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KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ASSOCIATED TITLE
REC BY: KARMA BLANCHARD, DEPUTY

AGREEMENT FOR PRIVATE ROADWAY

Milepost Location
No. 793.57

THIS AGREEMENT FOR PRIVATE ROADWAY (hereafter "Agreement") is made and entered into as of the 21st day of January, 1994, by and between UTAH TRANSIT AUTHORITY, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended (hereinafter "UTA") which is the owner of real property containing a railroad right-of-way, and AFP ENTERPRISES UTAH, L.L.C, a limited liability company organized under the laws of the State of Utah, to be addressed at

(hereafter "Licensee") who desires to obtain from UTA a license for a private roadway crossing at grade of the Right-of-Way.

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

ARTICLE 1. PRELIMINARY MATTERS.

Licensee desires to maintain and use a private roadway and grade crossing of the road bed and tracks across UTA's Right-of-Way at approximately Mile Post Location No. 793.57, at approximately 4300 South Street, Salt Lake County, State of Utah.

Pursuant to the need to protect UTA's present and future use of the Right-of-Way, UTA is willing to grant to Licensee a license to permit Licensee to maintain, use and if necessary repair and replace the subject Grade Crossing (defined below) in accordance with the terms, conditions, limitations and restrictions hereinafter set forth.

ARTICLE 2. INCORPORATED TERMS, DEFINITIONS.

The definitions set forth in Exhibit "B" hereto shall apply to this Agreement. This Agreement is subject to, and the Grade Crossing (as defined in Article 3) shall be constructed, installed, renewed, reconstructed, Maintained, repaired, modified, used, operated, relocated and removed, in accordance with the terms, provisions, conditions, limitations and covenants set forth herein and in the General Conditions, Exhibit "B" hereto attached, which terms, provisions, conditions, limitations and covenants of the General Conditions, Exhibit "B", are incorporated herein by this reference.

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ARTICLE 3. GRADE CROSSING ON UTA RIGHT-OF-WAY; LICENSE.

A. Licensee desires the use and operation of a private roadway over the tracks of UTA's Right-of-Way at grade, at or near Fireclay Avenue, located at approximately Milepost Location No. 793.57, all as shown, and in conformity with Exhibit "A" dated January 5, 1994, attached hereto and made a part hereof. On the east side of the center line of the main line track the private roadway is 24 1/2 feet wide and on the west side of the center line of the main line track the private roadway flares out and increases in width being 24 1/2 feet wide at center line of the main line track and being 39 feet wide at the west boundary line of the Right-of-Way. The above-referenced private roadway and all appurtenances and additions comprising the structure for carrying and providing for said roadway over the tracks and across UTA's Right-of-Way and along with that portion of the roadway located within the Right-of-Way, is hereafter referred to as "Grade Crossing". The location of the subject Grade Crossing and the roadway boundaries and UTA's Right-of-Way and tracks are all shown on Exhibit "A". The Grade Crossing and Crossing Area is shown by the cross-hatched area on Exhibit "A".

B. In consideration of the covenants and agreements herein contained to be kept, observed and performed by Licensee, and subject to the provisions of this Agreement, UTA hereby grants to Licensee for the term hereof a non-exclusive license to construct, locate, Maintain, use and operate, at Licensee's sole cost, expense and responsibility, the Grade Crossing inside the boundaries of UTA's Right-of-Way, as shown on Exhibit "A". UTA's title to the underlying property shall not be affected and Licensee shall have no property interest whatsoever in UTA's Right-of-Way or other property, but Licensee is granted only the license referred to herein. The license granted hereby shall be perpetual except for termination effected pursuant to Section 15 of Exhibit "B" entitled "TERMINATION". All items constructed within the boundaries of the Right-of-Way shall be and remain the sole property of UTA. UTA grants to Licensee, subject to the terms and conditions herein contained, the right to construct, locate, maintain, use and operate the subject private roadway and Grade Crossing across that portion of UTA's Right-of-Way at the location described herein.

(1) This grant shall not be construed as conveying or otherwise vesting in Licensee the right to install or to authorize the installation of any ditches, pipes, drains, sewer or underground structures, or pipelines or any telegraph, telephone, fiber optic, communication lines, electric power lines or other similar facilities in, upon, over, under, across or along the Right-of-Way or Crossing Area, except as necessary for maintenance of the subject

roadway, Grade Crossing and Crossing Area. Licensee shall not use the Crossing Area except for the usual ordinary purposes of a private roadway, and it is expressly understood and agreed that such purposes shall not be deemed to include the use by Licensee, or by others, for railroad, street railway, interurban railway or other rail transportation purposes or for the construction or maintenance of electric power transmission lines, gas lines, oil lines or gasoline or other pipe lines, ditches, drains, communication lines, fiber optics or underground facilities or structures. Licensee shall not use or permit the use of the Grade Crossing and Crossing Area for the transportation of persons or property other than its use as a private roadway.

(2) Licensee shall have a right of entry and obligation to control and remove from the Crossing Area weeds and vegetation which may obstruct the view of approaching motorists or which are otherwise not allowed to remain in place.

(3) The rights herein granted are expressly limited vertically and shall not extend beyond a plane parallel with and twenty (20) feet above the surface of the roadway as originally constructed, except that lighting fixtures and similar roadway appurtenances may extend above said plane, provided that any such facilities shall be removed or rearranged within thirty (30) days after notification from UTA that such facilities interfere with UTA's intended use of the space above said plane.

(4) The permission herein given is not exclusive, UTA reserving for itself, its agents, employees, and licensees the right to use the portion of said roadway located within the Right-of-Way, the Crossing Area and the Grade Crossing jointly with Licensee. UTA agrees not to grant to third parties subsequent licenses which preclude Licensee from using the Grade Crossing.

C. UTA shall have the right, but not the duty, to observe and inspect any and all construction, installation, Maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Grade Crossing, and/or that portion of the roadway within the Crossing Area, and other work concerning or related to the Grade Crossing and/or said portion of the roadway (hereafter "Construction"), and to require safety or other precautions and standards to be met or used during such Construction. Licensee and its contractors shall comply with the rules, regulations and instructions of UTA and its representatives as to the proper manner of protecting the facilities of UTA at and in the vicinity

of said roadway and Grade Crossing during the performance of any Construction.

ARTICLE 4. PLANS AND SPECIFICATIONS.

Any Construction related to the Grade Crossing under the terms of this Agreement shall be in conformity in all respects with plans and specifications prepared by and at the expense of Licensee and as approved by UTA and Licensee prior to the beginning of any such Construction related to said Grade Crossing, it being understood that UTA assumes no responsibility for the stability of said roadway or Grade Crossing nor for the safety of the roadway traffic thereon. Licensee shall make sure that the design and construction of the Grade Crossing is proper and sufficient, including appropriate safety factors.

ARTICLE 5. ACCESS; CONSTRUCTION; CONSTRUCTION COST; PAYMENT AND PERFORMANCE BONDS.

A. With the exception of crossing by using the roadway, prior to entering the Right-of-Way for any purpose, including the purposes of designing, constructing, installing, Maintaining, relocating, renewing, reconstructing, modifying, repairing and/or removing any portion of the Grade Crossing and any Construction regarding the Grade Crossing, Licensee shall sign in advance UTA's standard access agreement and shall comply with all provisions thereof, and also shall give UTA and Freight Operator 72 hours advance notice of each entry upon the Right-of-Way.

B. Licensee shall, at its sole cost and expense, perform all work and furnish all materials in connection with all Construction it causes to be performed related to said Grade Crossing. All such Construction concerning the Grade Crossing shall comply with all UTA specifications and requirements, all at Licensee's sole cost and expense. The contractor(s) to perform any such Construction work inside the boundaries of the Right-of-Way must be approved by UTA in advance as evidenced by UTA's execution of the Agreement with Contractor referred to in Article 10 below. Licensee, at its own cost and expense and subject to the prior approval of UTA, shall cause to be performed all grading and install all necessary drainage improvements and facilities required in connection with such Construction regarding the roadway and Grade Crossing to the standards and satisfaction of UTA, and shall arrange to modify any overhead and/or underground Utilities to meet UTA specifications, as determined by UTA. Licensee shall not suffer or permit drainage water to flow or collect upon the Right-of-Way or other property

of UTA because of the Construction, existence or operation of the Grade Crossing, and shall provide adequate passageway for the waters of any runoff, streams, bodies of water and drainage facilities (either natural or artificial, and including water from UTA's culvert and drainage facilities), so that water may not be impeded, obstructed, diverted or caused to back up, overflow or damage the Right-of-Way or other property of UTA or any part thereof, or the property of others.

C. All Construction relating to the Grade Crossing shall be done only during the Work Window and UTA's Right-of-Way shall be kept free and clear of all obstructions of any kind, and Licensee shall keep the Right-of-Way fully and safely operational for passenger service and freight service during all periods of Construction.

D. Licensee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, and furnish satisfactory evidence of such compliance to UTA upon request. Should any release, discharge, leakage, spillage, emission or pollution of any type occur upon or arise on UTA's Right-of-Way or any other property as a result of Licensee's use, presence, operations, the exercise of the rights granted hereunder or the existence of the Grade Crossing, Licensee, at its expense, shall be obligated to clean all property affected thereby, whether owned or controlled by UTA or any third persons, to the satisfaction of UTA (insofar as the property is owned or controlled by UTA) and any Governmental Authority having jurisdiction in the matter. UTA may, at its option, clean UTA's premises; if UTA elects to do so, Licensee shall pay UTA the costs of such cleanup promptly upon the receipt of bills therefor. Licensee agrees to investigate, release, protect, indemnify, defend and hold UTA harmless from and against all Loss, liability, cost and expense (including, without limitation, any fines, penalties, judgments, litigation costs and attorney fees) arising from Licensee's breach of this section, or as a result of any release, discharge, leakage, spillage or emission of Hazardous Materials or any other pollution, arising as a result of Licensee's use, presence, operations, exercise of the rights granted hereunder or the existence of the Grade Crossing, regardless of whether such Loss, liability, cost or expense arises during the time this Agreement is in effect or thereafter, unless such Loss, liability, cost or expense is proximately caused solely and exclusively by the active negligence of UTA, its officers, agents or employees.

ARTICLE 6. UTA PROTECTIVE SERVICES.

During Construction UTA and/or Freight Operator may, in the event they deem necessary, arrange for flagging, lighting, flashing signal barricades or other protection as required. Any such protection furnished by UTA and/or Freight Operator shall be at Licensee's sole cost and expense. UTA and/or Freight Operator may employ and furnish, at the expense of Licensee, such flagmen and watchmen as may be reasonably necessary to protect passenger or freight operations and traffic during the progress of the work contemplated by this Agreement and during any Construction related to the Grade Crossing. Such employees shall be deemed to be an employee of Licensee's contractor.

UTA may, at the expense of Licensee, furnish such inspector as it deems reasonably necessary for the purpose of inspection of work performed by Licensee or by contractors of Licensee. UTA's inspector shall have authority to control the operations of any contractor or subcontractor while excavating or doing any other work immediately adjacent to, under, over or afoul of any tracks. It is understood, however, that all suggestions, recommendations, and requirements of any such UTA inspector, except for control of work adjacent to, under, over or afoul of the tracks, shall be made to Licensee or to Licensee's contractor and not to any subcontractor or subcontractors employed by Licensee's contractor, and such UTA inspector shall not have any direct authority over any subcontractor whatsoever, other than such as may be necessary to avoid or eliminate a serious accident hazard. Licensee shall require its contractor and each subcontractor to conduct its operations in accordance with all reasonable requirements set forth by UTA and the inspectors of UTA.

ARTICLE 7. NO BENEFIT TO UTA FROM CONSTRUCTION

It is understood and agreed that no benefit accrues to UTA from the Grade Crossing or any Construction provided for or allowed by this Agreement.

ARTICLE 8. LICENSE FEE.

Licensee shall pay UTA a one-time License Fee for the existence of the Grade Crossing on the Right-of-Way or other UTA property, in the amount of ONE HUNDRED DOLLARS (\$100.00). Acceptance of the License Fee by UTA shall not act as a waiver of UTA's right to terminate this Agreement as herein provided.

ARTICLE 9. LICENSEE RESPONSIBLE FOR MAINTENANCE AND ALL

INCREASED COSTS TO UTA RESULTING FROM EXISTENCE OF
GRADE CROSSING.

Licensee, at its sole cost and expense, shall at all times maintain the Grade Crossing, including all its appurtenances in good and safe condition.

ARTICLE 10. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor or contractors are to do any Construction work to be performed regarding the Grade Crossing at the request of Licensee, then Licensee shall require its contractor, or contractors to execute UTA's Agreement With Contractor form. Licensee acknowledges receipt of a copy of the Agreement With Contractor form and understands its terms, provisions and requirements, and shall inform its contractor or contractors of the requirement to execute the Agreement With Contractor and deliver the same to UTA prior to entry upon or the performance of any work inside the boundaries of the Right-of-Way or other UTA property. Under no circumstances shall Licensee's contractor be allowed onto UTA's premises without first executing and delivering to UTA the Agreement With Contractor and providing the required proof of insurance.

ARTICLE 11. ADMINISTRATIVE FEE TO BE PAID BY LICENSEE.

In addition to the one-time license fee, Licensee shall pay to UTA a one-time fee of FIVE HUNDRED DOLLARS (\$500.00) in part to cover the cost of document and exhibit preparation, engineering and legal review and/or evaluation related to this Agreement. Said fee shall be paid upon execution hereof by Licensee and submission to UTA.

ARTICLE 12. TERM.

This Agreement shall take effect as of the date of this Agreement and shall continue in full force and effect until terminated as herein provided.

ARTICLE 13. NON-DISCLOSURE; CONFIDENTIALITY.

Except to the extent that disclosure of information contained in this Agreement is required by law, the contents of this Agreement shall not be disclosed or released by Licensee without the written consent of UTA.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date of this Agreement set forth above.

Approved as to form:

Crosby E. Medham by
UTA Engineer Randall A. Feil

UTAH TRANSIT AUTHORITY

By John C. Pingree
John C. Pingree
General Manager

Approved as to form:

Randall A. Feil
UTA Legal Counsel

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

STATE OF UTAH)
): ss.
COUNTY OF SALT LAKE)

On the 20th day of January, 1994, personally appeared before me JOHN C. PINGREE and KENNETH D. MONTAGUE, JR., whose identities are personally known to me or whose identities were proven to me on the basis of satisfactory evidence, and who admitted and acknowledged in my presence that they voluntarily executed the foregoing document for its stated purpose for and on behalf of UTAH TRANSIT AUTHORITY, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended, as its General Manager and Director of Finance and Administration respectively.

Carol Brophy
NOTARY PUBLIC
RESIDING AT Salt Lake City, Utah



LICENSEE:

AFP ENTERPRISES UTAH, L.L.C.,
a limited liability company
organized under the laws of
the State of Utah

ATTEST: *Kathryn K. Welker*
~~HARRY W. TILDEN~~

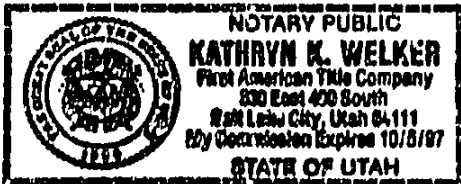
Kathryn K. Welker
(PRINT NAME)

By *Harry W. Tilden*
Name Harry W. Tilden
Its Secretary/Treasurer

By _____
Name _____
Its _____

STATE OF UTAH)
): ST.
COUNTY OF Salt Lake)

On the 21st day of January, 1994, personally
appeared before me HARRY W. TILDEN
hidd/ _____, whose identities are
personally known to me or whose identities were proven to me on
the basis of satisfactory evidence, and who admitted and duly
acknowledged in my presence that they voluntarily executed the
foregoing document for its stated purpose for and on behalf of
AFP ENTERPRISES UTAH, L.L.C., a limited liability company
organized under the laws of the State of Utah as its _____
Secretary/Treasurer



Kathryn K. Welker

NOTARY PUBLIC
RESIDING AT Salt Lake Co., Utah

EXHIBIT "A"

DESCRIPTION

BEGINNING on the West right of way line of the O.S.L.R.R. at a point 679.98 feet North and 18.40 feet West of the Southeast Corner of Lot 1, Block 10, Ten Acre Plat "A", Big Field Survey, and running thence West 397.10 feet; thence North 247.0 feet to a fence corner; thence East 25.20 feet; thence North 376.175 feet; thence North 89°00' East 370.00 feet to a point on a curve to the right on the West right of way line of the O.S.L.R.R., the radius point of which is South 86°11'28" West 2831.79 feet; thence Southerly along the arc of said curve and said West line of Railroad 216.67 feet to a point of tangency; thence South 0°34'30" West 413.12 feet to the point of BEGINNING.

Subject to and together with a non-exclusive easement for ingress and egress over and across the following described parcel:

BEGINNING at a point North 1333.16 feet and West 390.30 feet from the Southeast Corner of Lot 1, Block 10, Ten Acre Plat "A", Big Field Survey, and running thence South 60.01 feet; thence North 89°00' East 371.83 feet to a point on a curve to the left on the West right of way line of the O.S.L.R.R., the radius point of which is South 86°47'56" West 2831.79 feet; thence Northwesterly along the arc of said curve and said West line of Railroad 60.08 feet; thence South 89°00' West 367.84 feet to the point of BEGINNING.

The above described property also known by the street address of: 111 West Fireclay Avenue, Murray, Utah 84107.

* * *

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EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS.

For purposes of this Agreement, the following definitions shall apply:

"Construction" means any and all construction, installation, Maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Grade Crossing, and/or that portion of the roadway within the Crossing Area, and other work concerning or related to the Grade Crossing and/or said portion of the roadway, which Licensee causes to be performed, whether directly or indirectly.

"Freight Operator" means the Salt Lake City Southern Railroad Company, or its successors or assigns which use all or a portion of UTA's Right-of-Way to provide freight service to any freight customers along the Right-of-Way, and any other short line freight railroad operator which uses UTA's Right-of-Way to provide such freight service. The Freight Operator, at the time this Agreement was prepared, is Salt Lake City Southern Railroad Company.

"Governmental Authority" means any federal, state, municipal or local governmental body or agency.

"Hazardous Materials" means:

(a) any substances defined, regulated or listed (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," "pollutant," "contaminant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et. seq. ("CERCLA"); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. §1251 et seq.; (v) the Clean Air Act, 42 U.S.C. §7401 et seq.; (vi) the Toxic Substances Control Act, 15 U.S.C. § 2601 et. seq.; (vii) the Utah Air Conservation Act, U.C.A. §26-13-1 et. seq.; (viii) the Utah Water Pollution Control Act, U.C.A. §26-11-1 et. seq.; (ix) the Utah Safe Drinking Water Act, U.C.A. §26-12-1 et. seq.; (x) the Utah Solid and Hazardous Waste Act, U.C.A. §26-14-1 et. seq.; (xi) the Utah Hazardous Substance Mitigation Act, U.C.A. §19-6-301 et. seq.; (xii) the Utah Underground

Storage Tank Act, §19-6-401 et. seq.; and/or (xiii) any amendments to such enumerated statutes or acts; and

(b) any other hazardous or toxic substance, material, chemical, waste, contaminant or pollutant identified as hazardous or toxic or regulated, under any other applicable federal, state or local environmental laws, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products and by-products.

"Loss" means loss of or damage to the property of any Party or Third Person and/or injury to or death of any Party or Third Person. "Loss" shall also include without limitation, the following associated expenses incurred by a Party: loss, damage, claims, demands, actions, causes of action, penalties, costs, expenses, the cost of litigation, attorneys' fees, expert witness fees, court costs, the amounts paid in settlement, the amount of any judgment, and pre-judgment and post-judgment interest, and expenses arising from and cleanup regarding any incident involving Hazardous Materials.

"Maintain", "Maintained", "Maintaining" and "Maintenance" mean the use of proper and acceptable methods of creating and maintaining any level of condition or standard as may from time to time be required by UTA, Freight Operator, or any federal, state or municipal or other Governmental Authority having the authority to issue or enforce such conditions or standards, and shall also include the Maintenance of the Grade Crossing, as herein defined, and any appurtenances thereto, warning signs, and other related items, whether above, below, beside, around or near the Grade Crossing or Crossing Area.

"Party" and "Parties" mean UTA or Licensee, and UTA and Licensee, respectively;

"Right-of-Way" means the real property purchased by UTA from Union Pacific Railroad Company in April of 1993, consisting of approximately 23.55 miles of the Provo Subdivision Line, from approximately 900 South in Salt Lake City, Utah to the Salt Lake County/Utah County boundary line, and approximately 1.4 miles of the Midvale Spur which departs from the Provo Subdivision line at approximately 6400 South, and the other real property acquired by UTA from Union Pacific Railroad Company, as well as other real property owned or acquired by UTA abutting, adjoining, or in near proximity to said Provo Subdivision or Midvale Spur.

"Third Person" means any individual, corporation or entity other than UTA and Licensee.

"track" and "tracks" means any and all track structure, ballast, drainage structures, grading, subgrade stabilization, crossings, tunnels, bridges, trestles, culverts, structures, facilities, leads, spurs, turnouts, tails, sidings, signals, crossing protection devices, railroad communications systems, catenary systems and wires, poles and all other operating and non-operating appurtenances, and any other appurtenances, located on the Right-of-Way.

"track structure" means tracks, rails, ties, switches, frogs, end of track barricades or bumpers and other barricades or bumpers, derail devices, tie plates, spikes, fastenings and any other appurtenances related thereto.

"Utility" and "Utilities" mean and include all properties, facilities, utilities, crossings, encroachments, lines, etc. of any person, firm or corporation, including but not limited to, pipe lines, tube lines, water and gas mains, electrical conduits, wires, fiber optics, communication lines, sewer pipes, overhead wiring and supporting structures and appurtenances, and all other structures, located inside the boundaries of the Right-of-Way.

"Work Window" means the time periods as approved by UTA and Freight Operator for Construction work regarding that portion of the roadway or Grade Crossing located inside the boundaries of the Right-of-Way, which time periods must be entirely within the period of time during which the Freight Operator is allowed to deliver freight using the Right-of-Way, and which also must not include any time periods of passenger operations along the Right-of-Way.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) Licensee acknowledges the continuing rights and obligations of UTA to use its entire Right-of-Way, including its right and power to construct, use, and operate existing or additional tracks, telephone, signal and other pole and wire lines, pipelines, fiber optics, and other facilities upon, along or across any or all parts of said Right-of-Way, including the facilities of leasees of the Right-of-Way, and agrees when requested by UTA to cooperate with UTA, its successors and assigns, in effectuating the expansion of said facilities. Licensee's use of the subject premises for roadway purposes shall not be deemed to limit the right of UTA to use the subject premises for any purpose or to regulate the use of the subject premises by present or future licensees of UTA and the facilities thereby permitted within the roadway boundaries including pole lines, wire communication lines, fiber optics, and power lines, and including pipelines for the transmission of water, gas, and

other commodities, or limit the right of UTA to require the relocation of the same in the interest of UTA's operations, and Licensee shall not allow any excavation therefor to be made within the limits of the Right-of-Way without the knowledge, approval and permission of UTA.

(b) The foregoing grant of rights and license is subject and subordinate to the prior and continuing right and obligation of UTA to use and maintain its Right-of-Way and other property including the right and power of UTA to construct, maintain, repair, renew, use, operate, change, modify or relocate tracks, signals, communication facilities, fiber optics, catenary systems and wires, wirelines, pipelines, and other facilities upon, along, above or across any or all parts of the Right-of-Way and other UTA property, all or any of which may be freely done at any time or times by UTA without liability to Licensee or to any other party for compensation or damages.

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

Section 3. LICENSEE TO PROCURE ALL OTHER NEEDED AUTHORITY.

Licensee shall procure any needed property rights, easements, rights-of-way, Governmental Authority, franchises, permits or permission for Construction, Maintenance and operation regarding the roadway and Grade Crossing outside the boundaries of the Right-of-Way or over and across any public street, road or highway, and Licensee assumes all cost and expense thereof and shall pay any fees or costs imposed by any Governmental Authority or person as a result of Construction or operation regarding, or the existence of, the roadway or Grade Crossing. Licensee agrees to pay any and all costs and expenses incurred by UTA or Freight Operator relating to such Governmental Authority, franchise, permit or permission and to assume any and all liability for and agrees to protect, defend and hold harmless UTA and Freight Operator from and against any and all Loss, cost, damage, suits, and expense in any manner directly or indirectly arising or growing out of compliance with or a violation of the provisions of any such Government Authority, franchise, permit or permission.

Section 4. CONSTRUCTION, MAINTENANCE OF GRADE CROSSING AND ROADWAY:

(a) The Grade Crossing shall be Maintained so as not to interfere with tracks, ditches, or other structures or improvements now or hereafter located on the Right-of-Way. Licensee shall perform or cause to be performed all Construction regarding the Grade Crossing in strict conformity with UTA requirements and standards and all amendments thereof and supplements thereto, except as may be modified and approved by UTA's Civil Engineer in writing. In the event such requirements or standards conflict in any respect with the requirements of any controlling federal, state, municipal, local or other law or regulation, such controlling requirements of Governmental Authority shall govern on all points of conflict but in all other respects the UTA requirements and standards shall apply.

(b) With respect to the existence and Licensee's use and maintenance of the Grade Crossing Licensee, at its sole cost and expense and without cost or expense to UTA, shall comply with all requirements of law and Governmental Authority, whether federal, state or local.

(c) Licensee shall, at its sole cost and expense, Maintain, repair, and renew the Grade Crossing and the roadway across the Right-of-Way and over the tracks of UTA, and shall protect, release, defend, indemnify and hold harmless and relieve UTA from any and all expense for such Maintenance, repair, and renewal, provided, that UTA shall reimburse Licensee for the cost of repairs to said Grade Crossing occasioned by derailment of UTA's equipment due to the sole negligence of UTA. UTA at its sole expense will maintain the rail, ties and ballast. Licensee shall reimburse UTA for all expenses incurred by UTA in connection with the Construction, Maintenance, repair and use of the subject roadway and Grade Crossing. In addition, Licensee agrees to reimburse UTA and/or the owner of any telecommunication system located on the Right-of-Way for all expenses which either may incur which expenses would not have been incurred except by the reason of Licensee's use of the subject premises, including relocation costs or any damages incurred by such owner due to the injury to the said telecommunications system.

(d) With respect to all work performed on the Right-of-Way or other property of UTA in connection with Construction Licensee causes to be performed regarding the Grade Crossing, UTA shall have the right, but shall have no obligation, to observe the work and Construction and to require that it be done to the satisfaction of UTA.

(e) Prior to the commencement of any work in connection

with any such Construction regarding the Grade Crossing, Licensee shall submit to UTA plans setting out the method and manner of handling the work, including the supporting, shoring and cribbing, if any, required to protect UTA's tracks, property and operations and the operations of Freight Operator, and shall not proceed with the work until such plans have been approved by the Civil Engineer of UTA. UTA shall have the right, if it so elects, to provide such support or work as it may deem necessary for the safety of its property during the time of such Construction regarding the Grade Crossing, and, in the event UTA provides such support or work, Licensee shall pay to UTA, within thirty (30) days after bills shall have been rendered therefor, all cost and expense incurred by UTA in connection therewith, which expense shall include all assignable costs.

(f) Regarding disturbed soil which is replaced, Licensee shall replace and maintain such soil, being sure that the replaced soil is thoroughly compacted and where practicable that the grade is even with the adjacent surface of the ground.

(g) Licensee shall bear the cost of any modifications to UTA's tracks, track structure, structures, signal and communication facilities, catenary systems and wires, and other facilities or improvements, required by Construction Licensee causes to be performed regarding or the operation of the roadway or Grade Crossing.

Section 5. NOTICE OF COMMENCEMENT OF WORK.

Before beginning any Construction regarding the Grade Crossing, Licensee, or those acting under its authority, shall give written notice to UTA's Civil Engineer at least five (5) business days prior to the date upon which it is desired such work shall commence. If an emergency should arise requiring immediate attention, Licensee shall provide as much notice as practicable to UTA before commencing any Construction work regarding the Grade Crossing. In all other situations, Licensee shall notify UTA at least five (5) business days (or such other time as UTA may in writing allow) in advance of the commencement of any work upon the Right-of-Way or other property of UTA in connection with any Construction regarding the roadway or Grade Crossing. All such work shall be prosecuted diligently to completion.

Section 6. RESTORATION OF UTA'S PROPERTY; DRAINAGE; ETC.

In the event UTA authorizes Licensee to take down any fence of UTA or in any manner move or disturb any of the other property

of UTA or of its tenants or licensees in connection with Construction regarding the roadway or Grade Crossing, then in that event Licensee shall, as soon as possible and at Licensee's sole cost and expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and Licensee shall protect, defend, release, indemnify and hold harmless UTA, 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 taking down of any fence or the moving or disturbance of any other property of UTA or of its tenants or licensees.

Furthermore, in the Construction, Maintenance and improvement of the roadway and/or Grade Crossing Licensee shall take every precaution to prevent damage to, or the impairment of the stability of, the poles in any pole line of UTA or of its licensee's or tenants; and the Licensee shall, at its own expense, reset or relocate, at and under the direction of UTA any pole or poles that are, or are likely to be, damaged or weakened because of the Construction of such roadway or Grade Crossing or the Maintenance or improvement thereof, or shall reimburse UTA for the cost of resetting or relocating any such pole or poles if UTA elects to do the work itself.

Licensee shall keep the Grade Crossing and the Crossing Area clean and neat and free from combustible materials and provide and maintain such means as may be necessary to care for the drainage of the Right-of-Way, and Grade Crossing and Crossing Area to the extent that any such drainage may be necessitated by Construction, the existence of the Grade Crossing or any changed conditions resulting therefrom.

Section 7. SAFETY.

In addition to any safety provisions set forth herein, UTA shall have the right in its sole discretion to issue, and Licensee shall comply with, additional reasonable rules and regulations related to safety.

No Other Use; No Obstructions. With the exception of the Grade Crossing, and except as may be immediately required for (and only at the actual time of) performance of physical construction of work contemplated under this Agreement, and then only in full compliance with all clearance standards and other safety

requirements, Licensee shall not place, permit to be placed, erect, pile, store, stack, park, maintain or permit any line, building, platform, fence, gate, vehicle, car, pole or other structure, obstruction or material of any kind on UTA's property. Licensee shall at all times keep the Crossing Area within the Right-of-Way that is near the tracks free and clear of debris and other obstructions of any kind or nature. The indemnification provided for in the next succeeding paragraph shall apply whether or not UTA or Freight Operator has notice of any violation by Licensee of its duties to keep said area free and clear of debris and obstructions.

Indemnification. It is understood and agreed that it is Licensee's sole obligation to monitor its compliance with the requirements of this Section and Licensee agrees to protect, release, indemnify and defend UTA and Freight Operator and save and hold them harmless from and against any and all Loss, claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property, or injury to or death of persons whomsoever, including the property of and the Parties hereto and their employees, agents or representatives, occurring directly or indirectly by reason of any breach of the covenants to be kept by Licensee contained in this Section.

Utility and Other Crossings or Encroachments. Various Utilities, lines and/or facilities and other crossings or encroachments exist on, over and under the surface of the Right-of-Way or inside the boundaries of the Right-of-Way or other UTA property. Prior to any Construction Licensee shall properly investigate and determine the location of all such Utilities, lines, facilities, crossings and encroachments and shall not disturb or damage any such Utilities, lines, facilities, crossings and/or encroachments. In addition to the required investigation, prior to undertaking any Construction regarding the roadway or Grade Crossing Licensee shall have all Utilities in the area of the subject Grade Crossing "blue-staked" and clearly marked. Licensee shall make arrangements for protection of all Utilities, lines, facilities, crossings and/or encroachments and shall commence no work on UTA's property until all such protection has been accomplished.

Fiber Optic Cable Systems. Fiber optic cable systems may be buried or otherwise located on UTA's property. Protection of 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. In addition to the above requirements, Licensee shall telephone UTA's Civil Engineer at 1-801-262-5626, or at such other UTA telephone numbers as may be listed in the current telephone directory, to determine if UTA has knowledge of any fiber optic cable located anywhere on or

near the portion of UTA's premises to be used by Licensee. If so, Licensee shall contact the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for protection of the fiber optic cable and shall commence no work on or affecting UTA's property until all such protection has been accomplished.

Section 8. LICENSEE TO BEAR ENTIRE COST AND EXPENSE.

As between UTA and Licensee, Licensee shall bear the entire cost and expense incurred in connection with any and all Construction regarding the roadway and Grade Crossing, including any and all cost and expense which may be incurred by UTA in connection therewith for observation, supervision, inspection, flagging, or other cost or expense.

Section 9. MODIFICATION, RECONSTRUCTION, ETC.

(a) The license herein granted is subject to the needs and requirements of UTA and the improvement and use of its property, UTA's passenger and other operations, and the operations of the Freight Operator, however, Licensee's rights to cross the Right-of-Way can only be terminated pursuant to the termination provisions of Section 15 below, and provided that a reasonably equivalent substitute access to the parcel of real property described in Exhibit "C" is provided, Licensee shall allow UTA, at UTA's sole cost and expense, to move or relocate the roadway and Grade Crossing to such new location as UTA may designate, or remove the roadway and Grade Crossing entirely from the Right-of-Way, whenever in the furtherance of UTA's or Freight Operator's needs and/or requirements UTA shall find such action necessary or desirable. Furthermore, a change in the Grade Crossing, or its appurtenances, might be required by or as a result of law, ordinance, regulation or other contingency over which UTA has no control. In the event that any rearrangement, modification, reconstruction, relocation, removal or change regarding the Grade Crossing is required, or if the installation of any signals or compliance with other laws, regulations or public enactments is required in connection with the Grade Crossing, then Licensee shall cooperate with UTA and others to allow the required action and work to be completed. Nothing contained in this Section shall in any way affect the right of UTA to terminate this Agreement as provided for herein.

(b) To the extent the roadway or Grade Crossing is located on UTA property:

(1) all references to roadway or Grade Crossing in this

Agreement shall apply to the roadway or Grade Crossing as constructed and installed, even if it differs or varies from its depiction on Exhibit "A";

(2) references in this Agreement to roadway or Grade Crossing shall also apply to, and this Agreement shall apply to, any and all rearrangements, modifications, reconstructions, relocations, removals, changes, and extensions or additions to the roadway or Grade Crossing which have been authorized by UTA, unless they are the subject of a separate agreement that does not expressly or impliedly incorporate the terms hereof.

Section 10. REMOVAL OF GRADE CROSSING UPON TERMINATION OF AGREEMENT.

Upon termination of this Agreement howsoever, and at any time after termination, UTA may cause the removal from UTA property of such portions of the roadway or Grade Crossing as determined and directed by UTA and may restore, to the satisfaction of UTA, UTA's Right-of-Way and other property. Any of said roadway or Grade Crossing not so removed may, at UTA's election, be deemed forfeited and abandoned. UTA may cause the roadway or Grade Crossing so removed to be disposed of in any manner it deems appropriate. In the event of the removal and restoration of UTA property by UTA as herein provided, UTA shall in no manner be liable to Licensee for any damage sustained by 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 UTA may have against Licensee. In the event of termination, UTA shall have the right, at UTA's expense, to remove any portion of the roadway or Grade Crossing located on UTA property.

Section 11. NO INTERFERENCE WITH UTA'S OPERATION.

The roadway or Grade Crossing and all parts thereof within and outside of the boundary lines of the property of UTA and all Construction related thereto, shall be such as to cause no interference whatsoever with safety and the constant, continuous and uninterrupted use of the tracks, property, operations and facilities of UTA and the operations of Freight Operator, or of UTA's tenants or licensees, and nothing shall be done or suffered to be done by Licensee at any time that would in any manner impair such or the safety thereof. In the operation and Maintenance of the Grade Crossing and roadway Licensee shall take all suitable precaution to prevent any interference with the operation of the signal, communication lines, catenary system or wires or other installations or facilities of UTA or of its tenants or other licensees; and if, at any time, the operation or Maintenance of the roadway or Grade Crossing results in any interference with the operation of the signal communication lines or other installations or facilities, catenary systems or wires, as now existing or which may hereafter be provided or allowed by UTA and/or its tenants or licensees, Licensee shall, at the sole cost and expense of Licensee, immediately take such action as may be necessary to eliminate such interference.

Section 12. INDEMNITY.

As used in this Section, "UTA" includes Third Persons using UTA's property at or near the location of the Grade Crossing and their officers, agents, and employees;

(a) As a major inducement and in consideration of the license and permission herein granted, Licensee agrees to protect, defend, release, indemnify and hold harmless UTA from any Loss, claims, demands, expenses, costs and judgments which are due to or arise from:

1. The prosecution of any work by or on behalf of Licensee including the installation, Construction, Maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the roadway and Grade Crossing or any part thereof; or
2. The use or operation of the roadway and Grade Crossing by Licensee and/or Licensee's employees, agents, representatives or invitees.

(b) All obligations of Licensee under this Agreement to protect, release, indemnify, defend and/or hold harmless UTA and/or Freight Operator shall also extend to officers, agents,

representatives, employees and/or contractors of UTA and/or Freight Operator, and to companies and other legal entities that control, are controlled by, are subsidiaries of or affiliated with UTA and/or Freight Operator, their officers, agents, representatives, employees and/or contractors.

(c) In addition to other indemnity provisions in this Agreement, Licensee shall protect, release, indemnify, defend and hold UTA and Freight Operator harmless from and against all Loss, costs, liability and expense whatsoever, including without limitation, attorney's fees, court costs and expenses, arising out of any act or omission of Licensee, its contractor, agents and/or employees, that causes or contributes to (i) any damage to or destruction of any Utility line, facility, crossing, encroachment, or telecommunications system on or above UTA's property, and (ii) any injury to or death of any person employed by or on behalf of Freight Operator or by or on behalf of any owner or operator of any such Utility line, facility, crossing, encroachment or telecommunications system, and/or their contractors, agents, representatives and/or employees. Licensee shall not have or seek recourse against UTA or Freight Operator for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to any owner or operator of a Utility line, facility, crossing, encroachment, a telecommunication company using UTA's property or a customer or user of services of any fiber optic cable on UTA's property.

Section 13. CLAIMS AND LIENS FOR LABOR AND MATERIALS; TAXES AND ASSESSMENTS.

(a) Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of UTA in connection with any Construction regarding the roadway or Grade Crossing, 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 Licensee. Licensee shall protect, defend, release, indemnify and hold harmless UTA from and against any and all liens, liability, 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) Licensee shall promptly pay or discharge all taxes, charges and assessments assessed or levied upon, in respect to, or on account of the roadway or Grade Crossing, to prevent the same from becoming a charge or lien upon property of UTA, 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 or regarding the roadway or Grade Crossing or any improvement, appliance or fixture connected therewith placed upon the Right-of-Way or other UTA property. Where such tax, charge or assessment may not be separately made or assessed to Licensee, then Licensee shall reimburse to UTA the amount thereof.

(c) Licensee shall pay and continue to pay so long as the roadway or Grade Crossing is in place any and all taxes and assessments, general and special, including any privilege or beneficial use tax, that may be levied or assessed against or by reason of the roadway or Grade Crossing; and shall pay for all damages to adjacent or abutting property by reason of Construction regarding the roadway or Grade Crossing. No special or any other assessments for establishing or improving the roadway or Grade Crossing located upon the Right-of-Way or other UTA property are to be made against UTA, the Right-of-Way or other UTA property, and the Licensee agrees to protect UTA against and save it harmless from such assessments.

Section 14. WAIVER OF IMMUNITY.

If Licensee is a governmental entity covered by any governmental immunity, whether by common law or statute, then to the full dollar amount of any liability of Licensee to UTA and/or Freight Operator under this Agreement, Licensee hereby expressly waives such governmental immunity, including any related damage limitations such as those set forth in Utah Code Annotated § 63-30-34 (1953, as amended) and any other statutory damage limitation provisions. Licensee agrees that the waiver provided under this Section applies whether or not UTA, Freight Operator or Licensee are entitled to insurance coverage regarding such liability or regarding the underlying damages.

Section 15. TERMINATION.

(a) UTA may forthwith terminate or revoke this Agreement and all rights of Licensee hereunder only if:

1. Licensee ceases to use the Grade Crossing in an active and substantial way for any continuous period of one year, or the portion of the roadway within the Crossing Area is not used as a private roadway for any continuous period of one year; or

2. Licensee continues in default in the performance of any covenant, term or condition contained in this Agreement

for a period of thirty (30) days after written notice from UTA to Licensee specifying such default; provided that if a default by Licensee is deemed by UTA to be dangerous or hazardous, UTA may immediately suspend its performance under this Agreement during the thirty day default cure period and terminate this Agreement at the end of such period if there is no cure; and provided, however, that UTA shall have no obligation to terminate this Agreement after giving notice of default and may continue to perform hereunder without terminating this Agreement and without waiving the right to terminate. No notice of such termination or declaration of forfeiture shall be required and UTA may at once reenter upon the premises and repossess itself thereof and remove all persons therefrom or may resort to an action of forcible entry and detainer, or any other action, to recover the same or obtain appropriate relief, including without limitation, removal of the roadway or Grade Crossing; or

3. A reasonable alternate roadway access becomes available and is actually secured to permanently serve as access to the parcel of real property described in Exhibit "C" attached hereto.

(b) 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 16. SURRENDER UPON TERMINATION.

Upon termination of this Agreement howsoever, Licensee shall vacate and surrender the quiet and peaceable possession of the Right-of-Way and any other UTA property. Licensee, at its sole cost and expense, shall (a) remove from the Right-of-Way all obstructions, contamination caused by or arising from the presence, use or operation of the roadway and Grade Crossing, facilities and other property of Licensee or which Licensee caused to be put in place on UTA's property and (b) restore the Right-of-Way and other UTA property to good operating condition and to at least as good condition as the same was in before the date of this Agreement.

Section 17. PAYMENT OF BILLS; ASSIGNABLE COSTS; INTEREST.

Bills for expense or assignable costs properly chargeable to Licensee pursuant to this Agreement shall be paid by Licensee within thirty (30) days after presentation except as otherwise provided. Bills to Licensee not paid within thirty (30) days shall be subject to interest at the rate of 15% per annum.

Section 18. AGREEMENT NOT TO BE ASSIGNED.

Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of UTA, 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 UTA, shall terminate Licensee's rights under this Agreement. It is expressly agreed, however, that UTA shall give its written consent to any complete assignment by Licensee of all of Licensee's rights hereunder to a party who has purchased the real property described in Exhibit "C" and who has entered into a written assumption agreement whereby such party has assumed and agreed to perform all of the obligations of Licensee under this Agreement; as a condition precedent to UTA's consent such written assumption agreement must be in form and substance acceptable to UTA, but an assumption agreement substantially in the form attached hereto as Exhibit "D" will be acceptable, provided that UTA may require additional language or provisions or make revisions it reasonably deems to be important or necessary.

Section 19. SUCCESSORS AND ASSIGNS.

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

Section 20. SEVERABILITY.

This Agreement is executed by all Parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division, i.e., each paragraph, clause, phrase, item, term, condition, covenant or agreement, contained in this Agreement shall have independent and severable status from each other division, or combination

thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

Section 21. NOTICES.

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

(a) in the case of a notice or communication to UTA, Attention: General Manager, P. O. Box 30810, Salt Lake City, Utah 84130-0810, with a copy to William D. Oswald, Attorney for UTA, 201 South Main Street, 12th Floor, Salt Lake City, Utah, 84111;

(b) in the case of a notice or communication to Licensee, addressed to the address of Licensee as set forth in the Articles of Agreement above;

or addressed in such other way in respect to any Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served and to have been duly given (i) on the date of delivery, if delivered personally to the Party to whom notice is given, or if made by telecopy directed to the Party to whom notice is to be given at the correct telecopy number, or (ii) on receipt, if mailed to the Party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed.

Section 22. NO IMPLIED WAIVER.

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair the right of UTA to avail itself of any subsequent breach thereof. Furthermore, neither the right of supervision by UTA, nor the exercise or failure to exercise such rights, nor the approval or failure to disapprove, nor the election by UTA to

repair or reconstruct all or any part, of the work contemplated by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

Section 23. CONDEMNATION.

In the event that all or any portion of the Right-of-Way or other UTA property upon which the Grade Crossing is located is condemned or otherwise taken for public use, Licensee shall not be entitled to, nor shall Licensee receive or retain any compensation or damages by reason of such condemnation or taking, except for that portion of such compensation or damages specifically attributable to the taking or damaging of the roadway itself. Licensee shall have no claim to any compensation or damages for the condemnation or taking of the Right-of-Way or other UTA property or any interest therein and any amount of such compensation or damages Licensee might otherwise be entitled to, and any legal claim to such held by Licensee, are hereby automatically assigned to UTA by this Agreement and Licensee shall immediately deliver to UTA any such compensation or damages it receives.

EXHIBIT "D"

ASSIGNMENT AND ASSUMPTION AGREEMENT

Regarding Private Roadway
Milepost Location
No. 793.57

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereafter "Agreement") is made and entered into as of the ____ day of _____, 19____, by and between UTAH TRANSIT AUTHORITY, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended (hereinafter "UTA") which is the owner of real property containing a railroad right-of-way, _____, a _____, to be addressed at _____ (hereafter "Assignor") and _____ (hereafter "Assumer"), to be addressed at _____.

In connection with a transfer of real property Assignor desires to assign to Assumer Assignor's entire rights and interests in a certain license for a private roadway crossing at grade of UTA's Right-of-Way, which crossing is located at Fireclay Avenue in Salt Lake County, Utah, at approximately 4300 South, which is approximately Milepost Location No. 793.57, and Assumer desires to assume, as of the date Assumer succeeds to Assignor's title to certain real property, all the obligations and liabilities of the Licensee under the Agreement For Private Roadway dated as of the ____ day of _____, 1994, the document under which such license was granted.

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

Section 1. For valuable consideration, the receipt and adequacy of which are hereby expressly acknowledged, Assignor does hereby sell, assign, transfer and set over to Assumer all of Assignor's rights and interests in and to the Agreement For Private Roadway described above.

Section 2. For valuable consideration, the receipt and adequacy of which are hereby expressly acknowledged, and as of the date on which Assumer succeeds to Assignor's title to the real property described on Exhibit "____" hereto, Assumer hereby accepts the above assignment and assumes and agrees to be bound by and to perform and observe fully and faithfully all of the covenants, stipulations, conditions, obligations and liabilities of Assignor as Licensee under said Agreement For Private Roadway

accruing from the time Assumer succeeds to Assignor's title to said real property.

Section 3. In consideration of the covenants and agreements of Assignor and Assumer set forth herein, UTA gives its consent to the aforesaid assignment; PROVIDED, however, that such consent shall not be deemed or construed to authorize any further assignment of the Agreement For Private Roadway, whether voluntary, by operation of law or otherwise, without the consent in writing of UTA first had and obtained, which consent is to be given as required by the terms of the Agreement For Private Roadway; and PROVIDED FURTHER, that, as between UTA and Assignor, neither the subject assignment nor anything herein contained shall be construed as releasing Assignor from any obligation which accrued, or Assignor's liabilities, accrued or otherwise, which have arisen, under the Agreement For Private Roadway prior to Assumer's assumption of obligations and liabilities as set forth in this Agreement; PROVIDED FURTHER, that Assignor shall not be liable for liabilities, or required to perform any obligation, arising or occurring under the Agreement For Private Roadway after Assumer's assumption thereof.

NAME OF ASSIGNOR

Date signed _____

By _____
Name _____
Its _____

NAME OF ASSUMER

Date signed _____

By _____
Name _____
Its _____

UTAH TRANSIT AUTHORITY

By _____
John C. Pingree
General Manager

Approved as to form:

UTA Legal Counsel

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

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