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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
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FEE \$50.00 Pgs: 21  
DEP RTT REC'D FOR BLUESTONE CONSTR  
UCTION  
**AUDIT 250856**

Wireline Crossing 080808  
Form Approved, AVP-Law

SW 20 4N-1W

Folder No. 02548-82

10-069-0043 PT

### WIRELINE CROSSING AGREEMENT

Opposite Mile Post: 805.65, Salt Lake Subdivision  
Location: Layton, Davis County, Utah

**THIS AGREEMENT** ("Agreement") is made and entered into as of March 09, 2009, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **THE KROGER CO.**, an Ohio limited liability corporation to be addressed at The Kroger Co, 10170 Linn Station Road, Louisville, Kentucky 40223 ("Licensee").

**IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**Article 1. LICENSOR GRANTS RIGHT.**

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

*UP TO FIVE ONE* 12.47 kV wireline  
*DRA JJ*

across Licensor's track(s) and property (the "Wireline") in the town of Layton, County of Davis, State of Utah in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 05, 2009, marked Exhibit "A" attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than for the purpose set forth in this Article I, and the Wireline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

**Article 2. LICENSE FEE.**

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Two Thousand Dollars (\$2,000.00)**.

**Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.**

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

**Article 4. DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Wireline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

**Article 5. INSURANCE.**

A. Before commencement of the term of this Agreement and prior to any Wireline construction, the Licensee or Licensee's contractor shall obtain the required Railroad Protective Liability insurance at its sole expense, as specified in Section E on Exhibit C attached hereto and hereby made a part hereof. The Licensee, at its sole expense, shall also provide to the Licensor the insurance binders, certificates and endorsements described in Exhibit C, and also require that its contractor or subcontractor maintain the insurance coverages as set forth in Exhibit C, naming Licensor as an additional insured.

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

C. All insurance correspondence, binders, certificates and endorsements shall be directed to:

Union Pacific Railroad Company  
Real Estate Department – Folder No. 02548-82  
1400 Douglas Street STOP 1690  
Omaha, NE 68179-1690

D. Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Article shall not operate as a waiver of Licensee's obligations hereunder.

E. If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit C shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of Licensor.

F. The fact that insurance (including without limitation, self-insurance) is obtained by Licensee or its contractor/subcontractor shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

**Article 6. TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

THE KROGER CO.

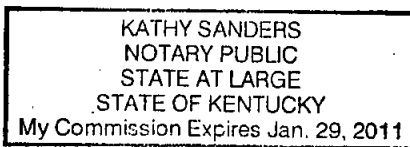
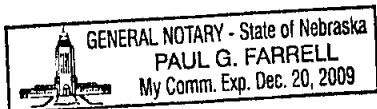
By: \_\_\_\_\_

*[Signature]*  
Manager - Contracts

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

*[Signature]*

Name Printed: Dennis Anderson  
Title: SI. Manager Logistics



**RECEIVED**

APR 27 2009

Bluestone Construction LLC  
Louisville, Kentucky

2-21-09

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

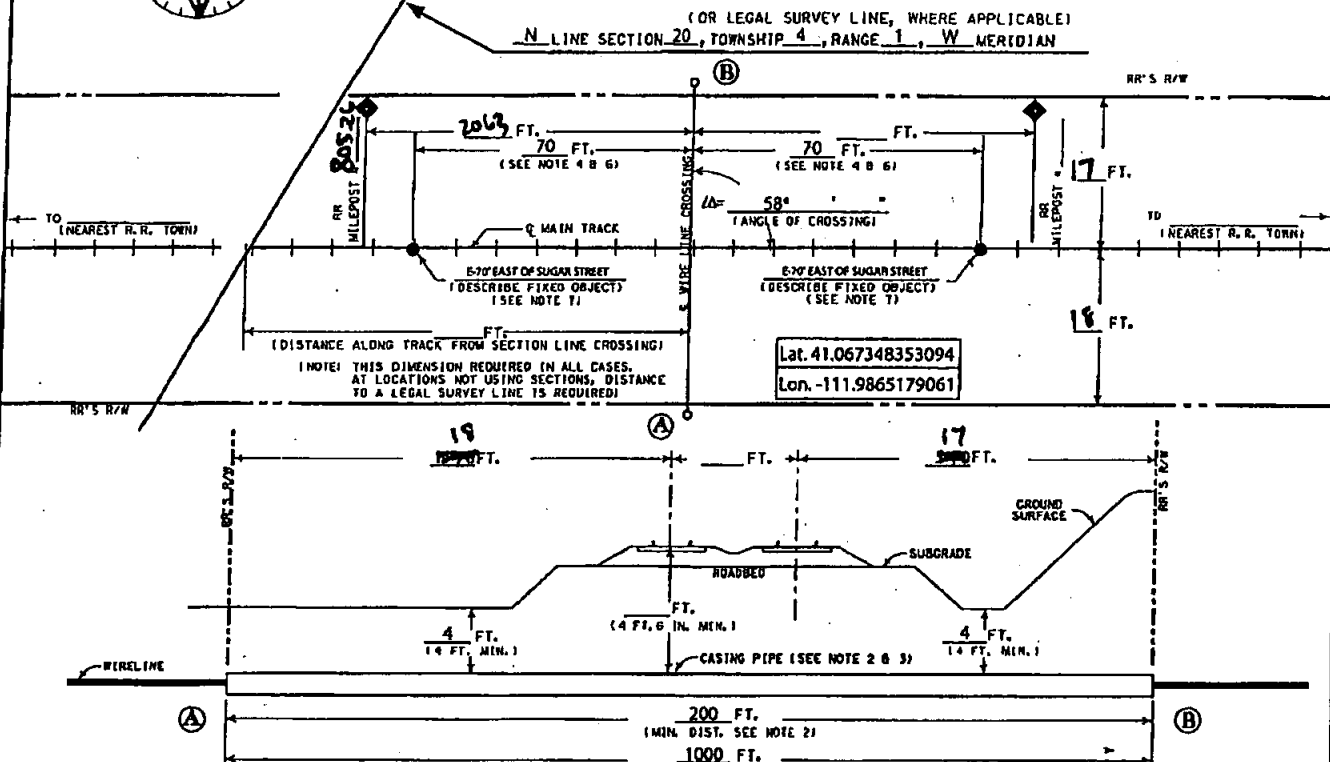


# UNDERGROUND WIRELINE CROSSING OVER 750 VOLTS

FORM DR-0404-G  
REV 10-26-2007  
www.uprr.com

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.

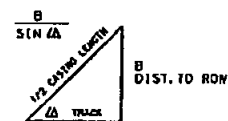
NO SCALE



**NOTES :**

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM C. OF TRACK, EXCEPT AS NOTED.
- 2) ENCASE COMPLETELY ACROSS OUR R/W WITH A RIGID METALLIC CONDUIT OR NON-METALLIC CONDUIT (PVC) ENCASED IN A MINIMUM OF 3 INCHES OF CONCRETE.
- 3) INSTALL 6 INCH WIDE WARNING TAPE 1 FOOT BELOW GROUNDLINE DIRECTLY OVER THE UNDERGROUND POWER LINE WHERE LOCATED ON OUR R/W OUTSIDE THE TRACK BALLAST SECTIONS.
- 4) IF WITHIN AREA OF UNDERGROUND SIGNAL FACILITIES SUCH AS FLASHING CROSSING SIGNALS, POWER SWITCHES, TRACK SIGNALS, ETC., CHECK WITH SIGNAL DEPARTMENT.
- 5) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 6) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, C. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 7) ALLOWABLE FIXED OBJECTS (INCLUDE: BACKWALLS OF BRIDGES; C. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR C. CULVERTS).
- 8) CASINO AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND OUG.

FORMULA TO FIGURE CASING LENGTH WITH ANGLE OF CROSSING OTHER THAN 90°



A) IS WIRELINE CROSSING WITHIN DEDICATED STREET ? C YES; C NO;  
 B) IF YES, NAME OF STREET SUGAR STREET  
 C) VOLTAGE TO BE CARRIED UNDER TRACK 12470  
 D) DISTRIBUTION LINE C OR TRANSMISSION LINE C  
 E) MAXIMUM CURRENT 500  
 F) SINGLE PHASE C THREE PHASE C NO. OF CIRCUITS 2  
 G) MAX. OPERATING CURRENT TO GROUND AT FEED END 492 AMPS.  
 H) MAX. OPERATING CURRENT TO GROUND AT LOAD END 492 AMPS.  
 I) WHAT TYPE OF FACILITY WILL LINE BE SERVING? DISTRIBUTION/MANUFACTURING  
 J) IF SEPARATE CABLES ARE USED, WHAT IS THE AVG. DISTANCE BETWEEN CABLES? \_\_\_\_\_  
 K) IF A NEW POWER SUBSTATION IS TO BE BUILT OR REVISED WITHIN 1/2 MILE OF RR, WHAT IS: MAX OPERATING CURRENT TO GROUND? \_\_\_\_\_ AMPS;  
 MAX RESISTANCE TO GROUND? \_\_\_\_\_ OHMS; MAX FAULT CURRENT TO GROUND? \_\_\_\_\_ AMPS.  
 L) CASING TYPE TO BE INSTALLED 02  
 M) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):  
C DRY BORE AND JACK (WET BORE NOT PERMITTED);  
C TUNNEL; OTHER TRACK DOESN'T EXIST. THIS WILL BE OPEN EXCAVATION  
 N) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PILTS WHEN MEASURED AT RIGHT ANGLES TO TRACK \_\_\_\_\_ FT. (30' MIN.)  
 O) APPLICANT HAS CONTACTED 1-800-336-9193  
 U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE \_\_\_\_\_ DOES; \_\_\_\_\_ DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED.  
 TICKET NO. \_\_\_\_\_

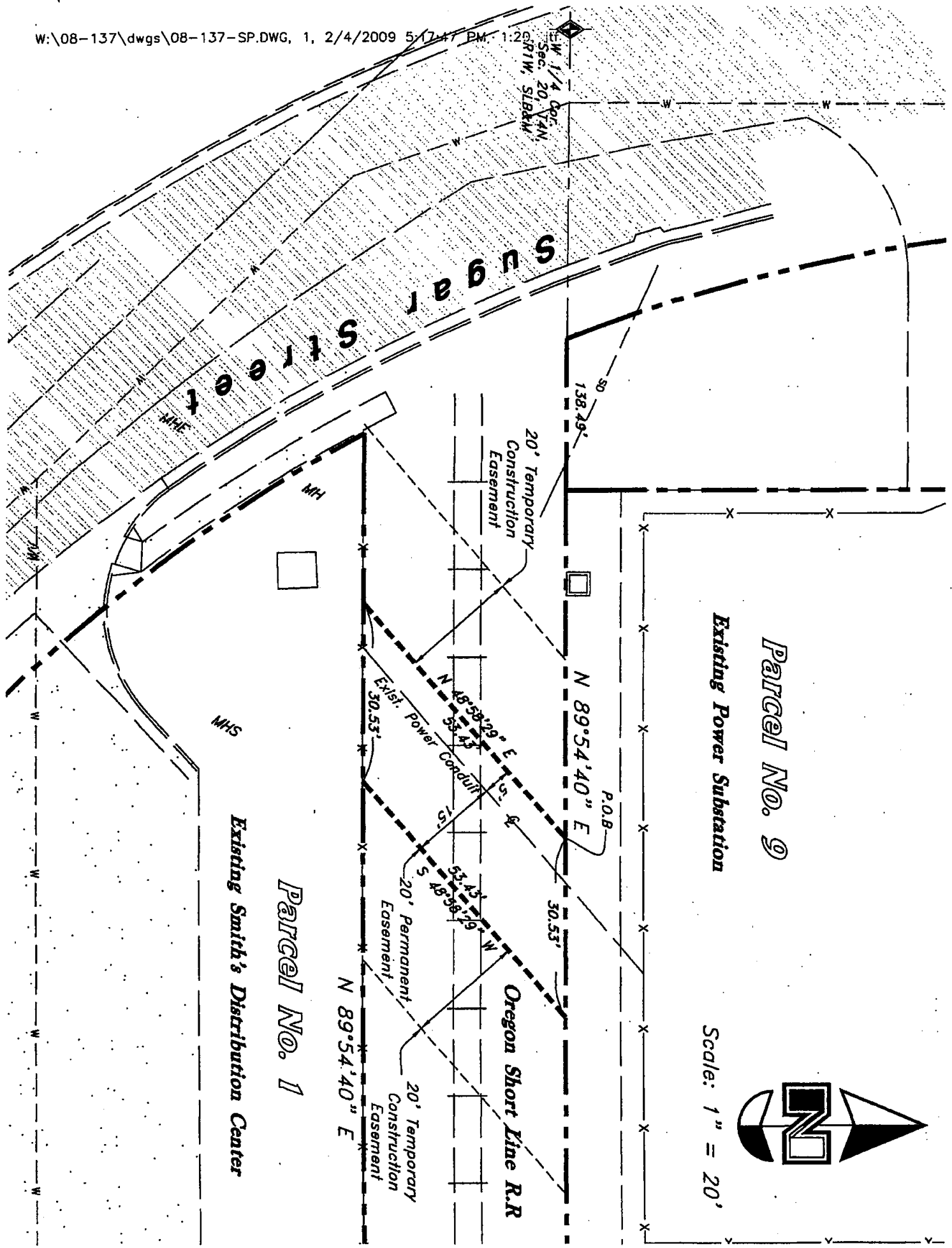
**EXHIBIT "A"**  
(FOR RAILROAD USE ONLY - DO NOT WRITE IN THIS BOX)

UNION PACIFIC RAILROAD CO.  
 Salt Lake (Abandoned Spur 189. 805.26)  
(SUPERVISOR)  
 M. P. 805.65 E. S. 20+631  
 UNDERGROUND WIRELINE CROSSING  
 LAYTON Davis UT  
(NEAREST RR STATION) (COUNTY) (STATE)  
 FOR THE KROGER CO. (APPLICANT)  
 RR FILE NO. 0254882 DATE 3-5-09

**WARNING**  
 IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
 PHONE 1 1-800-336-9193

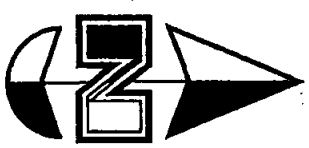
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SW 1/4 Cor.  
Sec. 20, T4N,  
R1W, S1B&M



Parcel No. 9

Existing Power Substation



Scale: 1" = 20'

Parcel No. 1

Existing Smith's Distribution Center

Oregon Short Line R.R.

20' Temporary Construction Easement

20' Permanent Easement

Exist. Power Conduit

20' Temporary Construction Easement

N 89°54'40" E

138.49'

30.53'

30.53'

30.53'

30.53'

30.53'

N 48°58'39" E

S 53°43'19" W

S 48°58'39" W

S 53°43'19" W

S 48°58'39" W

N 89°54'40" E

MHS

MH

MH

MH

MH

MH

MH

MH

MH

**Bluestone Construction  
Layton Smith's Warehouse  
Power Easement**

**February 4, 2008**

**20' Permanent Easement**

A part of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City, Davis County, Utah;

Beginning at a point on the South line of Parcel No. 9, being 138.49 feet North 89°54'40" East along the Quarter Section Line from the West Quarter Corner of said Section 20; and running thence North 89°54'40" East 30.53 feet along said Quarter Section line and South line of Parcel no. 9; thence South 48°59'29" West 53.43 feet to the North line of Parcel No. 1; thence South 89°54'40" West 30.53 feet along said North line; thence North 48°59'29" East 53.43 feet to said Quarter Section line, said South line of Parcel No. 9, and the point of beginning.

**Contains 1,069 sq. ft.**

**60' Temporary Construction Easement  
(20' Easterly and Westerly of 20' Permanent Easement)**

A part of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City, Davis County, Utah;

Beginning at a point on the South line of Parcel No. 9, being 107.96 feet North 89°54'40" East along the Quarter Section Line from the West Quarter Corner of said Section 20; and running thence North 89°54'40" East 91.60 feet along said Quarter Section line and South line of Parcel no. 9; thence South 48°59'29" West 53.43 feet to the North line of Parcel No. 1; thence South 89°54'40" West 91.60 along said North line and the projection thereof; thence North 48°59'29" East 53.43 feet to said Quarter Section line, said South line of Parcel No. 9, and the point of beginning.

**Contains: 3,206 sq.ft.**

Form Approved, AVP-Law  
Updated 063008

**EXHIBIT B**

**Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

A. The Wireline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering - Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

B. All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Wireline shall be done to the satisfaction of the Licensor.

C. If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

D. The Wireline shall be designed, constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.

E. In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on Exhibit A. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline

buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage", or equivalent working. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

F. Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

G. The Licensee shall keep and maintain the soil over the Wireline thoroughly compacted and the grade even with the adjacent surface of the ground.

H. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.**

A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

Jeff Gale - MTM  
Union Pacific Railroad Company  
2101 Pacific Avenue  
Ogden, UT 84401  
(801) 212-4005, Cellular (801) 557-4410

David Black - MSM  
Union Pacific Railroad Company  
2101 Pacific Avenue  
Ogden, UT 84401  
(801) 626-8207

B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving



the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.

C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.

D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period.

required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees and contractors and subcontractors are competent and adequately trained in all safety and health aspects of the job.

I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.**

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Wireline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

**Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF WIRELINE.**

A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Wireline, or move all or any portion of the Wireline to such new location, or remove the Wireline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.

B. All the terms, conditions and stipulations herein expressed with reference to the Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

**Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.**

A. The Wireline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems), and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

B. In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for any reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure safe and reliable maintenance and operation of the facilities of Licensor and/or its tenants because of interference from the Wireline.

C. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

D. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.

E. When not in use, any machinery and materials of Licensor or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.

F. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

**Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense

whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

**B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

**Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.**

A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Wireline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Wireline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Wireline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

**Section 9. RESTORATION OF LICENSOR'S PROPERTY.**

In the event the Licensor authorizes the Licensee to in any manner move or disturb any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore property to the same condition as the same were in before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands,

costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any property of the Licensor.

**Section 10. INDEMNITY.**

A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

**B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OR ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

1. **THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE WIRELINE OR ANY PART THEREOF;**
2. **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
3. **THE PRESENCE, OPERATION, OR USE OF THE WIRELINE OR ELECTRICAL INTERFERENCE OR OTHER TYPES OF INTERFERENCE CREATED OR CAUSED BY THE WIRELINE OR ESCAPING FROM THE WIRELINE;**
4. **THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED BY LICENSEE;**
5. **ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**
6. **LICENSEE'S BREACH OF THIS AGREEMENT,**

**EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.**

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

**Section 11. REMOVAL OF WIRELINE UPON TERMINATION OF AGREEMENT.**

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Wireline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

**Section 12. WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

**Section 13. TERMINATION.**

A. If the Licensee does not use the right herein granted or the Wireline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

**Section 14. AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

**Section 15. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Form Approved, AVP-Law  
Updated 063008

**EXHIBIT C**

**Union Pacific Railroad Company  
Insurance Exhibit**

**PART 1: GENERAL INSTRUCTIONS AND REQUIREMENTS:**

Prior to execution of this License, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with all insurance required by this License.

All certificates of insurance and correspondence shall be addressed and sent to:

Union Pacific Railroad Company  
Real Estate Department – Folder No.: 02548-82  
1400 Douglas St., STOP 1690  
Omaha, NE 68179-1690

All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

All policies required by this License shall provide coverage for punitive damages unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this License, or (d) all punitive damages are prohibited by all states in which this License will be performed.

The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the Indemnity provisions of this License. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

**PART 2: SPECIFIC INSURANCE LIMITS AND REQUIREMENTS**

Licensee shall, at its sole cost and expense, procure and maintain during the life of this License (except as otherwise provided in this License) the following insurance coverage:

- A. Commercial General Liability Insurance** written on ISO Occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) with limits of not less than:
- \$2,000,000 Each Occurrence
  - \$4,000,000 Aggregate

This policy must also contain the following endorsements (which must be stated on the certificate of insurance):



- **Additional Insured Endorsement ISO Form CG 20 26** (or a substitute form providing equivalent coverage).  
The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement Form CG 20 26, provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this License.
- **Contractual Liability - Railroads ISO Form 24 17 10 01** (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" covered by this License as the "Designated Job Site".

**B. Business Automobile Liability Insurance** written on ISO Form CA 00 01 10 01 (or a substitute form providing equivalent coverage) with a limit of:

- \$2,000,000 each accident.

This policy must contain the following endorsements (which must be stated on the Certificate of Insurance):

- **Designated Insured ISO Form CA 20 48 02 99** (or a substitute form providing equivalent coverage).
- **Coverage for Certain Operations in Connection with Railroads ISO Form CA 20 70 10 01** showing "Union Pacific Railroad Property" covered by this License as the "Designated Job Site".
- **Motor Carriers Act Endorsement OMB Form MCS-90** (if required by law).

**C. Workers Compensation Insurance.** Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this License. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.
- If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided.
- Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability obtained by Licensee required in this License. This waiver must be stated on the certificate of insurance.

**D. Umbrella or excess liability Insurance.** If Licensee utilizes umbrella or excess policies to meet limit requirements, these policies must "follow form" and afford no less coverage than the primary policy. If utilized, Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by Umbrella or Excess Liability obtained by Licensee required in this License. This waiver must be stated on the certificate of insurance.

**E. Railroad Protective Liability Insurance.** At all times during construction, installation, repair or removal of a pipeline or wire line Licensee or its Contractor must obtain and maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form

providing equivalent coverage) on behalf of Railroad as named Insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

Form Approved, AVP-Law  
Updated 063008

EXHIBIT D

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents.

**I. Clothing**

- A. All employees will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Employees shall wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

### IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.