a five-year period, commencing December 1, 1992."

SECTION 10. EXHIBITS.

Exhibit "A-6" (Premises exhibit) is attached hereto and incorporated herein, superseding Exhibits "A" and "A-3." Exhibits "F", "G", "H" and "T" are attached hereto and incorporated herein.

SECTION 11. Subparagraph (e) is hereby added to paragraph 4 (BOND OR OTHER SECURITY) of the Basic Lease, as amended:

(e) For the Expansion Premises, Lessee shall promptly furnish in form satisfactory to the Port evidence indicating (a) the consent of surety on Lessee's lease bond to all provisions of this Amendment, plus (b) an increase of the following surety amounts for the following items:

Basic Land and Improvements Rent on Expansion Premises and Option Premises (if exercised) upon Facility Component Completion	6 months' Basic Land and Improvements Rent
Intermodal Loading Yard	6 months' Special Improvements Rent
Maintenance and Repair Facility upon Facility Component Completion	6 months' Special Improvements Rent
Demolition of existing gatehouse and Facility Component Completion of Gatehouse and Entry	Outstanding Balance
Overpass upon Facility Component Completion	6 months' Special Improvements Rent
Intermodal Yard Cranes:	
If not Fixed Overhead System	50% of Outstanding Balance
If Fixed Overhead System	To Be Negotiated But in no event less than 50% of Outstanding Balance

SECTION 12. A new subparagraph (d) shall be added to the end of paragraph 8 of the Basic Lease as follows: "Lessee shall have the benefit of any and every warranty or guaranty of performance accruing to the Port (whether directly or indirectly), which is related to or arises out of the construction of any Facility Component. The Port shall cooperate with Lessee by promptly processing any such claims. Lessee shall take no action or conduct itself in any way which would have the effect of voiding any such warranty, provided, however, with the consent of the Port, which shall not be unreasonably withheld, Lessee may take action to repair or restore any Facility Component which has failed in service to normal condition during the pendency of any warranty claims.

SECTION 13.

Paragraph 20 of the Basic Lease is hereby amended by adding the following new subparagraph (b)(3) to the end thereof:

(3) The then principal balance equal to Lessee's remaining unamortized Special Improvements costs provided for in Exhibit F.

SECTION 14. MISCELLANEOUS.

Except as expressly amended herein, all provisions of the Basic Lease (as previously amended) shall remain in full force and effect and this Amendment is incorporated by reference into the Basic Lease, as previously amended. If there are any conflicts between the Basic Lease and this Amendment, then the terms of this Amendment shall prevail. The table of contents and titles of the sections of this Amendment shall not be deemed to be a part of this Amendment and shall not affect the meaning or construction of this Amendment or any of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Sixth Amendment as of the day and year first above written.

PORT OF SEATTLE

By: M.R. Dinsmore
M.R. Dinsmore
Executive Director

ATTEST: Thomas H. Janaka
Senior Port Counsel

By: _____

AMERICAN PRESIDENT LINES, LTD.

By: _____
John G. Burgess
Executive Vice President

ATTEST:

By: _____
Carl M. Rubin
Assistant Secretary

EAGLE MARINE SERVICES, LTD.

By: _____
Ronald D. Widdows
Executive Vice President and General Manager

Attest:

By: _____
Carl M. Rubin
Asst. Secretary

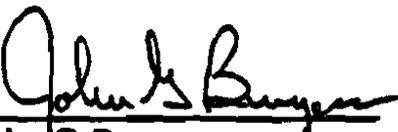
PORT OF SEATTLE

By: _____

ATTEST:

By: _____

AMERICAN PRESIDENT LINES, LTD.

By: 
John G. Burgess
Executive Vice President

ATTEST:

By: 
Carl M. Rubin
Assistant Secretary

EAGLE MARINE SERVICES, LTD.

By: 
Ronald D. Widdows
Executive Vice President and General Manager

Attest:

By: 
Carl M. Rubin
Asst. Secretary

(ACKNOWLEDGMENT FOR AMERICAN PRESIDENT LINES, LTD.)

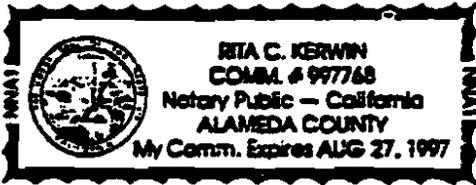
STATE OF CALIFORNIA)

SS.

COUNTY OF ALAMEDA)

On this 31st day of May, 1994 before me, Rita C. Kerwin, personally appeared John G. Burgess, personally known and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity as Executive Vice President of American President Lines, Ltd., and that by his signature on the instrument the person or entity upon behalf of which the person acted, executed this Sixth Amendment to Lease. That said person executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



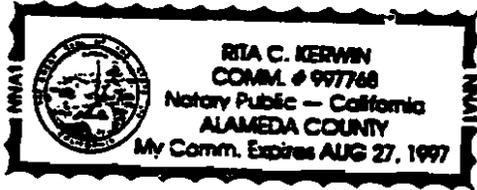
Rita C. Kerwin
Notary Public

(ACKNOWLEDGMENT FOR EAGLE MARINE SERVICES, LTD.)

STATE OF California)
) ss.
COUNTY OF Alameda)

On this 2nd day of May, 1994 before me personally appeared Ronald D. Widdows, personally known and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity as Executive Vice President and General Manager of Eagle Marine Services, Ltd., and that by his signature on the instrument the person or entity upon behalf of which the person acted, executed this Sixth Amendment to Lease. That said person executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Rita C. Kerwin
Notary Public in and for the
State of California, residing at
Oakland, California
My appointment expires *8/27/97*

Expansion Premises and Improvements (added with Amendment dated as of June 1, 1994)

Part

I. Basic Land and Improvements Rent for the 75 Acre Expansion Premises Area:

Period Beginning	Period Ending	Rate Per Acre/Year	Rent Per Year	Rent Per Month
01-01-93	12-31-97	\$58,000	\$4,410,000	\$367,500.00
01-01-98	12-31-2002	\$79,153	\$5,936,475	\$494,706.25
01-01-2003	12-31-2007	\$106,950	\$7,991,250	\$665,937.50

Effective, 01-01-2008, and every 5 years thereafter, rental rate per acre to be escalated by 34.61%.

* Subject to abatement or partial abatement due to construction. Basic Land and Improvements Rent shall commence upon the first day of the month following Facility Component Completion of any given facility (or land if no facility) unless otherwise specified in this Amendment.

II. Special Improvements Rent Cap (added by 6th Amendment, dated as of June 1, 1994):

Dollar Amounts in Thousands (except monthly rent cap)	Estimated Actual Cost 1992 ³	Actual Cost Cap ⁷	Port % Share	Leasee % Share	Leasee Maximum Share	Leasee Monthly Special Improvements Rent Cap 1996 ⁴
Intermodal Loading Yard (ILY) ¹	\$6,200	\$7,393	31%	69%	\$5,101	\$41,647
Pile foundation for 5th & 6th runways (ILY)	\$467	\$557	75%	25%	\$139	\$1,137
Maintenance and Repair facility (excluding demolition of existing building)	\$2,973	\$3,545	50%	50%	\$1,773	\$14,472
Maintenance and Repair facility demolition ²	\$300	\$300	50%	50%	\$150	\$1,225
Gatehouse and entry	\$4,665	\$5,563	100%	0%	\$0	\$0
Existing Gatehouse demolition	\$167	\$199	0%	100%	\$199	\$1,626
Net book value write-off of existing gatehouse and related assets ⁶	\$0	\$0	0%	100%	\$666	\$5,437
Overpass for entrance roadway: Initial spending level	\$5,763	\$6,872	80%	20%	\$1,374	\$11,221
Overpass for entrance roadway: Spending level increase for lengthened configuration	\$1,400	\$1,670	65%	35%	\$584	\$4,770
Existing CFS demolition	\$1,095	\$1,306	80%	20%	\$261	\$2,132
New CFS (assumes CFS of 80,000 square feet)	\$3,252	\$3,878	100%	0%	\$0	\$0
Totals (or weighted averages)⁵	\$26,282	\$31,283	67%	33%	\$10,247	\$83,667

Notes:

- ILY estimate excludes cost to protect METRO effluent line from loads of Intermodal Yard and soil removal and other costs to bring area to CY standard. Any such costs to be for the account of the Port.
- Fixed amount of \$300,000 toward demolition of existing maintenance and repair building.
- Estimated Actual Cost 1992³ includes markup for design contingency, sales tax, outside services, management and overhead.
- Monthly rent shown is based on amortization at a 9.25% annual percentage rate. Amortization amounts calculated over 360 months with payment at beginning of month, and continue for 30 years from first payment.
- Does not include costs of Container Cranes or Intermodal Yard Cranes.
- This payment is for the net book value write-off at 12/31/95 including NBV of the gate structure (\$499,000) plus other demolished assets (\$167,000) related to the gate.
- The Actual Cost Cap is calculated by escalating the Estimated Actual Cost 1992³ by 4.5% for four years.

EXHIBIT "H"

SIXTH AMENDMENT TO LEASE
BETWEEN
PORT OF SEATTLE AND EAGLE MARINE SERVICES, LTD
TERMINAL 5
AND ASSIGNMENT OF LEASE FROM AMERICAN PRESIDENT LINES, LTD
TO EAGLE MARINE SERVICES, LTD.

ATTACHMENT 1 ACTUAL SCHEDULE (BASED ON CRITICAL PATH METHOD -(CPM))

ATTACHMENT 2 - CONCEPTUAL PLAN TERMINAL 5 EXPANSION

ATTACHMENT 3 - PHASING DRAWINGS

SUMMARY OF FACILITIES REQUIREMENTS

All Facility Components that are contemplated for construction per this Sixth Amendment shall conform in respects to applicable federal, state and local statutes, ordinances, rules, regulations and to Port standards for marine terminals and on-dock intermodal yard. The Facility Components shall also meet the following specific requirements:

FACILITY COMPONENTS:

A. CONTAINER YARD

1. New Paving in the Expansion Area:

(a) Container Yard Area - Asphalt concrete and portland cement pavements shall be designed for full live load to support top-pick container handling equipment operating with a 40 long ton (LT) load having an operating wheel loading of 100,000 lbs. per dual wheel or 200,000 lbs. per axle. Pavement shall have a Port standard design life of 10 years.

(b) Parking areas, entrance lanes, and reefer area - Asphalt concrete and portland cement pavements shall be designed to support traffic for trucks handling 40LT containers. Pavement shall have a Port standard design life of 10 years.

2. Grading and Drainage - Standard grading and drainage with NPDES contaminant separation where required shall be provided. Drainage design layout shall accommodate future rubber tired gantry crane operations for container stacking arrangements.

3. Miscellaneous Requirements - Fencing, (4) remote control gates for vehicle access, landscaping with sprinkler system, entrance/exit lanes, yard striping, steel reinforced concrete truck bumpers, signage, new row number designations, and striping for traffic controls shall be provided.

4. Security and Infrastructure - Yard lighting (5 foot candles maintained), security lighting, monitored fire alarm system with central annunciator panel, halon and/or equivalent systems at computer rooms, security system with video cameras and monitors (similar to existing units in quality with added units to cover the expanded area), public address system, telephone duct system, computer and telecommunication conduit and wiring including fiber optics between new and existing buildings, water lines and hydrants, electrical distribution system sufficient for the designed use including substations, sanitary sewers and storm sewers that meet the requirements of the NPDES for contaminant separations.

5. Reefer Receptacles - Install 150 low profile reefer outlets, underground ducting, wiring, high voltage switch gear and transformers similar to those existing. Install 14 reefer plugs on existing stalls in Reefer Rows 208 and 209. Relocate existing reefer outlets which may be in conflict with new truck aisles.

6. Fueling Facilities - The following tanks shall be provided: One 10,000 gallon diesel tank, and one 500 gallon waste oil tank. The diesel tank shall be located adjacent to the tractor parking area. (refer to item 16 below). The waste oil tank shall be located adjacent to the M&R Shop. Special design considerations shall be given to the containment of any fuel spills for these areas. Appropriately sized fire extinguishing system shall be provided.

7. Automobile Parking - Approximately 560 to 600 (but in no event to exceed 600) parking spaces shall be provided for longshoremen, Lessee's employees, and customers. This includes existing parking spaces available for the administration building.

Elevated Row Signs - The bottom of all traffic control and row identification signs, existing or new, shall be no less than 23' above grade. Replace all existing row signs which do not meet minimum elevation criteria and install new elevated row signs to the same minimum height requirement providing good visibility for drivers at the end of each container rows and at other major queuing locations within the facility. A new row numbering system shall be designed for all signs to improve traffic circulation. "High contrast lettering", at least 24" high, shall be provided.

9. Rehabilitation of Existing Pavement in Original Premises of the Container Yard - All pavement areas as shown in Exhibit A-6 which cannot support toppick equipment operating with a 40LT load, and having a loading of 100,000 lbs. per dual wheel or 200,000 lbs. per axle, shall be upgraded or replaced to support this wheel load. Pavement shall have a Port standard design life of 10 years.

10. Yard Lighting System

The lighting system for the new and relocated light standards shall be designed to allow for programmable electronic remote switching of light standards, with manual overrides, to allow for energy conservation and the selection of individual sections for illumination.

(a) Relocate or replace eight existing light standards which are not in line with those existing that were correctly located to accommodate future rubber tired gantry row layouts throughout the terminal including the northeast portion of the terminal.

(b) Install new light standards to accommodate future rubber tired gantry layouts as indicated in (a) above.

11. Hazardous Cargo Area - Construct six parking stalls with signage. Area construction shall meet all regulatory requirements including ability to contain spills.

12. Contaminated Cargo Area - Area construction to meet all regulatory requirements, including the ability to contain spills, and to accommodate 150 FEU's on chassis with adequate signage.

13. Fumigation Area - Construct three parking stalls with necessary clearance, electrical service, water supply and signage. Area construction shall meet all regulatory requirements including ability to contain spills.

14. Flipping Area - Construct a reinforced concrete slab, 30' x 80', to support top-pick equipment operating with a 40 long ton(LT) load having a loading of 100,000 lbs. per dual wheel or 200,000 lbs. per axle.

15. Propane Tanks - Construct propane storage areas with water and electricity for one 2000 gallon tank in the CFS, one 5000 gallon tank adjacent to the truck pullout area north of the gatehouse and one 1000 gallon tank in the M & R Provide appropriately sized fire extinguishing system.

16. Tractor, Top-pick and Service Vehicle Parking Area - Construct parking space for 10 top-picks, 37 service vehicles and at least 60 tractors with drainage and oil separation facilities meeting regulatory requirements. This area shall be provided adjacent to the fueling facility (Refer to item 6 above).

17. Remove KBLE radio and KJR radio towers from the facility including all associated above ground wiring (provided the underground wiring will not cause RFI to Lessee's equipment), buildings and appurtenances.

18. Construct elevated & lighted terminal identification signs & flagpoles to accommodate Lessee's name and logo and its subsidiaries including current clients and expansion capability. The design and size shall be coordinated by Lessee with the Port to insure for the appropriate image and shall meet Port standards.

B. NEW WHARF CONSTRUCTION (400 foot extension and up to 1,000 foot Fourth Berth)

Construct the new wharf capable of berthing and servicing Lessee's C-10 class vessels. Wharf to be designed to support various modes of container handling and operation of a top-pick and other equipment with a 40LT load having a minimum loading of 100,000 lbs. per dual wheel or 200,000 lbs. per axle.

New wharf facilities shall include at least crane rails to be designed for 40,000 lbs. per foot wheel loading

under operating conditions, crane power, tie-downs, bumper stops, pin sockets, water service, telephone, ship's power, fire protection, and ship's sewer connection. Fendering system shall be designed to accept vessels and barges with 14 feet freeboard.

C. MARINE BUILDING (PROVIDED ONLY WITH OPTION AREA)

Construct a Marine Building equivalent in size and quality to the existing South Tower Building at Terminal 5, complete with conduit and wiring for telephone, computer, and telecommunications systems and with complete mechanical, HVAC and electrical systems. Install underground conduit with fiber optics wiring to the Administration Building and TY Control Tower.

SPECIAL IMPROVEMENTS:

For each of the improvements described herein, unless otherwise specified, the Port will construct and finish such improvements to a standard equivalent to the existing corresponding improvements which were provided to Lessee within the Original Premises, or as otherwise indicated. See Exhibit F in the Lease Amendment for reference to CAP for the Special Improvements.

A. MAINTENANCE AND REPAIR (M&R) FACILITY

Construct up to 41,960 square feet of operable equipment repair space and up to 5200 square feet of office space with quality of construction similar to the newer portion of T-46 M&R building. The building shall be designed to include offices, power shop, parts storage and tool room, container and top-pick bay(s), reefer repair area, parts office, battery room, mechanical room, storage areas, lunchroom, emergency eyewash stations with shower(s), fire sprinkler system, and toilet facilities, electrical, public address, necessary compressed air lines, mechanical and HVAC systems (office only), radiant heaters in the shop areas, conduit and wiring for telephone, telecommunications and computer systems and other features necessary for a standard operating maintenance facility.

B. GATEHOUSE AND ENTRANCE COMPLEX

Construct a two story gatehouse up to 16,000 square feet with operable space for container gate functions including offices for managers, supervisors, clerks, toilet facilities, storage rooms, control stations with

complete electrical, HVAC, mechanical, pneumatic tube systems (between inbound checker stations and gatehouse, between outbound checker stations and gatehouse), and intercom systems and conduit and wiring for telephone, computer and telecommunication systems.

The entrance complex shall contain 15 inbound/outbound lanes, lighted sign bridge equipped with programmable controls to communicate several predetermined variable messages and vary the travel direction of several of the lanes, with sufficient height to accommodate overheight loads not less than 18' in height from the finished grade. Provide queuing lanes, bobtail lane(s), firetruck access lane, checker booths with HVAC system, guardhouse with HVAC system, intercom pedestals, pneumatic tube stations, eyewash station(s), truck scales, each no less than 10' in width and 80' in length with a capacity of 60 tons, complete with digital readouts, computer interfaces and printers. Relocate existing AEI equipment with complete conduit, wiring and associated appurtenances. Entrance complex to include paving, lighting, drainage, striping, fencing, gates, and signage, telecommunication conduit, wiring and connections, and lavatory facilities. Provide a Trucker Service Area adjacent to the booths with service window(s), pay telephones, lavatory facilities, (10) 12' x 80' truck parking stalls and complete conduit, wiring, pneumatic tube system between gatehouse and trucker service area, computer interfaces and telecommunication conduit, wiring and connections.

C. CONTAINER FREIGHT STATION ("CFS")

Construct up to 80,000 SF of operable cargo handling space similar in quality of construction to that existing at Terminal 5 complete with electrical, intercom, mechanical and HVAC systems (office only), conduit and wiring for telecommunications, telephone and computer systems. The CFS shall include offices for managers, supervisors, clerks, lunchroom, lavatory facilities, rollup steel doors(and three electrically operated doors similar to existing T5 CFS), wheel chocks, exhaust fans, fire alarm systems, emergency eyewash with shower station(s), striping, dock lights, mechanical dock levelers, concrete dolly pads, and signage as required. Truck access to the public side of the building shall be provided.

D. INTERMODAL LOADING YARD

ing - Asphalt concrete and portland cement pavements shall be designed to support traffic for top-pick equipment operating with 40LT load having a loading of 100,000 lbs per dual wheel or 200,000 lbs. per axle. Reinforced concrete runways shall be provided as required for yard gantry cranes. Pavement shall have a Port standard design life of 10 years.

2. Grading and drainage - Standard grading and drainage with NPDES allowable contaminant separation shall be provided.

3. Misc. Requirements - Fencing, gates, truck lanes, traffic control striping, steel reinforced truck bumper blocks, pavement striping, elevated signs, security system,

4. Lighting and Mechanical Systems Standard lighting and compressed air systems for intermodal operations shall be provided to appropriately complement the final layout of the intermodal yard. Lighting level in the yard shall not be less than 5 foot candles (maintained).

5. Railroad - Construct six (6) standard operating railroad tracks with integrated switching systems and run-around track(s) for standard intermodal operations. The operating tracks shall accommodate 56 cars at 309' each in length with a minimum of (3) - 70' wide vehicle cross-overs - one at each end of the straight operating tracks and one at an intermediate location.

6. IY Tower Building - Consisting of three floors and one observation floor, with a total square footage of 3000 SF and a maximum height of 54 feet. It should include management and general offices, storage and toilet facilities complete with electrical, mechanical, HVAC, conduits and wiring for telephone and computer systems. The ground floor shall be constructed as a maintenance shop to support rail ramp operating equipment. This includes space for shopwork and parts storage complete with electrical and mechanical systems and conduit and wiring for telephone and computer systems.

INTERMODAL STORAGE YARD

Storage tracks shall be constructed with a capacity for 54 cars at 309' each in length, including lighting (to the extent required), drainage, fencing, and signage and shall meet the standard of design for intermodal storage yard facilities (see Attachment 2.)

E. OVERPASS

Construct an overpass ramp between T-5 entrance roadway and the low-level Spokane Street bridge approach to provide grade separation sufficient to allow passage of stack trains with high cube containers and to meet all regulatory requirements. The minimum structural clearance from top of rail to the underside of any overhead structure shall meet BN requirements. Design shall incorporate various traffic controls, striping and signage to regulate pedestrian and vehicular traffic.

PORT PROVIDED IMPROVEMENTS

A. RECEIVING/DEPARTURE TRACK

Construct receiving/departure track to support one full double stack train with 28 cars at 309' each in length. The track shall have sufficient length to avoid using the bridge during switching operations.

B. ACCESS TRACKS AND RAIL BRIDGE

Double track access shall be provided from 200 feet west of Duwamish Avenue South to a point 400 feet east of the east end of the Duwamish Rail Bridge, and from the northernmost point of the switch at the north end of the "Y" leading from the Duwamish Rail Bridge to the Intermodal Loading Yard and the Intermodal Storage Yard, except that double tracks will not be provided across the bridge between the points previously described. Design and construction shall be in accordance with the applicable federal railroad regulations.

The rail bridge shall be sufficiently reinforced to support stack train operations with railroad locomotive power. The minimum structural clearance from top of rail to the underside of any overhead structure shall meet BN requirements.

C. OPTION AREA

1 Area if exercised, shall be designed and constructed to meet the standards of design specified above for container yard, marine building and wharf.

D. ENVIRONMENTAL CONTROL SYSTEMS

Environmental control systems shall be provided for all new buildings in accordance with applicable federal, state and local statutes, ordinances, rules and regulations ("Code"). New facilities shall be equipped with appropriate environmental systems as described herein. The following facilities shall be included:

- Maintenance and Repair Facility
 - Gatehouse and Entrance Facility
 - Container Freight Station
 - TY Control Tower
 - Arrival and Security Building
 - TY Maintenance and Repair Facility
- Marine Building (If Option Area exercised)

1. Noise Control Systems - Within the new structures, the Port shall provide offices and interior work stations which meet Code regarding noise levels. Except as otherwise provided, the Port shall only provide noise level controls within the structures to be built and occupied as offices. All special use spaces (machine shops, print rooms, etc.) that generate high noise levels shall be designed to reduce, to the extent feasible, their noise impact on adjacent office work areas. Notwithstanding anything to the contrary, the Port shall not be required to undertake noise control measures beyond what is required for any new structures and required as mitigation for the benefit of third parties under the Environmental Impact Statement for the Southwest Harbor Project.

2. Temperature Control & Air Handling Systems - Temperature control shall be provided through the use of appropriate building materials, insulation and HVAC (heating, ventilating, air conditioning) systems. Mechanical systems shall be incorporated to provide adequate supplies of fresh air and to exhaust and/or

control fumes from special use spaces such as the Maintenance and Repair Facility. Temperature control systems shall be capable of maintaining all enclosed habitable spaces with temperature range and relative humidity that meet the Code or equivalent to the existing temperature and relative humidity, whichever is more stringent. Sector and work area thermostatic controls shall be provided to properly adjust temperature levels within all new buildings. Timers and other such energy saving devices shall be incorporated into the controls as appropriate.

3. **Lighting Control Systems** – Lighting control shall be provided through the appropriate use and mix of windows, skylights, clearstories, sun shades, blinds, curtains and electrical lighting systems. Habitable working spaces (offices, conference rooms, etc.) shall be designed for a lighting level that meet the Code or equivalent to the existing lighting levels, whichever is more stringent at desktop elevation. Individual switches, area control switches, rheostats, timers and energy saving devices shall be incorporated as appropriate. Other general use spaces, such as hallways, lavatories, coffee rooms, lunchrooms, print rooms and the like, shall be designed for the recommended light levels as suggested by the American Lighting Institute.

4. **Power Distribution Systems** – Power distribution within the buildings shall be designed to accommodate multi-user computer oriented work spaces with LAN (local area network) and mainframe linkages throughout. "Clean power" shall be provided with adequate load capacities and sufficient distribution points to service an environment where each and every employee could have desktop computer/ printer capabilities.

E. YARD LIGHTING SWITCHING SYSTEM

The existing lighting system shall be modified to allow programmable electronic switching of existing light standards, with manual overrides, to allow for energy conservation and the selection of individual sections for illumination. The design of this switching system shall be coordinated with the design of the switching system for the new light standards.

Schedule D: 6/3/94
Summary Construction Schedule

YOU...YES!...RBC...TOJ...
 A...Ehr...H...

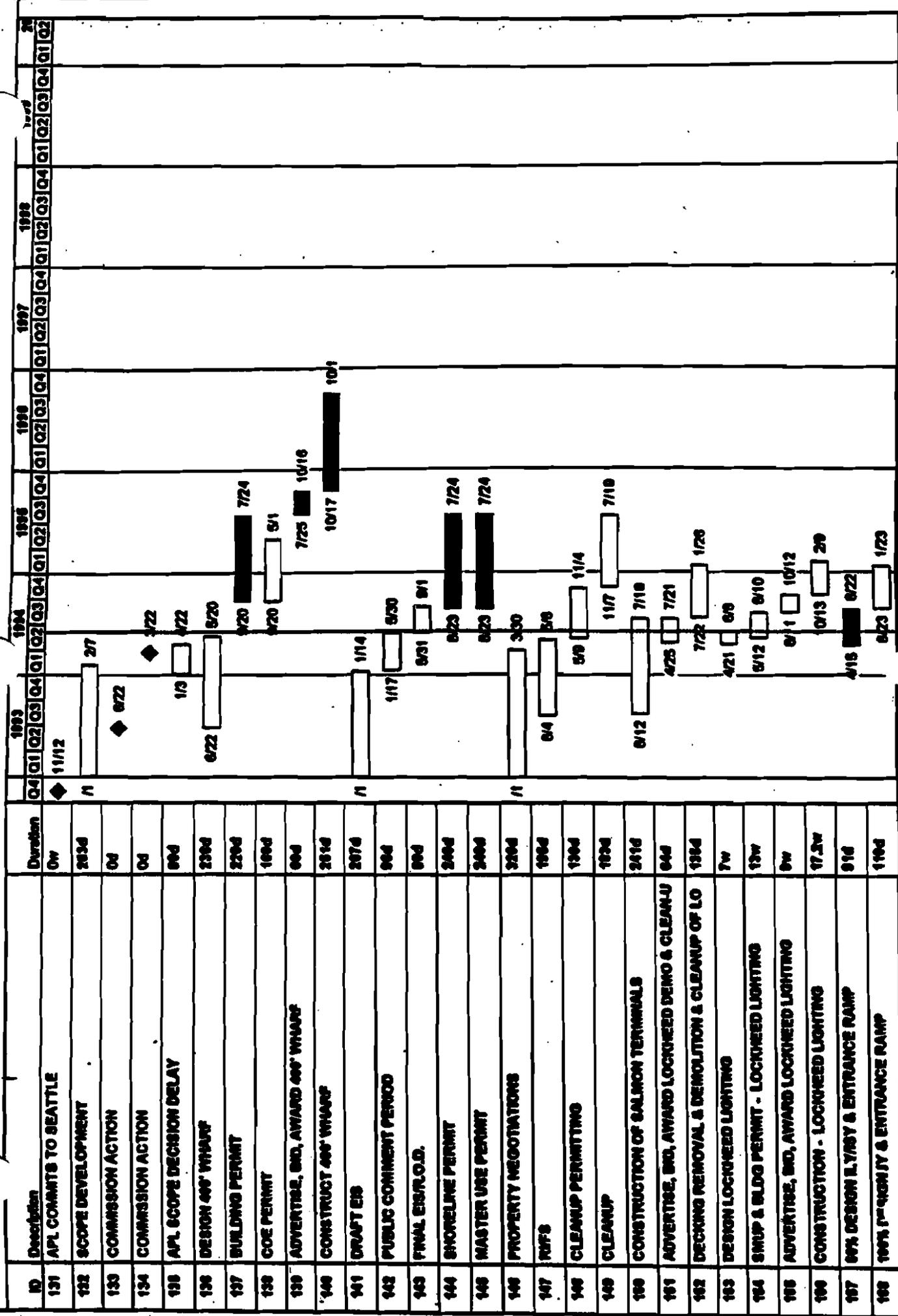


EXHIBIT I

**MEMORANDUM OF AGREEMENT
BETWEEN
BURLINGTON NORTHERN RAILROAD
AND
THE PORT OF SEATTLE**

This Memorandum of Agreement, along with any exhibits, attachments, and addenda hereto, ("Agreement") is entered into on the date hereinbelow written by and between Burlington Northern Railroad ("BN") and The Port of Seattle ("Port").

WITNESSETH

WHEREAS, Port intends to construct, by 1997, a state of the art containership terminal facility with on-dock rail capability on property designated as Terminal 5 on Exhibit I-1 attached hereto ("T-5");

WHEREAS, T-5 is included in a greater area of the Port's facilities in West Seattle located and bounded by the point at which BN ownership of trackage to West Seattle departs from joint BN/UP trackage across Harbor Island, near Klickitat Avenue, east of the Duwamish River Bridge, and all associated trackage, now existing or subsequently constructed, west of that point, designated as the General Switching Area on Exhibit I-1, (the "General Switching Area");

WHEREAS, Port does not intend to operate T-5 itself but has leased T-5 to Eagle Marine Services, Ltd., assignee, ("Lessee"), to conduct certain day-to-day operations and business of T-5 pursuant to that certain Sixth Amendment to Lease dated as of JUNE 1, 1994 and subsequent amendments thereto (the "Lease");

WHEREAS, BN and Port desire that T-5 and industries in West Seattle be provided with adequate railroad services;

WHEREAS, BN provides rail service to and intends to continue providing such service to West Seattle industries and to T-5 and will perform certain functions as set out in this Agreement directly with Lessee;

WHEREAS, Port desires that BN allow, and BN is willing to allow, Union Pacific Railroad ("UP") to have direct access for its road trains of intermodal railcars to and from T-5, pursuant to a separate access agreement between BN and UP (the "Access Agreement"), a copy of which is attached hereto as Exhibit I-6 for informational purposes only and shall not be subject to any terms or conditions of this Agreement. Further, Port desires that BN provide exclusive general switching service as defined in Section C hereinafter, for General Switching Area;

WHEREAS, BN and Port desire to provide a comprehensive agreement for the purpose of establishing the rail operating conditions, requirements, responsibilities and framework in conjunction with the development and operation of T-5; and

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, BN and Port agree as follows:

A. TERM OF AGREEMENT:

- (1) The term of this Agreement shall be from the date hereof and shall continue in effect concurrently with the term of the Lease, including any amendments, renewals, extensions or assignments thereof. In the event of termination of this Agreement, it is agreed and acknowledged by the parties that BN shall retain the rights to provide exclusive general switching service to T-5 and any subsequent or additional user(s) of T-5 as defined in Section C.**
- (2) The parties and Lessee agree and affirm that all maritime users of T-5 shall have the right to utilize on-dock rail loading/unloading capabilities for all containers and/or railcar traffic received from or destined to any rail service carrier having access to T-5 during the term of this Agreement.**

B. UNION PACIFIC RAILROAD ACCESS TO TERMINAL 5:

BN will allow UP, pursuant to the Access Agreement, to have direct rail access to the T-5 Intermodal Loading Yard ("ILY"), the Port's adjacent Intermodal Storage Yard ("ISY"), and such other trackage as designated by BN (such potentially designated tracks which will be specifically identified in the BN-UP Access Agreement, the ISY, ILY, and Receiving and Departure ("R&D") track(s) shall hereinafter be referred to as the "Tracks") (as depicted in Exhibit I-2A) for the purpose of timely spotting, delivery, picking up and/or pulling road trains of intermodal railcars. This rail access shall be under the sole management and control of BN. This allowance for UP direct road train or BN transfer service access to and from the Tracks will be based on an access charge of \$20.50 per container, to or from T-5, loaded or empty, with appropriate annual indexing as defined in Exhibit I-7, assessed by BN to UP, and rail operations conditions to be negotiated between BN and UP and set forth in the Access Agreement between BN and UP. The access charge, and its annual indexing, described in Exhibit I-7 is equal to that established in the Access Agreement (Exhibit I-6) and represents the complete financial terms with respect to the access charge, and its annual indexing, described in the Access Agreement. Any operating, financial and access terms of the Access Agreement relating to T-5 will not be modified without the Port's prior written consent. BN and Port agree to review the Access Agreement from time to time. The Access Agreement, and any disputes arising thereunder, shall not be subject to Section D or M hereof.

Direct access means that UP's road power and road crew or UP switch crews relieving UP road crews having insufficient time under the Federal Hours of Service Act and utilizing UP road power, may deliver road trains of intermodal railcars on inbound train movements directly to T-5 and place such cars on the Tracks, and/or retrieve such road trains of intermodal railcars from the Tracks on outbound road

train movement. It is agreed that UP road train crews or UP switch crews in lieu of UP road crews as provided above, shall not be restricted from performing duties as allowed under applicable Road/Yard Work Rules in conjunction with handling intermodal railcars associated with inbound/outbound trains, unless it is reasonably determined by BN that it is necessary for BN switch crews to work in conjunction with UP road crews to yard or assemble trains in order to meet service performance requirements. It is further understood that such decisions or directions of UP crews for the purpose of yarding an inbound train or assembling an outbound train at T-5 in conjunction with BN general switching responsibilities will be determined by the most expeditious and efficient use of the resources available for providing timely and cost effective service to T-5.

Nothing in this Agreement is meant to provide UP road or switch crews with authority to perform general switching activities, as defined in Section C below, at or in the General Switching Area. In no event will UP road crews, or switch crews in lieu of road crews as provided for elsewhere in this Section B, move intermodal cars within T-5 in any manner that could be construed or considered as general switching. Further, to the extent that BN provides road train service in lieu of UP, this service will be covered by the general switching service provided by BN as set forth in Section C below.

C. GENERAL SWITCHING SERVICE PROVIDED BY BN:

General switching service ("Switching Service") provided by BN shall include, but not be limited to, the following:

- (1) The movement of loaded and/or empty intermodal railcars between certain tracks within the Tracks;
- (2) The movement of loaded and/or empty intermodal railcars in either direction between BN and/or UP yard and/or storage tracks and the Tracks;

- (3) The movement of less than trainload lots of loaded and/or empty railcars in either direction between or within the Tracks and BN and/or UP tracks, in any manner that would be considered a normal railcar transfer movement, to permit consolidation with other railcars for rail shipment in trainload lots, unless performed by UP road crews, or UP switch crews in lieu of UP road crews as provided in Section B, and road power under applicable Road/Yard Work Rules;
- (4) The removal of bad order intermodal railcars from the Tracks and the placement of such cars on the designated repair track, delivery of such cars to the BN repair track, or the return of such cars to the UP, and the reverse movement of repaired cars;
- (5) The movement of different types of intermodal rail cars from the Tracks; and
- (6) Other movement of all types of railcars from track to track within the General Switching Area that is within the generally accepted definition of general switching.

The parties and Lessee recognize the geographical and operational jurisdiction of exclusive BN general switching rights which includes all trackage within T-5 leasehold that requires the use of BN owned or controlled trackage, and all associated BN owned or controlled trackage and property employed to support the operations of T-5 and other BN-served customers in the General Switching Area. BN will assess to Lessee for the provision of Switching Service to T-5 a switching rate of \$1,168 per eight (8) hour straight-time shift (with normal overtime rates as applicable) with appropriate annual indexing as defined in Exhibit I-7, provided, however, that such rate, and increases thereto, will not exceed those levels that are normal and customary within the industry for comparable switching service,

adjusting for the switching resources that BN has in place within the proximity of the General Switching Area.

The parties and Lessee further agree to negotiate in good faith to mutually determine the necessary and appropriate level of general switching service resources required of BN, taking into account the operational and geographical constraints of the General Switching Area to ensure the timely and efficient execution of the service requirements as agreed to by the parties and Lessee and recognizing BN's need to adequately serve other West Seattle industries.

D. RAIL SERVICES STANDARDS AND CORRECTIVE ACTIONS:

The parties and Lessee collectively agree that timely and proper rail service to T-5 is absolutely critical and that the rail services standards established and agreed to by the parties and Lessee will be adhered to in every respect. Such rail services shall be both train movements between the east end of the East Double Track and the Tracks, or such other points which may be established pursuant to the provisions of this Section D, and Switching Service ("Rail Services").

Any issues or disputes arising from the provisions of Sections A(2), C, D, E(1), F, G, H, I(2), J, K, L, N, and O of this Agreement shall be subject to this Section D and shall not be subject to Section M. Furthermore, the parties to this Agreement hereby acknowledge and agree that Lessee has standing, as a third-party beneficiary or otherwise, to enforce any rights and duties, or to seek resolution of any disputes against either or both parties hereto, pertaining to Lessee as set forth in the aforementioned Sections in this paragraph.

(1) Rail Services Standards Committee:

- a. In order to insure that Rail Services are performed in a timely and efficient manner, a Rail Services Standards Committee ("Committee"), comprised of one voting representative (or their designees) from Port, BN and Lessee shall be established

within thirty (30) days of the date of this Agreement. The Committee shall be responsible for establishing rules and service standards ("Rail Services Standards") as appropriate to ensure timely and efficient Rail Services. The Committee shall develop monitoring procedures to be used in measuring performance against such standards as may be so established.

- b. The Committee shall meet on a regular basis, not less often than every three months, to review Rail Services; the overall performance of T-5 and the General Switching Area rail operations; to discuss and attempt to resolve grievances concerning T-5 operations or services provided to other customers; to consider and decide upon ways of improving operations of the parties and Lessee; and such other relevant matters as the Committee may decide to consider.
- c. The Committee shall develop and issue standards, rules and measurement procedures as necessary to achieve the required Rail Services for Lessee based upon facility capabilities and cost of service factors. Any member may request a special meeting of the Committee on reasonable notice to the others. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party or Lessee. It is expected that the work of the Committee will be undertaken in a spirit of mutual cooperation consistent with the principles expressed in this Agreement.
- d. The decision of the majority vote of the Committee representatives shall be implemented; however, nothing in this

section shall limit or preclude any party from appealing the decision to the Executive Committee pursuant to the process set forth in Exhibit I-3, attached hereto and made a part hereof.

e. The Committee may recommend, but cannot in any event require, that either party or Lessee make certain capital improvements related to their operations.

f. The Parties agree that BN shall achieve performance to the Rail Services Standards as established by the Committee at prescribed levels and in the event that BN's performance falls below such prescribed levels, Port and Lessee will have certain rights and actions available as expressly enumerated in this Agreement to ensure that BN's performance returns to the required levels in as timely of a manner as possible, to the extent that BN is responsible for the performance falling below the required levels.

(1) Required Rail Services Standards performance shall be at ninety-five percent (95%) of the combined Rail Services Standards established by the Committee. Measurement of the required performance ("Performance," for the purposes of this Section D(1)(2)) shall be for a measurement period which will encompass the previous fourteen (14) consecutive days ("Measurement Period") and will be calculated daily on a rolling average basis for the total activities under Rail Services Standards requirements over the Measurement Period.

(2) In the event that during any Measurement Period Performance to the Rail Services Standards established by the Committee falls below ninety-five (95%), Lessee or Port shall have the right to obtain immediate corrective action from BN and/or Port, including additional resources, to restore Performance to the required level. Lessee or Port shall each be initially responsible for its respective cost of any additional resources provided in response to its respective requests as provided for in this paragraph D (1) (f) but Lessee and/or Port shall have the right to seek reimbursement of any such costs of additional resources employed to return Performance to the required level for the period of time during which Performance remains below the required Performance level.

When Performance over a Measurement Period is restored to the required level of ninety-five percent (95%), Lessee shall be responsible for the costs of the additional resources, if any, required to maintain Performance to the Rail Services Standards. Resolution of any disputes that may arise as to the proper allocation of resource costs shall be subject to Exhibit 1-3.

(3) In the event that during any Measurement Period Performance to the Rail Services Standards established by the Committee falls below eighty-five percent (85%), and to the extent that Port is subject to monetary

consequences under Paragraph 3(m)(vi) of the lease, BN shall be subject to monetary consequences to the Port for each day the Measurement Period Performance is below eighty-five percent (85%). Such monetary consequences shall be based on the sum of the switching charges and Terminal Entrance Fee ("TEF") revenues chargeable by BN for the day ending the Measurement Period during which Performance to the Rail Services Standards falls below or remains below eighty-five percent (85%). Determination of the extent of BN's participation in such monetary consequences shall be based on class of service (switching vs. access) and shall be based on the proportionate percentage of service failures to the total number of service failures over the applicable Measurement Period for each of the two classes of service. For example, if over a Measurement Period Performance to the Rail Services Standards established by the Committee only achieves an eighty-two percent (82%) compliance level, and of the ten (10) service failures identified during the Measurement Period involved, eight (8) failures were associated with switching, eighty percent (80%), and two (2) failures were associated with road train access, twenty percent (20%), the proportion applied for that single day of Performance at a level less than eighty-five percent (85%) would be eighty percent (80%) of the switch charges owed by Lessee for that single day and twenty

percent (20%) of the TEF revenues owed for that single day as provided for in the Access Agreement. The eighty-five percent (85%) Performance level referenced in this subparagraph shall be raised to ninety percent (90%) five (5) years after the opening date of the ILY. In any event, and to the extent for which BN is responsible for failures of the Rail Services Standards for a Measurement Period, BN shall be liable for payment of any such monetary consequences herein described in this section D (1) (f) only to the extent it received compensation for each single day that the Measurement Period Performance to the Rail Services Standards was below eighty-five (85%), or ninety percent (90%), as applicable.

(2) Corrective Action and Conflict Resolution:

The parties and Lessee agree that it is desirable to have clearly defined process steps for the various levels of internal and external dispute resolution. All of the agreed steps for the dispute resolution process are set out in Exhibit I-3 with respect to all matters within the scope of the Committee. Disputes not resolvable by the Committee may be appealed directly to the Executive Committee pursuant to the last paragraph of Section 3 of Exhibit I-3.

The parties and Lessee agree that the process described in Exhibit I-3 shall also be applied to the following claims where such claims arise as a result of a failure to achieve the required Performance level of Rail Services Standards as established by the Rail Services Standards Committee:

- a. **Claims by the Port for recovery from Lessee of amounts paid by the Port to Lessee and unpaid amounts owing to the Port from Lessee, all in accordance with Paragraph 3(m)(vi) of the Lease;**
- b. **Claims by the Port for recovery from BN of damages incurred by the Port, in accordance with Paragraph 3(m)(vi) of the Lease and/or Section D(1)(f) of this Agreement; to the extent hereinafter described:**
 - (1) **Claims associated with switching service provided by BN shall be limited to the amount BN received from Lessee for switching service on the day(s) on which Performance to the Rail Services Standards falls below eighty-five percent (85%), or ninety percent (90%) as applicable.**
 - (2) **Claims associated with road service access provided by BN shall be limited to the amount BN received from UP associated with T-5 access, TEF only, on day(s) on which Performance to the Rail Services Standards falls below eighty-five percent (85%), or ninety percent (90%) as applicable.**

E. RAILROAD RELATED IMPROVEMENTS:

(1) Facility Layout and Design:

As used herein the term "Facility" shall include all trackage in the General Switching Area and the double track to be constructed by the Port across Harbor Island, between the vicinity of East Marginal Way South and the vicinity of the east end of the Burlington Northern Rail Bridge at the southwest side of Harbor Island, parallel to the existing

railroad track ("East Double Track"). The parties and Lessee will negotiate to design the Facility so that its layout will be suitable for efficient and effective intermodal transfer activities; adequate railcar storage capacity and railroad service for West Seattle industries; and will include other related rail improvements to support the efficient and timely movement of railcars in switch or road train service, including double tracking where necessary, and other railroad-related improvements associated with the T-5 improvement program. The conceptual design for the portion of the Facility in the area of T-5 is as depicted on Exhibit I-2A and the conceptual design for the East Double Track is as depicted on Exhibit I-2B.

If the parties and Lessee cannot agree on a final Facility design by the date this Agreement is executed, either party or Lessee shall have the right to submit the issue to an independent third-party consultant with expertise in designing rail intermodal yards and facilities to settle issues related to the final design of the Facility and rail support improvements.

The Committee will deal with Facility design issues over the life of this Agreement in a manner consistent with the design ultimately determined by the parties and Lessee. In the event of a dispute related to the design of any portion of the Facility or its access trackage, the opinion of the Port and Lessee will take precedence with regard to T-5 and access thereto; the opinion of BN shall take precedence with regard to adequate access to West Seattle industries. If BN determines that design or capacity issues will so impede performance or service standards or cause economic and safety burdens, the dispute shall be decided as set forth in Section D above.

(2) Property Exchange and Valuation:

The parties shall cooperate in proceeding with any environmental processes, permit applications, street vacations, or other actions necessary to moving the T-5 project forward as scheduled. The parties shall execute a letter agreement (attached hereto as Exhibit I-4) addressing issues regarding property exchanges, appraisals, track construction, maintenance and schedules. If any disputes arise relating to the exchange of property or any other issue covered by or relating to the letter agreement, the parties only will submit the issue for determination by arbitration as set out in Section M below.

(3) Environmental Conditions and Indemnification:

Prior to an exchange of property under this provision, the Port shall provide reasonable assurances to BN through testing that the property transferred to BN does not contain contaminant levels in either the soil or groundwater in excess of the maximum level permissible under the Washington State Model Toxics Control Act (WSMTCA). To the extent these assurances cannot be provided for either the soil or groundwater, and until such time as these reasonable assurances can be provided, the Port shall indemnify and hold BN harmless for any cleanup required by any governmental authority due to the presence at the time of property transfer of contaminants in the transferred property's soil or groundwater in excess of the maximum level permissible under the WSMTCA, except to the extent such cleanup was necessitated by or the result of BN and/or its railroad operations. Prior to an exchange of property under this provision, BN shall provide reasonable assurances through testing that the property transferred to the Port does not contain contaminant levels in either

the soil or groundwater in excess of the maximum level permissible under the WSMTCA. To the extent these assurances cannot be provided for either soil or groundwater, and until such time as these assurances can be provided, BN shall indemnify the Port and hold the Port harmless for any cleanup required by any governmental authority of contamination present at the time of property transfer that was caused by or was the result of BN and/or its railroad operations.

Subject to the provisions of BN's Right of Entry Agreement (a copy of which is attached hereto as Exhibit I-5), the Port shall conduct preliminary environmental testing of the BN property at Port's expense. Further environmental testing, if required, may be conducted by either BN or the Port, at BN's discretion, and at BN's expense. The result of all testing shall be reasonably available to both parties.

F. FACILITY MAINTENANCE:

BN will have railroad right-of-way maintenance responsibility for all Tracks except for that trackage found within Lessee's leasehold premises and Port's ISY trackage. In the event Lessee and/or Port contracts with BN for maintenance or repair of the excluded trackage, BN will assess charges against Lessee or Port, as appropriate, for actual maintenance performed. If said maintenance is contracted, it will be to the specifications provided by Lessee or Port for their respective areas. The Tracks will be maintained to a level consistent with safe operation in order to meet service performance standards established pursuant to this Agreement.

G. EQUIPMENT MAINTENANCE, REPAIR AND INSPECTION:

BN or BN's contractor(s) (may include contractor arranged for by UP if approved by BN) shall provide, at the expense of the responsible party or parties, mechanical train/railcar inspections, air tests and certifications, application and removal of rear-of-train devices as furnished by the responsible party, maintenance

and repairs within the ILY, ISY and receiving and departure tracks, in accordance with Federal Railroad Administration ("FRA") and Association of American Railroads ("AAR") rules and regulations, and shall comply with all other AAR rules and regulations (including, without limitation, those relating to loading and inspection). Equipment repairs will be billed in accordance with AAR billing procedures.

H. DUWAMISH WATERWAY RAIL BRIDGE, NORMAL MAINTENANCE, AND REPAIR:

BN assumes full responsibility for normal maintenance and repair (other than casualty related) of the Duwamish Waterway Rail Bridge, as defined in the Lease (the "Bridge") in a condition, prior to July, 1, 1996, sufficient in size to accommodate fully loaded double stack intermodal railcars with 125 ton trucks, maximum weight not to exceed a per axle weight of 70,000 lbs. including tare weight of car, and locomotives models, both 4 axle and 6 axle, not exceeding 70,000 pounds per axle are permitted.

In the event the Bridge is taken out of service for whatever reason, within the context of this Section, BN will work to a level of industry standard to return the Bridge to service in an expeditious manner. This Section H shall be subject to Section D.

L. UPGRADING OR REPLACEMENT OF IMPROVEMENTS.

- (1) In the event that it becomes necessary to significantly upgrade or replace the Bridge or any other rail facility under BN maintenance responsibility in association with T-5 requirements, due to causes which are outside of the control of BN and its normal maintenance responsibilities, such as a change in the size and weight of equipment accessing T-5, need to double-track the Bridge, or substantial, constructive total, or total loss of the Bridge due to an accident or act

of God, Port agrees to explore funding or other options that may be available and appropriate for such improvements, extraordinary repair or replacement, as required. BN will participate in an expeditious manner, in jointly discussing and implementing the options for said improvement, extraordinary repair or replacement including the feasibility of construction of a new, possibly relocated, bridge over the Duwamish Waterway servicing West Seattle. In no event shall BN be required to participate in the financing of such improvements, extraordinary repair or replacement; however, with respect to extraordinary repair or replacement due to substantial, constructive total, or total loss resulting in loss of rail service capabilities and BN and Port are unable to reach agreement on necessary funding, Port shall have the right to fund the construction necessary to restore rail service capabilities. In such event, BN shall have the following options available with respect to Port cost recovery:

- (a) BN shall pay an annual fee to the Port for the Port's investment, with appropriate interest, based upon an amortization over a period of time equal to the remaining expected useful life of the new bridge ("New Bridge").
- (b) BN shall pay a per unit use charge to the Port for all rail traffic crossing the New Bridge. Such charge shall be assessed at a level sufficient to allow Port to recapture its cost and interest for the New Bridge construction over the expected useful life of the New Bridge.

The Port shall own the New Bridge; BN may, however, at its discretion, acquire full ownership in the New Bridge at any time during a five (5) year period

commencing with the date that the New Bridge resumes rail service or within one (1) year after collection of any judgment from any party causing damage to the Bridge which required the repair or replacement, whichever comes later, by compensating the Port for the remaining unamortized balance of the cost of construction of the New Bridge. The Port agrees, however, to enter into an agreement with BN to allow BN to manage and operate the New Bridge ("Management Agreement") as long as Port owns the New Bridge. For purposes of this Agreement, the UP Access Agreement and the Lease Agreement, BN shall, pursuant to the Management Agreement, have ownership responsibility for the New Bridge and will assume all liability for the New Bridge and be responsible for all normal maintenance and repair of the New Bridge as required by Section H of this Agreement. Any such Management Agreement shall not conflict with the terms of this Agreement.

In any event BN will have the right to continue to collect the access charge as provided for in Section B of this Agreement. In addition, Port agrees that BN will have exclusive right to purchase Port ownership in the New Bridge.

- (2) In the event it becomes necessary or desirable to Lessee to significantly upgrade the Bridge for a reason unrelated to substantial, constructive total, or total loss, and, if requested to do so by Lessee, BN will make capital improvements as expeditiously as possible, at Lessee's expense, to BN's facilities utilized to serve T-5 pursuant to this Agreement, as long as said capital improvements, or their construction, do not have an unreasonable impact on BN's ability to perform under this Agreement or on BN's ability to perform service for any other current or potential customers. When completed, said capital improvements shall be owned by BN.

J. LIABILITY PROVISIONS:

As used herein, "Loss or Damage" shall mean all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons arising from the performance or existence of this Agreement.

Each party and Lessee shall be liable for Loss or Damage to the other, its employees, agents or invitees and/or to third parties to the extent caused by the negligent acts or omissions, or willful misconduct of the party(ies) and/or Lessee whose employees, lessees, subcontractors, agents or invitees, and/or property caused the same.

K. FORCE MAJEURE:

Except as otherwise expressly provided herein, neither party hereto nor Lessee shall be liable to the other party(ies) and/or Lessee for any delay or interruption in performance of any obligation hereunder (except a payment obligation) resulting from events of *Force Majeure* such as governmental orders, regulations, labor strikes or disturbances, acts of public enemy, war, blockade, insurrection, acts of God, fires, floods, explosion, derailments, vandalism, sabotage, shortage of diesel fuel, breakage of machinery, or other cause, beyond the reasonable control of either party or Lessee.

The party or Lessee claiming *Force Majeure* shall take all reasonable steps to remove the *Force Majeure* event, and, for this section to be operative, shall promptly notify the other party(ies) and Lessee within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of the *Force Majeure* condition, and will notify the other party(ies) and Lessee within a period of five (5) days, excluding weekends and holidays, when the *Force Majeure* condition is terminated.

L. NOTICES:

All notices, requests, demands, and other communications under this Agreement shall be effective only if in writing and (i) if delivered and receipted for in writing; (ii) sent by certified or registered mail (return receipt requested) postage prepaid; (iii) sent by a nationally-recognized overnight delivery service, with delivery confirmed; or (iv) telexed or telecopied, with receipt confirmed, addressed as follows:

**Burlington Northern Railroad Company
Attn: Sr. Vice President, Corporate Development
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102-5384
Telephone: (817) 333-2332
Telecopy: (817) 333-3010**

**Port of Seattle
Attn: Manager, Marine Real Estate
P.O. Box 1209, Pier 69
Seattle, WA 98111
Telephone: (206) 728-3374
Telefax: (206) 728-3280**

**Lessee:
Eagle Marine Services, Ltd.
Attn: Port Manager
3443 West Marginal Way S.W.
Seattle, WA 98106
Telephone: (206) 933-4650
Telefax: (206) 933-4510**

or such other persons or addresses as shall be furnished in writing by any party or Lessee to the other party(ies) and/or Lessee. Notice shall be deemed to have been given as of the date (i) when personally delivered, (ii) three (3) days after the date of deposit with the United States mail properly addressed, (iii) when receipt of a Notice sent by an overnight delivery service is confirmed, or (iv) when receipt of the telex or telecopy is confirmed, as the case may be, unless the sending party has actual knowledge that a Notice was not received by the intended recipient.

M. ARBITRATION:

Any dispute arising between the parties, except where otherwise provided for in this Agreement, which cannot be settled by the parties, shall be settled under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceeding shall be conducted in an expedited manner as set forth in Section 5 of Exhibit I-3 hereto.

The parties agree that the arbitrator's award shall be binding and may be entered with any Court or agency having competent jurisdiction and the award may there be enforced between the parties without any further evidentiary proceedings, the same as if entered as a judgment by the Court.

N. BILLING, DEFAULT:

Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties and/or Lessee. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared in accordance with the schedules of labor additives, material prices and equipment rental rates as agreed upon by the Chief Accounting Officers of the parties hereto from time to time. It is understood by the parties that BN will bill Port and/or Lessee directly for their respective charges under this Agreement. Port and/or Lessee shall pay to BN at such location as BN may from time to time designate, all the compensation and charge of every name and nature which in and by the Agreement Lessee and/or Port is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no

exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

Should Lessee and/or Port fail to make any payment when due which Lessee and/or Port is obligated to make by this Agreement, or fail in any other respect to perform any payment obligation under this Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by BN to Lessee or Port, BN may, at its election submit the default directly to arbitration under Section M or secure a judgment by a court of law to recover any amounts owed.

BN may waive such default, but no action of BN in waiving any default shall affect any subsequent default of Lessee or Port or impair any rights of BN resulting therefrom.

O. ASSIGNMENT:

This Agreement, its rights and obligations shall inure to the benefit of and be binding upon the parties, their successors and assigns, but neither party may assign this Agreement without the prior written consent of the other.

If the Lease terminates, or the Port enters into a lease with a new lessee for T-5, and this Agreement is renewed, or if Lessee assigns the Lease to another lessee, the Port agrees that it shall require the new lessee to be bound by and accept the provisions of this Agreement as its provisions apply to lessees and the operations for or at T-5.

P. MISCELLANEOUS:

- (1) **Governing Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.
- (2) **Amendments:** No modification, addition, or amendment to this Agreement shall be effective unless and until such modification, addition, or amendment is reduced to a writing executed by authorized officers or agents of each party.
- (3) **Counterparts:** This Agreement may be executed in two or more original counterparts, each of which shall be considered an original of this Agreement
- (4) **Entire Agreement:** This Agreement, which term as used throughout includes the exhibits hereto, embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to herein

Intending to be legally bound, the parties have caused this Agreement to be executed by their duly authorized representatives

on this the 31st day of MAY, 1994.

BURLINGTON NORTHERN RAILROAD COMPANY

By: *G. L. Quinn*

Title: *President & CEO*

Date: _____

PORT OF SEATTLE

By: *M.R. Dinnare*

Title: **M.R. Dinnare**
Executive Director

Date: _____

EXHIBIT I-1

Refer to original Memorandum of Agreement

EXHIBIT I-2A

Refer to original Memorandum of Agreement

EXHIBIT I-2B

Refer to original Memorandum of Agreement

EXHIBIT I-3

CORRECTIVE ACTION AND CONFLICT RESOLUTION PROCESS AGREEMENT

The agreed steps for dispute resolution as referred to in Section D of the Agreement are as follows:

- (1) **On-Site Management:**
On-going, interactive communication shall be established and maintained between Lessee and BN's designated On-Site Management to coordinate planning and resource availability. Determination of timing and frequency of communication shall be addressed by the Committee when formulating service standards and requirements. In the event a dispute arises between the respective On-Site Management of Lessee and BN, notification shall be brought to the attention of the designated Local Senior Management officer for BN and Lessee responsible for T-5 operations in the Seattle area for resolution. Such appeal to Local Senior Management may be made at any time that a dispute cannot be resolved through normal communications between On-Site Management; notwithstanding, however, that the parties agree to pursue settlement of all outstanding local conflicts at this level in a timely and equitable manner, consistent with the intent of the established service standards.
- (2) **Local Senior Management:**
Upon notification by On-Site Management of a dispute that cannot be resolved, Local Senior Management of Lessee or BN will notify the other and the designated management representative of the Port in writing of the content and basis of the dispute. The Local Senior Management officers shall then each have five (5) business days to research the issue(s) and set a meeting date. A dispute resolution meeting shall be held not more than ten (10) business days from the original date of notification of the dispute. In the event that resolution cannot be reached between the Local Senior Management officers, or the required meeting is not held within the designated time frame, one or both Local Senior Management officers may submit the dispute for consideration to the Committee, along with all developed documentation supporting their stated position(s).
- (3) **The Committee:**
The Committee, charged with the responsibility of developing standards, rules, measurement procedures and performance reviews for Rail Services to T-5 and the General Switching Area, shall act as the first level of internal arbitration in the dispute resolution process. Upon notification of an appeal of the dispute by one or both of the Local Senior Management officers, the Committee shall have five (5) business days to review all submitted documentation. This five (5) day period shall not commence until each member of the Committee has been notified of an impending dispute and has received all applicable documentation supporting the parties' and Lessee's respective positions. The parties and/or Lessee commit to provide such documentation to the other

Committee members in ten (10) business days for their review and consideration. The Committee members shall meet before the expiration of the fifth (5th) business day after all parties and Lessee have received such documentation to discuss and resolve the issue(s) in dispute, and such decisions, determined by a 2 to 1 vote, shall be considered as binding to all parties and Lessee and shall be implemented with reasonable dispatch.

If, as a result of such dispute resolution vote, one of the parties or Lessee determines that the outcome of said vote is not consistent with the information supplied and reviewed, or that such outcome is contrary to the interests, abilities, or spirit of this Agreement, said party or Lessee may appeal the issue(s) to the Executive Committee, although any such appeal shall not affect implementation with reasonable dispatch as per majority vote of the Committee. Such appeal must be made within thirty (30) calendar days from the date of said vote by the Committee and notification of such appeal provided to each member of the Executive Committee in writing, with all supporting documentation provided.

(4) Executive Committee:

The Executive Committee, composed of one voting senior management representative from the Port, BN, and Lessee, will be responsible for reviewing and attempting to reach a fair and equitable disposition of any issue(s) brought to its attention through the Committee appeal process. The parties and Lessee shall designate their respective representatives to the executive committee within thirty (30) days of this agreement. Upon receipt of written notification by one or more of the Committee members that a Committee vote is being appealed, the Executive Committee shall meet within ten (10) business days from receipt of such appeal to review the issue(s). The Executive Committee shall have an additional five (5) business days from their initial meeting to review all pertinent information and evidence as supplied by the Committee before rendering a vote prior to the end of the fifth (5th) business day subsequent to the initial Executive Committee session. Such meeting(s) may be accomplished by telephonic means.

The Executive Committee shall negotiate in good faith to resolve any and all matters brought before it in a fair and equitable manner. The parties and Lessee agree that a 2 to 1 vote of the Executive Committee shall be considered as binding to all parties and Lessee in resolving the issue(s) in dispute and such decisions shall be implemented with reasonable dispatch.

If, as a result of the Executive Committee vote, one of the parties or Lessee determines that such decision is unfair, inequitable, capricious or otherwise contrary to the spirit and intent of the Agreement, said party or Lessee may notify the other parties and/or Lessee in writing of its intent to seek resolution of the issue(s) through external arbitration, although any such appeal shall not affect implementation with reasonable dispatch as per majority vote of the Committee. Such notification of intent to pursue resolution through external arbitration must be tendered within thirty (30) calendar days of the Executive Committee vote resolving such issue(s).

(5) **External Arbitration:**

Any dispute arising between or among the parties and/or Lessee as a result of this conflict resolution process with respect to the Agreement or any of the, various Rail Services Standards established by the Committee and any related performance of the Rail Services Standards that have not been resolved in a manner deemed fair and equitable by one of the parties or Lessee, such party or Lessee shall have the right to appeal for dispute resolution under the Commercial Arbitration rules of the American Arbitration Association.

Upon receipt of written notification from the appealing party or Lessee that appeal for external arbitration is desired, the appealing party(ies) and/or Lessee and the non-appealing party(ies) and/or Lessee shall within fifteen (15) business days of receipt of such notice of intent to appeal, select a qualified and recognized impartial third party for the arbitration panel; one for the appealing party(ies) and/or Lessee, and one for the non-appealing party(ies) and/or Lessee. The two impartial arbitrators so selected shall select a third member to chair the arbitration panel. The expense of the arbitration panel (excluding the parties' and/or Lessee's legal and associated expenses) will be allocated at the discretion of the arbitration panel. Any party or Lessee may seek recovery of an actual cost incurred as a result of an interim corrective action.

The parties and/or Lessee shall have twenty (20) business days from the date of selection of the third member of the arbitration panel in which to submit evidence and testimony. The parties and Lessee agree to request the arbitration panel's decision in an expedited time frame. The parties and Lessee agree that the arbitrator's award shall be binding and may be entered with any state or federal Court or agency having competent jurisdiction and the award may be enforced between the parties and/or Lessee without any further evidentiary proceedings, the same as if entered as judgment by the Court.

**EXHIBIT I-4
BN/POS LETTER AGREEMENT
WEST SEATTLE**

This letter is written to memorialize certain agreements between the Port of Seattle ("Port") and Burlington Northern Railroad ("BN") relating to property ownership, rail improvements, and rail service to be provided to Port facilities located in West Seattle and Harbor Island. The parties have executed a Memorandum of Agreement, dated MAY 31st, 1994 ("MOA", Exhibit I of the Lease), describing certain obligations with respect to such service. The MOA is attached to this letter. This letter is intended to supplement further the agreement between the parties as described in the MOA.

I Land Appraisal - Southwest Harbor

The parties acknowledge that some land owned by BN will be needed by the Port to accomplish the development described in the lease agreement (the "Lease") between Port and Eagle Marine Services (the "Lessee"). In consideration of BN's agreement to provide property requested by the Port, the Port will provide replacement property to BN, which replacement property shall be of sufficient space and condition to support existing rail operations and operating capacity at BN's Buckley Yard. In the event that the value of the replacement land and improvements is less than the value of the land and improvements owned by BN and exchanged to the Port, the Port shall pay to BN the difference in the value of the land and improvements.

II Rail Replacement - Southwest Harbor

All existing track on BN property to be conveyed to the Port as part of the Memorandum of Agreement and industrial support track for steel mill and rail barge operations shall be replaced, at the Port's cost, at locations suitable and appropriate for BN's West Seattle rail service requirements as depicted on Exhibit I-2A of the Lease. All new track laid by the Port shall be consistent with BN's engineering standards.

III Receiving and Departure Track Construction

Receiving and Departure ("R & D") tracks, as the term is used in this Agreement, are tracks which allow for the arrival or departure of road haul trains of various lengths. Each R & D track (including the West Double Track) shall have a capacity to accommodate one 9,000 foot train into the area west of the Bridge. The Port will construct, at no cost to BN, R & D tracks as agreed upon by the Port and BN to provide intermodal train and railcar service to the Intermodal Yard ("IY," as defined in the Lease) on land to be owned or to be controlled by BN. The parties agree that the R & D tracks are constructed to support Lessee's IY operation and that such tracks are not considered replacement tracks for trackage in the Buckley Yard which is displaced by the Port's development. BN agrees that Lessee has preferential use rights for the Intermodal Storage Yard ("ISY") tracks (as defined in the Lease) and that Lessee's activities in the ISY shall always take precedence over any other railcar storage. However, BN may use the ISY tracks for other railcar

storage purposes, subject to Lessee's preferential rights as expressed in written limitations or restrictions from the Port on such use.

IV. Construction of Double Track

The Port shall add an additional rail track alongside the existing track as described in Section 2, (e)(ii) (D) (5) of the Lease at no cost to BN to create a double track rail line on land to be owned or to be controlled by BN. Port shall obtain any and all permits and other governmental approvals and real property necessary to complete the construction of rail facilities to be constructed by Port. BN shall cooperate with the Port in obtaining such permits and approvals. For purposes of this Agreement, the definition of "Double Track" as used in the Lease shall apply. BN, as contractor for the Port, or Port, will construct the track necessary to create the Double Track and the Port will compensate BN for its actual costs of construction including overheads (such overheads shall be mutually agreed to by the parties). BN agrees that all tracks laid for the East Double Track will be available for use by other Class I rail carriers now having access to Harbor Island and any other Class I rail carriers subject to usual and customary access agreements. West Double Track may be used by other Class I rail carriers subject to any agreements entered into by such other carriers and BN.

V. Maintenance of New Tracks

BN shall have all maintenance obligations for any new tracks laid as part of this letter or the MOA on property to be owned or controlled by BN (except for the ILY and ISY Tracks and any trackage within Lessee's leasehold premises). Port shall warrant that the replacement property is of such condition that it will support and be acceptable for rail operations. Port shall have all maintenance obligations for the ISY tracks, and Lessee shall have all maintenance obligations for the ILY and any trackage within Lessee's leasehold premises. The Port and Lessee shall perform, or have performed, such maintenance to levels consistent with safe operation in order to meet service performance standards in the MOA.

VI. Damages

Time is of the essence in this Agreement. Except as otherwise provided, the Port and BN agree to cooperate in obtaining the appropriate permits and real property to complete construction of any rail facilities which the parties agree are to be constructed by BN and/or the Port. The Port agrees to obtain all necessary permits for construction of the Facility. BN acknowledges the Port's need to have whatever portions of the Facility that BN is constructing completed in a timely manner and consistent with the Port's overall construction schedule to satisfy the deadlines imposed on the Port under the Lease. The Port intends to have achieved Facility Component Completion (as defined in the Lease) of the Intermodal Yard Facilities (as defined in the Lease) by July 1, 1996, after which the Port will suffer damages in the form of lost lease revenues. If Facility Component Completion of the Intermodal Yard Facilities is not achieved by September-29, 1997, the Port will suffer additional damages as described in the Lease. These completion dates are based on completion of the final Facilities design for those portions thereof that are to be done by BN by December 31, 1994. Port further agrees to provide BN a list of required construction materials and a Facilities design at least fifty percent (50%) complete by July 31, 1994. BN acknowledges the Port will suffer damages if these deadlines for completion are not met, and the Port reserves the right to seek actual damages or, at its election, collect liquidated damages as may be provided in any

future contract between the Port and BN or a contractor acting on behalf of BN for construction of all or a part of the Facility. BN shall not be liable for any damages resulting from delays caused by the Port or Lessee, failure of the Port to reasonably agree upon final Facilities design or to execute this letter agreement, acts of God, severe weather or climate conditions, acts of public enemy, war, blockade, insurrection, vandalism, sabotage, labor strike or interference, lockout or labor dispute, governmental law, order or regulations, delays in acquisition of property due to no fault of BN, or as a result of having to commence condemnation proceedings to acquire property or other consequences beyond the reasonable control of BN.

AGREED to by and between the undersigned parties on this 31st day of MAY, 1994.

BURLINGTON NORTHERN RAILROAD COMPANY

BY: *Cedric*

TITLE: *Chairman & CEO*

PORT OF SEATTLE

BY: *Keith Chute*

TITLE: *Managing Director,*
Marine Division

BURLINGTON NORTHERN RAILROAD

TEMPORARY LICENSE AGREEMENT PERMITTING ENTRY TO PROPERTY

THIS AGREEMENT entered into this 10th day of June, 1993, by and between Burlington Northern Railroad Company ("BN"), licensor, and Port of Seattle, its employees, agents, consultants, and designees ("Licensee").

WHEREAS, Licensee has requested permission to enter upon BN property; and

WHEREAS, BN is willing to grant a temporary license for such entry, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. PERMISSION, LOCATION, AND ACCESS

Subject to the terms and conditions hereinafter set forth, BN hereby grants a temporary license to Licensee to enter upon the property of BN at Seattle, WA, more commonly known as Buckley Yard, more particularly located South of Terminal 2 and West of Terminal 5 at Sections 12 and 13, T 24 N, R 3 E, for the sole purpose of installing 14 soil borings for pre-acquisition environmental assessment.

2. LIABILITY

Licensee hereby releases and will protect, defend, indemnify, and save harmless BN, its subsidiaries, officers, employees, and agents against all claims, liabilities, demands, actions at law, and equity judgments, settlements, losses, costs, including attorneys' fees, damages, and expenses of every character and nature whatsoever (hereinafter referred to collectively as

FILE COPY

"claims") for injury, including death, suffered or sustained, directly or indirectly, by the officers, agents, and/or employees of BN and its subsidiaries, Licensee and its officers, agents, and/or employees, and all other persons whomsoever, and for damage to or loss or destruction of property of any kind by whomsoever owned, contributed by, resulting from, arising out of, or occurring in connection with the entry or presence of Licensee and its officers, agents, employees, and consultants on BN property incidental to Licensee's performance of the project. If any claim is asserted, Licensee will assume, at its own expense on behalf of BN, its subsidiaries, officers, agents, and employees, the defense of any such claims which may be brought against BN and pay on behalf of BN the amount of any settlement agreed upon, judgment that may be entered, and any other amounts assessed in connection therewith, plus all costs and expense.

3. INSURANCE

No work of any character shall be started on the property of BN until:

- a. An acceptable certificate of insurance specifying that the policy is applicable to the particular work has been furnished to and accepted by BN, naming BN as an additional insured and providing the following insurance coverages:**
 - (i) Worker's compensation and employers' liability insurance and satisfaction of statutory requirements of the State where the property covered by this Agreement is located;**
 - (ii) Comprehensive liability insurance with a dollar limitation of coverage not less than a combined single limit of One Million Dollars (\$1,000,000) per any one occurrence for all loss, damage, cost, and expense, including attorneys' fees, arising out of bodily injury, liability, and property damage**

liability during the policy period. Such policy shall be endorsed to reflect contractual liability insurance, specifically relating to the indemnity provisions of this agreement and with the exclusion for any activities conducted within fifty (50) feet of railroad tracks deleted; and

(iii) Automobile liability insurance, if applicable, having a combined single limit of One Million Dollars (\$1,000,000) per occurrence.

- b. All insurance described above shall be maintained until all work completed hereunder has been satisfactorily completed. The insurance companies issuing the policies may cancel or make significant changes in the coverage only with permission of BN.**
- c. After BN has advised Licensee that the limits, form, and substance of the insurance policies and certificates are acceptable, said policies and certificates shall be forwarded to the Division Superintendent ("DS"), or his "Designee", with a copy to the Manager Environmental Engineering ("Mgr. Envir. Eng."), as specified in this license.**
- d. The acceptance of the insurance by BN is not intended to and shall not reduce limit, affect, or modify the primary obligations and liabilities of Licensee under the provisions of this agreement.**

4. ENTRY UPON PROPERTY

Licensee shall notify BN's DS, or his Designee, and the Mgr. Envir. Eng. at least forty-eight (48) hours in advance before entering upon or starting any work upon BN property. The DS is Kevin C. Spradlin, (206) 625-6224. The Designee is Gil S. Maling, Trainmaster, (206) 625-6270. The Mgr. Envir. Eng. is Michael E. Clift, (206) 467-3384.

No entry or use of BN property will be permitted until this agreement is signed and permission, in writing, has been received from the DS, Designee and/or the Mgr. Envir. Eng.

5. BN OPERATIONS

All operations of Licensee shall be performed in such a manner so as not to interfere with BN property and operations or the use of BN facilities. If, in the opinion of the DS or Designee, conditions warrant at any time, BN will provide appropriate flag service and protection to its property, employees, and customers at the expense of Licensee, and Licensee will pay to BN the full cost and expense thereof within thirty (30) days of receipt of a billing for the flag service.

6. CROSSING OR FOULING TRACKS

In no event shall equipment or material be transported across BN's track without special permission and advance written notice of at least forty-eight (48) hours to the DS or Designee, so that BN may arrange for the necessary protection at and about the track. Such permission shall be reasonably given by the DS or Designee. Licensee agrees not to enter upon or foul BN track until given specific permission and signal to do so by a BN flagman, when flag protection is provided.

7. CLEARANCES

All equipment located on or material in use upon BN property shall be kept at all times not less than fifty (50) feet from the nearest rail of any track. Licensee shall conduct its operations so that no part of its equipment shall foul any track, transmission, signal, or communication line or any other structure on the property.

8. RESTORATION OF PREMISES

Upon completion of the work, Licensee shall leave the property in a condition satisfactory to the DS or Designee and the Mgr. Envir. Eng.; and Licensee shall remove all machinery, equipment, material, rubbish, and other property of Licensee so that the land is left in a condition satisfactory to the DS or Designee and the Mgr. Envir. Eng.

9. PROVIDING REPORTS

Licensee agrees to provide BN with a complete copy of the results of the analysis of any samples taken on BN property and any related reports, including conclusions and recommendations. Licensee further agrees to keep said results and reports confidential and not to disclose the information to any other party, unless Licensee has received express written authorization to do so from BN.

10. TERM OF LICENSE

BN reserves the right to revoke this license at any time. Unless modified or terminated in writing by the parties, this license shall extend until 12:01 a.m. on August 10, 1993, at which time it shall expire automatically. Licensee shall notify the DS or Designee and the Mgr. Envir. Eng. when use of the property or work is completed. Under no circumstances shall this temporary license be construed as granting Licensee any right, title, or interest of any kind or character in, on, or about the land or premises of BN.

11. ENVIRONMENTAL OBLIGATIONS AND INDEMNIFICATION

Licensee recognizes and assumes all responsibility for all present and future environmental obligations imposed under applicable environmental laws, regulations, or other such requirements relating to any contamination or aggravation of existing contamination of BN's property or groundwater arising from any operations conducted by Licensee pursuant to the terms of this license. Licensee therefore agrees to indemnify and hold harmless BN, its officers, agents, and employees from any and all liability, fines, penalties, claims, demands, or lawsuits brought by any third party or governmental agency under any theory of law seeking to hold BN liable for any cleanup costs, penalties, or damages for any contamination of BN's property or groundwater thereunder arising out of the operations conducted by Licensee. Licensee agrees that the above indemnity extends to any liability resulting from or arising out of the implementation of any cleanup plan approved by the United States Environmental Protection Agency or companion State agency. Licensee further agrees to under take, at its own expense, any cleanup of any contamination or aggravation of existing contamination of BN property and groundwater thereunder arising from any operation conducted pursuant to the terms of this license.

Licensee agrees to waive any and all statutes of limitation applicable to any controversy or dispute arising out of the proceeding.

SEATTLE T-5 ACCESS AGREEMENT

THIS AGREEMENT, along with any exhibits, attachments, and addenda hereto ("Agreement"), is entered into on this 31st day of May, 1994, by and between BURLINGTON NORTHERN RAILROAD COMPANY ("BN"), a Delaware corporation, and UNION PACIFIC RAILROAD COMPANY ("UP"), a Utah corporation.

WITNESSETH

WHEREAS, the Port of Seattle ("Port") intends to construct, by 1997, a state-of-the-art containership facility with on-dock rail capability on property designated as Terminal 5 ("T-5") on Exhibit A attached hereto;

WHEREAS, T-5 is included in a greater area of Port's facilities at West Seattle located and bounded by the point at which BN ownership of trackage to West Seattle departs from joint BN / UP trackage across Harbor Island, near Klickitat Avenue, east of the Duwamish River Bridge, and all associated trackage, now existing or subsequently constructed, west of that point, designated as the General Switching Area ("General Switching Area") on Exhibit A;

WHEREAS, Port does not intend to operate T-5 itself but has leased T-5 to Eagle Marine Services, LTD., assignee, ("Lessee"), to conduct certain day-to-day operations and business at T-5 pursuant to that certain Sixth Amendment to Lease dated as of June 15th, 1994 and subsequent amendments thereto ("Lease");

WHEREAS, BN and Port desire that T-5 and industries in West Seattle be provided with adequate railroad services;

WHEREAS, BN provides rail service to and intends to continue providing such service to West Seattle industries and to T-5 and will perform certain functions, as set out in a separate agreement with Port ("MOA"), directly with Lessee;

WHEREAS, Port desires that BN allow, and BN is willing to allow, UP to have direct access, for its road trains of intermodal railcars, to and from T-5, pursuant to this Agreement between BN and UP. Further, Port desires that BN provide exclusive general switching service as defined in Section 5 hereinafter, for General Switching Area;

WHEREAS, BN and UP desire to provide a comprehensive agreement for the purpose of establishing the rail operating conditions, requirements, responsibilities and framework in conjunction with UP's access to T-5; and

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, BN and UP agree as follows:

1. TERM OF AGREEMENT

The term of this Agreement shall be from the date that the MOA and Lease are effective and shall continue in effect concurrently with the terms of the MOA and Lease, including any amendments, renewals, extensions, or assignments thereof. In the event of termination of this Agreement, it is agreed and acknowledged by the parties that UP's access to T-5 shall also terminate and BN shall retain the rights to provide exclusive general switch service to T-5 and any subsequent or additional user(s) of T-5 as defined in Section 5.

2. GENERAL CONDITIONS

The General Conditions as set forth in Exhibit B attached hereto are hereby made a part of this Agreement. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

3. UP ACCESS TO T-5

BN shall allow UP, pursuant to this Agreement, to have direct rail access to the T-5 Intermodal Loading Yard ("ILY"), the Port's adjacent Intermodal Storage Yard ("ISY"), the Receiving and Departure tracks ("R&D"), and such other trackage as designated from time to time by BN (such designated tracks, the ISY, ILY, and R&D tracks shall hereinafter be referred to as the "Tracks") (as depicted in Exhibit C) for the purpose of timely spotting, delivery, picking up or pulling road trains of intermodal railcars. This direct rail access shall at all times be under the sole management and control of BN.

Direct rail access means that UP's road power and road crew may deliver road trains of intermodal railcars on inbound train movements directly to T-5 and place such cars on the Tracks, and/or retrieve such road trains of intermodal railcars from the Tracks on outbound

in movements. BN shall permit UP to substitute yard crews for road crews having insufficient time under the Federal Hours of Service Act, using road power; however, said yard crews are to be subject to the same limitations as the road crews they are replacing. It is agreed that UP road train crews, or switch crews in lieu of road crews as provided above, shall not be restricted from performing duties as allowed under applicable Road/Yard Work Rules in conjunction with handling intermodal railcars associated with inbound / outbound trains, unless it is reasonably determined by BN that it is necessary for BN switch crews to work in conjunction with UP road crews to yard or assemble trains in order to meet service performance requirements. It is further understood that such decisions or directions of UP crews for the purpose of yarding an inbound train or assembling an outbound train using the Tracks in conjunction with BN general switching responsibilities will be determined by BN as the most expeditious and efficient use of the resources available for providing timely and cost-effective service to T-5.

Nothing contained in this Agreement is meant to provide UP road or switch crews with authority to perform general switching activities, as defined in Section 5 below, at or in the General Switching Area. In no event will UP road crews, or switch crews in lieu of road crews as provided above, move intermodal railcars within the Tracks in any manner that could be construed or considered as general switching except as provided under applicable Road / Yard Work Rules.

4. ACCESS CHARGE AND INDEXING PROCEDURE

UP access to the Tracks, in UP road trains or BN Switching Service as defined in Section 5 of this Agreement, shall be based on an access charge of \$20.50 per container, to or from T-5, loaded or empty, assessed by BN to UP. The access charge shall be divided into two portions: Maintenance and Operations Fee ("MOF"), set initially at \$4.25 per container and adjusted annually (provided, however, that MOF shall not be less than \$4.25) thereafter at the same percentage change as the Rail Cost Recovery Index ("RCRI"), as contained in the AAR Railroad Cost Indexes, Annual Indexes of Chargeout Prices and Wage Rates (1977=100), WEST, with the first index adjustment being made on July 1, 1995, reflecting the change in the RCRI for 1994 as compared to 1993; and Terminal Entrance Fee ("TEF"), set initially at \$6.25 per container and adjusted annually (provided however, that TEF shall not be less than \$6.25) thereafter at the same percentage change as the Producers Price Index - Finished

Goods ("PPI - FG"), as published by the U.S. Department of Commerce, with the first index adjustment being made on July 1 of the year after T-5 opens, reflecting the change in the PPI - FG for the year T-5 opens compared to the year prior to opening.

5. GENERAL SWITCHING SERVICE PROVIDED BY BN

General switching service ("Switching Service") provided by BN, other than when UP crews perform service as specifically provided in Section 3, shall include, but not be limited to, the following:

- (1) The movement of loaded and/or empty intermodal railcars between certain tracks within the Tracks;**
- (2) The movement of loaded and/or empty intermodal railcars in either direction between BN and/or UP yard and/or storage tracks and the Tracks;**
- (3) The movement of less than trainload lots of loaded and/or empty railcars in either direction between or within the Tracks and BN and/or UP tracks, in any manner that would be considered a normal railcar transfer movement, to permit consolidation with other railcars for rail shipment in trainload lots, unless performed by UP road crews, or UP switch crews in lieu of UP road crews as provided in Section 3, and road power under applicable Road / Yard Work Rules;**
- (4) The removal of bad order intermodal railcars from the Tracks and the placement of such cars on the designated repair track, delivery of such cars to the BN repair track, or the return of such cars to the UP, and the reverse movement of repaired cars;**
- (5) The movement of different types of intermodal railcars from the Tracks; and**
- (6) Other movement of all types of railcars from track to track within the General Switching Area that is within the generally accepted definition of general switching.**

BN and UP recognize the geographical and operational jurisdiction of exclusive BN switching rights which includes all trackage within T-5 leasehold that requires the use of BN owned or controlled trackage, and all associated trackage employed to support the operations of T-5 and other BN-served customers in the General Switching Area.

UP SERVICE REQUESTS

Switching Service requested by UP and provided by BN, not at the direction of Lessee, shall be paid for by UP. The parties agree to establish a process which shall determine fair and equitable rates for the different elements of Switching Service and said rates shall be furnished to UP in written form along with provisions for escalation. The parties may also agree to such rates for other services which UP might request from BN, such as providing relief crews in hours of service situations. It is understood by the parties that the establishment of such rates in no way obligates BN to provide such services. Further, the furnishing of said services by BN at any given time does not establish an obligation on BN's part to provide said services thereafter. To the extent that BN provides such services BN shall be acting solely as a private carrier in the performance of these services.

7. EQUIPMENT MAINTENANCE, REPAIR AND INSPECTION

BN or BN's contractor(s) shall provide, at the expense of the responsible party or parties, mechanical train / railcar inspections, air tests and certifications thereof, application and removal of rear of train devices as furnished by the responsible party, maintenance and repairs within the ILY, ISY and R&D tracks, in accordance with FRA and AAR rules and regulations, and shall comply with all other AAR rules and regulations (including, without limitation, those relating to loading and inspection). It is BN's intent to contract this work as described in this Section 7 or any other work which may be subsequently identified as falling under the intent of this Section 7; however, BN reserves the right to perform this work. In order to achieve the most cost effective and efficient performance of this work, BN will work with UP in the selection of BN's contractor(s); however, BN reserves the right to make the final selection. Equipment repairs will be billed in accordance with AAR billing procedures. UP may make its own financial arrangement with BN's contractor(s) as long as it does not impact BN's ability to carry out its responsibilities under this Section 7. BN and UP each have the right to leave inbound road power, consistent with timely and cost effective service, on designated engine tie up tracks, as space is available, at T-5.

8. EMPLOYEE CLAIMS

UP hereby agrees, in addition to the payments to be made to BN under other provisions of this agreement, to reimburse BN for any and all costs incurred by BN in satisfying claims made under any applicable collective bargaining agreement and / or in providing employee protection

benefits, if any, prescribed by law, governmental authority or employee protective agreements where such costs and expenses, including satisfaction of any and all labor claims, are directly attributable to or which arise by reason of or result from UP's operation of trains over and on the Joint Trackage. BN agrees that it will not provide employee protection benefits or satisfy any labor claims except upon approval of UP following pre-arbitration consultation between BN and UP or after it has been determined by the appropriate board or tribunal that such protection benefits are properly payable or that such claims are valid. The parties hereto shall consult and cooperate with each other in the handling and defending of such matters.

9. COST SHARING

If during the term of this Agreement, Capital Improvements as defined in Exhibit B of this Agreement, or casualty replacements are required in support of the T-5 operation, and the cost of said Capital Improvements or casualty replacements are in excess of Ten Thousand Dollars (\$10,000), and to the extent that said Capital Improvements or casualty replacements are not paid for by other than the parties to this Agreement, then BN shall advise UP as provided in Section 2.2 of Exhibit B of this Agreement and the parties shall share in such remaining cost as follows:

The value of Capital Improvements or casualty replacement, the cost of which is to be shared by the parties as described above, will be accumulated as they occur. On the first business day on or after July 1 of each year following the opening of T-5, one year's interest, at the prevailing U.S. Prime Rate (as reflected in the Wall Street Journal, or equivalent, as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks) plus 2%, will be calculated on said value as of December 31 of the previous calendar year, and UP will pay BN a share of said calculated interest in the same proportion as the Unit Count Proportion, as hereafter defined in Exhibit B, Section 1.8, for the previous calendar year. For the first and last years of T-5 operation under this Agreement, this payment shall be apportioned on the number of months that this Agreement is in effect.

If Capital Improvements are made in support of the T-5 operation, for which UP makes payment as outlined in the previous paragraph, and BN can demonstrate that the annual maintenance and operation expenses of said Capital Improvements, not paid for by other than

The parties to this Agreement, have caused UP's calculated proportion of the total maintenance and operation expenses for the previous calendar year for the T-5 operation, said proportion to be determined based on the Unit Count Proportion for the same calendar year, to exceed the total MOF charges paid by the UP for the same calendar year, then UP shall pay to BN an amount equal to the difference between said calculated UP proportion of the maintenance and operation expenses and the total MOF charges paid by UP.

10. GOVERNING LAW

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate and have caused their corporate seals to be hereunto affixed the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By Richard H. Lewis
Title Sr. VP Corp. Development

UNION PACIFIC RAILROAD COMPANY

By David W. Anderson
Title Marketing

EXHIBIT "B"

GENERAL CONDITIONS

ATTACHMENT TO SEATTLE T-5 ACCESS AGREEMENT

Section 1. DEFINITIONS

- 1.1 "Agreement" shall mean that certain agreement to which this Exhibit "B" is appended.
- 1.2 "Owner" shall mean the party granting the right to use the Joint Trackage.
- 1.3 "User" shall mean the party granted the right to use the Joint Trackage.
- 1.4 "Joint Trackage" and / or "Tracts" shall mean trackage as described in Section 3 of the Agreement including necessary right of way and appurtenances, signals, communications, bridges, and facilities owned, managed or operated by Owner and all Changes in and/or Additions (as that term is hereinafter defined) thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.
- 1.5 "Light Engines" shall mean one or more locomotive units not coupled to cars.
- 1.6 "Caboose Hop" shall mean one or more locomotive units coupled to one or more cabooses with no cars coupled.
- 1.7 "Changes in and/or Additions" "and Additions" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission. For the purposes of this Agreement, "Capital Improvements" to the Joint Trackage shall mean the cost of any improvements made to the Joint Trackage chargeable to property accounts in accordance with RRB accounting Principles.
- 1.8 "Unit Count Proportion" shall mean the number of Units operated by a party divided by the total number of Units operated by all parties using the Joint Trackage, or a particular zone if Joint Trackage is zoned, calculated on a month by month basis. Such Unit Count Proportion shall include switch movements operating over the Joint Trackage. For the purposes of computing such Unit Count Proportion, trains, locomotives and cars engaged in

work service pertaining to maintenance or operation of and Changes in and/or Additions to the Joint Trackage shall not be counted. Light Engines and Caboose Hops shall be counted for Unit Count Proportion purposes.

1.9 "Unit" shall mean each single container placed upon a COFC platform or a count of one (1) Unit for each non-COFC car operated on the Joint Trackage. An Engine shall consist of one or more locomotives and shall receive a count of two (2) Units.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 User shall construct, maintain, repair and renew at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right of way of User. Owner shall construct, maintain, repair and renew, at the sole cost and expense of User, and shall own, the portions of the track connections between said tracks of the parties hereto, located on the right of way owned or controlled by Owner.

2.2 The construction, maintenance, repair and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. Owner shall advise User of such Changes and/or Additions in advance; however, failure of Owner to so advise User shall in no way reduce User's obligations hereunder. User may request Changes in and/or Additions to the Joint Trackage and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change

the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof herein intended. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the ILY, ISY and R&D tracks which would unreasonably impair the usefulness thereof to User.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same and User shall not, by reason of Owner's performing or failing or neglecting to perform any operation, maintenance, repair, renewal or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom, but should Owner fail to repair any defect or maintain the Joint Trackage to a standard suitable for efficient operation within a reasonable time after User shall have given written notice thereof to Owner, specifying the defect or deviation from standard and requesting that it be repaired, then User shall have the right to make the necessary repairs which shall be paid for by Owner.

2.5 User, at its expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment, radios or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense of any kind, caused by or resulting from such interruption or delay.

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

same for its costs thereof.

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

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

2.10 With respect to operation of trains, locomotives, cabooses and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations and orders promulgated by a municipality, board, commission or governmental agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

2.11 In the event any accident, derailment, or wreck (hereinafter called "derailment") involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law (hereinafter called "Hazardous Materials") shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately. In such event, User shall notify Owner by calling Owner's Assets Protection 24-Hour Command Center at phone number 1-800-832-5452.

Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of these General Conditions.

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

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

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

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

2.15 If any employee of User shall neglect, refuse or fail to abide by Owner's rules,

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

2.16 If any cars, cabooses or locomotives of User are bad ordered enroute on the Joint Trackage and it is necessary that they be set out, such cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may upon request of User and at User's expense furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement. The employees and equipment of Owner while in any manner so engaged or while enroute to or returning from such an assignment shall be considered sole User employees and exclusive User equipment. In the case of such repairs by Owner to freight cars in User's account, billing therefor, shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect on the date of performance of the repairs and Owner shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car owner

responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to cabooses shall be billed at the rates set forth in the Interchange Rules. Repairs to locomotives shall be billed as provided for in Section 3.

2.17 If equipment of User shall become derailed or otherwise disabled upon the Joint Trackage, such that wrecking service is required to clear the Joint Trackage, Owner shall, unless otherwise agreed, arrange for such service. "Wrecking Service" shall mean a service requiring the use of motorized on or off track equipment. Such wrecker service shall be at User expense unless otherwise provided for in allocation of liability in Section 4 of these General Conditions.

2.18 User shall pay to Owner expenses incurred by Owner in the issuance of time tables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of time tables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User require the issuance of time tables, then User shall not be required to pay any portion of the expenses incurred in connection therewith.

2.19 Owner shall provide volume information for the Joint Trackage to User on a monthly basis sufficient in detail to compute the Unit Count Proportion.

Section 3. BILLING, DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared each month in accordance with the schedules of labor additives, material prices and equipment rental rates as agreed upon by the Chief Accounting

Officers of the parties hereto from time to time. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a Roadway Completion Report is required, three years after the last day of the calendar month in which the Roadway Completion Report is made covering such project, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

3.4 Should any payment become payable by Owner to User under this Agreement, the provisions of Sections 3.1 through 3.4 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make by Agreement, or fail in any other respect to perform pursuant to this Agreement, and such default shall continue for a period of sixty (60) days after notice in writing of such default is

given by Owner to User, Owner may, at its election, exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

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

3.6 Either party hereto may assign any receivables due them under this Agreement, provided, however, such assignments shall not relieve the assignor of any rights or obligations under this Agreement.

Section 4. LIABILITY

4.1 For the purpose of this Section 4, the following definitions shall apply:

"Loss or Damage" shall mean all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons arising from the performance or existence of this Agreement.

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

"Joint Property" shall mean the Joint Trackage and all trains, locomotives, cabooses, cars and equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or operating the Joint Trackage or in making Changes in and/or Additions thereto for

the benefit of all of the parties hereto, or while being prepared to engage in, enroute to or from, or otherwise incident to performing such service. Such trains, locomotives, cabooses, cars and equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the parties hereto, and shall for the purpose of this Section 4 be considered the Sole Employees and/or the Sole Property of such party or parties. Pilots furnished by Owner to assist in operating trains, locomotives, cabooses, cars or equipment of User shall be considered the Sole Employees of User. All officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment, while engaged in, enroute to or from, or otherwise incident to operating wrecker or work trains clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment, shall for the purpose of this Section 4 be deemed the Sole Employees and/or Sole Property of the party bearing the cost of the other Loss or Damage of the wreck or derailment, or if more than one party is bearing the cost of the other Loss or Damage, the cost shall be borne on the same percentage as the Unit Cost Proportion for the prior twelve (12) calendar month period by such parties. Such officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment while enroute from performing such clearing of wrecks or derailments or repairing or renewing the Joint Property to perform another type of service, shall not be deemed to be performing service incident to the instant wreck or derailment.

4.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons and others on its trains, engines, cars or equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole

Property, or property in its care, custody or control, except when the Loss or Damage is caused by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more of the other parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the party whose Sole Employees and/or Sole Property caused the same shall bear all of the cost, or on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employees and/or Sole Property shall have caused the same.

Loss or Damage to third parties, Joint Employees or Joint Property caused by the acts or omissions, negligent or otherwise of Sole Employees and or Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property caused the same, or on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employees and/or Sole Property shall have caused the same. Loss or Damage to third parties, Joint Employees or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned among all of the parties on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period, or if the month of occurrence cannot be determined, then for the twelve (12) calendar month period preceding the month in which the Loss or Damage was first discovered.

Loss or damage caused solely by third parties, or with the concurring acts or omissions of Joint Employees and/or Joint Property, to the extent that the cost thereof is not borne by or recovered from the third party, shall be apportioned among the parties on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period. Loss or damage caused by third parties as concurring acts or omissions of Sole Employees and/or Sole Property, shall be borne by the party whose Sole Employee and/or Sole Property caused same, or on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employee and/or Sole Property shall have caused

same, less any costs borne by or recovered from the third party.

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

4.4 For the purpose of this Section 4, equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such equipment, shall be considered the equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

Locomotives, cars, equipment, and other property being handled or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 4.

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

4.5 Each party hereto shall pay all Loss or Damage for which such party shall be liable under the provisions of this Section 4, and shall indemnify and save harmless the other parties against such Loss or Damage, including any such damages awarded in any court action.

Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Section 4, and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.

In the event two or more parties hereto may be liable for any Loss or Damage under the provisions of this Section 4, and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in

excess of the sum of Fifty Thousand Dollars (\$50,000) shall be made by or for any party so jointly liable without the written authority of the other parties so jointly liable, but any settlement made by any party in consideration of Fifty Thousand Dollars (\$50,000) or a lesser sum shall be binding upon the other parties.

In case a suit shall be commenced against any party hereto for or on account of Loss or Damage for which another party hereto is solely or jointly liable under the provisions of this Section 4, the party so sued shall give to such other party notice in writing of the pendency of such suit, and thereupon such other party shall assume or join in the defense of such suit.

No party hereto shall be conclusively bound by any judgment against any other party, unless such party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

Section 5. ARBITRATION

5.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party or parties. Otherwise, the party demanding such arbitration (the demanding party) shall notify the other party or parties (the noticed parties) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed parties shall each appoint an arbitrator and notify the demanding party in writing of such appointment. Should any noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party and the arbitrators for the other noticed parties, if any, shall select one for the noticed

party so failing, and if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the demanding party is located upon application by any party after ten (10) days written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place.

After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

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

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

Section 6.

GOVERNMENTAL APPROVAL ABANDONMENT

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

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

If, at the time of such election, User is the only party (other than Owner) having the right to use the Joint Trackage, Owner shall, concurrent with its Notice of Abandonment, and to the extent is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User.

Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

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

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

delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

6.5 Upon termination of the Agreement, or any partial termination, as the applicable case may be, User shall promptly, and in no event later than 90 days following termination of the Agreement, at User's sole cost and expense, file any necessary applications or petitions to dismise, as appropriate, for termination of any consents, approvals or authorities received from any governmental agency pertaining to this Agreement.

Section 7. OTHER CONSIDERATIONS

7.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner.

7.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, lessees and assigns, but no sale, assignment, mortgage or lease by User of any interest or right given it under the Agreement separate and apart from the sale, assignment, mortgage or lease of all or substantially all of its railroad shall be valid or binding without the prior written consent of Owner.

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

7.4 All notices, demands, requests or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the President, Chief Operating Officer or Secretary of each company.

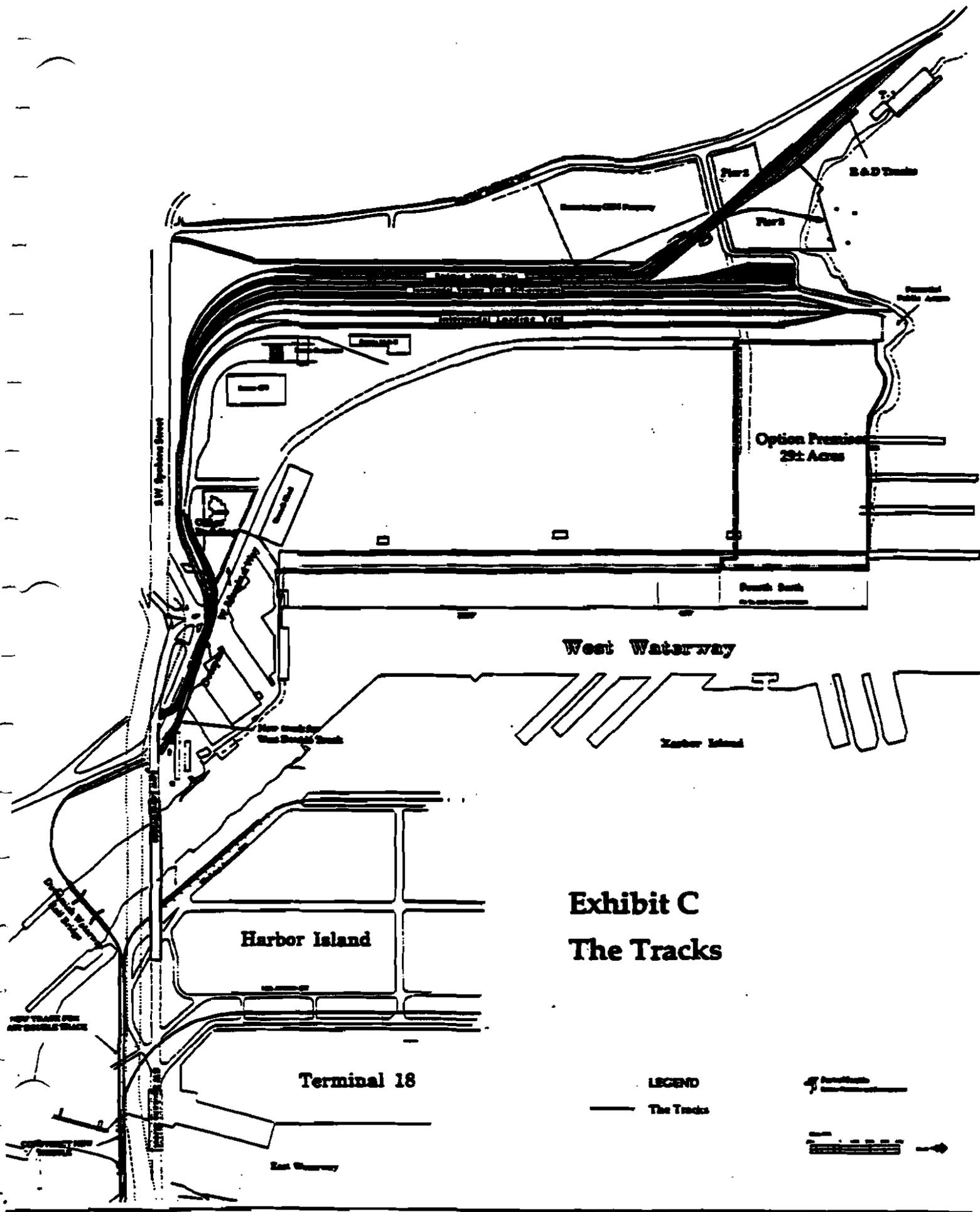
7.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity,

obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

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

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

END OF EXHIBIT "B"



West Waterway

Harbor Island

Harbor Island

Terminal 18

East Wharves

Exhibit C The Tracks

LEGEND

— The Tracks

of Property



**ASSIGNMENT AND ASSUMPTION OF LEASE
AND CONSENT OF PORT OF SEATTLE**

This Assignment and Assumption of Lease ("Assignment") is made as of June 1, 1994, by and between American President Lines, Ltd., a Delaware corporation ("Assignor") and Eagle Marine Services, Ltd., a Delaware corporation ("Assignee"), and consent hereunder is granted by the Port of Seattle as lessor ("Port").

WHEREAS, the Port and Assignor entered into a lease, dated June September 26, 1985 as subsequently amended ("Lease"), with respect to the property described therein;

WHEREAS, the Assignor desires to assign its interest under the Lease to Assignee and Assignee desires to acquire and assume Assignor's rights and obligations under the Lease;

NOW, THEREFORE, in consideration of the capital improvements proposed under the Sixth Amendment to the Lease, their mutual promises, and other good and valuable consideration, the receipt and adequacy of which is acknowledged, and pursuant to paragraph 19 of the Lease, the parties agree as follows:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the Lease, subject to all the terms and conditions, covenants, and agreements contained in the Lease.

2. Assignee hereby accepts such assignment as of the effective date stated above and assumes and agrees to perform all the terms, conditions, covenants and agreements of the Lease, on the part of the Assignor in the Lease, as if Assignee had originally executed the Lease. Assignee's agreement shall be binding on the successors and assigns of Assignee.

3. The Port consents to the assignment of the Lease from Assignor to Assignee. No further assignment or sublease shall be made without the Port's written consent, except as provided in said Lease.

4. Assignor and its successors shall remain fully liable for the performance and observance of the covenants and conditions in the Lease for this and any future assignment.

5. In the event Assignee comes under the jurisdiction of a bankruptcy court, the Port reserves the right to look to Assignor and its successors for full performance of all obligations under the Lease that may be subject to the automatic stay under 11 U.S.C. 362.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the date set forth above.

AMERICAN PRESIDENT LINES, LTD.

A Delaware corporation


By: **JOHN G. BURGESS**
Title: **EXECUTIVE VICE PRESIDENT**

EAGLE MARINE SERVICES, LTD.

A Delaware corporation


By: **ROD D. WIDDOWS**
Title: **EXECUTIVE VICE PRESIDENT and GENERAL MANAGER**

PORT OF SEATTLE

A Washington municipal corporation


By: **M.R. Dinsmore**
Title: **Executive Director**

SEATTLE T-5 ACCESS AGREEMENT

THIS AGREEMENT, along with any exhibits, attachments, and addenda hereto ("Agreement"), is entered into on this 31 day of May, 1994, by and between BURLINGTON NORTHERN RAILROAD COMPANY ("BN"), a Delaware corporation, and UNION PACIFIC RAILROAD COMPANY ("UP"), a Utah corporation.

WITNESSETH

WHEREAS, the Port of Seattle ("Port") intends to construct, by 1997, a state-of-the-art containership facility with on-dock rail capability on property designated as Terminal 5 ("T-5") on Exhibit A attached hereto;

WHEREAS, T-5 is included in a greater area of Port's facilities at West Seattle located and bounded by the point at which BN ownership of trackage to West Seattle departs from joint BN / UP trackage across Harbor Island, near Klickitat Avenue, east of the Duwamish River Bridge, and all associated trackage, now existing or subsequently constructed, west of that point, designated as the General Switching Area ("General Switching Area") on Exhibit A;

WHEREAS, Port does not intend to operate T-5 itself but has leased T-5 to Eagle Marine Services, LTD., assignee, ("Lessee"), to conduct certain day-to-day operations and business at T-5 pursuant to that certain Sixth Amendment to Lease dated as of June 15, 1994 and subsequent amendments thereto ("Lease");

WHEREAS, BN and Port desire that T-5 and industries in West Seattle be provided with adequate railroad services;

WHEREAS, BN provides rail service to and intends to continue providing such service to West Seattle industries and to T-5 and will perform certain functions, as set out in a separate agreement with Port ("MOA"), directly with Lessee;

WHEREAS, Port desires that BN allow, and BN is willing to allow, UP to have direct access, for its road trains of intermodal railcars, to and from T-5, pursuant to this Agreement between BN and UP. Further, Port desires that BN provide exclusive general switching service as defined in section 5 hereinafter, for General Switching Area;

WHEREAS, BN and UP desire to provide a comprehensive agreement for the purpose of establishing the rail operating conditions, requirements, responsibilities and framework in conjunction with UP's access to T-5; and

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, BN and UP agree as follows:

1. TERM OF AGREEMENT

The term of this Agreement shall be from the date that the MOA and Lease are effective and shall continue in effect concurrently with the terms of the MOA and Lease, including any amendments, renewals, extensions, or assignments thereof. In the event of termination of this Agreement, it is agreed and acknowledged by the parties that UP's access to T-5 shall also terminate and BN shall retain the rights to provide exclusive general switch service to T-5 and any subsequent or additional user(s) of T-5 as defined in Section 5.

2. GENERAL CONDITIONS

The General Conditions as set forth in Exhibit B attached hereto are hereby made a part of this Agreement. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

3. UP ACCESS TO T-5

BN shall allow UP, pursuant to this Agreement, to have direct rail access to the T-5 Intermodal Loading Yard ("ILY"), the Port's adjacent Intermodal Storage Yard ("ISY"), the Receiving and Departure tracks ("R&D"), and such other trackage as designated from time to time by BN (such designated tracks, the ISY, ILY, and R&D tracks shall hereinafter be referred to as the "Tracks") (as depicted in Exhibit C) for the purpose of timely spotting, delivery, picking up or pulling road trains of intermodal railcars. This direct rail access shall at all times be under the sole management and control of BN.

Direct rail access means that UP's road power and road crew may deliver road trains of intermodal railcars on inbound train movements directly to T-5 and place such cars on the Tracks, and/or retrieve such road trains of intermodal railcars from the Tracks on outbound

movements. BN shall permit UP to substitute yard crews for road crews having insufficient time under the Federal Hours of Service Act, using road power; however, said yard crews are to be subject to the same limitations as the road crews they are replacing. It is agreed that UP road train crews, or switch crews in lieu of road crews as provided above, shall not be restricted from performing duties as allowed under applicable Road/Yard Work Rules in conjunction with handling intermodal railcars associated with inbound / outbound trains, unless it is reasonably determined by BN that it is necessary for BN switch crews to work in conjunction with UP road crews to yard or assemble trains in order to meet service performance requirements. It is further understood that such decisions or directions of UP crews for the purpose of yarding an inbound train or assembling an outbound train using the Tracks in conjunction with BN general switching responsibilities will be determined by BN as the most expeditious and efficient use of the resources available for providing timely and cost-effective service to T-5.

Nothing contained in this Agreement is meant to provide UP road or switch crews with authority to perform general switching activities, as defined in Section 5 below, at or in the General Switching Area. In no event will UP road crews, or switch crews in lieu of road crews as provided above, move intermodal railcars within the Tracks in any manner that could be construed or considered as general switching except as provided under applicable Road / Yard Work Rules.

4. ACCESS CHARGE AND INDEXING PROCEDURE

UP access to the Tracks, in UP road trains or BN Switching Service as defined in Section 5 of this Agreement, shall be based on an access charge of \$20.50 per container, to or from T-5, loaded or empty, assessed by BN to UP. The access charge shall be divided into two portions: Maintenance and Operations Fee ("MOF"), set initially at \$4.25 per container and adjusted annually (provided, however, that MOF shall not be less than \$4.25) thereafter at the same percentage change as the Rail Cost Recovery Index ("RCRI"), as contained in the AAR Railroad Cost Indexes, Annual Indexes of Chargeout Prices and Wage Rates (1977=100), WEST, with the first index adjustment being made on July 1, 1995, reflecting the change in the RCRI for 1994 as compared to 1993; and Terminal Entrance Fee ("TEF"), set initially at \$12.25 per container and adjusted annually (provided however, that TEF shall not be less than \$12.25) thereafter at the same percentage change as the Producers Price Index - Finished

Goods ("PPI - FG"), as published by the U.S. Department of Commerce, with the first index adjustment being made on July 1 of the year after T-5 opens, reflecting the change in the PPI - FG for the year T-5 opens compared to the year prior to opening.

5. GENERAL SWITCHING SERVICE PROVIDED BY BN

General switching service ("Switching Service") provided by BN, other than when UP crews perform service as specifically provided in Section 3, shall include, but not be limited to, the following:

- (1) The movement of loaded and/or empty intermodal railcars between certain tracks within the Tracks;
- (2) The movement of loaded and/or empty intermodal railcars in either direction between BN and/or UP yard and/or storage tracks and the Tracks;
- (3) The movement of less than trainload lots of loaded and/or empty railcars in either direction between or within the Tracks and BN and/or UP tracks, in any manner that would be considered a normal railcar transfer movement, to permit consolidation with other railcars for rail shipment in trainload lots, unless performed by UP road crews, or UP switch crews in lieu of UP road crews as provided in Section 3, and road power under applicable Road / Yard Work Rules;
- (4) The removal of bad order intermodal railcars from the Tracks and the placement of such cars on the designated repair track, delivery of such cars to the BN repair track, or the return of such cars to the UP, and the reverse movement of repaired cars;
- (5) The movement of different types of intermodal railcars from the Tracks; and
- (6) Other movement of all types of railcars from track to track within the General Switching Area that is within the generally accepted definition of general switching.

BN and UP recognize the geographical and operational jurisdiction of exclusive BN switching rights which includes all trackage within T-5 leasehold that requires the use of BN owned or controlled trackage, and all associated trackage employed to support the operations of T-5 and other BN-served customers in the General Switching Area.

UP SERVICE REQUESTS

Switching Service requested by UP and provided by BN, not at the direction of Lessee, shall be paid for by UP. The parties agree to establish a process which shall determine fair and equitable rates for the different elements of Switching Service and said rates shall be furnished to UP in written form along with provisions for escalation. The parties may also agree to such rates for other services which UP might request from BN, such as providing relief crews in hours of service situations. It is understood by the parties that the establishment of such rates in no way obligates BN to provide such services. Further, the furnishing of said services by BN at any given time does not establish an obligation on BN's part to provide said services thereafter. To the extent that BN provides such services BN shall be acting solely as a private carrier in the performance of these services.

7. EQUIPMENT MAINTENANCE, REPAIR AND INSPECTION

BN or BN's contractor(s) shall provide, at the expense of the responsible party or parties, mechanical train / railcar inspections, air tests and certifications thereof, application and removal of rear of train devices as furnished by the responsible party, maintenance and repairs

in the ILY, ISY and R&D tracks, in accordance with FRA and AAR rules and regulations, and shall comply with all other AAR rules and regulations (including, without limitation, those relating to loading and inspection). It is BN's intent to contract this work as described in this Section 7 or any other work which may be subsequently identified as falling under the intent of this Section 7; however, BN reserves the right to perform this work. In order to achieve the most cost effective and efficient performance of this work, BN will work with UP in the selection of BN's contractor(s); however, BN reserves the right to make the final selection. Equipment repairs will be billed in accordance with AAR billing procedures. UP may make its own financial arrangement with BN's contractor(s) as long as it does not impact BN's ability to carry out its responsibilities under this Section 7. BN and UP each have the right to leave inbound road power, consistent with timely and cost effective service, on designated engine tie up tracks, as space is available, at T-5.

8. EMPLOYEE CLAIMS

UP hereby agrees, in addition to the payments to be made to BN under other provisions of this agreement, to reimburse BN for any and all costs incurred by BN in satisfying claims made under any applicable collective bargaining agreement and / or in providing employee protection

benefits, if any, prescribed by law, governmental authority or employee protective agreements where such costs and expenses, including satisfaction of any and all labor claims, are directly attributable to or which arise by reason of or result from UP's operation of trains over and on the Joint Trackage. BN agrees that it will not provide employee protection benefits or satisfy any labor claims except upon approval of UP following pre-arbitration consultation between BN and UP or after it has been determined by the appropriate board or tribunal that such protection benefits are properly payable or that such claims are valid. The parties hereto shall consult and cooperate with each other in the handling and defending of such matters.

9. COST SHARING

If during the term of this Agreement, Capital Improvements as defined in Exhibit B of this Agreement, or casualty replacements are required in support of the T-5 operation, and the cost of said Capital Improvements or casualty replacements are in excess of Ten Thousand Dollars (\$10,000), and to the extent that said Capital Improvements or casualty replacements are not paid for by other than the parties to this Agreement, then BN shall advise UP as provided in Section 2.2 of Exhibit B of this Agreement and the parties shall share in such remaining costs as follows:

The value of Capital Improvements or casualty replacement, the cost of which is to be shared by the parties as described above, will be accumulated as they occur. On the first business day on or after July 1 of each year following the opening of T-5, one year's interest, at the prevailing U.S. Prime Rate (as reflected in the Wall Street Journal, or equivalent, as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks) plus 2%, will be calculated on said value as of December 31 of the previous calendar year, and UP will pay BN a share of said calculated interest in the same proportion as the Unit Count Proportion, as hereafter defined in Exhibit B, Section 1.8, for the previous calendar year. For the first and last years of T-5 operation under this Agreement, this payment shall be apportioned on the number of months that this Agreement is in effect.

If Capital Improvements are made in support of the T-5 operation, for which UP makes a payment as outlined in the previous paragraph, and BN can demonstrate that the annual maintenance and operation expenses of said Capital Improvements, not paid for by other than

parties to this Agreement, have caused UP's calculated proportion of the total maintenance and operation expenses for the previous calendar year for the T-5 operation, said proportion to be determined based on the Unit Count Proportion for the same calendar year, to exceed the total MOF charges paid by the UP for the same calendar year, then UP shall pay to BN an amount equal to the difference between said calculated UP proportion of the maintenance and operation expenses and the total MOF charges paid by UP.

10. GOVERNING LAW

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate and have caused their corporate seals to be hereunto affixed the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By Richard L. Lewis
Title Sr. VP Corp. Development

UNION PACIFIC RAILROAD COMPANY

By Sam W. Aramond
Title VP Marketing

EXHIBIT "B"

GENERAL CONDITIONS

ATTACHMENT TO SEATTLE T-5 ACCESS AGREEMENT

Section 1. DEFINITIONS

- 1.1 "Agreement" shall mean that certain agreement to which this Exhibit "B" is appended.
- 1.2 "Owner" shall mean the party granting the right to use the Joint Trackage.
- 1.3 "User" shall mean the party granted the right to use the Joint Trackage.
- 1.4 "Joint Trackage" and / or "Tracks" shall mean trackage as described in Section 3 of the Agreement including necessary right of way and appurtenances, signals, communications, bridges, and facilities owned, managed or operated by Owner and all Changes in and/or Additions (as that term is hereinafter defined) thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.
- 1.5 "Light Engines" shall mean one or more locomotive units not coupled to cars.
- 1.6 "Caboose Hop" shall mean one or more locomotive units coupled to one or more cabooses with no cars coupled.
- 1.7 "Changes in and/or Additions" "and Additions" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission. For the purposes of this Agreement, "Capital Improvements" to the Joint Trackage shall mean the cost of any improvements made to the Joint Trackage chargeable to property accounts in accordance with RRB accounting Principles.
- 1.8 "Unit Count Proportion" shall mean the number of Units operated by a party divided by the total number of Units operated by all parties using the Joint Trackage, or a particular zone if Joint Trackage is zoned, calculated on a month by month basis. Such Unit Count Proportion shall include switch movements operating over the Joint Trackage. For the purposes of computing such Unit Count Proportion, trains, locomotives and cars engaged in

work service pertaining to maintenance or operation of and Changes in and/or Additions to the Joint Trackage shall not be counted. Light Engines and Caboose Hops shall be counted for Unit Count Proportion purposes.

1.9 "Unit" shall mean each single container placed upon a COFC platform or a count of one (1) Unit for each non-COFC car operated on the Joint Trackage. An Engine shall consist of one or more locomotives and shall receive a count of two (2) Units.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 User shall construct, maintain, repair and renew at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right of way of User. Owner shall construct, maintain, repair and renew, at the sole cost and expense of User, and shall own, the portions of the track connections between said tracks of the parties hereto, located on the right of way owned or controlled by Owner.

2.2 The construction, maintenance, repair and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. Owner shall advise User of such Changes and/or Additions in advance; however, failure of Owner to so advise User shall in no way reduce User's obligations hereunder. User may request Changes in and/or Additions to the Joint Trackage and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change

the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof herein intended. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the ILY, ISY and R&D tracks which would unreasonably impair the usefulness thereof to User.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same and User shall not, by reason of Owner's performing or failing or neglecting to perform any operation, maintenance, repair, renewal or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom, but should Owner fail to repair any defect or maintain the Joint Trackage to a standard suitable for efficient operation within a reasonable time after User shall have given written notice thereof to Owner, specifying the defect or deviation from standard and requesting that it be repaired, then User shall have the right to make the necessary repairs which shall be paid for by Owner.

2.5 User, at its expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment, radios or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense of any kind, caused by or resulting from such interruption or delay.

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

same for its costs thereof.

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

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

2.10 With respect to operation of trains, locomotives, cabooses and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations and orders promulgated by a municipality, board, commission or governmental agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

2.11 In the event any accident, derailment, or wreck (hereinafter called "derailment") involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law (hereinafter called "Hazardous Materials") shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately. In such event, User shall notify Owner by calling Owner's Assets Protection 24-Hour Command Center at phone number 1-800-832-5452.

Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of these General Conditions.

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

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

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

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

2.15 If any employee of User shall neglect, refuse or fail to abide by Owner's rules,

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

2.16 If any cars, cabooses or locomotives of User are bad ordered enroute on the Joint Trackage and it is necessary that they be set out, such cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may upon request of User and at User's expense furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement. The employees and equipment of Owner while in any manner so engaged or while enroute to or returning from such an assignment shall be considered sole User employees and exclusive User equipment. In the case of such repairs by Owner to freight cars in User's account, billing therefor, shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect on the date of performance of the repairs and Owner shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car owner

responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to cabooses shall be billed at the rates set forth in the Interchange Rules. Repairs to locomotives shall be billed as provided for in Section 3.

2.17 If equipment of User shall become derailed or otherwise disabled upon the Joint Trackage, such that wrecking service is required to clear the Joint Trackage, Owner shall, unless otherwise agreed, arrange for such service. "Wrecking Service" shall mean a service requiring the use of motorized on or off track equipment. Such wrecker service shall be at User expense unless otherwise provided for in allocation of liability in Section 4 of these General Conditions.

2.18 User shall pay to Owner expenses incurred by Owner in the issuance of time tables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of time tables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User require the issuance of time tables, then User shall not be required to pay any portion of the expenses incurred in connection therewith.

2.19 Owner shall provide volume information for the Joint Trackage to User on a monthly basis sufficient in detail to compute the Unit Count Proportion.

Section 3. **BILLING, DEFAULT**

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared each month in accordance with the schedules of labor additives, material prices and equipment rental rates as agreed upon by the Chief Accounting

Officers of the parties hereto from time to time. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a Roadway Completion Report is required, three years after the last day of the calendar month in which the Roadway Completion Report is made covering such project, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

3.4 Should any payment become payable by Owner to User under this Agreement, the provisions of Sections 3.1 through 3.4 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make by Agreement, or fail in any other respect to perform pursuant to this Agreement, and such default shall continue for a period of sixty (60) days after notice in writing of such default is

given by Owner to User, Owner may, at its election, exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

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

3.6 Either party hereto may assign any receivables due them under this Agreement, provided, however, such assignments shall not relieve the assignor of any rights or obligations under this Agreement.

Section 4. LIABILITY

4.1 For the purpose of this Section 4, the following definitions shall apply:

"Loss or Damage" shall mean all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons arising from the performance or existence of this Agreement.

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

"Joint Property" shall mean the Joint Trackage and all trains, locomotives, cabooses, cars and equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or operating the Joint Trackage or in making Changes in and/or Additions thereto for

the benefit of all of the parties hereto, or while being prepared to engage in, enroute to or from, or otherwise incident to performing such service. Such trains, locomotives, cabooses, cars and equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the parties hereto, and shall for the purpose of this Section 4 be considered the Sole Employees and/or the Sole Property of such party or parties. Pilots furnished by Owner to assist in operating trains, locomotives, cabooses, cars or equipment of User shall be considered the Sole Employees of User. All officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment, while engaged in, enroute to or from, or otherwise incident to operating wrecker or work trains clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment, shall for the purpose of this Section 4 be deemed the Sole Employees and/or Sole Property of the party bearing the cost of the other Loss or Damage of the wreck or derailment, or if more than one party is bearing the cost of the other Loss or Damage, the cost shall be borne on the same percentage as the Unit Cost Proportion for the prior twelve (12) calendar month period by such parties. Such officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment while enroute from performing such clearing of wrecks or derailments or repairing or renewing the Joint Property to perform another type of service, shall not be deemed to be performing service incident to the instant wreck or derailment.

4.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons and others on its trains, engines, cars or equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole

Property, or property in its care, custody or control, except when the Loss or Damage is caused by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more of the other parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the party whose Sole Employees and/or Sole Property caused the same shall bear all of the cost, or on the same percentage as the Unit Count Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employees and/or Sole Property shall have caused the same.

Loss or Damage to third parties, Joint Employees or Joint Property caused by the acts or omissions, negligent or otherwise of Sole Employees and or Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property caused the same, or on the same percentage as the Unit Count Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employees and/or Sole Property shall have caused the same. Loss or Damage to third parties, Joint Employees or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned among all of the parties on the same percentage as the Unit Count Proportion for the prior twelve (12) calendar month period, or if the month of occurrence cannot be determined, then for the twelve (12) calendar month period preceding the month in which the Loss or Damage was first discovered.

Loss or damage caused solely by third parties, or with the concurring acts or omissions of Joint Employees and/or Joint Property, to the extent that the cost thereof is not borne by or recovered from the third party, shall be apportioned among the parties on the same percentage as the Unit Count Proportion for the prior twelve (12) calendar month period. Loss or damage caused by third parties as concurring acts or omissions of Sole Employees and/or Sole Property, shall be borne by the party whose Sole Employee and/or Sole Property caused same, or on the same percentage as the Unit Count Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employee and/or Sole Property shall have caused

same, less any costs borne by or recovered from the third party.

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

4.4 For the purpose of this Section 4, equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such equipment, shall be considered the equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

Locomotives, cars, equipment, and other property being handled or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 4.

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

4.5 Each party hereto shall pay all Loss or Damage for which such party shall be liable under the provisions of this Section 4, and shall indemnify and save harmless the other parties against such Loss or Damage, including any such damages awarded in any court action.

Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Section 4, and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.

In the event two or more parties hereto may be liable for any Loss or Damage under the provisions of this Section 4, and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in

excess of the sum of Fifty Thousand Dollars (\$50,000) shall be made by or for any party so jointly liable without the written authority of the other parties so jointly liable, but any settlement made by any party in consideration of Fifty Thousand Dollars (\$50,000) or a lesser sum shall be binding upon the other parties.

In case a suit shall be commenced against any party hereto for or on account of Loss or Damage for which another party hereto is solely or jointly liable under the provisions of this Section 4, the party so sued shall give to such other party notice in writing of the pendency of such suit, and thereupon such other party shall assume or join in the defense of such suit.

No party hereto shall be conclusively bound by any judgment against any other party, unless such party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

Section 5. ARBITRATION

5.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party or parties. Otherwise, the party demanding such arbitration (the demanding party) shall notify the other party or parties (the noticed parties) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed parties shall each appoint an arbitrator and notify the demanding party in writing of such appointment. Should any noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party and the arbitrators for the other noticed parties, if any, shall select one for the noticed

party so failing, and if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the demanding party is located upon application by any party after ten (10) days written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place.

After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

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

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

Section 6.

GOVERNMENTAL APPROVAL ABANDONMENT

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

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

If, at the time of such election, User is the only party (other than Owner) having the right to use the Joint Trackage, Owner shall, concurrent with its Notice of Abandonment, and to the extent is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User.

Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

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

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

delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

6.5 Upon termination of the Agreement, or any partial termination, as the applicable case may be, User shall promptly, and in no event later than 90 days following termination of the Agreement, at User's sole cost and expense, file any necessary applications or petitions to dismiss, as appropriate, for termination of any consents, approvals or authorities received from any governmental agency pertaining to this Agreement.

Section 7. OTHER CONSIDERATIONS

7.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner.

7.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, lessees and assigns, but no sale, assignment, mortgage or lease by User of any interest or right given it under the Agreement separate and apart from the sale, assignment, mortgage or lease of all or substantially all of its railroad shall be valid or binding without the prior written consent of Owner.

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

7.4 All notices, demands, requests or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the President, Chief Operating Officer or Secretary of each company.

7.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity,

obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

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

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

END OF EXHIBIT "B"

B. UNION PACIFIC RAILROAD ACCESS TO TERMINAL 5:

BN will allow UP, pursuant to the Access Agreement, to have direct rail access to the T-5 Intermodal Loading Yard ("ILY"), the Port's adjacent Intermodal Storage Yard ("ISY"), and such other trackage as designated by BN (such potentially designated tracks which will be specifically identified in the BN-UP Access Agreement, the ISY, ILY, and Receiving and Departure ("R&D") track(s) shall hereinafter be referred to as the "Tracks") (as depicted in Exhibit I-2A) for the purpose of timely spotting, delivery, picking up and/or pulling road trains of intermodal railcars. This rail access shall be under the sole management and control of BN. This allowance for UP direct road train or BN transfer service access to and from the Tracks will be based on an access charge of \$20.50 per container, to or from T-5, loaded or empty, with appropriate annual indexing as defined in Exhibit I-7, assessed by BN to UP, and rail operations conditions to be negotiated between BN and UP and set forth in the Access Agreement between BN and UP. The access charge, and its annual indexing, described in Exhibit I-7 is equal to that established in the Access Agreement (Exhibit I-6) and represents the complete financial terms with respect to the access charge, and its annual indexing, described in the Access Agreement. Any operating, financial and access terms of the Access Agreement relating to T-5 will not be modified without the Port's prior written consent. BN and Port agree to review the Access Agreement from time to time. The Access Agreement, and any disputes arising thereunder, shall not be subject to Section D or M hereof.

Direct access means that UP's road power and road crew or UP switch crews relieving UP road crews having insufficient time under the Federal Hours of Service Act and utilizing UP road power, may deliver road trains of intermodal railcars on inbound train movements directly to T-5 and place such cars on the Tracks, and/or retrieve such road trains of intermodal railcars from the Tracks on outbound road

train movement. It is agreed that UP road train crews or UP switch crews in lieu of UP road crews as provided above, shall not be restricted from performing duties as allowed under applicable Road/Yard Work Rules in conjunction with handling intermodal railcars associated with inbound/outbound trains, unless it is reasonably determined by BN that it is necessary for BN switch crews to work in conjunction with UP road crews to yard or assemble trains in order to meet service performance requirements. It is further understood that such decisions or directions of UP crews for the purpose of yarding an inbound train or assembling an outbound train at T-5 in conjunction with BN general switching responsibilities will be determined by the most expeditious and efficient use of the resources available for providing timely and cost effective service to T-5.

Nothing in this Agreement is meant to provide UP road or switch crews with authority to perform general switching activities, as defined in Section C below, at or in the General Switching Area. In no event will UP road crews, or switch crews in lieu of road crews as provided for elsewhere in this Section B, move intermodal cars within T-5 in any manner that could be construed or considered as general switching. Further, to the extent that BN provides road train service in lieu of UP, this service will be covered by the general switching service provided by BN as set forth in Section C below.

C. GENERAL SWITCHING SERVICE PROVIDED BY BN:

General switching service ("Switching Service") provided by BN shall include, but not be limited to, the following:

- (1) The movement of loaded and/or empty intermodal railcars between certain tracks within the Tracks;
- (2) The movement of loaded and/or empty intermodal railcars in either direction between BN and/or UP yard and/or storage tracks and the Tracks;

**MEMORANDUM OF AGREEMENT
BETWEEN
BURLINGTON NORTHERN RAILROAD
AND
THE PORT OF SEATTLE**

This Memorandum of Agreement, along with any exhibits, attachments, and addenda hereto, ("Agreement") is entered into on the date hereinbelow written by and between Burlington Northern Railroad ("BN") and The Port of Seattle ("Port").

WITNESSETH

WHEREAS, Port intends to construct, by 1997, a state of the art containership terminal facility with on-dock rail capability on property designated as Terminal 5 on Exhibit I-1 attached hereto ("T-5");

WHEREAS, T-5 is included in a greater area of the Port's facilities in West Seattle located and bounded by the point at which BN ownership of trackage to West Seattle departs from joint BN/UP trackage across Harbor Island, near Klickitat Avenue, east of the Duwamish River Bridge, and all associated trackage, now existing or subsequently constructed, west of that point, designated as the General Switching Area on Exhibit I-1, (the "General Switching Area");

WHEREAS, Port does not intend to operate T-5 itself but has leased T-5 to Eagle Marine Services, Ltd., assignee, ("Lessee"), to conduct certain day-to-day operations and business of T-5 pursuant to that certain Sixth Amendment to Lease dated as of JUNE 1, 1994 and subsequent amendments thereto (the "Lease");

WHEREAS, BN and Port desire that T-5 and industries in West Seattle be provided with adequate railroad services;

WHEREAS, BN provides rail service to and intends to continue providing such service to West Seattle industries and to T-5 and will perform certain functions as set out in this Agreement directly with Lessee;

WHEREAS, Port desires that BN allow, and BN is willing to allow, Union Pacific Railroad ("UP") to have direct access for its road trains of intermodal railcars to and from T-5, pursuant to a separate access agreement between BN and UP (the "Access Agreement"), a copy of which is attached hereto as Exhibit I-6 for informational purposes only and shall not be subject to any terms or conditions of this Agreement. Further, Port desires that BN provide exclusive general switching service as defined in Section C hereinafter, for General Switching Area;

WHEREAS, BN and Port desire to provide a comprehensive agreement for the purpose of establishing the rail operating conditions, requirements, responsibilities and framework in conjunction with the development and operation of T-5; and

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, BN and Port agree as follows:

A. TERM OF AGREEMENT:

- (1) The term of this Agreement shall be from the date hereof and shall continue in effect concurrently with the term of the Lease, including any amendments, renewals, extensions or assignments thereof. In the event of termination of this Agreement, it is agreed and acknowledged by the parties that BN shall retain the rights to provide exclusive general switching service to T-5 and any subsequent or additional user(s) of T-5 as defined in Section C.**
- (2) The parties and Lessee agree and affirm that all maritime users of T-5 shall have the right to utilize on-dock rail loading/unloading capabilities for all containers and/or railcar traffic received from or destined to any rail service carrier having access to T-5 during the term of this Agreement.**

**MEMORANDUM OF AGREEMENT
BETWEEN
BURLINGTON NORTHERN RAILROAD
AND
THE PORT OF SEATTLE**

This Memorandum of Agreement, along with any exhibits, attachments, and addenda hereto, ("Agreement") is entered into on the date hereinbelow written by and between Burlington Northern Railroad ("BN") and The Port of Seattle ("Port").

WITNESSETH

WHEREAS, Port intends to construct, by 1997, a state of the art containership terminal facility with on-dock rail capability on property designated as Terminal 5 on Exhibit I-1 attached hereto ("T-5");

WHEREAS, T-5 is included in a greater area of the Port's facilities in West Seattle located and bounded by the point at which BN ownership of trackage to West Seattle departs from joint BN/UP trackage across Harbor Island, near Klickitat Avenue, east of the Duwamish River Bridge, and all associated trackage, now existing or subsequently constructed, west of that point, designated as the General Switching Area on Exhibit I-1, (the "General Switching Area");

WHEREAS, Port does not intend to operate T-5 itself but has leased T-5 to Eagle Marine Services, Ltd., assignee, ("Lessee"), to conduct certain day-to-day operations and business of T-5 pursuant to that certain Sixth Amendment to Lease dated as of JUNE 1, 1994 and subsequent amendments thereto (the "Lease");

WHEREAS, BN and Port desire that T-5 and industries in West Seattle be provided with adequate railroad services;

WHEREAS, BN provides rail service to and intends to continue providing such service to West Seattle industries and to T-5 and will perform certain functions as set out in this Agreement directly with Lessee;

WHEREAS, Port desires that BN allow, and BN is willing to allow, Union Pacific Railroad ("UP") to have direct access for its road trains of intermodal railcars to and from T-5, pursuant to a separate access agreement between BN and UP (the "Access Agreement"), a copy of which is attached hereto as Exhibit I-6 for informational purposes only and shall not be subject to any terms or conditions of this Agreement. Further, Port desires that BN provide exclusive general switching service as defined in Section C hereinafter, for General Switching Area;

WHEREAS, BN and Port desire to provide a comprehensive agreement for the purpose of establishing the rail operating conditions, requirements, responsibilities and framework in conjunction with the development and operation of T-5; and

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, BN and Port agree as follows:

A. TERM OF AGREEMENT:

- (1) The term of this Agreement shall be from the date hereof and shall continue in effect concurrently with the term of the Lease, including any amendments, renewals, extensions or assignments thereof. In the event of termination of this Agreement, it is agreed and acknowledged by the parties that BN shall retain the rights to provide exclusive general switching service to T-5 and any subsequent or additional user(s) of T-5 as defined in Section C.**
- (2) The parties and Lessee agree and affirm that all maritime users of T-5 shall have the right to utilize on-dock rail loading/unloading capabilities for all containers and/or railcar traffic received from or destined to any rail service carrier having access to T-5 during the term of this Agreement.**

B. UNION PACIFIC RAILROAD ACCESS TO TERMINAL 5:

BN will allow UP, pursuant to the Access Agreement, to have direct rail access to the T-5 Intermodal Loading Yard ("ILY"), the Port's adjacent Intermodal Storage Yard ("ISY"), and such other trackage as designated by BN (such potentially designated tracks which will be specifically identified in the BN-UP Access Agreement, the ISY, ILY, and Receiving and Departure ("R&D") track(s) shall hereinafter be referred to as the "Tracks") (as depicted in Exhibit I-2A) for the purpose of timely spotting, delivery, picking up and/or pulling road trains of intermodal railcars. This rail access shall be under the sole management and control of BN. This allowance for UP direct road train or BN transfer service access to and from the Tracks will be based on an access charge of \$20.50 per container, to or from T-5, loaded or empty, with appropriate annual indexing as defined in Exhibit I-7, assessed by BN to UP, and rail operations conditions to be negotiated between BN and UP and set forth in the Access Agreement between BN and UP. The access charge, and its annual indexing, described in Exhibit I-7 is equal to that established in the Access Agreement (Exhibit I-6) and represents the complete financial terms with respect to the access charge, and its annual indexing, described in the Access Agreement. Any operating, financial and access terms of the Access Agreement relating to T-5 will not be modified without the Port's prior written consent. BN and Port agree to review the Access Agreement from time to time. The Access Agreement, and any disputes arising thereunder, shall not be subject to Section D or M hereof.

Direct access means that UP's road power and road crew or UP switch crews relieving UP road crews having insufficient time under the Federal Hours of Service Act and utilizing UP road power, may deliver road trains of intermodal railcars on inbound train movements directly to T-5 and place such cars on the Tracks, and/or retrieve such road trains of intermodal railcars from the Tracks on outbound road

WHEREAS, Port desires that BN allow, and BN is willing to allow, Union Pacific Railroad ("UP") to have direct access for its road trains of intermodal railcars to and from T-5, pursuant to a separate access agreement between BN and UP (the "Access Agreement"), a copy of which is attached hereto as Exhibit I-6 for informational purposes only and shall not be subject to any terms or conditions of this Agreement. Further, Port desires that BN provide exclusive general switching service as defined in Section C hereinafter, for General Switching Area;

WHEREAS, BN and Port desire to provide a comprehensive agreement for the purpose of establishing the rail operating conditions, requirements, responsibilities and framework in conjunction with the development and operation of T-5; and

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, BN and Port agree as follows:

A. TERM OF AGREEMENT:

- (1) The term of this Agreement shall be from the date hereof and shall continue in effect concurrently with the term of the Lease, including any amendments, renewals, extensions or assignments thereof. In the event of termination of this Agreement, it is agreed and acknowledged by the parties that BN shall retain the rights to provide exclusive general switching service to T-5 and any subsequent or additional user(s) of T-5 as defined in Section C.**
- (2) The parties and Lessee agree and affirm that all maritime users of T-5 shall have the right to utilize on-dock rail loading/unloading capabilities for all containers and/or railcar traffic received from or destined to any rail service carrier having access to T-5 during the term of this Agreement.**

- (3) The movement of less than trainload lots of loaded and/or empty railcars in either direction between or within the Tracks and BN and/or UP tracks, in any manner that would be considered a normal railcar transfer movement, to permit consolidation with other railcars for rail shipment in trainload lots, unless performed by UP road crews, or UP switch crews in lieu of UP road crews as provided in Section B, and road power under applicable Road/Yard Work Rules;
- (4) The removal of bad order intermodal railcars from the Tracks and the placement of such cars on the designated repair track, delivery of such cars to the BN repair track, or the return of such cars to the UP, and the reverse movement of repaired cars;
- (5) The movement of different types of intermodal rail cars from the Tracks; and
- (6) Other movement of all types of railcars from track to track within the General Switching Area that is within the generally accepted definition of general switching.

The parties and Lessee recognize the geographical and operational jurisdiction of exclusive BN general switching rights which includes all trackage within T-5 leasehold that requires the use of BN owned or controlled trackage, and all associated BN owned or controlled trackage and property employed to support the operations of T-5 and other BN-served customers in the General Switching Area. BN will assess to Lessee for the provision of Switching Service to T-5 a switching rate of \$1,168 per eight (8) hour straight-time shift (with normal overtime rates as applicable) with appropriate annual indexing as defined in Exhibit I-7, provided, however, that such rate, and increases thereto, will not exceed those levels that are normal and customary within the industry for comparable switching service,

adjusting for the switching resources that BN has in place within the proximity of the General Switching Area.

The parties and Lessee further agree to negotiate in good faith to mutually determine the necessary and appropriate level of general switching service resources required of BN, taking into account the operational and geographical constraints of the General Switching Area to ensure the timely and efficient execution of the service requirements as agreed to by the parties and Lessee and recognizing BN's need to adequately serve other West Seattle industries.

D. RAIL SERVICES STANDARDS AND CORRECTIVE ACTIONS:

The parties and Lessee collectively agree that timely and proper rail service to T-5 is absolutely critical and that the rail services standards established and agreed to by the parties and Lessee will be adhered to in every respect. Such rail services shall be both train movements between the east end of the East Double Track and the Tracks, or such other points which may be established pursuant to the provisions of this Section D, and Switching Service ("Rail Services").

Any issues or disputes arising from the provisions of Sections A(2), C, D, E(1), F, G, H, I(2), J, K, L, N, and O of this Agreement shall be subject to this Section D and shall not be subject to Section M. Furthermore, the parties to this Agreement hereby acknowledge and agree that Lessee has standing, as a third-party beneficiary or otherwise, to enforce any rights and duties, or to seek resolution of any disputes against either or both parties hereto, pertaining to Lessee as set forth in the aforementioned Sections in this paragraph.

(1) Rail Services Standards Committee:

- a. In order to insure that Rail Services are performed in a timely and efficient manner, a Rail Services Standards Committee ("Committee"), comprised of one voting representative (or their designees) from Port, BN and Lessee shall be established

within thirty (30) days of the date of this Agreement. The Committee shall be responsible for establishing rules and service standards ("Rail Services Standards") as appropriate to ensure timely and efficient Rail Services. The Committee shall develop monitoring procedures to be used in measuring performance against such standards as may be so established.

- b. The Committee shall meet on a regular basis, not less often than every three months, to review Rail Services; the overall performance of T-5 and the General Switching Area rail operations; to discuss and attempt to resolve grievances concerning T-5 operations or services provided to other customers; to consider and decide upon ways of improving operations of the parties and Lessee; and such other relevant matters as the Committee may decide to consider.
- c. The Committee shall develop and issue standards, rules and measurement procedures as necessary to achieve the required Rail Services for Lessee based upon facility capabilities and cost of service factors. Any member may request a special meeting of the Committee on reasonable notice to the others. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party or Lessee. It is expected that the work of the Committee will be undertaken in a spirit of mutual cooperation consistent with the principles expressed in this Agreement.
- d. The decision of the majority vote of the Committee representatives shall be implemented; however, nothing in this

section shall limit or preclude any party from appealing the decision to the Executive Committee pursuant to the process set forth in Exhibit I-3, attached hereto and made a part hereof.

- e. The Committee may recommend, but cannot in any event require, that either party or Lessee make certain capital improvements related to their operations.
- f. The Parties agree that BN shall achieve performance to the Rail Services Standards as established by the Committee at prescribed levels and in the event that BN's performance falls below such prescribed levels, Port and Lessee will have certain rights and actions available as expressly enumerated in this Agreement to ensure that BN's performance returns to the required levels in as timely of a manner as possible, to the extent that BN is responsible for the performance falling below the required levels.
 - (1) Required Rail Services Standards performance shall be at ninety-five percent (95%) of the combined Rail Services Standards established by the Committee. Measurement of the required performance ("Performance," for the purposes of this Section D(1)(2)) shall be for a measurement period which will encompass the previous fourteen (14) consecutive days ("Measurement Period") and will be calculated daily on a rolling average basis for the total activities under Rail Services Standards requirements over the Measurement Period.

- (2) In the event that during any Measurement Period Performance to the Rail Services Standards established by the Committee falls below ninety-five (95%), Lessee or Port shall have the right to obtain immediate corrective action from BN and/or Port, including additional resources, to restore Performance to the required level. Lessee or Port shall each be initially responsible for its respective cost of any additional resources provided in response to its respective requests as provided for in this paragraph D (1) (f) but Lessee and/or Port shall have the right to seek reimbursement of any such costs of additional resources employed to return Performance to the required level for the period of time during which Performance remains below the required Performance level.

When Performance over a Measurement Period is restored to the required level of ninety-five percent (95%), Lessee shall be responsible for the costs of the additional resources, if any, required to maintain Performance to the Rail Services Standards. Resolution of any disputes that may arise as to the proper allocation of resource costs shall be subject to Exhibit 1-3.

- (3) In the event that during any Measurement Period Performance to the Rail Services Standards established by the Committee falls below eighty-five percent (85%), and to the extent that Port is subject to monetary

consequences under Paragraph 3(m)(vi) of the lease, BN shall be subject to monetary consequences to the Port for each day the Measurement Period Performance is below eighty-five percent (85%). Such monetary consequences shall be based on the sum of the switching charges and Terminal Entrance Fee ("TEF") revenues chargeable by BN for the day ending the Measurement Period during which Performance to the Rail Services Standards falls below or remains below eighty-five percent (85%). Determination of the extent of BN's participation in such monetary consequences shall be based on class of service (switching vs. access) and shall be based on the proportionate percentage of service failures to the total number of service failures over the applicable Measurement Period for each of the two classes of service. For example, if over a Measurement Period Performance to the Rail Services Standards established by the Committee only achieves an eighty-two percent (82%) compliance level, and of the ten (10) service failures identified during the Measurement Period involved, eight (8) failures were associated with switching, eighty percent (80%), and two (2) failures were associated with road train access, twenty percent (20%), the proportion applied for that single day of Performance at a level less than eighty-five percent (85%) would be eighty percent (80%) of the switch charges owed by Lessee for that single day and twenty

percent (20%) of the TEF revenues owed for that single day as provided for in the Access Agreement. The eighty-five percent (85%) Performance level referenced in this subparagraph shall be raised to ninety percent (90%) five (5) years after the opening date of the ILY.

In any event, and to the extent for which BN is responsible for failures of the Rail Services Standards for a Measurement Period, BN shall be liable for payment of any such monetary consequences herein described in this section D (1) (f) only to the extent it received compensation for each single day that the Measurement Period Performance to the Rail Services Standards was below eighty-five (85%), or ninety percent (90%), as applicable.

(2) Corrective Action and Conflict Resolution:

The parties and Lessee agree that it is desirable to have clearly defined process steps for the various levels of internal and external dispute resolution. All of the agreed steps for the dispute resolution process are set out in Exhibit I-3 with respect to all matters within the scope of the Committee. Disputes not resolvable by the Committee may be appealed directly to the Executive Committee pursuant to the last paragraph of Section 3 of Exhibit I-3.

The parties and Lessee agree that the process described in Exhibit I-3 shall also be applied to the following claims where such claims arise as a result of a failure to achieve the required Performance level of Rail Services Standards as established by the Rail Services Standards Committee:

- a. **Claims by the Port for recovery from Lessee of amounts paid by the Port to Lessee and unpaid amounts owing to the Port from Lessee, all in accordance with Paragraph 3(m)(vi) of the Lease;**
- b. **Claims by the Port for recovery from BN of damages incurred by the Port, in accordance with Paragraph 3(m)(vi) of the Lease and/or Section D(1)(f) of this Agreement; to the extent hereinafter described:**
 - (1) **Claims associated with switching service provided by BN shall be limited to the amount BN received from Lessee for switching service on the day(s) on which Performance to the Rail Services Standards falls below eighty-five percent (85%), or ninety percent (90%) as applicable.**
 - (2) **Claims associated with road service access provided by BN shall be limited to the amount BN received from UP associated with T-5 access, TEF only, on day(s) on which Performance to the Rail Services Standards falls below eighty-five percent (85%), or ninety percent (90%) as applicable.**

E. RAILROAD RELATED IMPROVEMENTS:

(1) Facility Layout and Design:

As used herein the term "Facility" shall include all trackage in the General Switching Area and the double track to be constructed by the Port across Harbor Island, between the vicinity of East Marginal Way South and the vicinity of the east end of the Burlington Northern Rail Bridge at the southwest side of Harbor Island, parallel to the existing

railroad track ("East Double Track"). The parties and Lessee will negotiate to design the Facility so that its layout will be suitable for efficient and effective intermodal transfer activities; adequate railcar storage capacity and railroad service for West Seattle industries; and will include other related rail improvements to support the efficient and timely movement of railcars in switch or road train service, including double tracking where necessary, and other railroad-related improvements associated with the T-5 improvement program. The conceptual design for the portion of the Facility in the area of T-5 is as depicted on Exhibit I-2A and the conceptual design for the East Double Track is as depicted on Exhibit I-2B.

If the parties and Lessee cannot agree on a final Facility design by the date this Agreement is executed, either party or Lessee shall have the right to submit the issue to an independent third-party consultant with expertise in designing rail intermodal yards and facilities to settle issues related to the final design of the Facility and rail support improvements.

The Committee will deal with Facility design issues over the life of this Agreement in a manner consistent with the design ultimately determined by the parties and Lessee. In the event of a dispute related to the design of any portion of the Facility or its access trackage, the opinion of the Port and Lessee will take precedence with regard to T-5 and access thereto; the opinion of BN shall take precedence with regard to adequate access to West Seattle industries. If BN determines that design or capacity issues will so impede performance or service standards or cause economic and safety burdens, the dispute shall be decided as set forth in Section D above.

(2) Property Exchange and Valuation:

The parties shall cooperate in proceeding with any environmental processes, permit applications, street vacations, or other actions necessary to moving the T-5 project forward as scheduled. The parties shall execute a letter agreement (attached hereto as Exhibit I-4) addressing issues regarding property exchanges, appraisals, track construction, maintenance and schedules. If any disputes arise relating to the exchange of property or any other issue covered by or relating to the letter agreement, the parties only will submit the issue for determination by arbitration as set out in Section M below.

(3) Environmental Conditions and Indemnification:

Prior to an exchange of property under this provision, the Port shall provide reasonable assurances to BN through testing that the property transferred to BN does not contain contaminant levels in either the soil or groundwater in excess of the maximum level permissible under the Washington State Model Toxics Control Act (WSMTCA). To the extent these assurances cannot be provided for either the soil or groundwater, and until such time as these reasonable assurances can be provided, the Port shall indemnify and hold BN harmless for any cleanup required by any governmental authority due to the presence at the time of property transfer of contaminants in the transferred property's soil or groundwater in excess of the maximum level permissible under the WSMTCA, except to the extent such cleanup was necessitated by or the result of BN and/or its railroad operations. Prior to an exchange of property under this provision, BN shall provide reasonable assurances through testing that the property transferred to the Port does not contain contaminant levels in either

the soil or groundwater in excess of the maximum level permissible under the WSMTCA. To the extent these assurances cannot be provided for either soil or groundwater, and until such time as these assurances can be provided, BN shall indemnify the Port and hold the Port harmless for any cleanup required by any governmental authority of contamination present at the time of property transfer that was caused by or was the result of BN and/or its railroad operations.

Subject to the provisions of BN's Right of Entry Agreement (a copy of which is attached hereto as Exhibit I-5), the Port shall conduct preliminary environmental testing of the BN property at Port's expense. Further environmental testing, if required, may be conducted by either BN or the Port, at BN's discretion, and at BN's expense. The result of all testing shall be reasonably available to both parties.

F. FACILITY MAINTENANCE:

BN will have railroad right-of-way maintenance responsibility for all Tracks except for that trackage found within Lessee's leasehold premises and Port's ISY trackage. In the event Lessee and/or Port contracts with BN for maintenance or repair of the excluded trackage, BN will assess charges against Lessee or Port, as appropriate, for actual maintenance performed. If said maintenance is contracted, it will be to the specifications provided by Lessee or Port for their respective areas. The Tracks will be maintained to a level consistent with safe operation in order to meet service performance standards established pursuant to this Agreement.

G. EQUIPMENT MAINTENANCE, REPAIR AND INSPECTION:

BN or BN's contractor(s) (may include contractor arranged for by UP if approved by BN) shall provide, at the expense of the responsible party or parties, mechanical train/railcar inspections, air tests and certifications, application and removal of rear-of-train devices as furnished by the responsible party, maintenance

and repairs within the ILY, ISY and receiving and departure tracks, in accordance with Federal Railroad Administration ("FRA") and Association of American Railroads ("AAR") rules and regulations, and shall comply with all other AAR rules and regulations (including, without limitation, those relating to loading and inspection). Equipment repairs will be billed in accordance with AAR billing procedures.

H. DUWAMISH WATERWAY RAIL BRIDGE, NORMAL MAINTENANCE, AND REPAIR:

BN assumes full responsibility for normal maintenance and repair (other than casualty related) of the Duwamish Waterway Rail Bridge, as defined in the Lease (the "Bridge") in a condition, prior to July, 1, 1996, sufficient in size to accommodate fully loaded double stack intermodal railcars with 125 ton trucks, maximum weight not to exceed a per axle weight of 70,000 lbs. including tare weight of car, and locomotives models, both 4 axle and 6 axle, not exceeding 70,000 pounds per axle are permitted.

In the event the Bridge is taken out of service for whatever reason, within the context of this Section, BN will work to a level of industry standard to return the Bridge to service in an expeditious manner. This Section H shall be subject to Section D.

I. UPGRADING OR REPLACEMENT OF IMPROVEMENTS.

- (1) In the event that it becomes necessary to significantly upgrade or replace the Bridge or any other rail facility under BN maintenance responsibility in association with T-5 requirements, due to causes which are outside of the control of BN and its normal maintenance responsibilities, such as a change in the size and weight of equipment accessing T-5, need to double-track the Bridge, or substantial, constructive total, or total loss of the Bridge due to an accident or act

of God, Port agrees to explore funding or other options that may be available and appropriate for such improvements, extraordinary repair or replacement, as required. BN will participate in an expeditious manner, in jointly discussing and implementing the options for said improvement, extraordinary repair or replacement including the feasibility of construction of a new, possibly relocated, bridge over the Duwamish Waterway servicing West Seattle. In no event shall BN be required to participate in the financing of such improvements, extraordinary repair or replacement; however, with respect to extraordinary repair or replacement due to substantial, constructive total, or total loss resulting in loss of rail service capabilities and BN and Port are unable to reach agreement on necessary funding, Port shall have the right to fund the construction necessary to restore rail service capabilities. In such event, BN shall have the following options available with respect to Port cost recovery:

- (a) BN shall pay an annual fee to the Port for the Port's investment, with appropriate interest, based upon an amortization over a period of time equal to the remaining expected useful life of the new bridge ("New Bridge").
- (b) BN shall pay a per unit use charge to the Port for all rail traffic crossing the New Bridge. Such charge shall be assessed at a level sufficient to allow Port to recapture its cost and interest for the New Bridge construction over the expected useful life of the New Bridge.

The Port shall own the New Bridge; BN may, however, at its discretion, acquire full ownership in the New Bridge at any time during a five (5) year period

commencing with the date that the New Bridge resumes rail service or within one (1) year after collection of any judgment from any party causing damage to the Bridge which required the repair or replacement, whichever comes later, by compensating the Port for the remaining unamortized balance of the cost of construction of the New Bridge. The Port agrees, however, to enter into an agreement with BN to allow BN to manage and operate the New Bridge ("Management Agreement") as long as Port owns the New Bridge. For purposes of this Agreement, the UP Access Agreement and the Lease Agreement, BN shall, pursuant to the Management Agreement, have ownership responsibility for the New Bridge and will assume all liability for the New Bridge and be responsible for all normal maintenance and repair of the New Bridge as required by Section H of this Agreement. Any such Management Agreement shall not conflict with the terms of this Agreement.

In any event BN will have the right to continue to collect the access charge as provided for in Section B of this Agreement. In addition, Port agrees that BN will have exclusive right to purchase Port ownership in the New Bridge.

- (2) In the event it becomes necessary or desirable to Lessee to significantly upgrade the Bridge for a reason unrelated to substantial, constructive total, or total loss, and, if requested to do so by Lessee, BN will make capital improvements as expeditiously as possible, at Lessee's expense, to BN's facilities utilized to serve T-5 pursuant to this Agreement, as long as said capital improvements, or their construction, do not have an unreasonable impact on BN's ability to perform under this Agreement or on BN's ability to perform service for any other current or potential customers. When completed, said capital improvements shall be owned by BN.

J. LIABILITY PROVISIONS:

As used herein, "Loss or Damage" shall mean all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons arising from the performance or existence of this Agreement.

Each party and Lessee shall be liable for Loss or Damage to the other, its employees, agents or invitees and/or to third parties to the extent caused by the negligent acts or omissions, or willful misconduct of the party(ies) and/or Lessee whose employees, lessees, subcontractors, agents or invitees, and/or property caused the same.

K. FORCE MAJEURE:

Except as otherwise expressly provided herein, neither party hereto nor Lessee shall be liable to the other party(ies) and/or Lessee for any delay or interruption in performance of any obligation hereunder (except a payment obligation) resulting from events of *Force Majeure* such as governmental orders, regulations, labor strikes or disturbances, acts of public enemy, war, blockade, insurrection, acts of God, fires, floods, explosion, derailments, vandalism, sabotage, shortage of diesel fuel, breakage of machinery, or other cause, beyond the reasonable control of either party or Lessee.

The party or Lessee claiming *Force Majeure* shall take all reasonable steps to remove the *Force Majeure* event, and, for this section to be operative, shall promptly notify the other party(ies) and Lessee within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of the *Force Majeure* condition, and will notify the other party(ies) and Lessee within a period of five (5) days, excluding weekends and holidays, when the *Force Majeure* condition is terminated.

L. NOTICES:

All notices, requests, demands, and other communications under this Agreement shall be effective only if in writing and (i) if delivered and receipted for in writing; (ii) sent by certified or registered mail (return receipt requested) postage prepaid; (iii) sent by a nationally-recognized overnight delivery service, with delivery confirmed; or (iv) telexed or telecopied, with receipt confirmed, addressed as follows:

**Burlington Northern Railroad Company
Attn: Sr. Vice President, Corporate Development
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102-5384
Telephone: (817) 333-2332
Telecopy: (817) 333-3010**

**Port of Seattle
Attn: Manager, Marine Real Estate
P.O. Box 1209, Pier 69
Seattle, WA 98111
Telephone: (206) 728-3374
Telefax: (206) 728-3280**

**Lessee:
Eagle Marine Services, Ltd.
Attn: Port Manager
3443 West Marginal Way S.W.
Seattle, WA 98106
Telephone: (206) 933-4650
Telefax: (206) 933-4510**

or such other persons or addresses as shall be furnished in writing by any party or Lessee to the other party(ies) and/or Lessee. Notice shall be deemed to have been given as of the date (i) when personally delivered, (ii) three (3) days after the date of deposit with the United States mail properly addressed, (iii) when receipt of a Notice sent by an overnight delivery service is confirmed, or (iv) when receipt of the telex or telecopy is confirmed, as the case may be, unless the sending party has actual knowledge that a Notice was not received by the intended recipient.

M. ARBITRATION:

Any dispute arising between the parties, except where otherwise provided for in this Agreement, which cannot be settled by the parties, shall be settled under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceeding shall be conducted in an expedited manner as set forth in Section 5 of Exhibit I-3 hereto.

The parties agree that the arbitrator's award shall be binding and may be entered with any Court or agency having competent jurisdiction and the award may there be enforced between the parties without any further evidentiary proceedings, the same as if entered as a judgment by the Court.

N. BILLING, DEFAULT:

Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties and/or Lessee. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared in accordance with the schedules of labor additives, material prices and equipment rental rates as agreed upon by the Chief Accounting Officers of the parties hereto from time to time. It is understood by the parties that BN will bill Port and/or Lessee directly for their respective charges under this Agreement. Port and/or Lessee shall pay to BN at such location as BN may from time to time designate, all the compensation and charge of every name and nature which in and by the Agreement Lessee and/or Port is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no

exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

Should Lessee and/or Port fail to make any payment when due which Lessee and/or Port is obligated to make by this Agreement, or fail in any other respect to perform any payment obligation under this Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by BN to Lessee or Port, BN may, at its election submit the default directly to arbitration under Section M or secure a judgment by a court of law to recover any amounts owed.

BN may waive such default, but no action of BN in waiving any default shall affect any subsequent default of Lessee or Port or impair any rights of BN resulting therefrom.

O. ASSIGNMENT:

This Agreement, its rights and obligations shall inure to the benefit of and be binding upon the parties, their successors and assigns, but neither party may assign this Agreement without the prior written consent of the other.

If the Lease terminates, or the Port enters into a lease with a new lessee for T-5, and this Agreement is renewed, or if Lessee assigns the Lease to another lessee, the Port agrees that it shall require the new lessee to be bound by and accept the provisions of this Agreement as its provisions apply to lessees and the operations for or at T-5.

P. MISCELLANEOUS:

- (1) **Governing Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.
- (2) **Amendments:** No modification, addition, or amendment to this Agreement shall be effective unless and until such modification, addition, or amendment is reduced to a writing executed by authorized officers or agents of each party.
- (3) **Counterparts:** This Agreement may be executed in two or more original counterparts, each of which shall be considered an original of this Agreement
- (4) **Entire Agreement:** This Agreement, which term as used throughout includes the exhibits hereto, embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to herein

Intending to be legally bound, the parties have caused this Agreement to be executed by their duly authorized representatives

on this the 31st day of MAY, 1994.

BURLINGTON NORTHERN RAILROAD COMPANY

By: *G. J. Quinn*

Title: *Thomas J. Quinn, CEO*

Date: _____

PORT OF SEATTLE

By: *M.R. Dinmore*

Title: **M.R. Dinmore**
Executive Director

Date: _____

EXHIBIT I-3

CORRECTIVE ACTION AND CONFLICT RESOLUTION PROCESS AGREEMENT

The agreed steps for dispute resolution as referred to in Section D of the Agreement are as follows:

- (1) **On-Site Management:**
On-going, interactive communication shall be established and maintained between Lessee and BN's designated On-Site Management to coordinate planning and resource availability. Determination of timing and frequency of communication shall be addressed by the Committee when formulating service standards and requirements. In the event a dispute arises between the respective On-Site Management of Lessee and BN, notification shall be brought to the attention of the designated Local Senior Management officer for BN and Lessee responsible for T-5 operations in the Seattle area for resolution. Such appeal to Local Senior Management may be made at any time that a dispute cannot be resolved through normal communications between On-Site Management; notwithstanding, however, that the parties agree to pursue settlement of all outstanding local conflicts at this level in a timely and equitable manner, consistent with the intent of the established service standards.
- (2) **Local Senior Management:**
Upon notification by On-Site Management of a dispute that cannot be resolved, Local Senior Management of Lessee or BN will notify the other and the designated management representative of the Port in writing of the content and basis of the dispute. The Local Senior Management officers shall then each have five (5) business days to research the issue(s) and set a meeting date. A dispute resolution meeting shall be held not more than ten (10) business days from the original date of notification of the dispute. In the event that resolution cannot be reached between the Local Senior Management officers, or the required meeting is not held within the designated time frame, one or both Local Senior Management officers may submit the dispute for consideration to the Committee, along with all developed documentation supporting their stated position(s).
- (3) **The Committee:**
The Committee, charged with the responsibility of developing standards, rules, measurement procedures and performance reviews for Rail Services to T-5 and the General Switching Area, shall act as the first level of internal arbitration in the dispute resolution process. Upon notification of an appeal of the dispute by one or both of the Local Senior Management officers, the Committee shall have five (5) business days to review all submitted documentation. This five (5) day period shall not commence until each member of the Committee has been notified of an impending dispute and has received all applicable documentation supporting the parties' and Lessee's respective positions. The parties and/or Lessee commit to provide such documentation to the other

Committee members in ten (10) business days for their review and consideration. The Committee members shall meet before the expiration of the fifth (5th) business day after all parties and Lessee have received such documentation to discuss and resolve the issue(s) in dispute, and such decisions, determined by a 2 to 1 vote, shall be considered as binding to all parties and Lessee and shall be implemented with reasonable dispatch.

If, as a result of such dispute resolution vote, one of the parties or Lessee determines that the outcome of said vote is not consistent with the information supplied and reviewed, or that such outcome is contrary to the interests, abilities, or spirit of this Agreement, said party or Lessee may appeal the issue(s) to the Executive Committee, although any such appeal shall not affect implementation with reasonable dispatch as per majority vote of the Committee. Such appeal must be made within thirty (30) calendar days from the date of said vote by the Committee and notification of such appeal provided to each member of the Executive Committee in writing, with all supporting documentation provided.

(4) **Executive Committee:**

The Executive Committee, composed of one voting senior management representative from the Port, BN, and Lessee, will be responsible for reviewing and attempting to reach a fair and equitable disposition of any issue(s) brought to its attention through the Committee appeal process. The parties and Lessee shall designate their respective representatives to the executive committee within thirty (30) days of this agreement. Upon receipt of written notification by one or more of the Committee members that a Committee vote is being appealed, the Executive Committee shall meet within ten (10) business days from receipt of such appeal to review the issue(s). The Executive Committee shall have an additional five (5) business days from their initial meeting to review all pertinent information and evidence as supplied by the Committee before rendering a vote prior to the end of the fifth (5th) business day subsequent to the initial Executive Committee session. Such meeting(s) may be accomplished by telephonic means.

The Executive Committee shall negotiate in good faith to resolve any and all matters brought before it in a fair and equitable manner. The parties and Lessee agree that a 2 to 1 vote of the Executive Committee shall be considered as binding to all parties and Lessee in resolving the issue(s) in dispute and such decisions shall be implemented with reasonable dispatch.

If, as a result of the Executive Committee vote, one of the parties or Lessee determines that such decision is unfair, inequitable, capricious or otherwise contrary to the spirit and intent of the Agreement, said party or Lessee may notify the other parties and/or Lessee in writing of its intent to seek resolution of the issue(s) through external arbitration, although any such appeal shall not affect implementation with reasonable dispatch as per majority vote of the Committee. Such notification of intent to pursue resolution through external arbitration must be tendered within thirty (30) calendar days of the Executive Committee vote resolving such issue(s).

(5)

External Arbitration:

Any dispute arising between or among the parties and/or Lessee as a result of this conflict resolution process with respect to the Agreement or any of the, various Rail Services Standards established by the Committee and any related performance of the Rail Services Standards that have not been resolved in a manner deemed fair and equitable by one of the parties or Lessee, such party or Lessee shall have the right to appeal for dispute resolution under the Commercial Arbitration rules of the American Arbitration Association.

Upon receipt of written notification from the appealing party or Lessee that appeal for external arbitration is desired, the appealing party(ies) and/or Lessee and the non-appealing party(ies) and/or Lessee shall within fifteen (15) business days of receipt of such notice of intent to appeal, select a qualified and recognized impartial third party for the arbitration panel; one for the appealing party(ies) and/or Lessee, and one for the non-appealing party(ies) and/or Lessee. The two impartial arbitrators so selected shall select a third member to chair the arbitration panel. The expense of the arbitration panel (excluding the parties' and/or Lessee's legal and associated expenses) will be allocated at the discretion of the arbitration panel. Any party or Lessee may seek recovery of an actual cost incurred as a result of an interim corrective action.

The parties and/or Lessee shall have twenty (20) business days from the date of selection of the third member of the arbitration panel in which to submit evidence and testimony. The parties and Lessee agree to request the arbitration panel's decision in an expedited time frame. The parties and Lessee agree that the arbitrator's award shall be binding and may be entered with any state or federal Court or agency having competent jurisdiction and the award may be enforced between the parties and/or Lessee without any further evidentiary proceedings, the same as if entered as judgment by the Court.

**EXHIBIT I-4
BN/POS LETTER AGREEMENT
WEST SEATTLE**

This letter is written to memorialize certain agreements between the Port of Seattle ("Port") and Burlington Northern Railroad ("BN") relating to property ownership, rail improvements, and rail service to be provided to Port facilities located in West Seattle and Harbor Island. The parties have executed a Memorandum of Agreement, dated MAY 31st, 1994 ("MOA", Exhibit I of the Lease), describing certain obligations with respect to such service. The MOA is attached to this letter. This letter is intended to supplement further the agreement between the parties as described in the MOA.

I. Land Appraisal - Southwest Harbor

The parties acknowledge that some land owned by BN will be needed by the Port to accomplish the development described in the lease agreement (the "Lease") between Port and Eagle Marine Services (the "Lessee"). In consideration of BN's agreement to provide property requested by the Port, the Port will provide replacement property to BN, which replacement property shall be of sufficient space and condition to support existing rail operations and operating capacity at BN's Buckley Yard. In the event that the value of the replacement land and improvements is less than the value of the land and improvements owned by BN and exchanged to the Port, the Port shall pay to BN the difference in the value of the land and improvements.

II. Rail Replacement - Southwest Harbor

All existing track on BN property to be conveyed to the Port as part of the Memorandum of Agreement and industrial support track for steel mill and rail barge operations shall be replaced, at the Port's cost, at locations suitable and appropriate for BN's West Seattle rail service requirements as depicted on Exhibit I-2A of the Lease. All new track laid by the Port shall be consistent with BN's engineering standards.

III. Receiving and Departure Track Construction

Receiving and Departure ("R & D") tracks, as the term is used in this Agreement, are tracks which allow for the arrival or departure of road haul trains of various lengths. Each R & D track (including the West Double Track) shall have a capacity to accommodate one 9,000 foot train into the area west of the Bridge. The Port will construct, at no cost to BN, R & D tracks as agreed upon by the Port and BN to provide intermodal train and railcar service to the Intermodal Yard ("IY," as defined in the Lease) on land to be owned or to be controlled by BN. The parties agree that the R & D tracks are constructed to support Lessee's IY operation and that such tracks are not considered replacement tracks for trackage in the Buckley Yard which is displaced by the Port's development. BN agrees that Lessee has preferential use rights for the Intermodal Storage Yard ("ISY") tracks (as defined in the Lease) and that Lessee's activities in the ISY shall always take precedence over any other railcar storage. However, BN may use the ISY tracks for other railcar

storage purposes, subject to Lessee's preferential rights as expressed in written limitations or restrictions from the Port on such use.

IV. Construction of Double Track

The Port shall add an additional rail track alongside the existing track as described in Section 2, (e)(ii) (D) (5) of the Lease at no cost to BN to create a double track rail line on land to be owned or to be controlled by BN. Port shall obtain any and all permits and other governmental approvals and real property necessary to complete the construction of rail facilities to be constructed by Port. BN shall cooperate with the Port in obtaining such permits and approvals. For purposes of this Agreement, the definition of "Double Track" as used in the Lease shall apply. BN, as contractor for the Port, or Port, will construct the track necessary to create the Double Track and the Port will compensate BN for its actual costs of construction including overheads (such overheads shall be mutually agreed to by the parties). BN agrees that all tracks laid for the East Double Track will be available for use by other Class I rail carriers now having access to Harbor Island and any other Class I rail carriers subject to usual and customary access agreements. West Double Track may be used by other Class I rail carriers subject to any agreements entered into by such other carriers and BN.

V. Maintenance of New Tracks

BN shall have all maintenance obligations for any new tracks laid as part of this letter or the MOA on property to be owned or controlled by BN (except for the ILY and ISY Tracks and any trackage within Lessee's leasehold premises). Port shall warrant that the replacement property is of such condition that it will support and be acceptable for rail operations. Port shall have all maintenance obligations for the ISY tracks, and Lessee shall have all maintenance obligations for the ILY and any trackage within Lessee's leasehold premises. The Port and Lessee shall perform, or have performed, such maintenance to levels consistent with safe operation in order to meet service performance standards in the MOA.

VI. Damages

Time is of the essence in this Agreement. Except as otherwise provided, the Port and BN agree to cooperate in obtaining the appropriate permits and real property to complete construction of any rail facilities which the parties agree are to be constructed by BN and/or the Port. The Port agrees to obtain all necessary permits for construction of the Facility. BN acknowledges the Port's need to have whatever portions of the Facility that BN is constructing completed in a timely manner and consistent with the Port's overall construction schedule to satisfy the deadlines imposed on the Port under the Lease. The Port intends to have achieved Facility Component Completion (as defined in the Lease) of the Intermodal Yard Facilities (as defined in the Lease) by July 1, 1996, after which the Port will suffer damages in the form of lost lease revenues. If Facility Component Completion of the Intermodal Yard Facilities is not achieved by September 29, 1997, the Port will suffer additional damages as described in the Lease. These completion dates are based on completion of the final Facilities design for those portions thereof that are to be done by BN by December 31, 1994. Port further agrees to provide BN a list of required construction materials and a Facilities design at least fifty percent (50%) complete by July 31, 1994. BN acknowledges the Port will suffer damages if these deadlines for completion are not met, and the Port reserves the right to seek actual damages or, at its election, collect liquidated damages as may be provided in any

future contract between the Port and BN or a contractor acting on behalf of BN for construction of all or a part of the Facility. BN shall not be liable for any damages resulting from delays caused by the Port or Lessee, failure of the Port to reasonably agree upon final Facilities design or to execute this letter agreement, acts of God, severe weather or climate conditions, acts of public enemy, war, blockade, insurrection, vandalism, sabotage, labor strike or interference, lockout or labor dispute, governmental law, order or regulations, delays in acquisition of property due to no fault of BN, or as a result of having to commence condemnation proceedings to acquire property or other consequences beyond the reasonable control of BN.

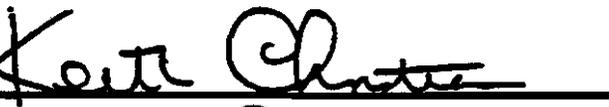
AGREED to by and between the undersigned parties on this 31st day of MAY, 1994.

BURLINGTON NORTHERN RAILROAD COMPANY

BY: 

TITLE: Calanum - CEO

PORT OF SEATTLE

BY: 

TITLE: Managing Director,
Marine Division

BURLINGTON NORTHERN RAILROAD

TEMPORARY LICENSE AGREEMENT PERMITTING ENTRY TO PROPERTY

THIS AGREEMENT entered into this 10th day of June, 1993, by and between Burlington Northern Railroad Company ("BN"), licensor, and Port of Seattle, its employees, agents, consultants, and designees ("Licensee").

WHEREAS, Licensee has requested permission to enter upon BN property; and

WHEREAS, BN is willing to grant a temporary license for such entry, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. PERMISSION, LOCATION, AND ACCESS

Subject to the terms and conditions hereinafter set forth, BN hereby grants a temporary license to Licensee to enter upon the property of BN at Seattle, WA, more commonly known as Buckley Yard, more particularly located South of Terminal 2 and West of Terminal 5 at Sections 12 and 13, T 24 N, R 3 E, for the sole purpose of installing 14 soil borings for pre-acquisition environmental assessment.

2. LIABILITY

Licensee hereby releases and will protect, defend, indemnify, and save harmless BN, its subsidiaries, officers, employees, and agents against all claims, liabilities, demands, actions at law, and equity judgments, settlements, losses, costs, including attorneys' fees, damages, and expenses of every character and nature whatsoever (hereinafter referred to collectively as

"claims") for injury, including death, suffered or sustained, directly or indirectly, by the officers, agents, and/or employees of BN and its subsidiaries, Licensee and its officers, agents, and/or employees, and all other persons whomsoever, and for damage to or loss or destruction of property of any kind by whomsoever owned, contributed by, resulting from, arising out of, or occurring in connection with the entry or presence of Licensee and its officers, agents, employees, and consultants on BN property incidental to Licensee's performance of the project. If any claim is asserted, Licensee will assume, at its own expense on behalf of BN, its subsidiaries, officers, agents, and employees, the defense of any such claims which may be brought against BN and pay on behalf of BN the amount of any settlement agreed upon, judgment that may be entered, and any other amounts assessed in connection therewith, plus all costs and expense.

3. INSURANCE

No work of any character shall be started on the property of BN until:

- a. An acceptable certificate of insurance specifying that the policy is applicable to the particular work has been furnished to and accepted by BN, naming BN as an additional insured and providing the following insurance coverages:**
 - (i) Worker's compensation and employers' liability insurance and satisfaction of statutory requirements of the State where the property covered by this Agreement is located;**
 - (ii) Comprehensive liability insurance with a dollar limitation of coverage not less than a combined single limit of One Million Dollars (\$1,000,000) per any one occurrence for all loss, damage, cost, and expense, including attorneys' fees, arising out of bodily injury, liability, and property damage**

liability during the policy period. Such policy shall be endorsed to reflect contractual liability insurance, specifically relating to the indemnity provisions of this agreement and with the exclusion for any activities conducted within fifty (50) feet of railroad tracks deleted; and

(iii) Automobile liability insurance, if applicable, having a combined single limit of One Million Dollars (\$1,000,000) per occurrence.

- b. All insurance described above shall be maintained until all work completed hereunder has been satisfactorily completed. The insurance companies issuing the policies may cancel or make significant changes in the coverage only with permission of BN.**
- c. After BN has advised Licensee that the limits, form, and substance of the insurance policies and certificates are acceptable, said policies and certificates shall be forwarded to the Division Superintendent ("DS"), or his "Designee", with a copy to the Manager Environmental Engineering ("Mgr. Envir. Eng."), as specified in this license.**
- d. The acceptance of the insurance by BN is not intended to and shall not reduce limit, affect, or modify the primary obligations and liabilities of Licensee under the provisions of this agreement.**

4. ENTRY UPON PROPERTY

Licensee shall notify BN's DS, or his Designee, and the Mgr. Envir. Eng. at least forty-eight (48) hours in advance before entering upon or starting any work upon BN property. The DS is Kevin C. Spradlin, (206) 625-6224. The Designee is Gil S. Maling, Trainmaster, (206) 625-6270. The Mgr. Envir. Eng. is Michael E. Clift, (206) 467-3384.

No entry or use of BN property will be permitted until this agreement is signed and permission, in writing, has been received from the DS, Designee and/or the Mgr. Envir. Eng.

5. BN OPERATIONS

All operations of Licensee shall be performed in such a manner so as not to interfere with BN property and operations or the use of BN facilities. If, in the opinion of the DS or Designee, conditions warrant at any time, BN will provide appropriate flag service and protection to its property, employees, and customers at the expense of Licensee, and Licensee will pay to BN the full cost and expense thereof within thirty (30) days of receipt of a billing for the flag service.

6. CROSSING OR FOULING TRACKS

In no event shall equipment or material be transported across BN's track without special permission and advance written notice of at least forty-eight (48) hours to the DS or Designee, so that BN may arrange for the necessary protection at and about the track. Such permission shall be reasonably given by the DS or Designee. Licensee agrees not to enter upon or foul BN track until given specific permission and signal to do so by a BN flagman, when flag protection is provided.

7. CLEARANCES

All equipment located on or material in use upon BN property shall be kept at all times not less than fifty (50) feet from the nearest rail of any track. Licensee shall conduct its operations so that no part of its equipment shall foul any track, transmission, signal, or communication line or any other structure on the property.

8. RESTORATION OF PREMISES

Upon completion of the work, Licensee shall leave the property in a condition satisfactory to the DS or Designee and the Mgr. Envir. Eng.; and Licensee shall remove all machinery, equipment, material, rubbish, and other property of Licensee so that the land is left in a condition satisfactory to the DS or Designee and the Mgr. Envir. Eng.

9. PROVIDING REPORTS

Licensee agrees to provide BN with a complete copy of the results of the analysis of any samples taken on BN property and any related reports, including conclusions and recommendations. Licensee further agrees to keep said results and reports confidential and not to disclose the information to any other party, unless Licensee has received express written authorization to do so from BN.

10. TERM OF LICENSE

BN reserves the right to revoke this license at any time. Unless modified or terminated in writing by the parties, this license shall extend until 12:01 a.m. on August 10, 1993, at which time it shall expire automatically. Licensee shall notify the DS or Designee and the Mgr. Envir. Eng. when use of the property or work is completed. Under no circumstances shall this temporary license be construed as granting Licensee any right, title, or interest of any kind or character in, on, or about the land or premises of BN.

11. ENVIRONMENTAL OBLIGATIONS AND INDEMNIFICATION

Licensee recognizes and assumes all responsibility for all present and future environmental obligations imposed under applicable environmental laws, regulations, or other such requirements relating to any contamination or aggravation of existing contamination of BN's property or groundwater arising from any operations conducted by Licensee pursuant to the terms of this license. Licensee therefore agrees to indemnify and hold harmless BN, its officers, agents, and employees from any and all liability, fines, penalties, claims, demands, or lawsuits brought by any third party or governmental agency under any theory of law seeking to hold BN liable for any cleanup costs, penalties, or damages for any contamination of BN's property or groundwater thereunder arising out of the operations conducted by Licensee. Licensee agrees that the above indemnity extends to any liability resulting from or arising out of the implementation of any cleanup plan approved by the United States Environmental Protection Agency or companion State agency. Licensee further agrees to under take, at its own expense, any cleanup of any contamination or aggravation of existing contamination of BN property and groundwater thereunder arising from any operation conducted pursuant to the terms of this license.

Licensee agrees to waive any and all statutes of limitation applicable to any controversy or dispute arising out of the proceeding.

parties to this Agreement, have caused UP's calculated proportion of the total maintenance and operation expenses for the previous calendar year for the T-5 operation, said proportion to be determined based on the Unit Count Proportion for the same calendar year, to exceed the total MOF charges paid by the UP for the same calendar year, then UP shall pay to BN an amount equal to the difference between said calculated UP proportion of the maintenance and operation expenses and the total MOF charges paid by UP.

10. GOVERNING LAW

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate and have caused their corporate seals to be hereunto affixed the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By Richard H. Lewis
Title Sr. VP Corp. Development

UNION PACIFIC RAILROAD COMPANY

By James W. Anderson
Title VP Marketing

benefits, if any, prescribed by law, governmental authority or employee protective agreements where such costs and expenses, including satisfaction of any and all labor claims, are directly attributable to or which arise by reason of or result from UP's operation of trains over and on the Joint Trackage. BN agrees that it will not provide employee protection benefits or satisfy any labor claims except upon approval of UP following pre-arbitration consultation between BN and UP or after it has been determined by the appropriate board or tribunal that such protection benefits are properly payable or that such claims are valid. The parties hereto shall consult and cooperate with each other in the handling and defending of such matters.

9. COST SHARING

If during the term of this Agreement, Capital Improvements as defined in Exhibit B of this Agreement, or casualty replacements are required in support of the T-5 operation, and the cost of said Capital Improvements or casualty replacements are in excess of Ten Thousand Dollars (\$10,000), and to the extent that said Capital Improvements or casualty replacements are not paid for by other than the parties to this Agreement, then BN shall advise UP as provided in Section 2.2 of Exhibit B of this Agreement and the parties shall share in such remaining costs as follows:

The value of Capital Improvements or casualty replacement, the cost of which is to be shared by the parties as described above, will be accumulated as they occur. On the first business day on or after July 1 of each year following the opening of T-5, one year's interest, at the prevailing U.S. Prime Rate (as reflected in the Wall Street Journal, or equivalent, as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks) plus 2%, will be calculated on said value as of December 31 of the previous calendar year, and UP will pay BN a share of said calculated interest in the same proportion as the Unit Count Proportion, as hereafter defined in Exhibit B, Section 1.8, for the previous calendar year. For the first and last years of T-5 operation under this Agreement, this payment shall be apportioned on the number of months that this Agreement is in effect.

If Capital Improvements are made in support of the T-5 operation, for which UP makes a payment as outlined in the previous paragraph, and BN can demonstrate that the annual maintenance and operation expenses of said Capital Improvements, not paid for by other than

SEATTLE T-5 ACCESS AGREEMENT

THIS AGREEMENT, along with any exhibits, attachments, and addenda hereto ("Agreement"), is entered into on this 31st day of May, 1994, by and between BURLINGTON NORTHERN RAILROAD COMPANY ("BN"), a Delaware corporation, and UNION PACIFIC RAILROAD COMPANY ("UP"), a Utah corporation.

WITNESSETH

WHEREAS, the Port of Seattle ("Port") intends to construct, by 1997, a state-of-the-art containership facility with on-dock rail capability on property designated as Terminal 5 ("T-5") on Exhibit A attached hereto;

WHEREAS, T-5 is included in a greater area of Port's facilities at West Seattle located and bounded by the point at which BN ownership of trackage to West Seattle departs from joint BN / UP trackage across Harbor Island, near Kickitat Avenue, east of the Duwamish River Bridge, and all associated trackage, now existing or subsequently constructed, west of that point, designated as the General Switching Area ("General Switching Area") on Exhibit A;

WHEREAS, Port does not intend to operate T-5 itself but has leased T-5 to Eagle Marine Services, LTD., assignee, ("Lessee"), to conduct certain day-to-day operations and business at T-5 pursuant to that certain Sixth Amendment to Lease dated as of June 15th, 1994 and subsequent amendments thereto ("Lease");

WHEREAS, BN and Port desire that T-5 and industries in West Seattle be provided with adequate railroad services;

WHEREAS, BN provides rail service to and intends to continue providing such service to West Seattle industries and to T-5 and will perform certain functions, as set out in a separate agreement with Port ("MOA"), directly with Lessee;

WHEREAS, Port desires that BN allow, and BN is willing to allow, UP to have direct access, for its road trains of intermodal railcars, to and from T-5, pursuant to this Agreement between BN and UP. Further, Port desires that BN provide exclusive general switching service as defined in Section 5 hereinafter, for General Switching Area;

WHEREAS, BN and UP desire to provide a comprehensive agreement for the purpose of establishing the rail operating conditions, requirements, responsibilities and framework in conjunction with UP's access to T-5; and

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, BN and UP agree as follows:

1. TERM OF AGREEMENT

The term of this Agreement shall be from the date that the MOA and Lease are effective and shall continue in effect concurrently with the terms of the MOA and Lease, including any amendments, renewals, extensions, or assignments thereof. In the event of termination of this Agreement, it is agreed and acknowledged by the parties that UP's access to T-5 shall also terminate and BN shall retain the rights to provide exclusive general switch service to T-5 and any subsequent or additional user(s) of T-5 as defined in Section 5.

2. GENERAL CONDITIONS

The General Conditions as set forth in Exhibit B attached hereto are hereby made a part of this Agreement. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

3. UP ACCESS TO T-5

BN shall allow UP, pursuant to this Agreement, to have direct rail access to the T-5 Intermodal Loading Yard ("ILY"), the Port's adjacent Intermodal Storage Yard ("ISY"), the Receiving and Departure tracks ("R&D"), and such other trackage as designated from time to time by BN. Such designated tracks, the ISY, ILY, and R&D tracks shall hereinafter be referred to as the "Tracks" (as depicted in Exhibit C) for the purpose of timely spotting, delivery, picking up or pulling road trains of intermodal railcars. This direct rail access shall at all times be under the sole management and control of BN.

Direct rail access means that UP's road power and road crew may deliver road trains of intermodal railcars on inbound train movements directly to T-5 and place such cars on the Tracks, and/or retrieve such road trains of intermodal railcars from the Tracks on outbound

train movements. BN shall permit UP to substitute yard crews for road crews having insufficient time under the Federal Hours of Service Act, using road power; however, said yard crews are to be subject to the same limitations as the road crews they are replacing. It is agreed that UP road train crews, or switch crews in lieu of road crews as provided above, shall not be restricted from performing duties as allowed under applicable Road/Yard Work Rules in conjunction with handling intermodal railcars associated with inbound / outbound trains, unless it is reasonably determined by BN that it is necessary for BN switch crews to work in conjunction with UP road crews to yard or assemble trains in order to meet service performance requirements. It is further understood that such decisions or directions of UP crews for the purpose of yarding an inbound train or assembling an outbound train using the Tracks in conjunction with BN general switching responsibilities will be determined by BN as the most expeditious and efficient use of the resources available for providing timely and cost-effective service to T-5.

Nothing contained in this Agreement is meant to provide UP road or switch crews with authority to perform general switching activities, as defined in Section 5 below, at or in the General Switching Area. In no event will UP road crews, or switch crews in lieu of road crews as provided above, move intermodal railcars within the Tracks in any manner that could be construed or considered as general switching except as provided under applicable Road / Yard Work Rules.

4. ACCESS CHARGE AND INDEXING PROCEDURE

UP access to the Tracks, in UP road trains or BN Switching Service as defined in Section 5 of this Agreement, shall be based on an access charge of \$20.50 per container, to or from T-5, loaded or empty, assessed by BN to UP. The access charge shall be divided into two portions: Maintenance and Operations Fee ("MOF"), set initially at \$4.25 per container and adjusted annually (provided, however, that MOF shall not be less than \$4.25) thereafter at the same percentage change as the Rail Cost Recovery Index ("RCRI"), as contained in the AAR Railroad Cost Indexes, Annual Indexes of Chargeout Prices and Wage Rates (1977=100), WEST, with the first index adjustment being made on July 1, 1995, reflecting the change in the RCRI for 1994 as compared to 1993; and Terminal Entrance Fee ("TEF"), set initially at \$16.25 per container and adjusted annually (provided however, that TEF shall not be less than \$16.25) thereafter at the same percentage change as the Producers Price Index - Finished

ds ("PPI - FG"), as published by the U.S. Department of Commerce, with the first index adjustment being made on July 1 of the year after T-5 opens, reflecting the change in the PPI - FG for the year T-5 opens compared to the year prior to opening.

5. GENERAL SWITCHING SERVICE PROVIDED BY BN

General switching service ("Switching Service") provided by BN, other than when UP crews perform service as specifically provided in Section 3, shall include, but not be limited to, the following:

- (1) The movement of loaded and/or empty intermodal railcars between certain tracks within the Tracks;
- (2) The movement of loaded and/or empty intermodal railcars in either direction between BN and/or UP yard and/or storage tracks and the Tracks;
- (3) The movement of less than trainload lots of loaded and/or empty railcars in either direction between or within the Tracks and BN and/or UP tracks, in any manner that would be considered a normal railcar transfer movement, to permit consolidation with other railcars for rail shipment in trainload lots, unless performed by UP road crews, or UP switch crews in lieu of UP road crews as provided in Section 3, and road power under applicable Road / Yard Work Rules;
- (4) The removal of bad order intermodal railcars from the Tracks and the placement of such cars on the designated repair track, delivery of such cars to the BN repair track, or the return of such cars to the UP, and the reverse movement of repaired cars;
- (5) The movement of different types of intermodal railcars from the Tracks; and
- (6) Other movement of all types of railcars from track to track within the General Switching Area that is within the generally accepted definition of general switching.

BN and UP recognize the geographical and operational jurisdiction of exclusive BN switching rights which includes all trackage within T-5 leasehold that requires the use of BN owned or controlled trackage, and all associated trackage employed to support the operations of T-5 and other BN-served customers in the General Switching Area.

6. UP SERVICE REQUESTS

Switching Service requested by UP and provided by BN, not at the direction of Lessee, shall be paid for by UP. The parties agree to establish a process which shall determine fair and equitable rates for the different elements of Switching Service and said rates shall be furnished to UP in written form along with provisions for escalation. The parties may also agree to such rates for other services which UP might request from BN, such as providing relief crews in hours of service situations. It is understood by the parties that the establishment of such rates in no way obligates BN to provide such services. Further, the furnishing of said services by BN at any given time does not establish an obligation on BN's part to provide said services thereafter. To the extent that BN provides such services BN shall be acting solely as a private carrier in the performance of these services.

7. EQUIPMENT MAINTENANCE, REPAIR AND INSPECTION

BN or BN's contractor(s) shall provide, at the expense of the responsible party or parties, mechanical train / railcar inspections, air tests and certifications thereof, application and removal of rear of train devices as furnished by the responsible party, maintenance and repairs within the ILY, ISY and R&D tracks, in accordance with FRA and AAR rules and regulations, and shall comply with all other AAR rules and regulations (including, without limitation, those relating to loading and inspection). It is BN's intent to contract this work as described in this Section 7 or any other work which may be subsequently identified as falling under the intent of this Section 7; however, BN reserves the right to perform this work. In order to achieve the most cost effective and efficient performance of this work, BN will work with UP in the selection of BN's contractor(s); however, BN reserves the right to make the final selection. Equipment repairs will be billed in accordance with AAR billing procedures. UP may make its own financial arrangement with BN's contractor(s) as long as it does not impact BN's ability to carry out its responsibilities under this Section 7. BN and UP each have the right to leave inbound road power, consistent with timely and cost effective service, on designated engine tie up tracks, as space is available, at T-5.

8. EMPLOYEE CLAIMS

UP hereby agrees, in addition to the payments to be made to BN under other provisions of this Agreement, to reimburse BN for any and all costs incurred by BN in satisfying claims made under any applicable collective bargaining agreement and / or in providing employee protection

EXHIBIT I-7

INDEXING PROCEDURES

1. **Access Charge (as defined in BN / UP Access Agreement):**

UP access to the Tracks, in UP road trains or BN transfer service, shall be based on an access charge of \$20.50 per container, to or from T-5, loaded or empty, assessed by BN to UP. The access charge shall be divided into two portions: Maintenance and Operations Fee ("MOF"), set initially at \$4.25 per container and adjusted annually (provided, however, that MOF shall not be less than \$4.25) thereafter at the same percentage change as the Rail Cost Recovery Index ("RCRI"), as contained in the AAR Railroad Cost Indexes, Annual Indexes of Chargeout Prices and Wage Rates (1977 = 100), WEST, with the first index adjustment being made on July 1, 1995, reflecting the change in the RCRI for 1994 as compared to 1993; and Terminal Entrance Fee ("TEF"), set initially at \$16.25 per container and adjusted annually (provided, however, that TEF shall not be less than \$16.25) thereafter at the same percentage change as the Producers Price Index - Finished Goods ("PPI - FG"), as published by the U.S. Department of Commerce, with the first index adjustment being made on July 1 of the year after T-5 opens, reflecting the change in the PPI - FG for the year T-5 opens compared to the year prior to opening. BN shall inform Port when any adjustment of the level of TEF and / or MOF is made.

2. **Switching Rate:**

The switching rate BN will assess to Lessee will be initially at \$1168 per straight-time shift and adjusted annually thereafter at the same percentage change as the Rail Cost Recovery Index ("RCRI"), as contained in the AAR Railroad Cost Indexes, Annual Indexes of Chargeout Prices and Wage Rates (1977 = 100), WEST, with the first index adjustment being made on July 1, 1995, reflecting the change in the RCRI for 1994 as compared to 1993.

EXHIBIT A

Refer to original Seattle T-5 Access Agreement

EXHIBIT "B"

GENERAL CONDITIONS

ATTACHMENT TO SEATTLE T-5 ACCESS AGREEMENT

Section 1. DEFINITIONS

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

1.2 "Owner" shall mean the party granting the right to use the Joint Trackage.

1.3 "User" shall mean the party granted the right to use the Joint Trackage.

1.4 "Joint Trackage" and / or "Tracks" shall mean trackage, as described in Section 3 of the Agreement including necessary right of way and appurtenances, signals, communications, bridges, and facilities owned, managed or operated by Owner and all Changes in and/or Additions (as that term is hereinafter defined) thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Light Engines" shall mean one or more locomotive units not coupled to cars.

1.6 "Caboose Hop" shall mean one or more locomotive units coupled to one or more cabooses with no cars coupled.

1.7 "Changes in and/or Additions" "and Additions" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission. For the purposes of this Agreement, "Capital Improvements" to the Joint Trackage shall mean the cost of any improvements made to the Joint Trackage chargeable to property accounts in accordance with RRB accounting Principles.

1.8 "Unit Count Proportion" shall mean the number of Units operated by a party divided by the total number of Units operated by all parties using the Joint Trackage, or a particular zone if Joint Trackage is zoned, calculated on a month by month basis. Such Unit Count Proportion shall include switch movements operating over the Joint Trackage. For the purposes of computing such Unit Count Proportion, trains, locomotives and cars engaged in

work service pertaining to maintenance or operation of and Changes in and/or Additions to the Joint Trackage shall not be counted. Light Engines and Caboose Hops shall be counted for Unit Count Proportion purposes.

1.9 "Unit" shall mean each single container placed upon a COFC platform or a count of one (1) Unit for each non-COFC car operated on the Joint Trackage. An Engine shall consist of one or more locomotives and shall receive a count of two (2) Units.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 User shall construct, maintain, repair and renew at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right of way of User. Owner shall construct, maintain, repair and renew, at the sole cost and expense of User, and shall own, the portions of the track connections between said tracks of the parties hereto, located on the right of way owned or controlled by Owner.

2.2 The construction, maintenance, repair and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. Owner shall advise User of such Changes and/or Additions in advance; however, failure of Owner to so advise User shall in no way reduce User's obligations hereunder. User may request Changes in and/or Additions to the Joint Trackage and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change

the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof herein intended. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the ILY, ISY and R&D tracks which would unreasonably impair the usefulness thereof to User.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same and User shall not, by reason of Owner's performing or failing or neglecting to perform any operation, maintenance, repair, renewal or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom, but should Owner fail to repair any defect or maintain the Joint Trackage to a standard suitable for efficient operation within a reasonable time after User shall have given written notice thereof to Owner, specifying the defect or deviation from standard and requesting that it be repaired, then User shall have the right to make the necessary repairs which shall be paid for by Owner.

2.5 User, at its expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment, radios or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense of any kind, caused by or resulting from such interruption or delay.

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

same for its costs thereof.

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

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

2.10 With respect to operation of trains, locomotives, cabooses and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations and orders promulgated by a municipality, board, commission or governmental agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

2.11 In the event any accident, derailment, or wreck (hereinafter called "derailment") involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law (hereinafter called "Hazardous Materials") shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately. In such event, User shall notify Owner by calling Owner's Assets Protection 24-Hour Command Center at phone number 1-800-832-5452.

Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of these General Conditions.

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

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

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

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

2.15 If any employee of User shall neglect, refuse or fail to abide by Owner's rules,

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

2.16 If any cars, cabooses or locomotives of User are bad ordered enroute on the Joint Trackage and it is necessary that they be set out, such cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may upon request of User and at User's expense furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement. The employees and equipment of Owner while in any manner so engaged or while enroute to or returning from such an assignment shall be considered sole User employees and exclusive User equipment. In the case of such repairs by Owner to freight cars in User's account, billing therefor, shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect on the date of performance of the repairs and Owner shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car owner

responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to cabooses shall be billed at the rates set forth in the Interchange Rules. Repairs to locomotives shall be billed as provided for in Section 3.

2.17 If equipment of User shall become derailed or otherwise disabled upon the Joint Trackage, such that wrecking service is required to clear the Joint Trackage, Owner shall, unless otherwise agreed, arrange for such service. "Wrecking Service" shall mean a service requiring the use of motorized on or off track equipment. Such wrecker service shall be at User expense unless otherwise provided for in allocation of liability in Section 4 of these General Conditions.

2.18 User shall pay to Owner expenses incurred by Owner in the issuance of time tables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of time tables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User require the issuance of time tables, then User shall not be required to pay any portion of the expenses incurred in connection therewith.

2.19 Owner shall provide volume information for the Joint Trackage to User on a monthly basis sufficient in detail to compute the Unit Count Proportion.

Section 3. BILLING, DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared each month in accordance with the schedules of labor additives, material prices and equipment rental rates as agreed upon by the Chief Accounting

Officers of the parties hereto from time to time. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a Roadway Completion Report is required, three years after the last day of the calendar month in which the Roadway Completion Report is made covering such project, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

3.4 Should any payment become payable by Owner to User under this Agreement, the provisions of Sections 3.1 through 3.4 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make by Agreement, or fail in any other respect to perform pursuant to this Agreement, and such default shall continue for a period of sixty (60) days after notice in writing of such default is

given by Owner to User, Owner may, at its election, exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

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

3.6 Either party hereto may assign any receivables due them under this Agreement, provided, however, such assignments shall not relieve the assignor of any rights or obligations under this Agreement.

Section 4. LIABILITY

4.1 For the purpose of this Section 4, the following definitions shall apply:

"Loss or Damage" shall mean all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons arising from the performance or existence of this Agreement.

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

"Joint Property" shall mean the Joint Trackage and all trains, locomotives, cabooses, cars and equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or operating the Joint Trackage or in making Changes in and/or Additions thereto for

the benefit of all of the parties hereto, or while being prepared to engage in, enroute to or from, or otherwise incident to performing such service. Such trains, locomotives, cabooses, cars and equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the parties hereto, and shall for the purpose of this Section 4 be considered the Sole Employees and/or the Sole Property of such party or parties. Pilots furnished by Owner to assist in operating trains, locomotives, cabooses, cars or equipment of User shall be considered the Sole Employees of User. All officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment, while engaged in, enroute to or from, or otherwise incident to operating wrecker or work trains clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment, shall for the purpose of this Section 4 be deemed the Sole Employees and/or Sole Property of the party bearing the cost of the other Loss or Damage of the wreck or derailment, or if more than one party is bearing the cost of the other Loss or Damage, the cost shall be borne on the same percentage as the Unit Cost Proportion for the prior twelve (12) calendar month period by such parties. Such officers, agents, employees, contractors, trains, locomotives, cabooses, cars or equipment while enroute from performing such clearing of wrecks or derailments or repairing or renewing the Joint Property to perform another type of service, shall not be deemed to be performing service incident to the instant wreck or derailment.

4.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons and others on its trains, engines, cars or equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole

Property, or property in its care, custody or control, except when the Loss or Damage is caused by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more of the other parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the party whose Sole Employees and/or Sole Property caused the same shall bear all of the cost, or on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employees and/or Sole Property shall have caused the same.

Loss or Damage to third parties, Joint Employees or Joint Property caused by the acts or omissions, negligent or otherwise of Sole Employees and or Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property caused the same, or on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employees and/or Sole Property shall have caused the same. Loss or Damage to third parties, Joint Employees or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned among all of the parties on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period, or if the month of occurrence cannot be determined, then for the twelve (12) calendar month period preceding the month in which the Loss or Damage was first discovered.

Loss or damage caused solely by third parties, or with the concurring acts or omissions of Joint Employees and/or Joint Property, to the extent that the cost thereof is not borne by or recovered from the third party, shall be apportioned among the parties on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period. Loss or damage caused by third parties as concurring acts or omissions of Sole Employees and/or Sole Property, shall be borne by the party whose Sole Employee and/or Sole Property caused same, or on the same percentage as the Unit Court Proportion for the prior twelve (12) calendar month period if more than one party's Sole Employee and/or Sole Property shall have caused

same, less any costs borne by or recovered from the third party.

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

4.4 For the purpose of this Section 4, equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such equipment, shall be considered the equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

Locomotives, cars, equipment, and other property being handled or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 4.

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

4.5 Each party hereto shall pay all Loss or Damage for which such party shall be liable under the provisions of this Section 4, and shall indemnify and save harmless the other parties against such Loss or Damage, including any such damages awarded in any court action.

Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Section 4, and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.

In the event two or more parties hereto may be liable for any Loss or Damage under the provisions of this Section 4, and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in

excess of the sum of Fifty Thousand Dollars (\$50,000) shall be made by or for any party so jointly liable without the written authority of the other parties so jointly liable, but any settlement made by any party in consideration of Fifty Thousand Dollars (\$50,000) or a lesser sum shall be binding upon the other parties.

In case a suit shall be commenced against any party hereto for or on account of Loss or Damage for which another party hereto is solely or jointly liable under the provisions of this Section 4, the party so sued shall give to such other party notice in writing of the pendency of such suit, and thereupon such other party shall assume or join in the defense of such suit.

No party hereto shall be conclusively bound by any judgment against any other party, unless such party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

Section 5. ARBITRATION

5.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party or parties. Otherwise, the party demanding such arbitration (the demanding party) shall notify the other party or parties (the noticed parties) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed parties shall each appoint an arbitrator and notify the demanding party in writing of such appointment. Should any noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party and the arbitrators for the other noticed parties, if any, shall select one for the noticed

party so failing, and if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the demanding party is located upon application by any party after ten (10) days written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place.

After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

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

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

Section 6.

GOVERNMENTAL APPROVAL ABANDONMENT

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

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

If, at the time of such election, User is the only party (other than Owner) having the right to use the Joint Trackage, Owner shall, concurrent with its Notice of Abandonment, and to the extent is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User.

Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

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

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

delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

6.5 Upon termination of the Agreement, or any partial termination, as the applicable case may be, User shall promptly, and in no event later than 90 days following termination of the Agreement, at User's sole cost and expense, file any necessary applications or petitions to dismiss, as appropriate, for termination of any consents, approvals or authorities received from any governmental agency pertaining to this Agreement.

Section 7. OTHER CONSIDERATIONS

7.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner.

7.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, lessees and assigns, but no sale, assignment, mortgage or lease by User of any interest or right given it under the Agreement separate and apart from the sale, assignment, mortgage or lease of all or substantially all of its railroad shall be valid or binding without the prior written consent of Owner.

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

7.4 All notices, demands, requests or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the President, Chief Operating Officer or Secretary of each company.

7.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity,

obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

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

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

END OF EXHIBIT "B"

EXHIBIT C

Refer to original Seattle T-5 Access Agreement

AGREEMENT

THIS AGREEMENT is entered into as of 31st day of May, 1994, by and between BURLINGTON NORTHERN RAILROAD COMPANY ("BN"), THE PORT OF SEATTLE ("Port"), and AMERICAN PRESIDENT LINES ("APL") and EAGLE MARINE SERVICES, LTD., ("Eagle") a wholly owned subsidiary of APL, collectively referred to as "Lessee".

WITNESSETH

WHEREAS, BN and Port have previously entered into a Memorandum of Agreement dated May 31st 1994, establishing the rail operating conditions, requirements, responsibilities and frame work in conjunction with the development and operation of Terminal 5 in West Seattle, Washington; and

WHEREAS, APL has assigned its interest under the Lease to Eagle pursuant to a Sixth Amendment to the Lease dated May 1, 1994; and

~~JUNE~~ WHEREAS, Port and APL have previously entered into a Lease Agreement for Terminal 5 in West Seattle, Washington; and

WHEREAS, Port, Lessee and BN desire to recognize and affirm the rights, duties and/or obligations of each as set forth in the Memorandum of Agreement dated May 31, 1994.

NOW, THEREFORE, in consideration of their mutual promises and intending to be legally bound thereby, Port, APL and BN agree as follows:

1. All parties acknowledge the rights, duties and/or obligations of each other assumed in the following sections of the Agreement: Sections A(2), C, D, E(1), F, G, H, I(2), J, K, L, N and O.

2. Lessee recognizes and affirms that it shall be bound by the sections of the Memorandum of Agreement as set forth in Item 1 above, and that BN, Port and Lessee have standing to enforce the rights, duties, and/or obligations as set forth within the sections of the Memorandum of Agreement as set forth in Item 1 above, and, further, they have standing to pursue dispute resolution under the terms of the Memorandum of Agreement.

3. It is understood by and between the parties that the Memorandum of Agreement between BN and Port, the Access

Agreement between BN and UP and the Amendment No. 6 to the Lease Agreement between Port and Eagle Marine Services, Ltd., a wholly owned subsidiary of APL, respectively shall not be effective until all referenced documents have been appropriately executed.

AGREED to by and between the undersigned parties on this 31st day of ~~April~~, 1994.
MAY

PORT OF SEATTLE

AMERICAN PRESIDENT LINES
~~On behalf of Eagle Marine Services, Ltd.~~

PHB
S
APL
PLW

By: *M.L. Dismore*
Its: M.L. Dismore
Executive Director

By: *Richard Burger*
Its: Executive Vice President

BURLINGTON NORTHERN RAILROAD
COMPANY

EAGLE MARINE SERVICES, LTD.

By: *C. Edlin*
Its: C. Edlin

By: *D.A. Will*
Its: Executive V.P. and General Manager



BURLINGTON NORTHERN RAILROAD

**Dave L. Hatzenbuhler
Assistant Vice President -
Corporate Development**

**2900 Continental Plaza
777 Main Street
Ft. Worth, TX 76102-5384
(817) 333-1546**

March 11, 1994

**Mr. Pete Baumhefner
Director Operations
American President Lines
1111 Broadway
Oakland, California 94607**

Dear Pete,

This letter will serve to confirm the agreement in principle previously reached between American President Lines and Burlington Northern Railroad concerning the joint sharing of switch engine service expenses at the new Terminal 5 on-dock container facility for an interim period upon the facilities opening.

As we have previously agreed, Burlington Northern will share with American President Lines equally such switch service costs for a period of time up to but not exceeding 180 days after opening of the facility to facilitate the development and implementation of appropriate and equitable Rail Services Standards and measurements. The actual length of time such share costing, up to 180 days, will be in effect will be determined by the Rail Services Standards Committee in its on-going responsibilities of establishing and monitoring Rail Services Standards.

This Letter of Understanding shall not be considered binding by Burlington Northern Railroad until the Memorandum of Agreement between Burlington Northern Railroad and the Port of Seattle, the Access Agreement between Burlington Northern Railroad and Union Pacific Railroad, and the Sixth Amendment to the Lease between Eagle Marine Services and the Port of Seattle are each duly signed and executed.

Sincerely,



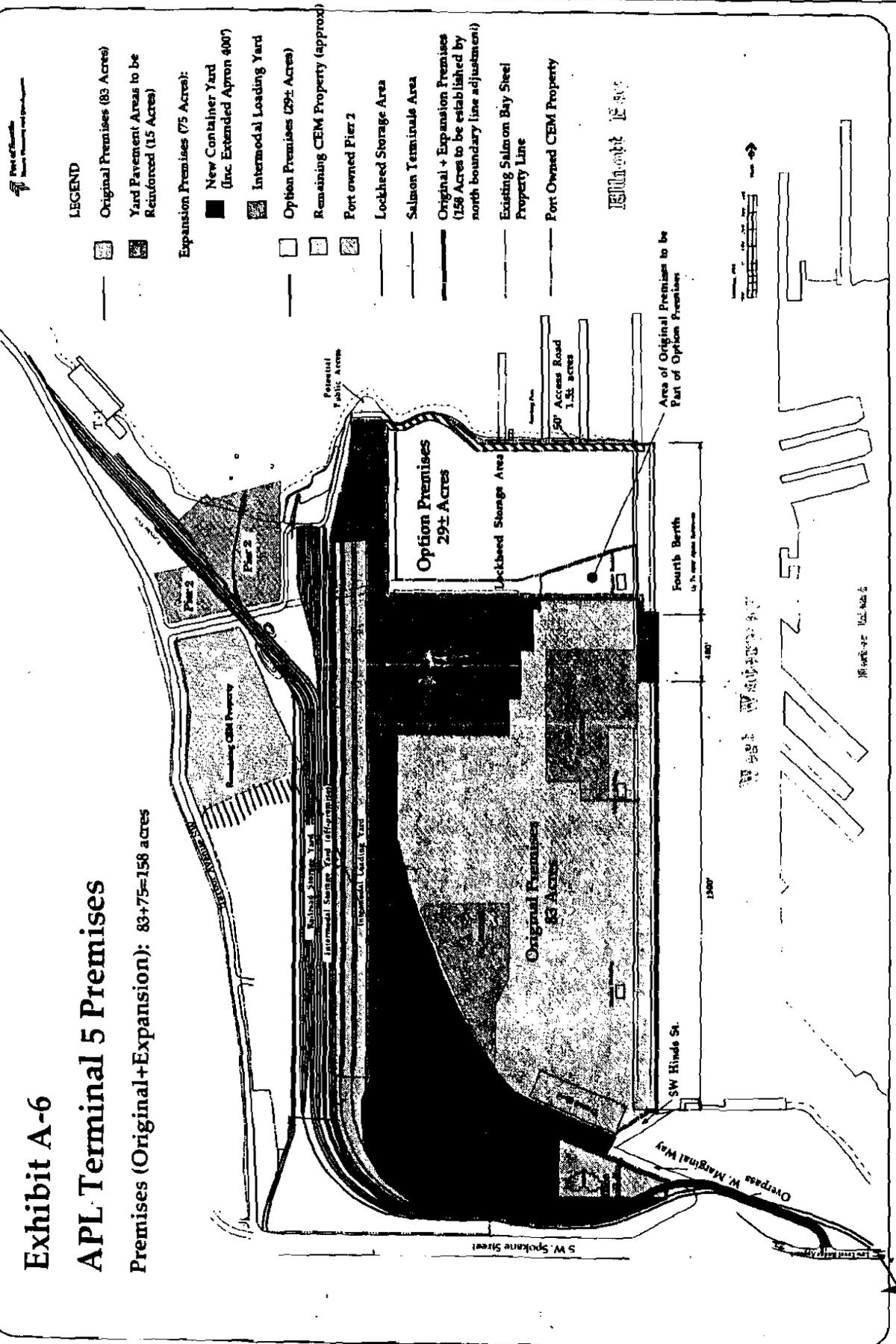
David L. Hatzenbuhler

**cc: John Beacom
John Carnahan
Frank Clark**

Exhibit A-6

APL Terminal 5 Premises

Premises (Original+Expansion): 83+75=158 acres



To Duwamish Waterway Rail Bridge

LEGEND:

-  APL use (Monthly Agreement M-3168)
-  Existing OPTCY
-  OPTCY Expansion (as needed)
-  Property Lines

Port of Seattle
Terminal 107

Approximate structure

Former Peacor, Inc.
Seaboard Lumber Property

Drummond
Lighterage
Property
(Closely)

28' Wide Timber Apron
Barr No. 2, 400'

85' Wide Concrete Apron
Barr No. 1, 650'

Terminal 105

DUMFRIES WAREHOUSE

Public Access Area

Exhibit G: Off-Premises Temporary Container Yard (OPTCY)

Scale 1:1000



Exhibit A

General Switching Area

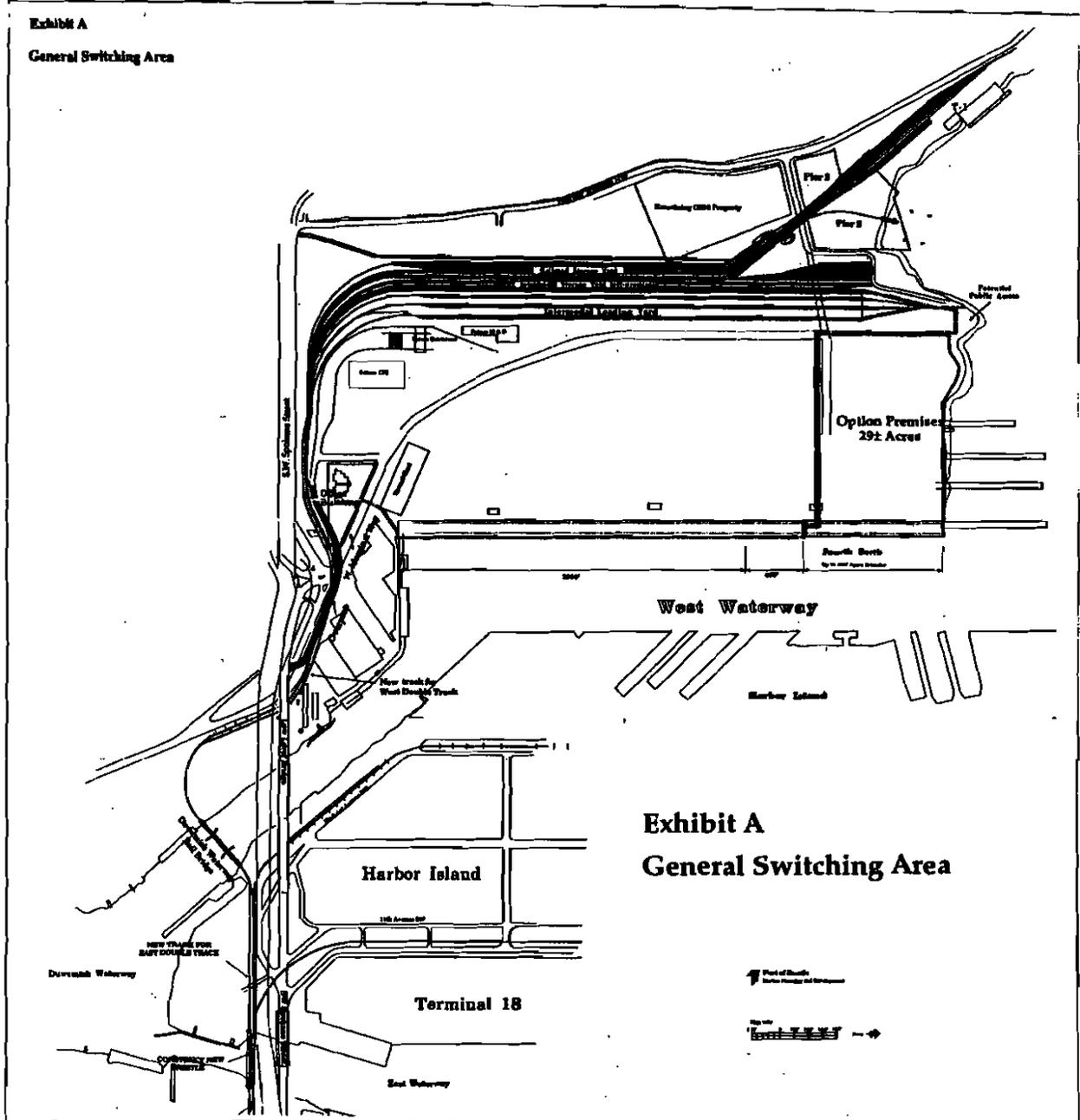


Exhibit A
General Switching Area

Exhibit C

The Tracks

LEGEND

- Option Premises (292 Acres)
- Remaining CIM Property
- Fort owned Pier 2
- Original + Expansion Premises (158 Acres)
- The Tracks

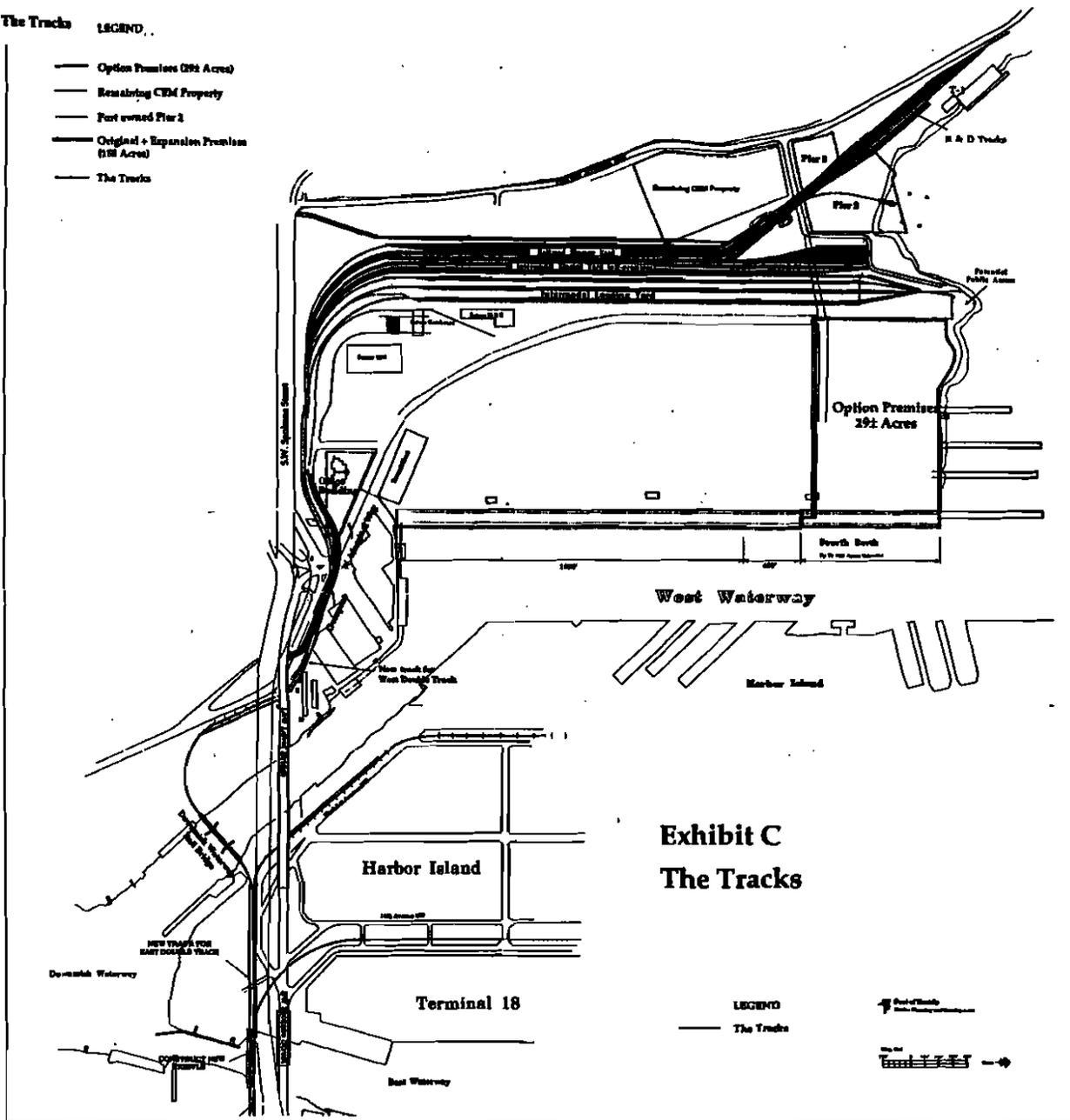


Exhibit C
The Tracks

LEGEND

- The Tracks

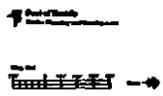
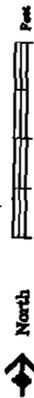


Exhibit I-1: General Switching Area

Port of Seattle
Marine Planning and Development



January, 1994
Notes: This map may not be to scale.

Legend:

— General Switching Area

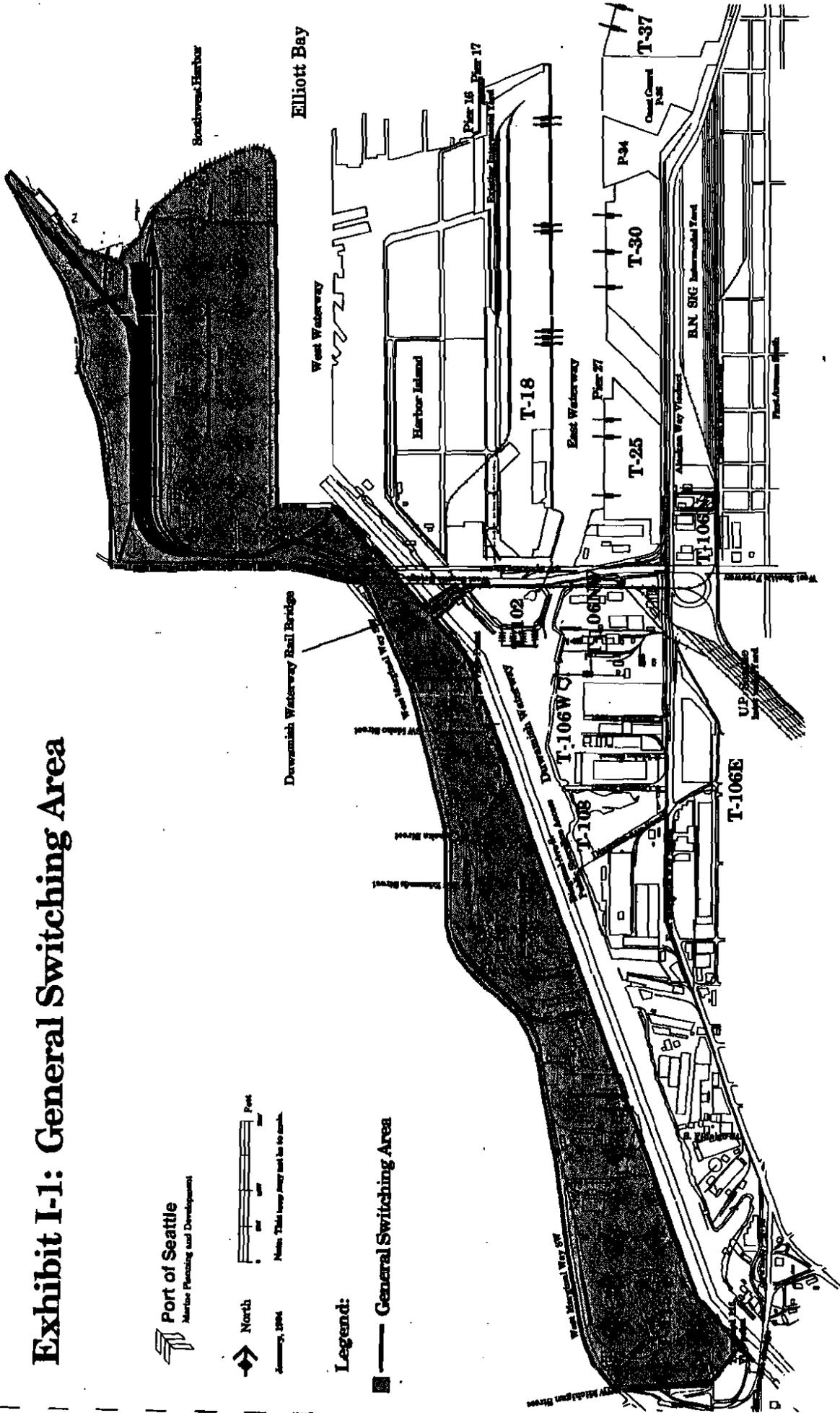


Exhibit I-2A

Rail Facility in the Area of T-5

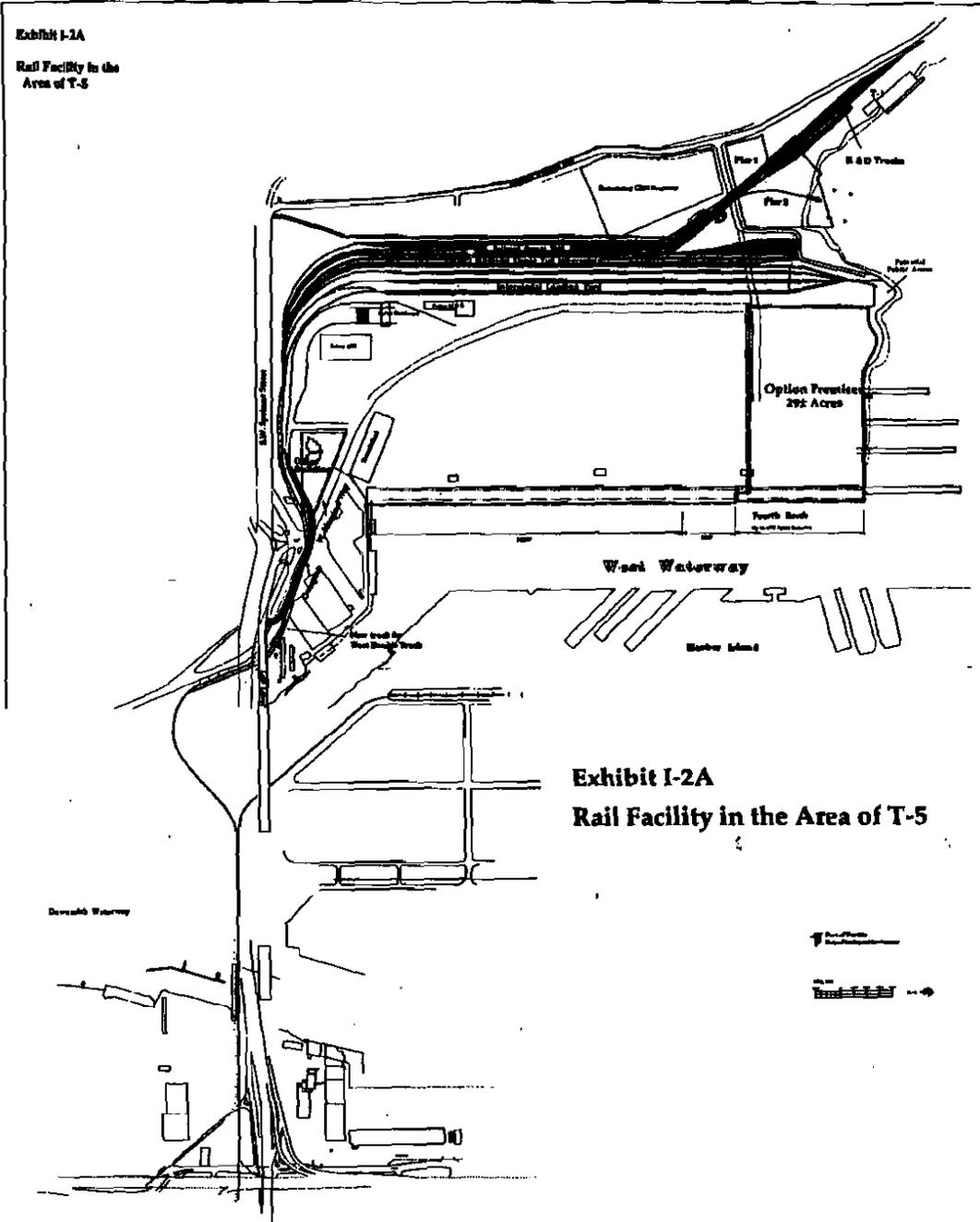
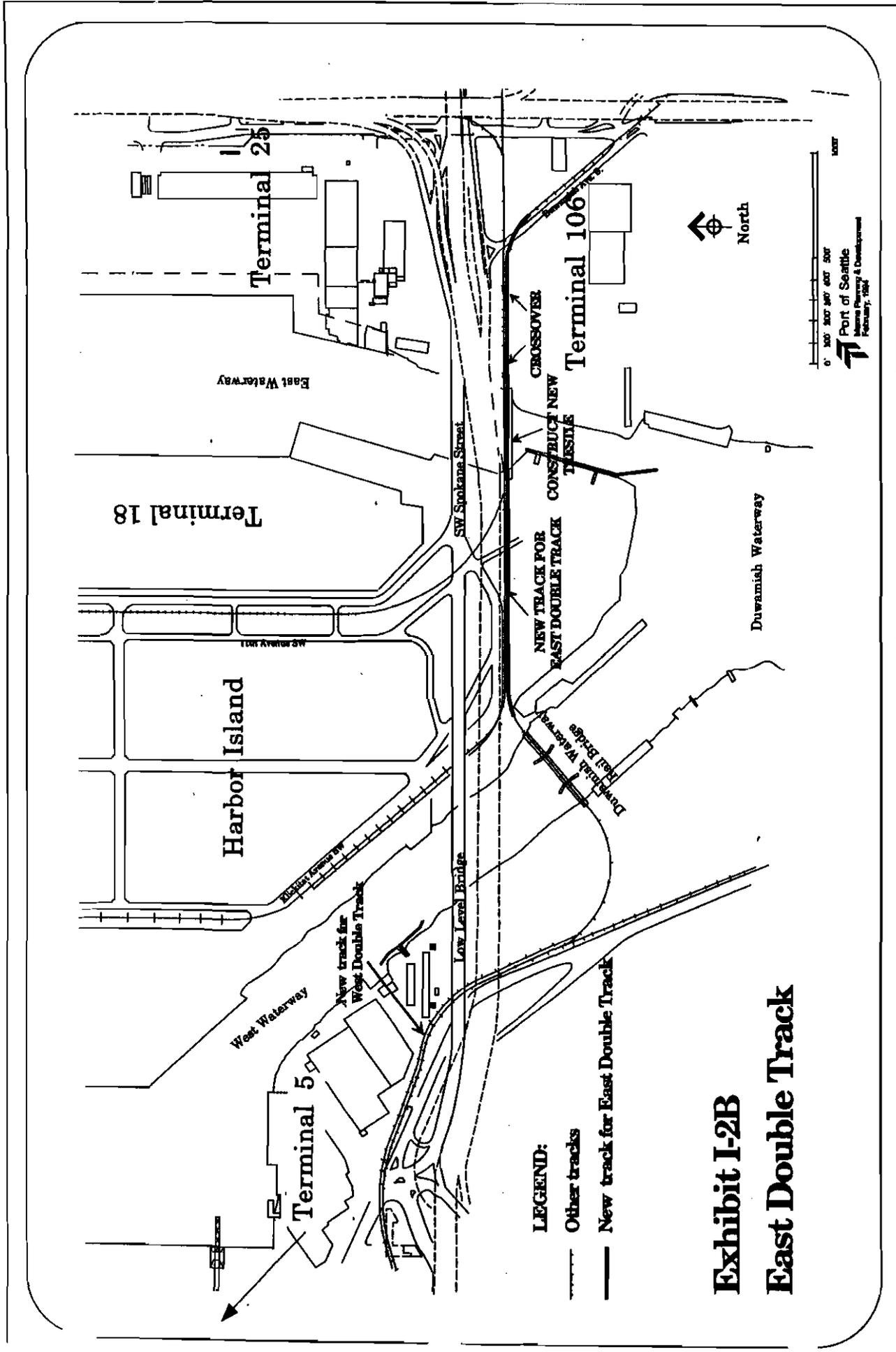


Exhibit I-2A
Rail Facility in the Area of T-5



East Waterway

Terminal 18

Harbor Island

Terminal 5

West Waterway

New track for West Double Track

Low Level Bridge

NEW TRACK FOR EAST DOUBLE TRACK

CONSTRUCT NEW TIEBACK

CROSSOVER

Terminal 106

Duwamish Waterway

LEGEND:

--- Other tracks

— New track for East Double Track

**Exhibit I-2B
East Double Track**



North



500'

Port of Seattle
Marine Planning & Development
February, 1984