

**AMENDED AND RESTATED
ALAMEDA CORRIDOR
USE AND OPERATING AGREEMENT**

by and among

THE CITY OF LONG BEACH,
acting by and through its Board of Harbor Commissioners,

THE CITY OF LOS ANGELES,
acting by and through its Board of Harbor Commissioners,

THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY,
a California joint powers authority,

BNSF RAILWAY COMPANY,
a Delaware corporation,

and

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

dated as of

[_____], 2016

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AMENDED AND RESTATED

ALAMEDA CORRIDOR

USE AND OPERATING AGREEMENT

THIS AMENDED AND RESTATED ALAMEDA CORRIDOR USE AND OPERATING AGREEMENT (this “**Agreement**”), dated as of [_____], 2016, is entered into by and among (i) **BNSF RAILWAY COMPANY** (formerly known as The Burlington Northern and Santa Fe Railway Company), a Delaware corporation (successor by merger to The Atchison, Topeka and Santa Fe Railway Company) (“**BNSF**”), (ii) **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (which also is successor by merger to Southern Pacific Transportation Company) (“**UP**”), (iii) **THE CITY OF LOS ANGELES**, a municipal corporation, acting by and through its **BOARD OF HARBOR COMMISSIONERS** (“**POLA**”), (iv) **THE CITY OF LONG BEACH**, a municipal corporation, acting by and through its **BOARD OF HARBOR COMMISSIONERS** (“**POLB**”) (POLA and POLB are sometimes collectively referenced herein as “**Owner**”), and (v) **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, a joint powers authority created under the laws of the State of California (“**ACTA**”), with reference to the following Recitals:

RECITALS

A. Pursuant to that certain Purchase and Sale Agreement dated as of December 22, 1994 (“**SPT Purchase Agreement**”), by and between the former Southern Pacific Transportation Company, a Delaware corporation (“**SPT**”), as seller, and Owner, as purchaser, Owner acquired from SPT certain railroad rights of way and adjoining land and improvements located in the County of Los Angeles, State of California, commonly known as SPT’s San Pedro Branch, and portions of SPT’s Wilmington branch and Long Beach branch, all as more particularly described in the SPT Purchase Agreement.

B. Pursuant to that certain Purchase and Sale Agreement dated as of December 22, 1994 (“**UP Purchase Agreement**”), by and between Union Pacific Railroad Company, a Utah corporation (“**Union Pacific**”), as seller, and Owner, as purchaser, Owner acquired from Union Pacific certain railroad rights of way and adjoining land and improvements located in the County of Los Angeles, State of California and commonly known as the UP San Pedro Branch, as more particularly described in the UP Purchase Agreement. In December 1992, Owner acquired from Union Pacific certain other railroad rights of way and adjoining land and improvements with respect to the Project (hereinafter defined).

C. Pursuant to that certain Agreement for Sale of Certain Real Property Interests in the Los Angeles Harbor Subdivision Rail Line between MP 27.6 and MP 28.3 and Other Interests at Redondo Junction of The Atchison, Topeka and Santa Fe Railway Company to City of Los Angeles and City of Long Beach dated as of December 22, 1994 by and between Owner, as purchaser, and the former The Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation (“**ATSF**”), as seller (“**ATSF Purchase Agreement**”), Owner acquired from ATSF certain railroad rights of way and other property interests and improvements as more particularly described in the ATSF Purchase Agreement.

D. The parties hereto acknowledge that the Port of Long Beach and the Port of Los Angeles (collectively, “**Ports**”) are major, economically important seaports which provide public dock and wharf facilities to handle the shipment and transportation of international cargo, freight and other goods.

E. In anticipation of the substantially increased volume of traffic to and from the Ports, and to ensure the efficient and competitive operation of the Ports and the transportation of international freight, cargo and other goods to and from the Ports, Owner and ACTA reviewed several alternatives intended to mitigate and improve existing and anticipated conditions at the Ports, improve the efficient and competitive service to and from the Ports, and improve public safety along the route on which Port-related traffic is transported.

F. The alternative which Owner and ACTA pursued was the consolidation of BNSF’s and UP’s overhead rail freight service to and from the Ports onto one set of rail lines running north from the Ports, generally parallel to Alameda Street, to points in central Los Angeles (from which BNSF and UP then would move such freight on their separate rail lines to points beyond Los Angeles). This alternative is further described herein as the Project.

G. On October 12, 1998, the parties entered into that certain Alameda Corridor Use and Operating Agreement (the “**Original Agreement**”) for the purpose of setting forth the terms and conditions for the financing, use, operation, maintenance and repair of the Project. The Original Agreement provides, among other things, that ACTA(i) undertake the design and construction of the Rail Corridor and related improvements (described herein as the Project), (ii) obtain financing with respect to the Project, and (iii) perform certain ongoing administrative duties with respect to the Rail Corridor (including the collection of fees and charges to be paid by the parties, and the payment of principal, interest and other amounts relating to the financing of the Project).

H. Concurrently with the execution of the Original Agreement, Owner and ACTA entered into a Use Permit (“**Permit**”), covering the property comprising the Rail Corridor which, among other things, allowed ACTA to construct the Project on the property comprising the Rail Corridor and perform its other duties under the Original Agreement.

I. Pursuant to the terms of the Original Agreement, on February 9, 1999 ACTA issued its tax-exempt and taxable revenue bonds for the purpose of financing the design and construction of the Project and on April 15, 2002 the Project was substantially completed and rail operations commenced on the Rail Corridor.

J. The parties hereto acknowledge that Owner acquired the property described in the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, and certain other properties previously acquired by Owner from Union Pacific, for the purpose of constructing the Rail Corridor, and that Owner would not otherwise have acquired such property if Railroads (hereinafter defined) had not agreed to use the Rail Corridor (on the terms and conditions set forth in the Original Agreement) for the purpose of overhead rail freight service to and from the Ports.

K. In connection with the transactions described in the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, Owner, SPT, Union Pacific and ATSF entered into that certain Memorandum of Understanding for Joint Operating Agreement (Alameda Transportation Corridor) dated as of December 22, 1994 (“**MOU**”), which, among other things, set forth the basic terms and conditions for the financing, construction, use, operation, maintenance and repair of the Rail Corridor, and the parties’ agreement to negotiate in good faith and execute as soon as practical after the date thereof, a definitive agreement on these matters on terms consistent with those set forth in the MOU (except as otherwise agreed by the parties). The Original Agreement is the definitive agreement that was described in the MOU and contemplated by Owner and Railroads, and the Original Agreement superseded the MOU.

L. On July 5, 2006, the parties entered into that certain First Amendment to Alameda Corridor Use and Operating Agreement (the “**First Amendment**”) in connection with the settlement of the Transloading Dispute (hereinafter defined).

M. The parties now desire to amend and restate the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF, UP, Owner and ACTA hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Specific Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth below:

“**ACTA**” means the Alameda Corridor Transportation Authority, a joint powers authority created under the laws of the State of California.

“**ACTA Financing**” has the meaning set forth in Section 7.3(b)(1)(i).

“**ACTA Revenues**” has the meaning set forth in Section 7.1(a).

“**Acquired Rail Lines**” has the meaning set forth in Section 15.15.

“**Annual Amount**” has the meaning set forth in Section 7.3(b)(1).

“**Benefit Amount**” has the meaning set forth in Section 7.3(b)(7).

“**BNSF**” means BNSF Railway Company (formerly known as The Burlington Northern and Santa Fe Railway Company), a Delaware corporation.

“BNSF C&M Agreement” means that certain Right of Entry and Construction Agreement dated as of October 12, 1998 (as the same may be amended from time to time, to the extent not inconsistent with the provisions of this Agreement), by and among BNSF, ACTA and Owner.

“Bonds” shall mean revenue bonds or other evidences of indebtedness issued by ACTA from time to time pursuant to the Master Trust Indenture.

“Capital Expenses” means the costs and expenses incurred in making any capital improvements or betterments, or replacements to the extent that costs and expenses of replacements are determined to be Capital Expenses in accordance with the guidelines previously adopted pursuant to the Original Agreement or by agreement of Owner and the Railroads, or that are adopted in the future by Owner and Railroads pursuant to Section 2.5(b), to (i) the Rail Corridor other than the Non-Rail Components, and (ii) subject to the other provisions of this Agreement, the Port-Owned Tracks.

“Container Charges” has the meaning set forth in Section 7.3(g).

“Corridor Dispatcher” has the meaning set forth in Section 3.1.

“Corridor Maintenance Contractor” has the meaning set forth in Section 8.1.

“CPI” means the Consumer Price Index for all Urban Consumers, Los Angeles-Anaheim Riverside (all items), 1982-1984 = 100, published by the United States Department of Labor, Bureau of Statistics, or such successor index as hereafter may be published by the United States Department of Labor, Bureau of Statistics, or another index that hereafter may be agreed upon by the parties to this Agreement.

“Crossing Rights” has the meaning set forth in Section 15.15.

“Dolores Yard” means Dolores Yard as outlined on Page 3 of the Map.

“Dow Chemical Facility” means the Dow Chemical Facility outlined on Page 3 of the Map.

“Drill Track” means a single track rail line constructed pursuant to and in accordance with the provisions of the UP C&M Agreement, any support structures to the extent they support the Drill Track and the real property on and along which such rail line is located, generally running adjacent and parallel to parts of the Rail Corridor. Except as otherwise provided in this Agreement, the Drill Track will be used to serve local industry and for local movements to or from UP’s Santa Ana Branch, and will not be used for Through Train (hereinafter defined) movements. The Drill Track shall not be part of the Rail Corridor or the Port-Owned Tracks (hereinafter defined).

“Drill Track Operating Agreement” means the Alameda Corridor Drill Track Use and Operating Agreement, dated as of December 31, 2002, by and among UP, Owner and ACTA, governing the use, operation, maintenance, repair and replacement of the Drill Track, as

amended from time to time. To the extent the terms of the Drill Track Operating Agreement conflict with the provisions of this Agreement, the provisions of this Agreement shall control.

“**Estimated Reserve Balance**” has the meaning set forth in Section 7.4(h).

“**FRA**” means the Federal Railroad Administration.

“**Federal Loan**” means the \$400 million loan made to ACTA by the U.S. Department of Transportation, acting through the Federal Highway Administration, pursuant to an Amended and Restated Loan Agreement dated as of October 1, 1998, or any replacement or refinancing thereof with or by an agency of the United States Government. The \$400 million loan made to ACTA by the U.S. Department of Transportation was repaid in full in 2004.

“**Fee Increase Date**” means November 24, 2006.

“**First Amendment**” means that certain First Amendment to Alameda Corridor Use and Operating Agreement dated as of July 5, 2006, by and among BNSF, UP, POLA, POLB and ACTA.

“**Hazardous Substances**” means any toxic or hazardous wastes, materials or substances, pollutants or contaminants, including petroleum (including crude oil or any fraction thereof), natural gas and synthetic fuel products and by products, and any substances defined in, regulated or listed as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “toxic wastes,” “pollutants,” “contaminants,” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 40 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., the California Health and Safety Code, Sections 25115-25117, 25249.5, 25249.8, 25281 and 25316, and regulations promulgated pursuant to any of the foregoing.

“**ICTF**” means the Intermodal Container Transfer Facility outlined on Page 3 of the Map.

“**Indemnified Matter**” has the meaning set forth in Section 11.5(a). “Indemnitee” has the meaning set forth in Section 11.5(a). “Indemnitor” has the meaning set forth in Section 11.5(a).

“**Joint Use Construction Projects**” means the improvements described on Exhibit B attached hereto.

“**Local Train**” means any train on which at least 80% of the railcars are delivered to or picked up from industries which are located between the northerly boundary of the Ports and the point that the mainline tracks owned by a particular Railroad diverge from the northerly end of the Rail Corridor. For purposes of this definition, (i) one platform of at least 40-feet or one well of at least 40-feet shall equal one railcar, and (ii) railcars carrying Toyota (or related company) automobiles originating at or being delivered to the Toyota Distribution Facility

during the exclusive service period described in Section 5.2(b)(iii) shall be considered originating from or delivered to an industry located north of the Ports.

“**Losses**” has the meaning set forth in Section 11.5(b).

“**M&O Charges**” has the meaning set forth in Section 7.2(a).

“**Manuel Sidings**” means the three sidings near the Sepulveda Boulevard Bridge and located generally in the vicinity of the track identified as “Manuel 3” on Page 3 of the Map.

“**Map**” means the map (consisting of four pages) attached hereto as Exhibit A.

“**Master Trust Indenture**” means that certain Master Trust Indenture dated as of January 1, 1999, as amended and supplemented, by and between ACTA and U.S. Bank National Association, as trustee, which provides the terms and conditions upon which ACTA may issue revenue bonds or other evidences of indebtedness for the purpose of financing or refinancing all or a portion of the Project.

“**Mead Yard**” means Mead Yard as outlined on Page 3 of the Map.

“**Monthly Amount**” has the meaning set forth in Section 7.5(a).

“**MOU**” has the meaning set forth in Recital K.

“**Mutual Agreement**” is a determination approved by at least three of the following parties: POLB, POLA, BNSF and UP. Unless otherwise provided herein, Mutual Agreement shall be made in accordance with the following process:

(a) If a decision is required to be made by Mutual Agreement in accordance with this Agreement, any of POLB, POLA, BNSF, UP or ACTA shall provide written notice of the matter to the other parties (a “**Notice of Mutual Agreement**”). The Notice of Mutual Agreement shall set forth, among other things, the nature of the matter to be decided, including any documents or supporting materials relating to such matter, and the date by which Owner and Railroads shall provide their written approval or disapproval of the matter to the parties (such date shall not be more than sixty (60) days nor less than thirty (30) days unless a different time period is agreed upon in writing by all parties) following the date of such Notice of Mutual Agreement). The parties shall participate in good faith discussions as are appropriate to address the requested decision.

(b) Until such time as Mutual Agreement is reached with respect to the matter, if any, any existing procedures, requirements or circumstances shall remain in effect.

“**Net Project Costs**” has the meaning set forth in Section 7.3(1).

“**Non-Rail Components**” means the walls, retaining walls, embankments, support structures and drainage facilities of and for the trench portion of the Rail Corridor, and

the structural portions of the bridges and overpasses over the trench portion of the Rail Corridor. The term Non-Rail Components shall not include (i) public streets, roadways or highways along the Rail Corridor, (ii) the surface pavement of streets on the bridges and overpasses over the trench portion of the Rail Corridor, and (iii) the lighting, drainage and fence structures located on the bridges and overpasses over the trench portion of the Rail Corridor (and the maintenance, repair and replacement of such items shall not be the responsibility of the parties to this Agreement or paid for with M&O Charges, Use Fees, Container Charges, Port Advances or from the Reserve Account).

“Non-Rail Maintenance and Capital Improvement Charges” has the meaning set forth in Section 7.4(a).

“Non-Waterborne Containers” has the meaning set forth in Section 7.3(e)(l).

“North End Grade Separation” means that certain rail-to-rail grade separation, by which BNSF’s San Bernardino Subdivision Tracks will cross over the Rail Corridor Tracks and the Los Angeles River in the location shown on Page 1 of the Map, thereby eliminating the at-grade rail crossing that currently exists in the vicinity of Redondo Junction.

“Notice of Mutual Agreement” has the meaning set forth in the definition of “Mutual Agreement.”

“Original Agreement” means that certain Alameda Corridor Use and Operating Agreement dated as of October 12, 1998, by and among, POLB, POLA, ACTA, BNSF and UP, as amended by the First Amendment.

“Other Rail Lines” has the meaning set forth in Section 15.15.

“Overdue Rate” means a rate per annum equal to the “prime rate” plus 5%, but in no event greater than the maximum rate permitted to be charged under the law of the State of California as of the date the payment in question was due under this Agreement. As used in the preceding sentence, “prime rate” means the rate announced from time to time by the Los Angeles main office of Bank of America as its “reference rate”. If Bank of America no longer announces a “reference rate,” then Owner and Railroads, through Mutual Agreement, shall promptly adopt a substitute benchmark for determining the Overdue Rate similar to the Bank of America “reference rate”.

“Owner” means, collectively, POLA and POLB, and their respective successors and assigns with respect to ownership of the Rail Corridor property and improvements.

“Permitted Switching Locations” means that portion of a Rail Corridor through track that must be occupied while a train is switching rail cars at one of the following industries or locations shown on the Map: Texaco Products, K-PAC, UP Hammond Lead and the Auto Dock Lead. If such an industry or location permanently ceases to use rail freight service from the Rail Corridor, then the through track segment used for switching such industry or location no longer shall constitute a Permitted Switching Location unless it is necessary to use such through track segment to switch one of the other industries or locations identified in this definition.

“**PHL**” means Pacific Harbor Line, Inc., a Delaware corporation.

“**Pier B Yard**” means the Pier B Yard (formerly known as the 8th Street Yard) in the Port of Long Beach as outlined on Page 3 of the Map.

“**POLA**” means the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners.

“**POLB**” means the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners.

“**Port**” means, individually, each of the seaports located on San Pedro Bay in the County of Los Angeles commonly known as the Port of Long Beach and the Port of Los Angeles, and “**Ports**” means, collectively, both of such seaports.

“**Port Advances**” has the meaning set forth in Section 7.3(b)(5).

“**Port Facilities**” means all existing or future terminals, yards and facilities owned or leased by, or located on property owned by, Owner, POLA or POLB (or any successor or assignee of any of the foregoing) and located within the Port areas (as such Port areas are shown on Page 4 of the Map), including the ICTF, as such facilities may be expanded or contracted from time to time.

“**Port-Owned Tracks**” means all Track and Track Support Structures now or in the future owned jointly or separately by POLA and/or POLB (or any successor or assignee of either or both of the foregoing), located within the Port areas shown on Page 4 of the Map, whether or not located within the Rail Corridor, provided, however, that neither the Drill Track nor Track located within a Port Facility shall be considered part of the Port-Owned Tracks. “**Port-Owned Tracks**” also shall include (i) the Manuel Sidings and the portion of the UP San Pedro Branch used to access the Manuel Sidings, but only if the Manuel Sidings are used for holding or storing trains as part of the Rail Corridor pursuant to Section 9.1, and (ii) the portion of the UP San Pedro Branch between Thenard Crossing and the Port areas shown on Page 4 of the Map. Except as provided in clause (ii) of the preceding sentence, the UP San Pedro Branch shall not be deemed to be Port-Owned Tracks under this Agreement unless Owner expressly so agrees.

“**Port Rail Agreements**” means, collectively, (i) that certain Permit to Use Tracks Agreement dated as of December 1, 1997, by and among POLA, BNSF, SPT and Union Pacific, (ii) that certain San Pedro Bay Harbor Rail Operating Agreement dated as of December 1, 1997, by and between POLA and PHL, (iii) that certain Use of Tracks Agreement dated as of June 1, 1998, by and among POLB, UP and BNSF, and (iv) that certain Long Beach Rail Operating Agreement dated as of June 1, 1998, by and between POLB and PHL, as each of such agreements may be extended or amended from time to time.

“**Port Rail Operator**” means the entity (or entities) in charge of dispatching and operating trains on Port-Owned Tracks, and maintaining such Port-Owned Tracks, within the harbor areas of POLA and POLB. The current location of such dispatching and operating authority is shown on Exhibit A attached hereto. As of this date, the Port Rail Operator is PHL,

which has been engaged by POLA with respect to POLA's harbor area, and by POLB with respect to POLB's harbor area.

“Project” means the construction and development of the project described in that certain Plan adopted by ACTA on January 14, 1993, as modified and shown on the Conceptual Design Layout (Alternative 2.1B) (copies of which have been date stamped December 22, 1994 and initialed by each of POLA, POLB, SPT, ATSF and Union Pacific), prepared by Daniel, Mann, Johnson & Mendenhall in joint venture with Moffatt & Nichol, Engineers (including the Tracks and Track Support Structures for the Rail Corridor, the Non-Rail Components, and streets, roadways and highways and street, roadway, highway and railway overpass facilities), as updated and, to the extent shown thereon, superseded by the Track Schematic Drawings, and as the same have been amended prior to the date hereof pursuant to the Original Agreement or by agreement of the Owner and the Railroads. The “Project” may be further amended from time to time, to the extent not inconsistent with the Track Schematic Drawings and the provisions of this Agreement (provided that if any such amendment to the Plan made after the October 12, 1998, other than an amendment required by law or an amendment required by a governmental entity or agency other than Owner or ACTA, will increase the total amount of Net Project Costs by an amount in excess of \$50 million, then such amendment must first be approved by Owner and Railroads through Mutual Agreement and, if not approved by Owner and Railroads through Mutual Agreement, such amendment nevertheless may be made if Owner and ACTA agree that the amount in excess of said \$50 million will be paid entirely from sources other than Use Fees and Container Charges).

“Property Assembly Reimbursement” has the meaning set forth in Section 7.3(b)(6).

“Pro Rata Portion” means, with respect to any of the Railroads, a percentage equal to the relationship of such Railroad's use (including Repositioning and Crossing Movements, as hereinafter defined) of the Rail Corridor and the Port-Owned Tracks to the total use of the Rail Corridor and the Port-Owned Tracks by all of the Railroads (including Repositioning and Crossing Movements) during a given time period. Use shall be measured by gross ton miles or by train miles depending upon the nature of the costs or expenses subject to proration, as more particularly set forth in this Agreement.

“RCAF” means the Rail Cost Adjustment Factor (unadjusted), as determined by the STB.

“Rail Corridor” means the multiple main track, high density, predominantly 40 mile per hour mainline railroad system (including the Track and Track Support Structures and identified rail connections for each of the Railroads) with centralized traffic control which permits bi-directional operation on each main track and provides for maximum train-handling capacity, together with the real property on which such railroad system is located, as generally shown on the Conceptual Design Layout described above in the definition of “Project,” as updated and, to the extent shown thereon, superseded by the Track Schematic Drawings (provided that (i) “maximum train-handling capacity” shall not be construed to require any Railroad to upgrade its locomotives in order to meet such standard in operating on the Rail Corridor, and (ii) “predominantly 40 mile per hour” shall not be construed to require that the

entire Rail Corridor and every connection thereto be designed and constructed to accommodate rail operations at speeds of 40 miles per hour). The Rail Corridor has been constructed in accordance and conformance with the provisions and standards set forth in the UP C&M Agreement (or, with respect to any portion of the Rail Corridor constructed on property owned by BNSF, in accordance with the provisions and standards set forth in the BNSF C&M Agreement) and is generally located in the right-of-way Owner acquired from SPT running generally along and parallel to Alameda Street beginning, in the north, for each Railroad, at the point that such Railroad leaves the mainline tracks or trackage rights owned or held by such Railroad (other than the Rail Corridor itself), which point, for each Railroad, is shown on Page 1 of the Map, and ending, in the south, at the Anaheim Street grade separation in the City of Long Beach and at the northerly entrance to the Badger Avenue Bridge in the City of Long Beach. The Rail Corridor includes:

- (a) the Joint Use Construction Projects (provided, however, capital replacement of the North End Grade Separation shall be governed by separate agreements between BNSF and the commuter agencies which operate over the North End Grade Separation, and provided further, however, for purposes of maintenance, repair and dispatching, the North End Grade Separation shall not be considered part of the Rail Corridor);
- (b) the connections and crossings identified in Section 3.1(a)(i)(B) and Section 3.1(a)(i)(C) of the UP C&M Agreement;
- (c) a Track connection between the Rail Corridor and a Track leading to Watson Yard, up to the property line of Owner's property, as that Watson Yard Track connection is described in the ATSF Purchase Agreement (as such description is updated and modified in the BNSF C&M Agreement); and
- (d) a Track connection between the Rail Corridor and BNSF's main line Tracks near Redondo Junction, up to the property line of Owner's property, as that Track connection is described in the ATSF Purchase Agreement (as such description is updated and modified in the BNSF C&M Agreement).

The Rail Corridor does not include any street, roadway or highway structures or improvements over or adjacent to the Rail Corridor (provided that this sentence shall not be deemed to exclude from the definition of Rail Corridor any (x) maintenance, access or service roads constructed on or adjacent to the Rail Corridor property for the primary purpose of providing access to or maintaining the Track and other components of the Rail Corridor, or (y) the structural portion of bridges and overpasses over the trench portion of the Rail Corridor (which structural portions constitute part of the Non-Rail Components), all of which are part of the Rail Corridor). The Rail Corridor does not include the Drill Track.

“Railroad” means, individually, BNSF or UP, and **“Railroads”** means, collectively, all of BNSF and UP, and the assignees of the foregoing permitted pursuant to this Agreement, together with any other Class I or financially responsible and experienced regional railroad that in the future may be granted rights by Owner to use the Rail Corridor pursuant to Section 15.1.

“Repositioning and Crossing Movement” means one of the following continuous movements across the Rail Corridor (i.e., not including switching on the Rail Corridor) for the purpose of repositioning of locomotives, railcars and equipment, or moving the same across the Rail Corridor, only:

- (i) movements over the Rail Corridor only north of 25th Street (and, with respect to UP, including J Yard), or the connection of UP’s Wilmington Branch to the Rail Corridor, and not to or from any Port Facility;
- (ii) movements over the Rail Corridor only south of the Dolores Yard/ICTF connection track at Dominguez Junction between a Port Facility and a rail origin or destination south of Dominguez Junction (which shall include for BNSF only movements to Watson Yard and then to an industry or yard located on BNSF’s Harbor Subdivision south of 25th Street);
- (iii) movements across the Rail Corridor that both originate and terminate on the Drill Track or adjacent yards;
- (iv) movements across the Rail Corridor between UP’s Wilmington Branch and Dolores Yard;
- (v) turning of locomotives and railcars by UP using the Watson Yard connection track as described in that certain Use of Tracks Agreement dated as of December 22, 1994 among SPT, BNSF and Owner; and
- (vi) movements between the Dow Chemical Facility and Mead Yard;

provided that in each case the Railroad conducting the Repositioning and Crossing Movement shall not hold, store, position or leave trains, railcars, locomotives or other equipment on, or otherwise block, any of the main line tracks of the Rail Corridor. In no event shall Repositioning and Crossing Movements be used to move railcars or containers that otherwise are required by this Agreement to use the Rail Corridor to another rail line in order to avoid using the Rail Corridor.

“Required Annual Payment” has the meaning set forth in Section 7.3(h)(i).

“Required Debt Service Reserve” has the meaning set forth in Section 7.3(b)(1)(ii).

“Reserve Account” has the meaning set forth in Section 7.4 (a).

“Reserve Account Target” has the meaning set forth in Section 7.4(b).

“Settlement Agreement” means that certain Settlement and Release Agreement dated as of July 5, 2006, entered into by BNSF, UP, POLA, POLB and ACTA in connection with the settlement of the Transloading Dispute.

“Shortfall Advances” has the meaning set forth in Section 7.3(h)(i).

“Significant Delay” means that access to or operation on the Rail Corridor will be delayed for a significant time period, as reasonably determined by the Corridor Dispatcher under the particular circumstances, following any guidelines or policies adopted prior to the date hereof pursuant to the Original Agreement or by agreement of Owner and the Railroads. Owner and Railroads, through Mutual Agreement, may modify any such existing guidelines and/or adopt new specific guidelines and parameters for the Corridor Dispatcher to determine whether a particular circumstance constitutes (or will constitute) a Significant Delay.

“SPB Connection Track” has the meaning set forth in Section 3.2(f).

“SPB Segment” has the meaning set forth in Section 3.2(f).

“Standard Detour Agreement” has the meaning set forth in Section 2.4(a).

“STB” means the Surface Transportation Board.

“Subsequent Shortfall Advance” has the meaning set forth in Section 7.3(h)(ix).

“Substantial Completion” means and includes the construction of the crossings and connections described in clause (b) of the definition of "Rail Corridor," on the terms set forth in the UP C&M Agreement, and the construction of the connection Tracks described in clauses (c) and (d) of the definition of "Rail Corridor" beyond the property line of Owner's property on the terms set forth in the BNSF C&M Agreement. The parties acknowledge and agree that Substantial Completion occurred on April 15, 2002.

“Tax Exempt Rate” has the meaning set forth in Section 7.3(b)(7).

“Temporary Increases” has the meaning set forth in Section 7.3(h)(ix).

“TEU” means twenty-foot equivalent unit. For purposes of computing those Use Fees and Container Charges under Section 7.3 which are based on a TEU, the rate shall be the amount obtained by multiplying the then-current Use Fee or Container Charge (as the case may be) per TEU, by the length of the container, and dividing that product by 20.

“Through Train” means any train movement commencing or terminating at a Port Facility, together with UP's "Dolores Hauler" (pursuant to the Project environmental impact report) and existing unit trains to or from any oil refineries served from the Rail Corridor (pursuant to the Project environmental impact report), excluding, however, any Repositioning and Crossing Movements and/or Local Train.

“Toyota Distribution Facility” means the Toyota Distribution Facility as outlined on Page 3 of the Map.

“Track” means all railroad related improvements, including all tracks (including main line tracks, spur tracks, lead tracks, passing tracks and storage tracks) and all rail-related facilities (including rails and fastenings, switches, frogs, bumpers, ties, ballast, roadbed, signaling devices and systems, traffic control systems, interlocking devices and plants, crossing

warning devices, crossing surfaces, signal pole lines, and signal communication facilities and equipment).

“**Track Schematic Drawings**” means those certain track schematic drawings dated 12 January 1998 (with a date code of 1 October 1998 along the lower right margin) and initialed by each of POLA, POLB, ACTA, BNSF and UP, a copy of which are attached to each of the UP C&M Agreement and the BNSF C&M Agreement, as the same have been amended prior to the date hereof pursuant to the Original Agreement or by agreement of Owner and the Railroads.

“**Track Support Structures**” means those properties, improvements and structures for use or support of the Track, including rail bridges, rail tunnels, culverts and other structures, subgrade, embankments, walls (including sound walls but excluding support structures for street, roadway or highway bridges), dikes, pavements and drainage facilities, and maintenance, access and service roads.

“**Transloaded**” has the meaning set forth in the Settlement Agreement.

“**Transloading**” has the meaning set forth in the Settlement Agreement.

“**Transloading Dispute**” has the meaning set forth in the Settlement Agreement.

“**UP**” means Union Pacific Railroad Company, a Delaware corporation.

“**UP C&M Agreement**” means that certain Amended and Restated Construction and Maintenance Agreement dated as of October 12, 1998 (as the same may be amended from time to time, to the extent not inconsistent with the provisions of this Agreement), by and between UP and Owner, governing the construction of the Rail Corridor and the Drill Track.

“**UP San Pedro Branch**” means the railroad rights of way and adjoining land and improvements located in the County of Los Angeles, State of California, commonly known as the UP San Pedro Branch, approximately between Milepost 3.08 in the north and Milepost 21.71 in the south, as more particularly described in the UP Purchase Agreement.

“**Unpaid Shortfall**” has the meaning set forth in Section 7.3(h)(iii).

“**Use Fees**” has the meaning set forth in Section 7.3(a).

“**Use Fees Termination Date**” has the meaning set forth in Section 7.3(c).

“**Waterborne Containers**” has the meaning set forth in Section 7.3(e)(l).

“**Watson Yard**” means Watson Yard, as shown on Page 3 of the Map.

“**West Thenard**” means the rail junction shown on Page 3 of the Map.

1.2 Generally. All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural

number shall be deemed to have been made, respectively, in the plural or singular number as well. All references to Sections, subsections, paragraphs and subparagraphs are to Sections, subsections, paragraphs and subparagraphs of this Agreement unless indicated otherwise. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to this entire Agreement and not to any particular provision or section unless specifically indicated otherwise. The terms "include" and "including" shall mean "including, but not limited to".

ARTICLE II

CONSTRUCTION AND USE OF RAIL CORRIDOR AND DRILL TRACK

2.1 Construction of the Rail Corridor. The parties hereto acknowledge and agree that the Project was constructed at the cost of entities other than the Railroads (except as may be otherwise provided in this Agreement or any other agreement to which one or more of the Railroads is a party) and in accordance with the UP C&M Agreement and, with respect to any portion of the Project constructed on property owned by BNSF, in accordance with the BNSF C&M Agreement.

2.2 Agreement to Use.

(a) UP and BNSF agree that so long as the STB (and any other federal agency with jurisdiction) has given any necessary approvals or consents, each Railroad shall use and, subject to the provisions of this Agreement, shall have the right to use, the Rail Corridor for all Through Train movements. In addition, UP and BNSF each shall cooperate reasonably with Owner and ACTA in obtaining any other approvals or consents that may be necessary for the continued operation of the Project.

(b) Subject to the payment of fees pursuant to Article VII, the Railroads shall have the right to use the Rail Corridor for the movement of Local Trains, provided, however, (i) such Local Trains shall have the priority set forth in Section 3.2 and shall otherwise comply with the provisions of this Agreement, (ii) although Local Trains may operate on the Rail Corridor, there shall be no switching of rail cars on the Rail Corridor, nor shall there be any freight rail service to any local industry customers directly from the Rail Corridor, except as expressly permitted in Section 3.1(a)(iii) of the UP C&M Agreement and except for switching activities at the Permitted Switching Locations (subject to the terms and conditions set forth below), and (iii) in no event shall more than 20% of the cargo transported by all Railroads on the Rail Corridor in any year move to or from facilities which are not included within the meaning of "port facilities" under Section 142(a)(2) of the Internal Revenue Code of 1986, as amended (with such percentage to be determined on the basis of gross ton miles transported on the Rail Corridor). Each Railroad shall submit to ACTA (with a copy to Owner and Railroads), within 30 days after the end of each month a written statement setting forth the number of gross ton miles transported on the Rail Corridor that did not move to or from "port facilities" during such month. If it is determined by ACTA (or any agency of the federal government) or by the Railroads and Owner through Mutual Agreement that the 20% limitation set forth in the immediately preceding sentence has been or may be reached in any year, at the direction of ACTA, or as directed by the Railroads and Owner through Mutual Agreement, some or all of the railcars or containers

carrying cargo to a location that is not a “port facility” (as such term is used in the preceding sentence) may be rerouted over other rail lines selected by and available to the Railroad operating such railcars (e.g., in the case of UP, over the Drill Track). Notwithstanding the prohibition on switching of rail cars on the Rail Corridor set forth above, the Railroads may conduct switching activities at the Permitted Switching Locations on the following terms and conditions: (1) the switching of rail cars may be conducted from only one mainline track of the Rail Corridor at any one time and switching activities shall be conducted at the Permitted Switching Locations only during non-peak hours of Rail Corridor operations, (2) Through Train movements on the Rail Corridor shall be given dispatch priority over switching movements, and (3) funds in the Reserve Account may not be used for the purpose of causing such switching activities no longer to occur on the Rail Corridor until such time as Owner has received all payments to which Owner is entitled under Paragraphs (5), (6) and (7) of Section 7.3(b).

(c) Neither POLA, POLB nor ACTA will require the Railroads to operate Through Trains powered by electric locomotives on the Rail Corridor unless the Railroads voluntarily agree thereto, provided, however, if electrification of the Rail Corridor is otherwise required, such requirement shall not be a basis on which any party may terminate this Agreement, but if legally permissible, a Railroad may satisfy the requirement to use electric powered locomotives by using locomotives powered by an alternative energy source acceptable to the appropriate government entities.

2.3 Drill Track. The Drill Track may be used only by UP, for the purpose of operating Local Trains (except as otherwise provided in this Agreement). UP’s use of the Drill Track shall be exclusive (subject to Section 2.4) and shall be governed by the Drill Track Operating Agreement.

2.4 Detours.

(a) In the event of a complete blockage of the mainline Tracks on the Rail Corridor which will cause a Significant Delay, each Railroad shall provide to the other Railroads detour routes over any of its available rail routes (including over the Drill Track and the UP San Pedro Branch), adequate and sufficient to provide access to and from the Ports, on the terms of any detour agreement between or among the Railroads which then may be in effect with respect to such detour route or, if no such agreement is in effect, then on the terms of the Standard Form for Detour Agreement adopted by the Association of American Railroads (“**Standard Detour Agreement**”) (provided that, with respect to such detours over the UP San Pedro Branch, access shall be provided to each of the Railroads on an equal and nondiscriminatory basis).

(b) The provisions of Section 2.4(a) shall not be applicable to delays or blockages occurring as a result of planned construction or maintenance of the Rail Corridor.

2.5 Design and Operating Principles.

(a) The Rail Corridor and the Project shall be designed, operated, maintained and dispatched in a manner that promotes efficient and competitive freight rail service to and from the Ports, and in a manner that does not discriminate among any of the Railroads or between POLA and POLB. Notwithstanding the foregoing, the Rail Corridor and the Project will

not be designed to eliminate switching for the Permitted Switching Locations or to avoid any delays that such switching may cause.

(b) As of the date hereof, Owner and Railroads, have established pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads) a performance standard and rail operating procedures for the Rail Corridor, which performance standard and operating procedures are designed to achieve and implement the principles and goals of the Rail Corridor and the Project consistent with the provisions thereof. Such performance standard and rail operating procedures for the Rail Corridor may be updated or modified from time to time by Owner and Railroads through Mutual Agreement. As of the date hereof, Owner and Railroads, have established and arranged for pursuant to the Original Agreement (or by separate agreement among Owner and Railroads) specific rules and regulations to implement the standards and procedures set forth in the Original Agreement relating to dispatching, maintenance, capital expenditures (including establishing guidelines and criteria, including, if appropriate, specific units of measurement, for determining whether the replacement of components of the Track and the Track Support Structures will be treated as a capital item, and paid as a Capital Expense, or a maintenance item, and paid as an M&O Charge) and operation of the Rail Corridor and, subject to the provisions of the Port Rail Agreements, the Port-Owned Tracks. Such rules and regulations may be updated or modified from time to time through Mutual Agreement of Owner and Railroads. Each Railroad shall cause its employees and agents to observe the performance and operating standards, and to obey the rules and regulations, adopted by Owner and Railroads through Mutual Agreement.

(c) Any decision made through Mutual Agreement relating to the Port-Owned Tracks and/or the Port Facilities shall require that POLA (with respect to the Port-Owned Tracks and/or Port Facilities located within POLA's Port area, as shown on the Map) or POLB (with respect to the Port-Owned Tracks and/or Port Facilities located within POLB's Port area, as shown on the Map), as the case may be, agree or consent to such decision. If Owner and Railroads are unable to reach Mutual Agreement with respect to any decision or any action to be taken under this Agreement, including with respect to selection or replacement of the Corridor Dispatcher or the Corridor Maintenance Contractor, or the approval or adoption of an annual maintenance and capital plan or the budgets therefor, then POLB, POLA, and each Railroad shall have the independent right to submit such matter to mediation pursuant to Section 14.4.

(d) Owner and Railroads, through Mutual Agreement, shall be responsible for selecting the proposed Corridor Dispatcher and the Corridor Maintenance Contractor (and any other contractors as may be necessary from time to time to provide security, communications, inspection, maintenance, construction, repair and other services for the Rail Corridor). Promptly after the selection of the proposed Corridor Dispatcher and the Corridor Maintenance Contractor (or any other contractors that from time to time may provide services for the Rail Corridor pursuant to the provisions of the Original Agreement or this Agreement), ACTA will endeavor, while acting in compliance with applicable law, to enter into an agreement with such entity on the business terms specified by Owner and Railroads. If such entity declines to accept the business terms specified by Owner and Railroads, or if ACTA otherwise does not enter into an agreement with such entity, Owner and Railroads, through Mutual Agreement, shall select a different contractor or modify the business terms proposed for the contractor selected previously. The selection process established in this Section shall be repeated until ACTA enters into an

agreement with the Corridor Dispatcher and the Corridor Maintenance Contractor (and any other contractors that may provide services for the Rail Corridor pursuant to the provisions of the Original Agreement or this Agreement). No such contract, however, may be for a term in excess of five years without the unanimous consent of Owner and Railroads.

(e) Notwithstanding the provisions of this Section 2.5, Section 3.5, Section 4.2, or Section 8.2, Owner and Railroads may not amend the provisions of this Agreement, take actions or adopt standards, rules or procedures that would conflict with the terms of this Agreement.

ARTICLE III

DISPATCHING

3.1 Dispatcher. Dispatching service for all train movements on and within the Rail Corridor, on all Port-Owned Tracks and to all Port Facilities shall be subject to the direction and control of the entity (“Corridor Dispatcher”) selected by Owner and Railroads through Mutual Agreement. The Corridor Dispatcher may not be either UP alone or BNSF alone, unless unanimously approved by Owner and Railroads.

3.2 Dispatch Priority. All train movements on and within the Rail Corridor, on all Port-Owned Tracks and to or from all Port Facilities shall be dispatched in accordance with the following general principles:

(a) As among the Railroads, all trains shall be dispatched on a nondiscriminatory basis.

(b) All Through Trains shall have priority over (i) any Local Trains and Repositioning and Crossing Movements using or crossing the Rail Corridor, and (ii) switching activities at the Permitted Switching Locations.

(c) All Through Trains shall be dispatched on a “first-come, first-served” basis, provided that, in the event of an emergency or other extraordinary circumstance which is beyond the reasonable control of the Railroad experiencing such circumstance, special priority may be authorized upon demonstration of such emergency or other extraordinary circumstance to the Corridor Dispatcher. Upon demonstration of an emergency or other extraordinary circumstance to the Corridor Dispatcher, a Through Train that reaches a Rail Corridor access point after another Through Train of equal priority nevertheless may be given priority by the Corridor Dispatcher over such earlier train (without discrimination as to the Railroad operating either such train).

(d) A Track was constructed connecting Watson Yard to the Rail Corridor, which connection Track may cross the Drill Track and yard Tracks in the vicinity of Milepost 500.3. With respect to trains entering the Rail Corridor northbound from Watson Yard or leaving the Rail Corridor southbound to Watson Yard, the Corridor Dispatcher shall control the crossing access of all Tracks crossing the connection Track built between the Rail Corridor and Watson Yard (including the Drill Track) and, as between BNSF and UP, BNSF’s trains shall have priority over UP’s trains operating on the Tracks which are crossed by the connection Track

between the Rail Corridor and Watson Yard, provided that (i) the Corridor Dispatcher shall give UP at least two hours prior notice of any such BNSF trains entering or leaving the Rail Corridor to or from Watson Yard, (ii) if UP notifies the Corridor Dispatcher that UP will need to conduct switching operations on its Tracks crossed by the connection Track between the Rail Corridor and Watson Yard, UP shall have at least one hour windows following each BNSF train movement in which to conduct such switching operations, (iii) no trains, railcars, or equipment may be stopped, stored or positioned in a manner that blocks any authorized train movements on such connection Track or any rail crossings thereof, and (iv) liability for train operations on and across such connection Track shall be as set forth in Article XI of this Agreement.

(e) If Owner and Railroads unanimously agree, certain classes of freight and cargo may be given priority over other classes of freight and cargo.

(f) Owner or ACTA constructed as part of the Project a Track connecting the easterly-most main line Track of the Rail Corridor to a portion of SPT's San Pedro Branch acquired as an easement by Owner south of Dolores Yard at approximately Milepost 500.6 on such San Pedro Branch (the "**SPB Connection Track**"). UP uses the segment of the San Pedro Branch covered by such easement between Milepost 500.7 and the northeasterly boundary line of BNSF's Harbor Subdivision at approximately Milepost 500.9 ("**SPB Segment**") in connection with local freight rail operations. The SPB Segment is not part of the Rail Corridor's main line Tracks, but may be used as an additional access route to the Ports. The Corridor Dispatcher shall control access to, and the operation of all trains and equipment on, the SPB Connection Track and the SPB Segment, as well as the crossing access of any Tracks crossing the SPB Connection Track. The SPB Connection Track and the SPB Segment shall be deemed to be Port-Owned Tracks. Trains using the SPB Connection Track and the SPB Segment to move to or from the Rail Corridor shall have priority over all other trains or switching movements, including priority over trains operating on any Tracks that are crossed by the SPB Connection Track, provided that (i) the Corridor Dispatcher shall give UP at least two hours prior notice of any trains entering the SPB Connection Track or the SPB Segment, (ii) if UP notifies the Corridor Dispatcher that UP will need to use the SPB Segment, UP shall have at least a two hour window following each such train movement to or from the Rail Corridor in which to conduct switching operations on the SPB Segment, (iii) no trains, railcars or equipment may be stored or positioned in a location that blocks any train movements on the SPB Connection Track or on the SPB Segment (except that UP shall have the right to temporarily position railcars or equipment on the SPB Segment in connection with UP's local freight rail operations, provided that such railcars and equipment shall be removed by UP on two hours' notice from the Corridor Dispatcher as provided above), and (iv) liability for train operations on and across the SPB Connection Track and the SPB Segment shall be as set forth in Article XI of this Agreement.

3.3 Diversions. In the event that the Corridor Dispatcher determines that there will be a Significant Delay to a Through Train of any Railroad in gaining access to the Rail Corridor, the Corridor Dispatcher shall notify such Railroad of the Significant Delay, and such Railroad then shall have the right to divert the delayed Through Train to an alternate rail line owned by such Railroad or over which such Railroad has a rail service easement or trackage rights. In addition, in the event of any such Significant Delay, if any Railroad has not elected to divert its Through Trains to an alternate rail line owned by such Railroad or over which such Railroad has a rail service easement or trackage rights, the Corridor Dispatcher may divert

Through Trains to the UP San Pedro Branch, with (i) UP and BNSF to pay to the Corridor Dispatcher dispatching charges, calculated on a train mile basis, (ii) UP and BNSF to pay to the entity responsible for maintaining and operating the UP San Pedro Branch, as reimbursement for maintenance and operations expenses on the UP San Pedro Branch, its proportionate share of such expenses, allocated on a gross ton mile basis comparing its use of the UP San Pedro Branch to the total use of the UP San Pedro Branch by all of the Railroads, and with the Through Trains of each of the Railroads to be provided equal and nondiscriminatory access to the UP San Pedro Branch and (iii) UP and BNSF to pay Use Fees on diverted Through Trains (except in the case of a complete blockage as provided in Section 7.3(f)). The Corridor Dispatcher shall continue to observe any guidelines or parameters previously adopted pursuant to the Original Agreement or by agreement among Owner and the Railroads with respect to the order of trains to be diverted. Through Mutual Agreement, Owner and Railroads may establish new or additional guidelines and parameters for the Corridor Dispatcher to determine the order in which trains are to be diverted (e.g., the order of priority for diverting trains consisting primarily of empty railcars or containers, trains consisting of railcars only, trains consisting of containers only, Local Trains, Through Trains, etc.).

3.4 Dispatch Jurisdiction. Dispatching jurisdiction for train movements approaching, on and leaving the Rail Corridor, on all Port-Owned Tracks and to and from Port Facilities, shall be as follows:

<u>Location</u>	<u>Dispatch Jurisdiction</u>
(i) east of the Railroads' respective staging facilities in Barstow, Colton and Yermo	each Railroad shall have exclusive dispatch control over its trains
(ii) Through Trains operating between the Railroads' staging facilities and the northerly limits of the Rail Corridor (as shown on the Map), and trains leaving the Rail Corridor at its northerly limits	Corridor Dispatcher and Railroad dispatcher shall coordinate, but each Railroad shall have exclusive dispatch control over its trains
(iii) All trains entering and operating on the Rail Corridor or on any Port- Owned Tracks (other than Port- Owned Tracks that are subject to the Port Rail Agreements)	Corridor Dispatcher and Railroad dispatcher shall coordinate, but Corridor Dispatcher shall have exclusive control over all trains
(iv) All trains entering or operating on any Port-Owned Tracks that are subject to the Port Rail Agreements	Corridor Dispatcher and Port Rail Operator shall coordinate, but, subject to <u>Section 3.6</u> , Port Rail Operator shall have exclusive control over all trains

The Railroads and the Corridor Dispatcher shall cooperate with each other to ensure that all train movements will be coordinated with the Corridor Dispatcher and the Railroads to assure, to the extent reasonably possible, the efficient and uninterrupted flow of trains to, from and on the Rail

Corridor, on all Port Owned Tracks, and to and from Port Facilities. Dispatching of the Drill Track shall be governed by the Drill Track Operating Agreement, the dispatching provisions of which shall be consistent with the terms of this Agreement.

3.5 Dispatching Standards and Dispute Resolution. As of the date hereof, Owner and Railroads, have established pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads) dispatching regulations and standards relating to the Corridor Dispatcher's performance so as to provide efficient and competitive operations entering, leaving and operating over the Rail Corridor, on any Port-Owned Tracks and to and from any Port Facilities. Such dispatching regulations and the standards relating to the Corridor Dispatcher's performance may be updated or modified from time to time by Owner and Railroads through Mutual Agreement. Owner and Railroads shall have the right and obligation to monitor such performance and operations to ensure compliance with such standards. Owner and Railroads shall meet periodically with the Corridor Dispatcher to identify and implement by Mutual Agreement methods to eliminate or reduce any problems relating to dispatching (and POLB, POLA and each Railroad shall have the independent authority to convene a meeting if in the reasonable opinion of at least one of them there are significant problems with the Corridor Dispatcher's performance). In the absence of a Mutual Agreement, any disputes regarding dispatching shall be resolved, if necessary, pursuant to the mediation procedures set forth in Section 14.4. Each Railroad shall cause its employees and agents to obey the orders and directions of the Corridor Dispatcher.

3.6 Dispatching of Port-Owned Tracks. If and to the extent that the Port Rail Agreements provide that the Port Rail Operator shall be responsible for dispatching any Port-Owned Tracks, the Port Rail Agreements shall control with respect to those Port-Owned Tracks, and any provisions to the contrary contained in this Agreement with respect to dispatching such Port-Owned Tracks are deemed superseded by the Port Rail Agreements until the applicable Port Rail Agreement is terminated or expires in accordance with its respective terms, except that Owner and Railroads, through Mutual Agreement, shall have the right to affirmatively elect to cause the dispatching of the Port-Owned Tracks to be shifted to, and undertaken by, the Corridor Dispatcher.

ARTICLE IV

LOCOMOTIVES AND CREWS; CORRIDOR OPERATION

4.1 Locomotives and Crews.

(a) Each Railroad shall, at its sole cost and expense: (i) use its own equipment and crews for all train movements on the Rail Corridor and all Port-Owned Tracks (subject to the provisions of the Port Rail Agreements and any existing written agreement to which either or both of the Railroads are parties), (ii) maintain an adequate, experienced, licensed (where necessary) and competent staff to operate such Railroad's trains on the Rail Corridor and all Port-Owned Tracks, and (iii) maintain its equipment in compliance with all applicable FRA, federal, state and local governmental laws and requirements. All trains operating on the Rail Corridor and on Port-Owned Tracks shall be adequately powered to run at maximum authorized track speeds (provided, however, that underpowered trains may be permitted to use the Rail

Corridor, subject to the control of the Corridor Dispatcher, if such trains will not interfere with or delay other trains using the Rail Corridor) and otherwise in such condition that the efficient use and operation of the Rail Corridor and all Port-Owned Tracks will not be disrupted. Neither Owner nor ACTA shall have any obligation to inspect, maintain, refuel, service or repair any equipment used by any of the Railroads, to clear any derailed trains, or to provide refueling, servicing or repair facilities or equipment to any of the Railroads, in connection with such Railroad's use of the Rail Corridor or the Port-Owned Tracks.

(b) Each Railroad shall be solely responsible for providing any security services or measures it deems necessary or desirable for its property and equipment, and all cargo, rail cars and equipment in its possession or control. Each Railroad acknowledges that the Owner's status as the owner of the property on which the Rail Corridor is to be constructed, and ACTA's status as the lessee, licensee or permittee with respect to such property, shall not impose any duty or obligation on either Owner or ACTA to provide any security services or measures to protect any property or equipment owned or used by the Railroads from theft, vandalism or damage, and Owner and ACTA disclaim any such duty or obligation.

(c) Each Railroad shall comply, at its sole cost and expense, with all lawfully enacted federal, state and local laws, rules, regulations, permits and orders then in effect and applicable to its operations on the Rail Corridor and the Port-Owned Tracks. POLA, POLB and ACTA each shall comply, at its sole cost and expense, with all lawfully enacted federal, state and local laws, rules, regulations, permits and orders then in effect and applicable to its respective activities with respect to the Rail Corridor and the Port-Owned Tracks. If any party fails to comply with its obligations under this Section 4.1(c), and such failure results in a fine, penalty, cost or charge being imposed or assessed on or against any other party to this Agreement, the party which failed to comply with its obligations shall promptly reimburse, defend, indemnify and hold the other parties harmless with respect to such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith. Each of the parties to this Agreement shall cooperate reasonably and in good faith with the other parties to ensure that the use of and operations on the Rail Corridor and Port-Owned Tracks comply with all lawfully enacted federal, state and local laws, rules, regulations, permits and orders then in effect.

4.2 Corridor Operation.

(a) As of the date hereof, Owner and Railroads, have established pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads), rules and regulations governing rail operations relating to the Rail Corridor and all Port-Owned Tracks (including the clearing of derailed trains), all of which have been designed to achieve and implement the principles and goals of the Rail Corridor and the Project set forth in Section 2.5(a). Such rules and regulations may be updated or modified from time to time by Owner and Railroads through Mutual Agreement. Each Railroad shall cause its employees and agents to observe such rules and regulations.

(b) Owner and Railroads shall meet periodically to identify and implement methods to monitor compliance with the rules and regulations adopted by them and eliminate or reduce any problems relating to operations on the Rail Corridor and the Port-Owned Tracks. POLB, POLA, and each Railroad shall have the independent authority to convene a meeting of

the Parties if in the reasonable opinion of any one of them there are significant problems with such operations. In the absence of Mutual Agreement, any disputes regarding operations on such tracks shall be resolved, if necessary, pursuant to the mediation procedures set forth in Section 14.4.

(c) As among the parties to this Agreement, and except as otherwise expressly provided in this Agreement or in another agreement with one of the Railroads, Owner's status as the owner of the property on which the Rail Corridor is to be constructed, and ACTA's status as the Owner's lessee, licensee or permittee with respect to such property, shall not impose any duty or obligation on either Owner or ACTA to inspect, maintain, service, dispatch, operate or repair the Rail Corridor, the Port-Owned Tracks or the UP San Pedro Branch, or to make any capital improvements or replacements thereto, and Owner and ACTA disclaim any such duty or obligation.

(d) If and to the extent that the Port Rail Agreements provide that the Port Rail Operator shall be responsible for overseeing and coordinating operations on any Port-Owned Tracks, the Port Rail Agreements shall control with respect to those Port-Owned Tracks, and any provisions to the contrary contained in this Agreement regarding operations on such Port-Owned Tracks are deemed superseded by the Port Rail Agreements until the applicable Port Rail Agreement is terminated or expires in accordance with its respective terms. As of the date hereof, the Port Rail Operator is responsible for switching operations over, and for maintaining and dispatching, the Port-Owned Tracks within the area shown on Exhibit A attached hereto.

ARTICLE V

ACCESS TO PORT FACILITIES

5.1 Access to Port Facilities.

(a) Subject only to the exceptions set forth in Section 5.2, access and rail operations to and from all Port Facilities, and over all Track and Track Support Structures owned by POLA and/or POLB, is hereby granted to each of the Railroads on an equal and nondiscriminatory basis, provided that the physical connections necessary to provide such access exist or Owner or ACTA have otherwise agreed to construct such connections, and provided further that until the North End Grade Separation was completed, access over and dispatching at the existing at-grade rail crossing at Redondo Junction was as set forth in agreements between BNSF and UP governing such matters.

(b) ACTA, POLA and POLB each agree, for itself only, that no access fee shall be imposed upon any Railroad by ACTA, POLA and/or POLB to access any Port Facilities except as may be set forth in any agreements between or among ACTA, POLA and/or POLB and the Railroad to be charged the access fee. ACTA, POLA and/or POLB are not obligated to, but may, construct any new or modify any existing Track, Track Support Structures or connections to provide such access (except as they otherwise may have agreed).

(c) Each of the Railroads hereby acknowledges and represents to Owner, ACTA and the other Railroad that, except as set forth in Section 5.2, it does not own any Tracks

within the Port areas (as such Port areas are shown on Page 4 of the Map) over which the other Railroad does not have nondiscriminatory trackage rights.

5.2 Exceptions. The following facilities and services are specifically excepted from the general access provisions set forth in Section 5.1:

(a) UP shall have the exclusive right to use and operate the ICTF and, subject to existing interchange rights, those portions of Dolores Yard and J Yard which are owned by or subject to an easement in favor of UP.

(b) UP shall have the exclusive right to use and operate the Mead Yard (except for the limited right for BNSF to operate trains through Mead Yard to Terminal Island on the terms attached hereto as Exhibit C; in Exhibit C, the term "Railroad" means UP), subject to existing interchange rights, if any, and the exclusive right to serve (i) the Dow Chemical Facility, (ii) the Arco Calciner Facility, and (iii) the Toyota Distribution Facility, which facility shall be exclusive to UP (A) through December 31, 2006 or, if the main Toyota lease is extended, through the expiration date of such extended lease, but in no event later than December 31, 2016, or (B) for so long as such facility exists at that location, whichever is shorter.

(c) BNSF shall have the exclusive right to use and operate the Watson Yard, subject to existing interchange rights, if any.

(d) Notwithstanding the foregoing exclusive rights, any industry as of October 12, 1998, open to reciprocal switching at any of the locations specified in this Section 5.2 shall remain open to such reciprocal switching and, as of October 12, 1998 onward, any Railroad possessing such rights may, by written agreement with any other Railroad, change any existing reciprocal switching or exclusive switching agreements at any of the locations specified in this Section 5.2, but only in a manner that does not discriminate against any Railroad.

5.3 Modification of Existing Agreements. In order to implement the general access provisions set forth in Section 5.1, the parties agree that if and to the extent that the terms and conditions of any of the agreements listed on Exhibit D attached hereto conflict with the terms and conditions of this Agreement, then, effective as of the date of Substantial Completion of the Rail Corridor, this Agreement shall supersede and control those conflicting terms and conditions without the necessity of any further agreement between or among the parties to such agreements. The Railroads agree that, notwithstanding anything to the contrary in this Agreement, neither Owner nor ACTA shall have any obligation to resolve, or any liability for, any dispute between the Railroads with respect to such agreements listed on Exhibit D.

ARTICLE VI

ACCESS TO RAIL CORRIDOR AND PORT-OWNED TRACKS

6.1 Access to Rail Corridor and Port-Owned Tracks.

(a) On and subject to the terms and conditions of this Agreement, Owner and ACTA hereby authorize each of the Railroads to operate such Railroad's trains on and over the entire length of the Rail Corridor (and, if applicable pursuant to the provisions of this

Agreement, the UP San Pedro Branch), all Port-Owned Tracks and all existing and future Tracks and Track Support Structures owned by Owner, POLA and/or POLB (other than the Drill Track) for the purpose of providing freight rail service to and from the Ports, which authorization is hereby made to each of the Railroads on an equal and nondiscriminatory basis. The authorization granted hereby, however, does not, and shall not be construed to, give or grant the Railroads any ownership interest of any kind or character in or to the Rail Corridor, the UP San Pedro Branch, or any Port-Owned Tracks, or any other real or personal property of ACTA, POLA and/or POLB, and each Railroad specifically acknowledges that it has no ownership interest in any of such property (except as may have been reserved in connection with the transactions described in the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, respectively, and then only to the extent of such reservations). In addition: (i) POLA hereby grants to each of UP and BNSF a non-exclusive overhead trackage rights license for the operation of Through Trains on and over any portion of the Rail Corridor where neither Railroad currently has a reserved rail freight service easement, which trackage rights license (x) shall be subject to the approval of (or exemption by) the STB, (y) shall be for a term of 66 years (renewable thereafter on terms and conditions reasonably acceptable to POLA and the Railroads), and (z) shall otherwise be on all of the same terms and conditions set forth in this Agreement; and (ii) promptly after October 12, 1998, each of UP and BNSF shall grant to the other Railroad a permanent, non-exclusive overhead trackage rights license for the operation of Through Trains on and over any portion of the Rail Corridor property over which the granting Railroad previously reserved a rail freight service easement, all without charge or payment (other than the fees payable in accordance with Article VII), provided, however, such overhead trackage rights shall be effective only upon Substantial Completion and receipt of any required approval from the STB (and any other federal agency with jurisdiction). Each Railroad which previously reserved a rail service easement over any portion of the Rail Corridor property acquired by Owner from such Railroad consents and agrees to such overhead trackage rights operations by the other Railroad on such portion of the Rail Corridor (but not the Drill Track, except as set forth in Sections 2.4 and 3.2(d)). In addition to the foregoing, the parties acknowledge that the Port Rail Operator will operate trains on and over such portions of the Rail Corridor as may be necessary for the Port Rail Operator to conduct its operations pursuant to the Port Rail Agreements (for example, to move trains from Port Facilities to or from Watson Yard, Dolores Yard, etc.).

(b) Notwithstanding the equal and nondiscriminatory nature of the authorization granted in this Article VI, the parties hereto agree that the agreements identified on Exhibit E attached hereto will not be required to be modified in the manner described in Section 5.3, and any provisions set forth in such agreements which favor one Railroad over another shall be allowed to remain in effect (unless, with respect to the agreement governing the Redondo Interlocker identified on Exhibit E hereto, such agreement otherwise is terminated or transferred to Owner pursuant to the ATSF Purchase Agreement).

(c) All points of connection to the Rail Corridor shall be subject to sound operating procedures and the design criteria of the Project engineers, and shall otherwise be subject to Owner's and the connecting Railroad's approval, which approval shall not be unreasonably withheld.

6.2 Prohibition Against Liens. No Railroad shall cause, suffer or otherwise permit the filing of any mortgage, deed of trust, judgment lien or mechanic's, materialman's or other lien against any property owned or controlled by Owner or ACTA. However, in the event such filing does occur, such Railroad shall cause the same to be discharged of record within 30 days after the date of filing of the same.

6.3 Possessory Interest Taxes. WITHOUT DEROGATING FROM THE LIMITATIONS ON THE RAILROAD'S RIGHTS WITH RESPECT TO THE RAIL CORRIDOR AND THE PORT-OWNED TRACKS PROVIDED FOR HEREIN, THIS AGREEMENT MAY CREATE A POSSESSORY PROPERTY INTEREST IN EACH RAILROAD FOR TAX PURPOSES, THE RAILROADS MAY BE SUBJECT TO PAYMENT OF A POSSESSORY PROPERTY TAX IF SUCH AN INTEREST IS CREATED, AND NEITHER ACTA, POLA NOR POLB SHALL HAVE ANY LIABILITY FOR ANY SUCH TAX.

ARTICLE VII

M&O CHARGES AND USE FEES

7.1 Establishment of Right to M&O Charges, Use Fees, Container Charges and Port Advances.

(a) In consideration of ACTA's obligation to construct, finance and administer activities in connection with the Rail Corridor and the execution and entering into of this Agreement, the Permit and the Master Trust Indenture, ACTA (or any trustee for Bonds issued by ACTA) shall have the sole right and obligation to receive, hold and expend in accordance with the terms of this Agreement all M&O Charges, Use Fees, Container Charges and Port Advances and all other funds, assets or amounts to which it may be entitled hereunder ("**ACTA Revenues**"). Except as expressly provided in this Agreement, no entity (including the Railroads, POLA, POLB, or any entity in which POLA and POLB are members other than ACTA) shall have any right to receive, hold and expend ACTA Revenues to which ACTA is entitled under this Agreement.

(b) In further consideration of ACTA's obligations and the execution and entering into of such documents, the Railroads, POLA and POLB agree to take all actions as may be necessary or appropriate to effectuate the payment and receipt of the ACTA Revenues to be received by ACTA pursuant to this Agreement. Furthermore, POLA and POLB will not do or permit anything to be done, or omit or refrain from doing anything (including the exercise of their rights under Section 14.3) in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of this Agreement or which otherwise would interfere with ACTA's right to receive the ACTA Revenues.

(c) ACTA shall have the right to pledge, assign and transfer and has pledged, assigned and transferred, without recourse, all of its rights subject to the terms of this Agreement to receive all or a portion of the ACTA Revenues, and any other rights or remedies as granted to ACTA hereunder, to the trustee pursuant to the Master Trust Indenture in connection with the

ACTA Financing (as defined below). POLA, POLB and the Railroads each agree to make all such payments directly to the trustee until receipt of further payment instructions signed by both ACTA and such trustee.

(d) All payments by the Railroads and Owner hereunder, including, without limitation, payments of the ACTA Revenues, shall be an absolute obligation of Railroads or Owner, as applicable, and shall be made when due without deduction, setoff, reduction or any defenses of any kind or character unrelated to the mathematical calculation of amounts. Railroads and Owner expressly disclaim any interest in the ACTA Revenues and waive any defenses to enforcement by ACTA of any claim to such amounts and agree not to challenge ACTA's rights to such amounts.

7.2 M&O Charges.

(a) Subject to the other provisions of this Section 7.2, each Railroad shall be charged a Pro Rata Portion of the annual cost of operating, maintaining and repairing the Rail Corridor and the Port-Owned Tracks (including any storage tracks), taxes (including property or possessory interest taxes assessed against Owner, ACTA or the Railroads with respect to the Rail Corridor), premiums for the casualty insurance and business interruption insurance described in Section 11.2 with deductibles determined by Owner and Railroads through Mutual Agreement (which deductibles shall not, however, violate the requirements of the Master Trust Indenture, the Federal Loan and the ACTA Financing) and relating solely to the Rail Corridor and the Port-Owned Tracks (but not any casualty insurance premiums relating to automobiles, trucks or other wheeled equipment owned or leased by Owner or ACTA and not used solely in connection with operation or maintenance of the Rail Corridor or Port-Owned Tracks, which premiums shall be the responsibility of Owner or ACTA, as the case may be), costs of dispatching (including communication and signaling), the cost of maintaining and repairing communications facilities, signals and interlockers, security costs, debris removal, costs of maintaining and repairing rails, ties, ballast, undercutting, drainage and surfacing, and other repairs, and the costs and expenses of the entities or parties responsible for inspecting, dispatching, securing, maintaining and/or repairing the Rail Corridor and/or the Port-Owned Tracks (including without limitation, the Corridor Dispatcher and the Corridor Maintenance Contractor) (and a charge for the reasonable overhead of such entities or parties) (all of the foregoing being collectively referred to herein as "M&O Charges"). Subject to Section 7.1(c), all such M&O Charges shall be paid by the Railroads to ACTA and placed by ACTA in a separate fund established by ACTA. ACTA shall use such fund for the sole purpose of promptly paying the costs and expenses identified in this Section 7.2. Except as expressly provided in this Section 7.2(a), none of ACTA, POLA or POLB shall be responsible for the payment of any M&O Charges covered by this Section 7.2(a). M&O Charges shall not include replacement costs except to the extent that Owner and Railroads determine through Mutual Agreement that such costs are not properly included in Capital Expenses. Notwithstanding anything to the contrary in this Section 7.2, for so long as the Port Rail Agreements are in effect, if and to the extent that the Port Rail Agreements provide for the maintenance, repair or replacement of the Port-Owned Tracks, or the dispatching, switching and operation thereon, the Port Rail Agreements shall control with respect to the payment of the costs and expenses for such matters, with the intent and understanding that the Railroads shall not be required to pay M&O Charges under this Agreement with respect to the maintenance, repair,

replacement, dispatching or switching operations of the Port-Owned Tracks because the Railroads are obligated to make payments for such matters under the Port Rail Agreements.

(b) M&O Charges incurred in the maintenance and repair of Track and Track Support Structures of the Rail Corridor and the Port-Owned Tracks shall be pro-rated based on gross ton miles. All other M&O Charges identified in Section 7.2(a) shall be pro-rated based on train miles, including dispatching costs and costs and expenses incurred in the maintenance and repair of signals and communications systems (including (i) all grade crossing warning systems which involve totally separate systems from grade crossing warning systems protecting the Drill Track or other Tracks owned or operated exclusively by only one Railroad; and (ii) an equitably proportionate share of grade crossing warning systems serving both the Drill Track (or other Tracks owned or operated exclusively by only one Railroad) and the Rail Corridor and/or Port-Owned Tracks). The resulting amounts, collectively, shall be the Pro Rata Portions owed by each Railroad.

(c) Notwithstanding anything to the contrary set forth in this Section 7.2 or elsewhere in this Agreement, the M&O Charges shall not include (and none of the following shall be included in determining the Pro Rata Portion payable by any Railroad under this Agreement):

(i) the costs to remediate hazardous materials conditions resulting from the activities of parties other than the Railroads or the Railroads' employees, contractors, shippers or invitees, the cost of which shall be borne entirely by Owner (nothing in this clause (i), however, shall supersede any hazardous material liability allocation provision in any other agreement between Owner and any of the Railroads);

(ii) liability insurance policy premiums (if any) paid by Owner and/or ACTA to insure against the risks for which Owner and/or ACTA is liable under the terms of this Agreement;

(iii) any costs or expenses to maintain, repair or operate any Tracks or Track Support Structures: (x) within any of the Port Facilities listed in Section 5.2 (which costs and expenses shall be paid solely by the Railroad (or Railroads) which exclusively uses or operates such Port Facility, unless otherwise provided in a written agreement between or among such Railroad or Railroads and/or POLA and/or POLB), or (y) which comprise the Port-Owned Tracks and which are maintained and repaired by a third party (including the Port Rail Operator) or one of the Railroads pursuant to a written agreement (in which case such costs and expenses shall be paid in the manner set forth in such written agreement for so long as such agreement, or any renewal or replacement thereof, is in existence; thereafter, the costs and expenses to maintain, repair and operate such Port-Owned Tracks shall be covered by Section 7.2(b)), or as otherwise agreed in writing by Owner and Railroads;

(iv) costs and expenses incurred to repair, maintain, replace and operate the Drill Track or the portion of any connection Track located outside the boundaries

of the Rail Corridor that leads to a facility or rail line owned or used or operated exclusively by only one Railroad, including the cost of constructing and maintaining all signals, turnouts and crossovers used to access the Rail Corridor from the Drill Track or such other facility or rail line owned or used or operated exclusively by only one Railroad, and vice versa, which costs and expenses shall be allocated between UP and Owner pursuant to the Drill Track Operating Agreement (in the case of the Drill Track) or, to the extent not located within the boundaries of the Rail Corridor, shall be paid solely by the Railroad which owns or exclusively uses or operates such facility or rail line to which the connection Track leads (except as otherwise may be provided in another written agreement to which such Railroad is a party); Owner and Railroads have previously determined pursuant to the Original Agreement which signals, if any, along the Rail Corridor shall be deemed related to the Drill Track for purposes of this clause (iv); or

(v) costs and expenses incurred to repair, maintain, replace and operate (A) the rail bridges for BNSF's Harbor Subdivision crossing over the Rail Corridor, and UP's La Habra Branch crossing over the Rail Corridor, which costs and expenses shall be paid solely by the Railroad(s) which operate(s) over such rail bridges and (B) the North End Grade Separation, which costs and expenses shall be paid by parties other than ACTA or Owner in accordance with separate agreements between BNSF and the commuter agencies which operate over such bridge (except that any costs or expenses incurred to repair or replace such rail bridges or the North End Grade Separation as a result of a design defect (unless such design defect relates to a change requested by a Railroad) or a construction defect in the original construction shall be the responsibility of Owner or ACTA), but, notwithstanding this clause (v), the parties agree that (X) the costs of designing and constructing such rail bridges and the North End Grade Separation shall be a cost of the Project included in determining Net Project Costs, and (Y) as long as one of the Railroads is operating on the rail bridges described in clause (A) above, the cost of any capital replacement or improvement to any such rail bridge shall be paid by such Railroad(s) from the Reserve Account described in Section 7.4.

(d) Nothing in this Agreement shall be deemed or construed as limiting the right of ACTA, POLA and/or POLB to require payment by the Railroads or others of any maintenance, operations, repair or replacement charges in connection with use of Port-Owned Tracks (including Tracks that will be included in the Rail Corridor) prior to Substantial Completion, which charges shall not exceed the actual costs of such maintenance, operation, repair and/or replacement activities.

7.3 Use Fees and Container Charges.

(a) The Rail Corridor use fees set forth in Section 7.3(e) ("Use Fees"), the Container Charges set forth in Section 7.3(g), and the Shortfall Advances, if any, by POLA and POLB pursuant to Section 7.3(h), will be used (i) to pay Net Project Costs and (ii) to pay the other expenses, and fund, maintain and replenish the reserves relating to the Project and the use and operation of the Rail Corridor, all as described in Section 7.3(b) and the other provisions of

this Article VII. Use Fees and Container Charges will be assessed and collected beginning upon the date of commencement of Through Train operations over the Rail Corridor north of West Thenard and south of 25th Street after Substantial Completion (i.e., excluding test or training trips by trains). The Railroads shall not owe Use Fees or Container Charges for any Through Train or Local Train movements prior to commencement of such Through Train operations.

(b) Revenues generated by Use Fees and Container Charges shall be allocated and disbursed during each year to pay the following amounts on or before the date due in the order of priority set forth below:

1. The amount necessary each year (“**Annual Amount**”) to pay the following items (to the extent the following items are scheduled, budgeted or otherwise expected to be due and payable that year):
 - (i) interest and principal due during such year with respect to the financing of the Project by ACTA (i.e., ACTA’s financings other than the Federal Loan, Port Advances, Property Assembly Reimbursement and the Benefit Amount), which may include the Bonds and/or a series of debt offerings or financings and multiple tranches or levels of priority of indebtedness that may consist of short term, interim and long term financings or refinancings of prior financings (including, without limitation, refinancing of the Federal Loan under the Master Trust Indenture) or obligations to credit enhancers or swap or other hedge providers if incurred in connection with such financings or refinancings (collectively, “**ACTA Financing**”); and
 - (ii) the amounts necessary to pay debt service on sums held in or debt incurred to fund any debt service reserve fund established in connection with the ACTA Financing (“**Required Debt Service Reserve**”), plus any amount necessary to replenish the Required Debt Service Reserve after draws thereon; and
 - (iii) the fees and charges of third party trustees, administrators, rating agencies, auditors, independent consultants, financial advisors, underwriters, attorneys or custodians incurred by Owner or ACTA in connection with the ACTA Financing, fees and costs incurred to obtain and renew letters of credit, bond insurance and other forms of credit enhancement facilities for the ACTA Financing and any amounts necessary to make any rebate payments to the United States or to otherwise comply with the provisions of the Internal Revenue Code.
2. To establish and maintain in effect the Reserve Account accumulating toward, or at the level of, the then current Reserve Account Target as provided in Section 7.4, subject to the restrictions on annual contributions specified in Section 7.4(c).
3. To pay the amounts due during such year with respect to the Federal Loan in accordance with its terms.
4. To pay ACTA’s reasonable expenses each calendar year relating to (i) the ongoing administration of the ACTA Financing and the Federal Loan, including compliance activities, (ii) administration of contracts for the Rail Corridor (including

contracts with the Corridor Dispatcher and the Corridor Maintenance Contractor), and (iii) administrative duties related to the Rail Corridor (including legal and accounting work related to the Rail Corridor). Such payments will be based on ACTA's budget for such year for performance of such activities, which budget shall be provided to Owner and Railroads, with payments to ACTA to be made in monthly installments on the first day of each month commencing on the first day of such budget year. If after receipt of ACTA's final accounting for a year, ACTA's actual expenditures for performance of such activities for such year vary from the budget, any excess payment to ACTA shall be deducted from the following year's payments due to ACTA hereunder, and any shortfall, to the extent not covered by a Port Advance, shall be paid to ACTA from Use Fee and Container Charge revenues from the following year. Pursuant to Section 7.7, POLB, POLA, and each Railroad shall have the independent right to audit ACTA's records of the costs that are included hereunder.

5. To refund to POLA and POLB (as the case may be) the following amounts (collectively, "**Port Advances**"): (i) Net Project Costs advanced by POLA or POLB (either directly or through ACTA) prior to Substantial Completion that have not already been reimbursed to POLA or POLB from the proceeds of the financings or grants received by ACTA; (ii) Shortfall Advances made by either POLA or POLB pursuant to Section 7.3(h); (iii) amounts, if any, voluntarily advanced by POLA or POLB (either directly or through ACTA) in excess of the Shortfall Advances to pay all or a portion of the Annual Amount, the Federal Loan or any other obligation or liability of ACTA with respect to the Project; (iv) amounts, if any, voluntarily advanced by POLA and POLB after Substantial Completion, in excess of Shortfall Advances to cover the costs of ACTA specified in Section 7.3(b)(4) that have not already been reimbursed to POLA or POLB from the proceeds of the financings or grants received by ACTA; and (v) any amounts advanced by either POLA or POLB pursuant to Section 7.4(g). Port Advances shall bear interest from the date advanced at a rate per annum equal to the interest rate on six month U.S. Treasury Bills, which rate shall be adjusted each January 1 and July 1, effective for the outstanding Port Advances on such date.

6. To refund to POLA and POLB the sum of \$200 million as reimbursement for a portion of amounts expended by POLA and POLB to acquire the property and related rights and interests necessary for the Project ("**Property Assembly Reimbursement**"), which amount shall not bear interest or otherwise be adjusted for the passage of time. POLA and POLB have allocated between themselves the Property Assembly Reimbursement and notified ACTA in writing of such allocation prior to Substantial Completion. Notwithstanding the foregoing, POLA and POLB hereby authorize ACTA to deduct thirty-four percent (34%) of any amount it otherwise would pay either POLA or POLB under this Section 7.3(b)(6) and immediately deposit such amount in the Reserve Account, regardless of whether such payment causes the Reserve Account to exceed the Reserve Account Target. Any amounts so deposited in the Reserve Account shall be available for the purposes specified in Section 7.4(a).

7. To pay to POLA and POLB the Benefit Amount. As used herein, the term "**Benefit Amount**" means an amount equal to 40% of the difference between the present value of the amount that will be paid using tax exempt financing for a portion of the

financing for the Project and the amount that would have been paid had taxable financing been used for such portion of the financing for the Project. As of the date of the Original Agreement it was estimated that approximately \$400 million of such financing would be issued on a tax-exempt basis. In February 1999, in connection with ACTA's issuance of tax-exempt bonds, the Benefit Amount was determined to be \$42,262,628.83 (applying a discount rate equal to the tax exempt interest rate on such bonds on that date) ("**Tax Exempt Rate**"). The Benefit Amount shall bear interest, compounded semi-annually, at the Tax Exempt Rate from the date of issuance of the tax exempt financing, which interest shall be added to the balance of the Benefit Amount and likewise bear interest until paid. POLA and POLB have allocated between themselves the Benefit Amount and notified ACTA in writing of such allocation prior to Substantial Completion.

If ACTA determines upon its final accounting after the end of a year that revenues from Use Fees and Container Charges remain at the end of such year after payment of the amounts due during such year with respect to items 1 through 4 of this Section 7.3(b) and provision for any payments due with respect to such items during the following year that are not anticipated to be covered by Use Fees and Container Charges during the following year, then the excess revenues from Use Fees and Container Charges from such year shall be applied first to pay all amounts then outstanding under item 5 above, and then to pay all amounts outstanding under item 6 above, and finally to pay all amounts outstanding under item 7 above. No payments shall be made with respect to items 5 through 7 until the final accounting has been made for such year. If it is determined upon completion of the final accounting for any calendar year that revenues from Use Fees, Container Charges and/or Shortfall Advances with respect to such year were in excess of the total amount needed to pay or fund all amounts and accounts in Sections 7.3(b)(1) through 7.3(b)(7) due with respect to a calendar year, then to the extent possible under the contracts governing the ACTA Financing and the Federal Loan, such excess revenues shall be used by ACTA to prepay the principal amount of the ACTA Financing and/or the Federal Loan (provided that ACTA may elect not to prepay if it would be required to pay prepayment penalties or premiums), or if that is not possible, held for application against future installments of the ACTA Financing and the Federal Loan.

Notwithstanding the priority for allocating revenues set forth above, the parties acknowledge that the Original Agreement provided that ACTA had the right to modify the priority for allocating such revenues in certain circumstances in connection with the ACTA Financing. In February 1999, in connection with ACTA's Financing, the priority and application of ACTA Revenues, including Use Fees and Container Charges, were so modified as set forth in the Master Trust Indenture.

(c) The Railroads shall continue to be assessed the Use Fees and Container Charges at their full rates (i.e., unadjusted for changes in annual debt service) until the earlier to occur of the following ("**Use Fees Termination Date**"): (i) April 15, 2062 (being the date sixty (60) years after the April 15, 2002 commencement of Through Train operations over the Rail Corridor north of West Thenard and south of 25th Street after Substantial Completion), and (ii) the date that Net Project Costs and the amounts and obligations listed in Section 7.3(b) have been paid in full (including repayment in full of any ACTA Financing and the Federal Loans and the funding of the Reserve Account to the then current Reserve Account Target). Use Fees and Container Charges shall not be assessed and collected for any freight traffic movements after the

unloaded) and then moved on the Rail Corridor again in the same direction (i.e., north or south on the Rail Corridor) to a location off of the Rail Corridor shall be charged only one Use Fee for that one-way trip.

3. Except as set forth in Paragraph 2 of this Section 7.3(e), the Use Fees will be assessed on all traffic as set forth in Section 7.3(f), other than Repositioning and Crossing Movements and switching of rail cars at the Permitted Switching Locations, which will be exempt from Use Fees (provided that if a train moving railcars to or from a Permitted Switching Location uses the trench portion of the Rail Corridor, such train movement will not be exempt from the Use Fees).

4. Use Fees shall be increased effective on January 1 of each year, based on changes in the CPI for the twelve (12) month period ending the immediately preceding October 31; provided, however, in no event shall such increase be less than 1.5% or greater than 4.5%, and no reduction shall be made if the CPI decreases.

5. UP's Dolores Hauler and UP's presently existing unit oil train to Tosco are required to use the Rail Corridor due to conditions in the Project's environmental impact report even though such trains are likely to constitute "Local Trains" and thus not required by the terms of this Agreement to use the Rail Corridor. To the extent that such trains meet the definition of a "Local Train," such trains shall not be charged Use Fees even though they travel on the Rail Corridor, but such trains shall be included in determining the operating Railroad's share of M&O Charges under Section 7.2. If the Project's environmental impact report is supplemented or amended to no longer specify that such trains use the Rail Corridor, then (i) such trains shall no longer be required to use the Rail Corridor (unless they constitute Through Trains), and (ii) the partial exemption from Use Fees provided such trains by this Paragraph (5) of Section 7.3(e) shall be automatically repealed.

6. The Transloading or other unloading of a Waterborne Container after it has been transported eastbound over the Rail Corridor will not affect the amount of the Use Fee that is due for such transportation over the Rail Corridor.

(f) Each Railroad shall pay to ACTA, in the manner specified in Section 7.6, the Use Fees set forth on the schedule in Section 7.3(e), which Use Fees shall be charged on (i) all Through Trains, regardless of whether the Through Train uses the Rail Corridor (unless such Through Train cannot use the Rail Corridor because of a complete blockage of all through tracks comprising the Rail Corridor for more than five consecutive days), (ii) all Local Trains which actually use all or any portion of the Rail Corridor, and (iii) all rail cars and/or containers, as the case may be, which originate or terminate at a Port Facility but which are included on a Local Train which does not use the Rail Corridor (other than rail cars carrying Toyota (or related company) automobiles originating in the continental United States and terminating at the Toyota Distribution Facility during the exclusive service period described in Section 5.2(b)(iii)).

(g) Commencing April 15, 2002, each Railroad also shall pay to ACTA, in the manner specified in Section 7.6 and at the same rate per TEU set forth in Section 7.3(e) for Use Fees for loaded Waterborne Containers (as such rate is adjusted from time to time pursuant to

Section 7.3(e)(4)), a charge (“**Container Charges**”) on each loaded Waterborne Container that originates or terminates at the Ports and that is moved by rail into or out of Southern California (i.e., the counties of Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial) by such Railroad, unless such Waterborne Container has already been assessed the Use Fee pursuant to the provisions of Section 7.3, which payment shall be made to ACTA regardless of whether the containers have traveled on the Rail Corridor. Notwithstanding the first sentence of this Section 7.3(g), if there is a complete blockage of all through tracks comprising the Rail Corridor for more than five consecutive days, then Container Charges shall not be assessed on those Waterborne Containers that are shifted to transport by truck to or from the Ports as a result of the complete blockage. For purposes of determining the number of Waterborne Containers that have been shifted to transport by truck as a result of a complete blockage, it shall be assumed that all Waterborne Containers transported by truck during the period of complete blockage (commencing after the fifth day of such complete blockage) in excess of the number of Waterborne Containers transported during the same calendar period for the immediately prior year were shifted to truck transport as a result of the complete blockage, and no Container Charges shall be assessed against such excess (but Container Charges shall continue to apply to Waterborne Containers that are within the levels of the prior year whether or not such Waterborne Containers were shifted to truck transport as a result of a complete blockage of the Rail Corridor). There shall be no adjustment in Container Charges for a partial blockage of the Rail Corridor.

(h) The following provisions shall apply to Shortfall Advances:

(i) If during any calendar year after Substantial Completion (or the partial calendar year in which Substantial Completion occurred) the Annual Amount payments due during such calendar year (or the initial partial year) and the Federal Loan payments due during such calendar year (or the initial partial year) (collectively, the “**Required Annual Payment**”) are not paid in full, then POLA and POLB will advance to ACTA, from any legally available source, funds (“**Shortfall Advances**”) sufficient to pay the positive difference between the Required Annual Payment due with respect to such year and the amount of other funds available to be applied against the Required Annual Amount in such year (exclusive of all reserves and other funds specifically pledged for other purposes), provided, however, that in no event shall the Shortfall Advances required to be made pursuant to this Section 7.3(h) with respect to a calendar year (or the initial partial calendar year) exceed in the aggregate an amount equal to 40% of the total Annual Amount and Federal Loan payments due in such calendar year (or the initial partial calendar year). Payment of the Shortfall Advances shall be made as provided in Section 7.3(h)(iii) below. Each of POLA and POLB shall be separately responsible for one-half of the Shortfall Advances due in a year, with neither entity responsible for the contribution required of the other (and in no event shall POLA or POLB individually be required to pay in any calendar year (or partial year) an amount in excess of 20% of the Required Annual Amount due in such calendar year or the initial partial year). ACTA and POLB acknowledge that POLA has and expects from time to time to enter into agreements relating to its bonded indebtedness or other revenue obligations, which existing agreements presently require payment of operation and maintenance costs prior to debt

service on such POLA obligations. Nothing in this Operating Agreement shall prevent POLA from changing the priority of payment with respect to its existing or any future bonded indebtedness or other revenue obligations. It is understood that the only purpose and effect of the preceding two sentences is to assure that the payment of Shortfall Advances made by POLA hereunder is not required by this Operating Agreement to be given more or less favorable priority than such payments made by POLB hereunder. The Shortfall Advances shall be allocated to fund shortfalls for such year in the following items and in the following order of priority: first, to the Annual Amount (other than any portion or tranche subordinated to the Federal Loan), second to the Federal Loan, and third, to any subordinated portion or tranche of the ACTA Financing.

(ii) At least 90 days prior to the beginning of each ACTA fiscal year which commences after Substantial Completion, ACTA shall submit to POLA and POLB (with a copy to the Railroads) its then current projection of the amount of Shortfall Advances and/or Section 7.4(g) payments that ACTA estimates may be required from POLA and POLB during ACTA's upcoming fiscal year. ACTA shall include in any such notice reasonable background detail regarding the basis for its estimate. Upon receipt of any such notice by POLA and POLB; each entity shall (A) include its share of the amount of the estimated Shortfall Advance and/or Section 7.4(g) payments in its budget for the fiscal year during which such Shortfall Advance and/or Section 7.4(g) payments may occur (or amend its budget for such fiscal year if such budget has been previously adopted); and/or (B) set aside existing surplus revenues or other lawfully available funds for the payment of its share of such Shortfall Advance and/or Section 7.4(g) payments. Promptly following such action, POLA and POLB shall each provide ACTA with a certificate stating that the amount of the estimated Shortfall Advance and/or Section 7.4(g) payments have been included in its budget for the fiscal year, and/or that surplus revenues or other lawfully available funds have been set aside to make such payments, as applicable. In addition, upon request, ACTA shall prepare and deliver to POLA and POLB, a report setting forth ACTA's then current projection of the amount of the estimated Shortfall Advance and/or Section 7.4(g) payments that ACTA estimates will be required from such entity during the then current fiscal year. If at any time ACTA determines that the estimated amount of the Shortfall Advance and/or Section 7.4(g) payments are greater than the estimates previously provided by ACTA and budgeted or set aside by POLA and POLB pursuant to this Section, then ACTA shall immediately notify POLA and POLB and each such entity shall promptly appropriate funds to its current budget to provide for such estimated increase in the amount of the Shortfall Advance and/or Section 7.4(g) payments and/or set aside additional surplus revenues or other lawfully available funds to cover such increase. POLA and POLB shall thereafter provide to ACTA written notice certifying that such entity has complied with the foregoing requirement.

(iii) Each of POLA and POLB acknowledges that the notices provided by ACTA pursuant to this Section are estimates of the amount of Shortfall Advances and/or Section 7.4(g) payments that may be required during the current and

upcoming fiscal year of each entity and are provided only to assist POLA and POLB in their respective budget planning. POLA and POLB shall pay the actual amount of Shortfall Advances and/or Section 7.4(g) payments required to be paid under the terms of this Agreement notwithstanding the fact that such amounts may vary from the estimates provided by ACTA under this Section. At least 45 days before the date on which a Shortfall Advance is needed, ACTA shall deliver a written notice to POLA and POLB (with a copy to the Railroads) specifying the actual amount of the Shortfall Advance needed on such date and requesting payment thereof. POLA and POLB shall each pay its respective share of such amount on or prior to the date specified in such notice.

(iv) In the event POLA or POLB fails to pay a Shortfall Advance in the year such payment is due, then the amount of such unpaid Shortfall Advance (the “**Unpaid Shortfall**”) shall continue to accrue and be payable by POLA or POLB (as the case may be) on the first day of the following fiscal year. The obligation of POLA or POLB (as the case may be) to pay the Unpaid Shortfall shall be in addition to its obligation to pay Shortfall Advances. In the event such Unpaid Shortfall triggers a reamortization of the Federal Loan and causes an increase in the amount due on the Federal Loan for the following year, such increase shall be allocated entirely to the entity which has not paid for purposes of determining POLA’s and POLB’s respective Shortfall Advance, if any, for such following year. In the event such increase is included in the entity’s Shortfall Advance for such subsequent year, then the amount of such entity’s Unpaid Shortfall for the prior year shall be reduced by the amount of such increase.

(v) Within 120 days after the end of each calendar year ACTA shall deliver a final statement to POLA and POLB (with a copy to the Railroads) of the actual amount of any Shortfall Advances that were required for the prior calendar year. If such final statement shows that POLA and/or POLB contributed more than its respective share of the amount of Shortfall Advances actually required with respect to the prior calendar year, ACTA shall promptly refund the excess contributions to POLA and/or POLB, as the case may be. If such final statement shows that POLA and/or POLB contributed less than the amount of Shortfall Advances actually required with respect to the prior calendar year, POLA and/or POLB, as the case may be, shall promptly deliver to ACTA its respective share of the shortfall in required contributions. Nothing in this Section 7.3(h) shall be construed as a commitment or covenant by POLA or POLB to contribute to or pay for any shortfalls in funding of the matters described herein beyond the amount of the contribution specified in this Section 7.3(h) or in Section 7.4(g).

(vi) If any portion or tranche of the ACTA Financing is subordinated as provided in the last grammatical paragraph of Section 7.3(b), then for the purposes of this Section 7.3(h) only, the Annual Amount shall be deemed to include such subordinated portion or tranche and Shortfall Advances shall be applied thereto in the order of priority set forth in Section 7.3(h)(i).

(vii) ACTA, POLA and POLB further agree that, to the extent there remains any balance outstanding on the Federal Loan following the Use Fees Termination Date, such balance shall be considered an amount due under Section 7.3(h)(i), and the Shortfall Advances may, at the discretion of the U.S. Department of Transportation, be continued and increased to 100% of the amount required to amortize the Federal Loan balance outstanding, which shall be paid by ACTA as provided in this Section 7.3(h)(vii). Such balance shall be paid by ACTA with continued Shortfall Advances over a 10-year period following the Use Fees Termination Date and such balance shall bear interest at the then existing rate of interest which the Federal Loan bears. Such amortization shall be made on a basis of substantially equal installments of principal and interest. Notwithstanding the foregoing, in the event that the continued payment of Shortfall Advances required pursuant to this Section 7.3(h)(vii) shall cause POLA or POLB (either together or individually) to suffer significant financial hardship or otherwise significantly interfere with or compromise the operations of the Ports, as demonstrated to the satisfaction of the U.S. Department of Transportation, then such Shortfall Advances may be reduced and ACTA shall agree to renegotiate the terms of the Federal Loan. Each of POLA and POLB shall be separately responsible for one-half of any continued Shortfall Advances due under this Section 7.3(h)(vii), and the provisions of Section 7.3(h)(iv) shall apply to Shortfall Advances made under this Section 7.3(h)(vii). The provisions of Section 7.3(b)(vi) shall not apply to this Section 7.3(h)(vii). ACTA, POLA and POLB acknowledge that nothing in this Section 7.3(h)(vii) shall prevent the U.S. Department of Transportation from pursuing any legal remedies otherwise or generally available to it with respect to amounts due on the Federal Loan.

(viii) The obligation of POLA and POLB to make Shortfall Advances shall continue even though Use Fees may be abated under Section 7.3(g) as the result of a complete blockage of all through tracks comprising the Rail Corridor for more than 5 consecutive days. The proceeds of any business interruption insurance with respect to such an abatement of Use Fees (and, if applicable, Container Charges) that are applied to the Required Annual Amount shall be taken into account in determining the amount of Shortfall Advances due under this Section 7.3(h).

(ix) In the event that, at any time or times on or after the Fee Increase Date, a Shortfall Advance is made by POLA and POLB as required by Section 7.3(h)(i) (a “**Subsequent Shortfall Advance**”), then, commencing sixty (60) days following receipt by the Railroads of notice by ACTA that a Subsequent Shortfall Advance has been made by POLA and POLB pursuant to Section 7.3(b)(iii) (but commencing, in no event, prior to the date that the Subsequent Shortfall Advance payment is actually due from POLA and POLB), Use Fees for loaded Waterborne Containers and Container Charges, as more fully described in Sections 7.3(e) and 7.3(g), respectively, each shall be increased by \$1.00 per TEU (which \$1.00 amount shall be increased annually per Sections 7.3(e)(4) and 7.3(g) commencing January 1, 2007, including years in which such rate increase is not imposed) (the “**Temporary Increases**”). The Temporary Increases shall only be used as

provided in Section 7.3 and shall remain in effect only until such time as all then-outstanding Subsequent Shortfall Advances (plus accrued interest thereon as provided in Section 7.3(b)(5)) are either actually refunded by ACTA to POLA and POLB or required to be refunded in accordance with the order of priority listed in Section 7.3(b) (including the order of priority listed in Section 7.3(b)(5)). The amounts of any Temporary Increases collected after such time shall be promptly credited by ACTA against future Use Fees and Container Charges in the order Use Fees and Container Charges become due beginning with the month immediately subsequent to such time. ACTA shall provide written notice to UP and BNSF of (A) projected and actual Shortfall Advances concurrently with the notices provided to the Ports pursuant to Sections 7.3(h)(ii) and (iii), (B) payment of Subsequent Shortfall Advances by POLA and POLB, and (C) the actual refunding or required refunding of all Subsequent Shortfall Advances and interest thereon promptly after such refunding actually occurs or is required to occur, using the order of priority listed in Section 7.3(b) (including the order of priority listed in Section 7.3(b)(5)). The Parties acknowledge that the Temporary Increases provided for in this Section 7.3(h)(ix) may be imposed from time to time throughout the term of this Agreement whenever a Subsequent Shortfall Advance occurs.

(i) ACTA, POLA, POLB and each of the Railroads agree to reasonably cooperate with each other and to use their respective reasonable efforts to obtain funding and financing or refinancing for the Project on terms and conditions as favorable for implementation of the Project as is possible under then-existing circumstances and conditions (including, with respect to any financing or refinancing, cooperation to obtain the maximum amount of such financing or refinancing on a tax-exempt basis, if available, and to provide financial and operating data for disclosure purposes to the extent such information is available and necessary to comply with federal securities laws).

(j) Nothing in this Section 7.3 shall be deemed or construed (i) to require or prevent Owner from using investment grade or non-investment grade funding or financing or refinancing (or a mix thereof) to pay all or part of Net Project Costs, (ii) as a commitment or covenant by the Railroads to provide any credit support or volume guarantees in connection with any financing or refinancing for the Project or, (iii) to require the Railroads to pay any portion of the Annual Amount, other than through Use Fees and Container Charges.

(k) Notwithstanding anything in this Agreement to the contrary, in lieu of funding all or any portion of the Required Debt Service Reserve, Owner and/or ACTA may deliver, or cause to be delivered, a surety bond or an insurance policy securing an amount, together with moneys or other investments or instruments on deposit in the debt service reserve fund (if any), equal to the Required Debt Service Reserve. Such surety bond or insurance policy shall be issued by an insurance company whose unsecured debt obligations (or for which obligations secured by such insurance company's insurance policies) are rated in the highest rating category of Moody's Investors Service and Standard & Poor's Ratings Services or any other nationally recognized rating agency. In addition to the foregoing, in lieu of funding all or any portion of the Required Debt Service Reserve, Owner and/or ACTA may deliver, or cause to be delivered, an irrevocable letter of credit issued by a financial institution having unsecured

debt obligations rated in one of the three highest rating categories of Moody's Investors Service and Standard & Poor's Ratings Services or any other nationally recognized rating agency, in an amount, together with moneys or other investments or instruments on deposit in the debt service reserve fund, equal to the Required Debt Service Reserve. If a replacement surety bond, insurance policy and/or letter of credit will not be deposited prior to the expiration of a current surety bond, insurance policy and/or letter of credit, Owner and/or ACTA immediately shall cause to be deposited in the Required Debt Service Reserve moneys (funded from Use Fees, Container Charges and Shortfall Advances) sufficient to cause the amount on deposit to equal the Required Debt Service Reserve. Notwithstanding the foregoing, any replacement surety bond, insurance policy and/or letter of credit must meet any applicable requirements of the Master Trust Indenture.

(1) As used in this Agreement, the term "**Net Project Costs**" means all costs incurred by or on behalf of Owner and/or ACTA in connection with the Project, including: (1) all costs of designing, bidding and constructing the Project and related improvements, including utility relocations, acquisition of property necessary for the Project from parties other than the Railroads, and amounts paid by Owner or ACTA to one of the Railroads to perform certain construction work pursuant to a force account or other reimbursement arrangement, but excluding the cost of any improvements shown on the Track Schematic Drawing attached to the UP C&M Agreement and the BNSF C&M Agreement as being funded by either of the Railroads or by third parties, (2) costs necessary to provide, or incurred in connection with obtaining, financing or refinancing or grants for the Project, including the Federal Loan, the ACTA Financing and the amounts described in Section 7.3(b)(1), and costs incurred in connection with seeking tax-exempt financing for the Project, including obtaining and monitoring compliance with rulings or advice letters from the Internal Revenue Service, (3) expenses of an independent consultant (or consultants) retained jointly by UP and BNSF to review and comment on updates and modifications to the Conceptual Design Layout and the Track Schematic Drawing described in the definition of "Project" and Project construction plans (however, this clause shall not be deemed to supersede the scope of work or compensation provisions related to such consultant in the BNSF C&M Agreement or in the actual contract with such consultant), (4) costs of Railroad employees (including flagmen) requested by Owner or ACTA, or required by law, to perform work in connection with the Project, (5) costs to obtain any necessary permits or approvals related to the Project or any component thereof, or any financing with respect thereto, including federal and state environmental impact statements, reports and studies, settlement agreements with governmental jurisdictions along the Rail Corridor, hazardous substances or materials investigations and reports, and any attorneys' fees and litigation costs related to either obtaining or defending the same, (6) attorneys' fees and litigation costs of establishing or defending the rights of the Owner and/or ACTA to construct the Project, and (7) the reasonable administrative expenses of Owner and ACTA in connection with the development of the Project, less the total amount of all federal, state or local grants for the Project including the \$135 million already allocated to the Project (however, as used in this Agreement, "grants" shall not include the Federal Loan or any other loans or guaranties by federal, state or local governments). It is the intent of the parties hereto that Net Project Costs shall be paid as they are incurred from the proceeds of the ACTA Financing, the Federal Loan, Port Advances, the Property Assembly Reimbursement and other funds available to ACTA, and that, as and to the extent provided in Section 7.3(b), revenues from Use Fees and Container Charges (and, if applicable, Shortfall Advances) will be used to pay and fund the ACTA Financing, the Federal Loan, Port Advances,

the Property Assembly Reimbursement and the other items listed in Section 7.3(b). It is also anticipated that Port Advances made prior to Substantial Completion will be reimbursed to Owner, to the maximum extent possible, from the proceeds of the ACTA Financing, the Federal Loan and grants or other funds available to ACTA.

(m) ACTA and the Railroads acknowledge and agree that all payments required to be made by POLA and POLB pursuant to this Agreement shall be payable from funds in POLA's and POLB's respective "Harbor Revenue Fund" and not from any other fund or account of POLA, the City of Los Angeles, POLB or the City of Long Beach.

(n) Notwithstanding anything to the contrary contained in Section 7.3, ACTA may, but is not required to, apply \$.40 per TEU (which \$.40 per TEU shall be increased annually by changes in the CPI per Sections 7.3(e) and (g), respectively, commencing January 1, 2007) of each of (i) the Use Fees on loaded Waterborne Containers under Section 7.3(e) and (ii) the Container Charges under Section 7.3(g), and in effect from time to time (i.e., taking into account CPI increases), to pay the Port Advances referred to in Section 7.3(b)(5)(i) and/or the Property Assembly Reimbursement (until all such obligations are paid in full), in such amounts and in such order of priority as POLA and POLB shall direct ACTA to apply; provided, however, that such application shall comply with all requirements and conditions as may be contained in the Master Trust Indenture and/or as may be imposed from time to time by any applicable lender, rating agency or bond insurer. Neither UP nor BNSF shall have any responsibility with respect to the application of such portion of the Container Charges and Use Fees. ACTA's inability, for any reason, to apply such portion of the Container Charges and Use Fees in the manner referred to in this Section 7.3(n) will not affect the enforceability of this Agreement or the Settlement Agreement.

7.4 Reserve Account.

(a) Pursuant to the terms of the Master Trust Indenture, ACTA established a fund to be held in trust by the trustee known as the Reserve Account ("**Reserve Account**"). The Reserve Account shall be used by ACTA to pay when due (i) annual maintenance and capital improvements and replacements of the Non-Rail Components, together with capital replacement of any rail bridge over the Rail Corridor (but only if (A) one of the Railroads actually is using the rail bridge at the time the capital replacement is needed, and (B) a third party, at its cost, is not providing the maintenance and/or capital improvement or replacement of such rail bridge) (collectively, "**Non-Rail Maintenance and Capital Improvement Charges**"), (ii) Capital Expenses, (iii) costs or fees charged by the financial institution or firm at which the Reserve Account is established for maintaining the Reserve Account and investing any funds therein, and (iv) if approved by Owner and Railroads through Mutual Agreement (or if both Railroads are in default under this Agreement, then approved by ACTA) to pay M&O Charges if and only to the extent such charges have not been paid by the Railroads and sufficient funds are not otherwise available therefore. Notwithstanding the foregoing, if any betterment, capital improvement and/or upgrade to the Track and/or Track Support Structures, including those located on Port-Owned Tracks, will benefit fewer than all of the Railroads (*e.g.*, an improvement to the Rail Corridor that is used by only one Railroad), then only the Railroad(s) so benefited shall pay the costs of such betterment, capital improvement and/or upgrades (provided that if the other Railroad thereafter elects to use the subject betterment, capital improvement and/or upgrade, that

Railroad shall reimburse the first Railroad for one-half of the cost of such betterment, capital improvement and/or upgrade, with interest thereon at the then-current market rate), and the same shall not be funded from the Reserve Account unless approved unanimously by Owner and Railroads.

(b) Subject to Section 7.4(c), the Reserve Account shall be funded over time from the Use Fee and Container Charge revenues remaining each year after payment of the amounts described in Section 7.3 (b)(1) until the Reserve Account reaches (or is restored to) the then-current target amount for the Reserve Account (“**Reserve Account Target**”). The Reserve Account Target since Substantial Completion has been \$15 million. The Reserve Account Target shall be adjusted from time to time as provided in Section 7.4(e). Interest and investment income added to the Reserve Account pursuant to Section 7.4(d) and sums added pursuant to Section 7.3(b)(6) and Section 7.4(g) shall be included in determining whether the Reserve Account Target has been met. Once the Reserve Account Target has been met, Use Fee and Container Charge revenues shall be added to the Reserve Account only to the extent necessary to restore the balance therein to the then-current Reserve Account Target.

(c) Notwithstanding any other provision of this Section 7.4, until all amounts (including interest, if any) outstanding with respect to the Federal Loan, the ACTA Financing, Port Advances, the Property Assembly Reimbursement and the Benefit Amount have been paid in full (i), no more than \$10 million of Use Fees and Container Charges generated each year may be deposited in the Reserve Account and (ii) the Reserve Account Target shall not exceed \$90 million (except that these two restrictions shall not apply to deposits in the Reserve Account pursuant to Section 7.3(b)(6), or to income or interest earned on the Reserve Account). Furthermore, to the extent any amounts are withdrawn from the Reserve Account to pay M&O Charges, such amounts shall be replenished solely from payments made by the Railroads in accordance with Section 7.5(d) and not from Use Fee and Container Charge revenues.

(d) Amounts placed in the Reserve Account shall be invested in accounts or investments selected by ACTA in accordance with ACTA’s Investment Policy, as amended from time to time in accordance with the requirements of California law applicable to ACTA. Any income or interest earned on amounts in the Reserve Account shall be added to the Reserve Account (even if the addition of such amounts would result in the amount in the Reserve Account to exceed the then-current Reserve Account Target) and shall be available for application to the purposes specified herein for the Reserve Account.

(e) In April 2017, and every five years thereafter, Owner and Railroads, through Mutual Agreement, shall adjust the Reserve Account Target for the upcoming five-year period so that it will be equal to one-fifth of all costs potentially covered by the Reserve Account (including M&O Charges) that are projected to be incurred during the upcoming five year period, taking into account all relevant factors, including (i) projected increases in such costs for the upcoming five year period, (ii) the anticipated inflation rate over the upcoming five year period, and (iii) any extraordinary maintenance, betterments or capital improvements or replacements that are anticipated to be made over the upcoming five year period. Any adjustment to the Reserve Account Target shall take effect on January 1 of the first year of each such 5-year period. If Owner and Railroads, through Mutual Agreement, elect to increase the then-current Reserve Account Target, revenues from Use Fees and Container Charges shall be deposited in

the Reserve Account pursuant to Section 7.3(b) until the new Reserve Account Target is met. If Owner and Railroads, through Mutual Agreement, elect to reduce the then-current Reserve Account Target, the Reserve Account shall be reduced by spending funds therein without making any new deposits from Use Fees or Container Charges until the new Reserve Account Target is met. Notwithstanding anything to the contrary in this Section 7.4(e), in no event shall the Reserve Account Target be reduced below \$15 million. If no Mutual Agreement is reached on the adjustment, if any, to be made to the Reserve Account Target, then POLB, POLA, and each Railroad independently may cause the matter to be mediated pursuant to Section 14.4.

(f) It is the intent of the parties hereto that the Reserve Account shall be maintained in place for the life of the Rail Corridor. After the Use Fees Termination Date the Reserve Account shall be funded from contributions by the Railroads. No later than November 30 of each calendar year following the Use Fees Termination Date, Owner and Railroads, through Mutual Agreement, shall determine the amount, if any, estimated to be necessary to bring the balance in the Reserve Account to the then-current Reserve Account Target as of January 1 of the following year. No later than March 1 of such year each Railroad shall deposit into the Reserve Account its Pro Rata Portion (determined on a gross ton mile basis based on usage of the Rail Corridor over the prior year) of such amount.

(g) The following special funding provisions shall apply to the Reserve Account:

(i) Pursuant to that certain Waiver and Release of Rights under Section 8.6 of the Use and Agreement dated as May 22, 2002 (“**Section 8.6 Waiver**”), by and among BNSF, UP and ACTA, each Railroad agreed to waive any and all future rights, claims and demands to moneys on deposit in the Reserve Account or any other rights, claims or demands to fund Additional Capital Improvements from the Reserve Account pursuant to Section 8.6 of the Original Agreement in exchange for the deposit by each Port to the Reserve Account the amount of three million dollars (\$3,000,000) (each, a “**Port Deposit**”) for the purpose of funding certain projects identified by the Railroads to be constructed within three years following Substantial Completion. Except for the Port Deposit, each Railroad agreed to release each Port from any further obligation to fund any deposits or deficiencies in the Reserve Account following Substantial Completion pursuant to Section 7.4(g) of the Original Agreement.

(ii) The Port Deposits by POLA or POLB constitute Port Advances and are to be reimbursed to the entity that contributed the same, with interest, as provided in Section 7.3(b).

(iii) The Port Deposits by POLA and POLB shall not be considered to be a part of, or count against, any Shortfall Advances by Owner for purposes of Section 7.3(h).

(h) The determination of whether the Reserve Account Target has been met for a year (and if not, what amount shall be deposited in such account during the year) shall be made in accordance with the provisions of the Master Trust Indenture.

7.5 Payment of M&O Charges and Capital Expenses.

(a) The budgeted M&O Charges (as provided in Section 8.3) for each calendar year other than the calendar year in which Substantial Completion occurs shall be divided into 12 equal installments (each such monthly amount being referred to herein as the “**Monthly Amount**”). If Owner and Railroads, through Mutual Agreement, modify the budgeted M&O Charges during a year, the Monthly Amount shall be adjusted to reflect the revised budget, with any increase or decrease in the budget spread over the remainder of the year. Notwithstanding the foregoing, if an item or items to be funded through M&O Charges is scheduled to be performed before sufficient funds have accumulated through payment of the Monthly Amount (such as the payment of insurance premiums as provided in Section 11.2), then Owner and Railroads, through Mutual Agreement, may require an accelerated payment of M&O Charges to fund such items(s).

(b) The budgeted Capital Expenses (as provided in Section 8.3) shall be paid from the Reserve Account, to the extent funds then are available in the Reserve Account. If and to the extent funds are not then available in the Reserve Account to pay any budgeted Capital Expenses, or any other Capital Expenses that Owner and Railroads, through Mutual Agreement, may from time to time determine to be necessary or appropriate (including to pay for any capital repairs or replacements that may be required as a result of a casualty event), each Railroad shall pay its Pro Rata Portion on a gross ton mile basis (based on the Railroad’s Pro Rata Portion for the previous calendar year) of such Capital Expenses.

(c) The budgeted Non-Rail Maintenance and Capital Improvement Charges (as provided in Section 7.4) shall be paid from the Reserve Account, to the extent funds then are available in the Reserve Account. If and to the extent funds are not then available in the Reserve Account to pay any budgeted Non-Rail Maintenance and Capital Improvement Charges, or any other Non-Rail Maintenance and Capital Improvement Charges that Owner and Railroads, through Mutual Agreement, may from time to time determine to be necessary or appropriate (including to pay for any capital repairs or replacements that may be required as a result of a casualty event), each Railroad shall pay its Pro Rata Portion on a gross ton mile basis (based on the Railroad’s Pro Rata Portion for the previous calendar year) of such Non-Rail Maintenance and Capital Improvement Charges.

(d) Each Railroad shall pay to ACTA its share of the Monthly Amount on the last day of each month. Any payment not made when due shall bear interest at the Overdue Rate until paid. In addition, ACTA shall have all other remedies for such non-payment set forth in Article XIV. Promptly after the end of each calendar year, ACTA shall reconcile the actual and budgeted amounts of the M&O Charges and Capital Expenses for such calendar year and shall provide a detailed copy thereof to Owner and Railroads. To the extent that a Railroad’s total payments during such calendar year differ from its allocation of actual M&O Charges and Capital Expenses for the calendar year based upon its Pro Rata Portion for the year, such Railroad shall receive a credit for such difference during the next succeeding month(s), or shall pay to ACTA the shortfall within 30 days after receipt of an invoice therefor, as the case may be. On or prior to the last day of each February, each Railroad shall deliver to ACTA (with a copy to Owner and the other Railroad) a written statement setting forth the number of train miles and the

number of gross ton miles such Railroad conducted over the Rail Corridor and Port-Owned Tracks for the prior calendar year, certified as true and correct by an officer of such Railroad.

(e) Owner and Railroads each agree to make such undertakings and provide such annual and other information as may be requested in connection with the ACTA Financing pursuant to Securities and Exchange Commission Rule 15c2-12. Owner and Railroads also shall supply such publicly available information, factual certifications and opinions of counsel, and confirmation of any rights conveyed hereunder, as may be reasonably required in connection with the ACTA Financing (the reasonable costs incurred by any Railroad or Owner in complying with the foregoing shall be reimbursed to such party as a Net Project Cost).

7.6 Payment of Use Fees and Container Charges.

(a) On or before the last day of each month, each Railroad shall pay to ACTA its Use Fees and Container Charges for the preceding month (or months, in the case of the first payment), based upon the actual number of containers and railcars transported by or on behalf of such Railroad during the immediately preceding month for which the payment of a Use Fee or Container Charge would apply. Any payment not made when due shall bear interest at the Overdue Rate until paid. In addition, ACTA, shall have all other remedies for such non-payment set forth in Article XIV. On the date each such payment is due, each Railroad also shall deliver to ACTA (with a copy to Owner and Railroads) a written statement setting forth the actual number of containers and railcars subject to Use Fee and Container Charges during the prior month (or months, in the case of the first report), and the actual number of Waterborne Containers transported by such Railroad and not already assessed a Use Fee or Container Charge during the prior month; such statement shall include sufficient detail as may be necessary to allow ACTA to verify the number of containers (including Waterborne Containers) and railcars subject to Use Fees and Container Charges.

(b) ACTA shall monitor, or hire a third party to monitor, the railcars and containers that are subject to Use Fees and Container Charges and the cost thereof shall be included in the costs covered by Section 7.3(b)(1). After the end of each calendar quarter ACTA shall reconcile the amount of Use Fees and Container Charges actually paid by each Railroad for such quarter and shall provide copies of such reconciliation to Owner and Railroads. To the extent the amount of a Railroad's payment for such quarter differs from the amount it actually should have paid for the quarter based upon the number of containers and railcars actually subject to such charges, such Railroad shall receive a credit for such difference during the next succeeding month(s), or shall pay the shortfall within 30 days after receiving a statement therefor, as the case may be.

(c) If requested by ACTA, payment of Use Fees and Container Charges shall be made by wire transfer of immediately available funds to the account specified by ACTA.

7.7 Audit Rights. Owner, ACTA and the Railroads each shall have the right, from time to time, at its respective expense, to audit the books and records of the other parties hereto that pertain to the matters described in this Article VII. All such audits shall be conducted during regular office hours and with reasonable prior notice.

ARTICLE VIII

MAINTENANCE OF AND CAPITAL REPAIRS TO RAIL CORRIDOR

8.1 Corridor Maintenance Contractor.

Owner and Railroads, through Mutual Agreement pursuant to Section 2.5(d), shall select the person or entity (“**Corridor Maintenance Contractor**”) responsible for the inspection, maintenance and repair of, and making capital replacements and improvements to, the Rail Corridor and all Port-Owned Tracks (including, without limitation, the Non-Rail Components). The parties acknowledge that more than one entity or agency may be selected through Mutual Agreement by Owner and Railroads to perform different aspects of the maintenance and repair of, and the capital replacements and improvements to, the Rail Corridor and/or the Port-Owned Tracks, and each such person or entity so selected shall be deemed to be a Corridor Maintenance Contractor for purposes of this Agreement. The Corridor Maintenance Contractor shall not be UP or BNSF unless unanimously approved by Owner and Railroads.

8.2 Maintenance Standard.

(a) The Rail Corridor and Port-Owned Tracks shall be inspected, maintained and repaired, and capital repairs, replacements and improvements shall be made, by the Corridor Maintenance Contractor, which maintenance and capital repairs shall include the matters for which M&O Charges are assessed pursuant to Section 7.2 and for which the Reserve Account is established pursuant to Section 7.4, (i) in a safe and reliable condition consistent with industry practice, (ii) in a manner that does not impair the ability of all Railroads to have equal competitive access over the Rail Corridor, (iii) at a level of utility, maintenance and repair consistent with all applicable laws, including FRA regulations, and (iv) otherwise in a condition which will permit rail operations at the speeds and in the manner contemplated for the Rail Corridor and the Project pursuant to this Agreement. Owner and Railroads have established pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads) specific standards and procedures for the maintenance and repair of, and for making capital repairs, replacements and improvements to, the Rail Corridor and the Port-Owned Tracks, which standards are consistent with (but may be higher than) those set forth in the preceding sentence. Such standards and procedures may be updated or modified from time to time by Owner and Railroads through Mutual Agreement.

(b) All materials, replacements, substitute items and capital improvements installed or made by or on behalf of the Corridor Maintenance Contractor, ACTA, POLA and/or POLB on or to the Rail Corridor or any Port-Owned Tracks shall become part of the Rail Corridor or Port-Owned Tracks, as the case may be, and the property of Owner, unless Owner otherwise agrees in writing.

(c) The Corridor Maintenance Contractor may temporarily take out of service portions of the Rail Corridor and/or the Port-Owned Tracks, upon giving the Railroads and Owner at least five days prior notice of such work (except in the case of an emergency, in which case the Corridor Maintenance Contractor shall give the Railroads such notice as is reasonable under the circumstances). In no event shall the Railroads be entitled to any sums, damages, fees

or other compensation relating to any loss of business or revenues resulting from any such track being taken out of service.

8.3 Annual Maintenance and Capital Improvement Plan and Budget.

(a) No later than September 1st of each year, Owner and Railroads shall prepare or cause to be prepared a plan and budget for inspection, maintenance, repairs and capital improvements and replacements to the Rail Corridor and the Port-Owned Tracks for the coming calendar year, which plan and budget shall be consistent with assuring each Railroad equal competitive access and otherwise shall be designed to achieve and implement the principles and goals of the Rail Corridor and the Project set forth in this Agreement. Such budget shall be prepared by the Corridor Maintenance Contractor or by another person or entity designated by Owner and Railroads through Mutual Agreement. Such plan and budget shall contain a separate subplan and subbudget for each of the following categories of maintenance, repairs and capital improvements: (1) M&O Charges; (2) Capital Expenses; and (3) Non-Rail Maintenance and Capital Improvement Charges. Owner and Railroads, through Mutual Agreement, shall approve or disapprove of such proposed plan and budget within 30 days after receipt thereof. If the proposed plan and budget is not approved through Mutual Agreement, the parties disapproving the proposed plan and budget shall provide to the entity preparing the budget detailed reasons for such disapproval, whereupon such entity, within 15 days after receipt of the disapproval, shall deliver to Owner and Railroads a revised proposed annual plan and budget which shall reflect the comments to the original proposed plan and budget provided by Owner and Railroads. This revised annual plan and budget shall be subject to review and approval in the manner set forth above. The failure of Owner and Railroads to approve any annual proposed plan and budget in the manner and within the time periods set forth above shall be deemed disapproval of such plan and budget. Through Mutual Agreement, Owner and Railroads may modify an approved budget from time to time to take into account changed circumstances or needs. POLA, POLB and each Railroad shall have the independent authority to convene a meeting of the parties if in the reasonable opinion of any of them there are significant problems with the proposed plan or budget.

(b) If on or before December 1 of any given year, a plan and budget for the coming calendar year has not been approved by Owner and Railroads through Mutual Agreement, then POLB, POLA, and each Railroad may independently invoke the mediation procedures specified in Section 14.4. If a proposed plan and budget for the coming calendar year has not been approved by Owner and Railroads through Mutual Agreement by January 1 of such year, then, to reduce any disruption to maintenance and operations on the Rail Corridor and the Port-Owned Tracks, the prior calendar year's plan and budget shall apply, and the Corridor Maintenance Contractor shall conduct its operations, and the Railroads shall pay the Monthly Amount, in accordance therewith, until a final plan and budget for the current calendar year is approved by Owner and Railroads through Mutual Agreement.

(c) The Railroads, ACTA and Owner acknowledge that the annual maintenance and capital improvement and replacement plan is intended to provide for a normalized maintenance and replacement schedule over a period of time that will maintain the Rail Corridor and Port-Owned Tracks and all components thereof in the condition required by this Agreement. The maintenance and capital improvements program set forth in the annual

maintenance and capital improvement plan shall include the periodic replacement of ties, rail, ballast, switches and other components of the Rail Corridor and Port-Owned Tracks with materials of like quality.

8.4 Maintenance of Facilities Owned or Operated by the Railroads.

Except as otherwise may be set forth in the Port Rail Agreements or any other written agreements between or among the Railroads and/or POLA and/or POLB, each Railroad shall be responsible, at its sole cost and expense, for the maintenance and operation of, and repairs to, (i) any facility exclusively used or operated by such Railroad pursuant to Section 5.2, (ii) any signals located on the Rail Corridor and determined by Owners and Railroads through Mutual Agreement to be for the exclusive benefit of one Railroad, and (iii) all Track, Track Support Structures and other facilities and property owned or exclusively used or operated by such Railroad beyond or outside the boundaries of the Rail Corridor (including any Track connecting any property, rail line or facility owned or exclusively owned or operated by such Railroad to the Rail Corridor, to the extent not on the Rail Corridor, including signals, turnouts and crossovers with respect to such Track and including, by way of example, the rail bridges for BNSF's Harbor Subdivision crossing and for UP's La Habra Branch crossing over the Rail Corridor, and the North End Grade Separation (except that any costs or expenses incurred to repair or replace such rail bridges as a result of a design defect (unless such design defect relates to a design change requested by a Railroad) or a construction defect in the original construction shall be the responsibility of Owner and/or ACTA)). Nothing in this Section 8.4, however, shall prevent any of the Railroads from entering into agreements with each other or with third parties providing for the performance of, or the sharing or reimbursement of costs related to, the maintenance, operation and/or repair matters covered by this Section.

8.5 Maintenance of Port-Owned Tracks. If and to the extent that the Port Rail Agreements provide that the Port Rail Operator shall be responsible for the repair or maintenance of, or making capital improvements or replacements to, any Port-Owned Tracks, the Port Rail Agreements shall control with respect to those Port-Owned Tracks, and any provisions to the contrary contained in this Agreement with respect to the repair or maintenance of, or capital improvements or replacements to, such Port-Owned Tracks are deemed superseded by the Port Rail Agreements until such agreements are terminated or expire in accordance with their respective terms.

8.6 [Reserved].

ARTICLE IX

STORAGE AND HOLDING OF TRAINS

9.1 Storage and Holding.

(a) Except as otherwise provided in Section 2.2 or in Sections 9.1(b) and 9.1(c), no Railroad shall be permitted to (i) store or leave trains, rail cars or other equipment, or (ii) uncouple locomotives from cars (except in an operating emergency), on the mainline Tracks within the Rail Corridor. The lead track from the west end of Mead Yard extending south toward the Badger Avenue Bridge shall not be considered a mainline Track within the Rail Corridor.

(b) If designated holding sidings are constructed within the Rail Corridor, the right to hold or store trains, rail cars or equipment on such sidings will be assigned to the Railroads on an equitable, nondiscriminatory, hourly basis by the Corridor Dispatcher, which storage or holding shall be in compliance with all applicable laws, rules and regulations and such other reasonable, nondiscriminatory rules as Owner and Railroads previously have established pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads), or may in the future establish and agree upon through Mutual Agreement (including the payment of a nondiscriminatory fee in the case of any such storage requested by any Railroad). Until all financings covered by the Annual Amount have been paid in full, any such storage fees shall be applied by Owner to payment of the Annual Amount as part of Owner's contribution thereto; after repayment of all such financings, such storage fees shall be deposited by Owner in the Reserve Account established in Section 7.3(b)(2).

(c) In addition, the Railroads shall have the right to hold or store trains on the Manuel Sidings in accordance with the provisions of Section 9.1(b), provided that for so long as UP exclusively serves the Toyota Distribution Facility, UP shall have first priority to store or hold trains on the siding commonly known as "Manuel 3" and no storage fee shall be charged for such use of the "Manuel 3" siding, unless used to store a unit train not going to or from the Toyota Distribution Facility, in which case the storage fee shall apply.

(d) POLB agrees that one track in POLB's Pier B Yard will be made available on a non-exclusive basis for use by the Railroads as a storage track to support unit train operations in connection with the Rail Corridor. Such track will be allocated and dispatched by the Port Rail Operator in accordance with the Port Rail Agreements governing POLB's Pier B Yard.

9.2 Unloading of Trains. Except as otherwise provided in Section 2.2, no trains shall be loaded or unloaded on or within the Rail Corridor.

ARTICLE X

PASSENGER RAIL OPERATIONS

10.1 Passenger Rail Operations. The parties acknowledge and agree that passenger rail operations on the portion of the Rail Corridor between Hobart Junction and Soto Street Junction shall be permitted to the extent set forth in existing agreements relating to such segment of the Rail Corridor, provided, however, if under such existing agreements passenger rail operations may be increased with Owner's consent, Owner agrees that it shall not consent to such increased passenger rail operations on such segment. The parties agree that there shall be no other passenger or commuter rail operations on any portion of the Rail Corridor except at Redondo Junction pursuant to pre-existing agreements. If after Substantial Completion Owner or any Railroad receives from the entities providing or operating such passenger rail service any payments in contribution to or reimbursement of maintenance, repair, or operations costs with respect to this Rail Corridor segment, such payments shall be deposited in the maintenance fund established pursuant to Section 7.2(a) and used to pay costs and expenses covered by Section 7.2.

ARTICLE XI

LIABILITY

11.1 Property Damage; Personal Injury.

(a) Generally, and subject to the other provisions of this Section 11.1, if any property damage, personal injury or death arising from operations on the Rail Corridor or the Port-Owned Tracks is determined to have been caused by or to have arisen from the policies, procedures or decisions previously made or adopted pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads), or hereafter made or adopted by Owner and Railroads through Mutual Agreement (including the selection and retention of the Corridor Dispatcher, the Corridor Maintenance Contractor and/or any other third party contractor working under a contract approved pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, then, as among the parties to this Agreement, POLA, POLB, UP and BNSF each shall be responsible for 25% of any liability for such property damage, personal injury or death which is not covered by such contractor or its insurance pursuant to this Agreement. Owner, ACTA and the Railroads intend that the agreements with the Corridor Dispatcher, the Corridor Maintenance Contractor and any other third party contractor working under a contract approved by Owner and Railroads through Mutual Agreement shall require that such contractors assume the liability and responsibility for all property damage, personal injury and death which is caused by or arises from the acts or omissions of such contractors, and that such contractors shall be obligated to carry insurance in accordance with Section 11.2 insuring against such events, but such agreements shall in no way alter the allocation of liability among POLA, POLB, UP and BNSF set forth in this Section 11.1(a). The liability of POLA, POLB, UP and BNSF under this Section 11.1(a) shall be several, not joint. If any of POLA, POLB, UP or BNSF ever pays or incurs more than 25% of any liability under this Section 11.1(a), that party shall have the right to recover from the other three parties (through a claim for contribution, or otherwise), and the other three parties shall pay, their respective share of the amount of the liability that the paying party paid or incurred in excess of 25%, together with interest thereon at the Overdue Rate until such amount is paid in full. Notwithstanding the foregoing, if at any time either, or both, of the Railroads is acting as the Corridor Dispatcher or Corridor Maintenance Contractor, such Railroad(s) shall be solely responsible for its (or their) acts or omissions while acting in such capacity, and neither POLA, POLB, nor the other Railroad (if applicable), shall share any responsibility pursuant to this Section 11.1(a) for liability arising from such acts or omissions (*i.e.*, neither POLA, POLB nor, if applicable, the other Railroad, shall bear 25% of such liability by reason of the selection of such Railroad(s) to serve in such capacity). In no event shall ACTA have any liability for any matters described in this Section 11.1(a) (unless and until such time, if ever, ACTA assumes the obligations of the Owner pursuant to Section 15.1(b)).

(b) Owner shall be liable for any injury to or death of trespassers or non-contractor/non-Railroad third parties or damage to their property, provided that (i) if a Railroad's employee or invitee, or their equipment, is involved in such incident, such Railroad shall bear the liability for such injury, death or damage, and (ii) if the injury or damage results from the acts or omissions of the Corridor Dispatcher, Corridor Maintenance Contractor and/or any other third party contractor working under a contract approved pursuant to the Original

Agreement (or in a separate agreement among Owner and the Railroads), or by Owner and Railroads through Mutual Agreement, then POLA, POLB, UP and BNSF shall share the liability for such injury, death or damage in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a). In no event shall ACTA have any liability for any matters described in this Section 11.1(b) (unless and until such time, if ever, ACTA assumes the obligations of the Owner pursuant to Section 15.1(b)).

(c) The Railroads, Owner and ACTA intend that the agreements with the Corridor Dispatcher, the Corridor Maintenance Contractor and any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement shall provide that (i) unless FELA is found to be applicable, injury to or death of such contractors' employees shall be covered by the worker's compensation and liability insurance of the respective contractors, and (ii) the respective contractors' insurance will cover damage to their equipment. However, to the extent that a contractor's insurance does not cover any such injury, death or damage, or if FELA is found to apply, POLA, POLB, UP and BNSF shall share liability for such loss (in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a)). In no event shall ACTA have any liability for any matters described in this Section 11.1(c) (unless and until such time, if ever, ACTA assumes the obligations of the Owner pursuant to Section 15.1(b)).

(d) Except to the extent caused by the acts or omissions of the Corridor Dispatcher, the Corridor Maintenance Contractor and/or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement (in which case the provisions of Section 11.1(a) shall apply with respect to such contractor's share of the liability under this Section 11.1(d)):

(i) POLA, POLB and ACTA each shall be liable for injury to or death of its respective invitees, agents, contractors not working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, representatives and direct employees (i.e., not the Railroads, the Railroads' employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, which, for purposes of this Section 11.1(d), shall not be deemed to be contractors of ACTA or Owner), and damage to its or their equipment, REGARDLESS OF ANY NEGLIGENCE OF ANY RAILROAD, except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of any Railroad or that Railroad's employees, invitees or contractors not working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, in which case the Railroad involved shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct; and

(ii) each Railroad shall be liable for injury to or death of its respective invitees, agents, contractors not working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, representatives and direct employees (i.e., not POLA, POLB, ACTA, their respective employees, or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement), and damage to its or their equipment, REGARDLESS OF ANY NEGLIGENCE OF POLA, POLB OR ACTA, except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of POLA, POLB or ACTA, or their respective employees, invitees or contractors not working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, in which case POLA, POLB or ACTA (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct.

For the purposes of this Section 11.1(d), “equipment” shall not include facilities or equipment constituting part of, or used in connection with rail operations on or maintenance of, the Rail Corridor or Port-Owned Tracks.

(e) In a train accident or derailment involving the train of only one Railroad, the Railroad involved shall be responsible for any injury to or death of its employees and damage to its equipment, as well as for injury to or death of third parties (as and to the extent set forth in Section 11.1(b)) and damage to property (including Rail Corridor structures), except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of the other Railroad, POLA, POLB or ACTA, or their respective invitees, contractors not working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement or direct employees (i.e., not the Railroads, their employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, which, for purposes of this Section 11.1(e), shall not be deemed to be contractors of ACTA or Owner), in which case POLA, POLB, ACTA or the other Railroad (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct. Notwithstanding the preceding sentence, to the extent an accident or derailment is caused by an act or omission of the Corridor Dispatcher, the Corridor Maintenance Contractor or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, or any of their respective employees, such contractor shall be responsible for the injury, death and damage resulting therefrom in proportion to its relative degree of fault (and if such contractor or its insurance does not cover such share of liability, then POLA, POLB, UP and BNSF shall bear that share of the liability in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a)).

(f) In a train accident or derailment involving the trains of more than one Railroad, each Railroad shall be responsible for any injury to or death of its own employees and damage to its equipment, and each Railroad shall share (in proportion to its relative degree of fault) the responsibility for injury to or death of third parties (as and to the extent set forth in Section 11.1(b)) and damage to property (including damage to Rail Corridor structures), except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of POLA, POLB or ACTA, or their respective invitees, contractors not working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement or direct employees (*i.e.*, not the Railroads, their employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, which, for purposes of this Section 11.1(f), shall not be deemed to be contractors of ACTA or Owner), in which case POLA, POLB or ACTA (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct. Notwithstanding the preceding sentence, to the extent an accident or derailment is caused by an act or omission of the Corridor Dispatcher, the Corridor Maintenance Contractor or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, or any of their respective employees, such contractor shall be responsible for the injury, death and damage resulting therefrom in proportion to its relative degree of fault (and if such contractor or its insurance does not cover such share of liability, then POLA, POLB, UP and BNSF shall bear that share of the liability in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a)). Further, the Railroads may agree among themselves that, in the circumstance where the act or omission of an employee of one Railroad causes or contributes to such an accident, the first Railroad shall be responsible for the death or injury to the employees of the other Railroad, and the damage of the other Railroads' equipment.

(g) With respect to operations on portions of the UP San Pedro Branch which are not considered Port-Owned Tracks under this Agreement, as between the Railroads, on the one hand, and POLA, POLB and ACTA, on the other, the Railroads agree that none of POLA, POLB or ACTA shall have any liability for any injury to or death of any employees, or for any damage to any equipment, of any Railroad operating on the UP San Pedro Branch pursuant to the provisions of this Agreement, except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of POLA, POLB or ACTA or their respective invitees, contractors not working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, or direct employees (*i.e.*, not the Railroads, the Railroads' employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement, which, for purposes of this Section 11.1(g), shall not be deemed to be contractors of ACTA or Owner), in which case POLA, POLB or ACTA (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct. As among the Railroads, liability for such matters shall be apportioned in accordance with any

detour or other agreement then in effect between or among the Railroads involved or, if no such agreement is then in effect, then in accordance with the Standard Detour Agreement.

(h) The party (or parties) responsible or liable pursuant to this Section 11.1 for any death, injury or damage shall indemnify, defend and hold harmless the other parties (and such other parties' respective officers, directors and employees), from and against any claim, action, proceeding, investigation or demand arising, in whole or in part, from such incident, except to the extent such claim arises out of the gross negligence or intentional misconduct of the party seeking indemnity, all in accordance with Section 11.5.

(i) If and to the extent that the Port Rail Agreements (or any other agreements among POLA and the Railroads or POLB and the Railroads with respect to the Port-Owned Tracks in the respective Ports) allocate liability for injury, death or damage arising from operations on such Port-Owned Tracks, such other agreements shall control with respect to allocating liability with respect to such Port-Owned Tracks, and any provisions to the contrary contained in this Agreement regarding liability for operations on such Port-Owned Tracks are deemed superseded by such other agreements are terminated or expire in accordance with their respective terms.

(j) The provisions of this Section 11.1 shall bind and are for the benefit of the parties to this Agreement only, and no other person or entity shall be entitled to rely upon or benefit from any of such provisions.

(k) Notwithstanding anything to the contrary set forth in this Section 11.1 or elsewhere in this Agreement, the Port Rail Operator is not, and shall not be deemed to be, an agent, contractor or employee of POLA, POLB or ACTA.

11.2 Insurance.

(a) Each Railroad may self-insure against its liability risks under this Agreement to levels customary in the industry for Class I railroads. Notwithstanding the foregoing, if Owner and Railroads so determine through Mutual Agreement, POLA, POLB, UP and BNSF together shall obtain a commercial general liability insurance policy covering the risks described in Section 11.1, which insurance policy shall have limits and deductibles as previously agreed pursuant to the Original Agreement (or by separate agreement), or hereafter agreed upon by Owner and Railroads through Mutual Agreement (and if such a policy of general liability insurance is obtained, (i) each of POLA, POLB, UP and BNSF shall be responsible for paying 25% of the premiums for such liability policy, (ii) each of POLA, POLB, UP and BNSF shall be a named insured thereunder, and (iii) such liability policy shall name ACTA as an additional insured).

(b) Each contract with the Corridor Dispatcher, the Corridor Maintenance Contractor and other third parties shall require that such entities obtain and keep in force at all times during the term of such contract a commercial general liability insurance policy on an occurrence basis, with each such policy to afford protection to a limit of not less than \$25 million (as such limit may have been adjusted in the past pursuant to the Original Agreement, and may hereafter be increased by Owner and Railroads through Mutual Agreement) with respect to

personal injury or death to one or more persons or damage to property caused by or arising from the acts or omissions of such contractor. Each of POLA, POLB, ACTA, UP and BNSF shall be a named insured under such insurance policies. If at any time either of the Railroads is acting as the Corridor Dispatcher or the Corridor Maintenance Contractor, such Railroad shall obtain and keep in effect the above-described liability insurance while acting in such capacity, and shall not be permitted to self-insure against liability arising from its acts or omissions while acting in such capacity, but if both Railroads together are acting as the Corridor Dispatcher or the Corridor Maintenance Contractor, the Railroads shall be permitted to self-insure against liability arising from their acts or omissions while acting in such capacity.

(c) ACTA shall obtain and continuously keep in force during the term of this Agreement an all risk policy of property insurance insuring, as and to the extent required by the ACTA Financing, against loss and damage by all risks of physical loss to the Rail Corridor (including earthquake and flood, if such coverages are required by the ACTA Financing). The specific coverages, limits and deductibles of such property insurance shall satisfy the requirements of the ACTA Financing (and ACTA shall use commercially reasonable efforts to obtain such insurance coverage at the lowest premiums practicable). Subject to the requirements of the ACTA Financing, to reduce the cost of insurance, the deductible under such insurance may be adjusted from time to time by ACTA and by Owner and Railroads through Mutual Agreement. The proceeds of such insurance policy may be assigned by ACTA pursuant to the Master Trust Indenture.

(d) ACTA shall obtain and continuously keep in force, at all times that the ACTA Financing and the Federal Loan are outstanding, business interruption insurance in an amount not less than 100% of the Use Fees and Container Charges payable by the Railroads for a two-year period (based on ACTA's projections for such two year period, which shall be adjusted as of the beginning of each calendar year). ACTA shall use commercially reasonable efforts to obtain such insurance coverage at the lowest premiums practicable. Subject to the requirements of the ACTA Financing, to reduce the cost of insurance, the deductible under such insurance may be adjusted from time to time by ACTA and by Owner and Railroads through Mutual Agreement, provided that any deductible under such insurance may not exceed the period (currently 5 consecutive days) set forth in Sections 7.3(f) and 7.3(g) for relief from Use Fees and Container Charges, respectively, for a complete blockage of the Rail Corridor (or if the deductible is expressed as a dollar amount, then such deductible cannot exceed the Use Fee and Container Charges revenues generated during such period). The proceeds of such insurance shall be payable in accordance with the Master Trust Indenture.

(e) Any insurance required by this Section 11.2 shall not be permitted to expire or be canceled or materially changed while this Agreement is in effect except upon 60 days' prior written notice to ACTA. Each insurance policy required hereunder shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits, except after 60 days' prior written notice has been given to ACTA.

(f) Prior to the commencement of joint rail operations on the Rail Corridor, any party required to obtain insurance pursuant to in this Section 11.2 shall deliver to the other parties to this Agreement original endorsements showing that the insurance required hereunder is

in effect. Upon renewal of each required insurance policy, original endorsements to such renewal policies also shall be delivered to the parties.

(g) Nothing in this Agreement shall be deemed to preclude Owner or Railroads from asserting any defenses they may have against a claim that Owner or Railroads are liable for losses or damages as a result of any actions or inactions undertaken as a result of authorization by Owner and Railroads through Mutual Agreement, including, without limitation, asserting that the matter giving rise to the claim was caused in whole or in part by actions or inactions of parties other than Owner and Railroads.

(h) Owner and Railroads have agreed pursuant to the Original Agreement (or by separate agreement among Owner and the Railroads) that notwithstanding any provision of Section 7.5 to the contrary, insurance premiums for the policies required to be obtained by ACTA pursuant to Section 11.2(c) and Section 11.2(d) shall be paid annually by each Railroad (based on its respective Pro Rata Portion of train miles for the prior calendar year) no later than fifteen (15) days following receipt of such invoice(s) from ACTA (which invoices will be delivered after ACTA determines the actual insurance premiums for the applicable year).

11.3 Environmental Liability.

(a) Each party shall be responsible for, and shall indemnify, defend and hold harmless the other parties from and against, any claims, liabilities, losses or actions arising out of the release of Hazardous Substances within, on, over or under the Rail Corridor and/or the Port-Owned Tracks to the extent such release is a release from the equipment, or is caused by the activities, of such party (and, for purposes of this Section 11.3, the UP San Pedro Branch shall be considered a Port-Owned Track to the extent BNSF operates on such branch pursuant to this Agreement).

(b) Notwithstanding the provisions of Section 11.3(a), ACTA and Owner agree that neither ACTA, POLA nor POLB shall pursue any Railroad for any release of Hazardous Substances that occurred prior to October 12, 1998 on any portion of property on which such Railroad did not operate prior to October 12, 1998 (provided that the foregoing shall not preclude ACTA, POLA and/or POLB from pursuing UP for releases of Hazardous Substances on property previously owned by the former SPT). Each Railroad shall indemnify, defend and hold the other Railroads harmless from and against any actions, proceedings, governmental investigations, losses, damages, costs and expenses (including reasonable attorneys' fees) which may reasonably be incurred or suffered by such other Railroads in connection with or arising from a release of Hazardous Substances by such indemnifying Railroad, its agents, shippers or invitees, which occurred on a portion of the Rail Corridor owned by the indemnifying Railroad prior to the time that the indemnified Railroads operated on such property, except to the extent such Hazardous Substances were released by, or from other property owned by, such other Railroad, to the extent such losses, damages, costs and expenses exceed \$10,000 in any year.

(c) Nothing in this Section 11.3 is intended, or shall be deemed, to alter, modify or limit the provisions of existing agreements by, between and among Owner, POLA, POLB and/or one or more of the Railroads with respect to Hazardous Substances.

11.4 Casualty.

(a) If all or any portion of the Rail Corridor is damaged or destroyed by any casualty while the ACTA Financing and/or the Federal Loan is outstanding, all proceeds of the insurance maintained by ACTA pursuant to Sections 11.2(c) and 11.2(d) shall be applied in accordance with the provisions of the Master Trust Indenture (or if the ACTA Financing no longer is outstanding, but the Federal Loan still is outstanding, then in accordance with the documents evidencing the Federal Loan). Except as otherwise expressly set forth in this Agreement, no party shall have any obligation to repair or restore damage to the Rail Corridor except to the extent insurance proceeds actually are applied for such purposes under the Master Trust Indenture (or, if applicable, the documents evidencing the Federal Loan).

(b) After the ACTA Financing and the Federal Loan have been paid in full, and except as otherwise expressly set forth in this Agreement, no party shall have any obligation to any other party hereto to repair or replace damage to the Rail Corridor or any Port-Owned Tracks caused by any casualty, unless insurance proceeds are available to make such repairs or replacement. In furtherance of the foregoing, POLA, POLB and ACTA will be entitled to immediately and unilaterally remove from service any portion of the Rail Corridor or any Port-Owned Tracks, without liability to any party hereto, if it is damaged or destroyed by any casualty. In such event, ACTA shall be responsible for (and shall pay all costs associated with) obtaining any governmental or regulatory approvals that may be necessary in connection with any such removal from service. Except as otherwise expressly set forth in this Agreement, in no event shall any party have any liability to any other party for injury to persons or damage to property resulting from any casualty. Subject to the foregoing provisions regarding the application of insurance proceeds, if Owner determines, in its sole and absolute discretion, that material damage caused by a casualty to all or any portion of the Rail Corridor renders continuation of operations under this Agreement impracticable, Owner shall be entitled, unilaterally, without joinder by any Railroad and without liability therefor, to terminate this Agreement by written notice to the Railroads, provided that such notice must be given within 120 days after such casualty. In such event, Owner shall be responsible for obtaining any governmental or regulatory approvals that may be necessary in connection with any such removal from service. This Agreement shall be deemed terminated on the later of (i) the date such notice is delivered or (ii) the date on which any governmental or regulatory approvals or exemptions necessary to terminate this Agreement have been obtained, provided that each Railroad shall have 90 days after the effective date of termination to remove its property from the Rail Corridor.

11.5 Indemnification.

(a) If any claim, action, proceeding, investigation or demand shall be brought or threatened against any person entitled to indemnification under this Article XI (an “**Indemnitee**”), by reason of any matter requiring indemnification (an “**Indemnified Matter**”), Indemnitee shall give written notice thereof to the person required to make such indemnification (an “**Indemnitor**”), which notice shall contain a reasonably detailed description of the event, occurrence or condition giving rise to the claim for indemnity and shall enclose a true copy of any and all documents served upon or received by Indemnitee.

(b) If Indemnitee shall suffer or incur any liabilities, losses, causes of action, penalties, demands, detriments, claims, damages, costs, judgments or expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from or in connection with any Indemnified Matter, Indemnitor shall pay Indemnitee the total of such Losses suffered and incurred by Indemnitee within 90 days following demand therefor and delivery of an account of Losses suffered by Indemnitee and thereafter as such Losses are incurred and reported to Indemnitor by Indemnitee, and any such Losses which are not paid within such 90 day period shall be delinquent. In addition to all other rights and remedies of Indemnitee against Indemnitor provided herein, or under applicable law, Indemnitor shall pay to Indemnitee interest accrued on any delinquent payments at the Overdue Rate from the date such payment is due until paid.

(c) Indemnitor shall at its own cost, expense, and risk: (i) defend Indemnitee in all suits, actions, or other legal or administrative proceedings that may be brought or instituted against an Indemnitee on account of any Indemnified Matter with counsel selected by Indemnitor and reasonably acceptable to Indemnitee; (ii) pay and/or satisfy any judgment or decree that may be recorded against Indemnitee in any such suit, action, or other legal or administrative proceedings; and (iii) reimburse Indemnitee for all Losses incurred by Indemnitee relating to or in connection with any such suit, action, or other legal or administrative proceedings.

(d) Notwithstanding anything in this Agreement to the contrary, Indemnitor shall not, without the prior written consent of Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any action, suit, proceeding, or claim relating, directly or indirectly, to any Indemnified Matter or consent to the entry of any judgment therein in excess of \$100,000.

(e) Without limiting the rights of Indemnitee pursuant to this Section 11.5, Indemnitee shall have the right to join and participate in, as a party if it so elects, any suits, actions, or other legal or administrative proceedings that may be brought or instituted against an Indemnitee on account of any Indemnified Matter. In any such case, Indemnitee may, at its own cost and expense, employ its own legal counsel and consultants to prosecute, negotiate, or defend any claim, action, or cause of action provided that Indemnitee shall not, without the prior written consent of Indemnitor (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any action, suit, proceeding, or claim relating, directly or indirectly, to any Indemnified Matter or consent to the entry of any judgment therein in excess of \$100,000.

(f) For purposes of the indemnification provisions of this Agreement, "POLA" shall include the City of Los Angeles, the Port of Los Angeles and its Board of Harbor Commissioners, "POLB" shall include the City of Long Beach, the Port of Long Beach and its Board of Harbor Commissioners, "ACTA" shall include the ACTA Board of Commissioners, and the indemnification in favor of each party to this Agreement shall include its respective officers, directors and employees.

11.6 Releases.

(a) To the maximum extent permitted by applicable law, and for so long as ACTA has not assumed the obligations of the Owner pursuant to Section 15.1(b), POLA, POLB,

UP and BNSF each hereby expressly releases, remises and discharges forever ACTA from any and all Losses which may have been or in the future may be incurred or suffered by POLA, POLB, UP or BNSF or its respective property, caused by or otherwise resulting from any act or omission by the Corridor Dispatcher or the Corridor Maintenance Contractor, their respective affiliates or subsidiaries and their respective employees, agents, representatives, contractors, or invitees.

(b) POLA, POLB, UP and BNSF, after having read and been advised by legal counsel regarding the provisions of California Civil Code Section 1542 and in any and all similar statutes, rules and regulations and any other statute of the United States, hereby agree, represent and warrant that the matters released in this Section 11.6 are not limited to the matters which are known or disclosed. California Civil Code Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

POLA, POLB, UP and BNSF each hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and each further agrees, represents and warrants that the releases contained in this Section 11.6 have been negotiated and agreed upon in light of that realization and that it nevertheless hereby intends to release and discharge ACTA from any such causes of action, claims, demands, controversies, damages, costs, losses and expenses.

POLA: _____ POLB: _____ UP: _____ BNSF: _____

11.7 Interpretation.

(a) Each of the parties hereto hereby agrees that this Agreement is not intended to be, and none shall construe it as, a contract or agreement covered by the provisions of California Civil Code Section 2784.5 (which Section concerns certain hauling, trucking or cartage contracts or agreements).

(b) Each of the parties hereto hereby agrees that the Corridor Dispatcher, the Corridor Maintenance Contractor and any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through Mutual Agreement are not, and none of them are intended to be, the agent, servant or independent contractor (as such terms are used in California Civil Code Section 2782) of ACTA. In addition, each of POLA, POLB, UP and BNSF agrees that neither it nor any of its agents or representatives shall claim or assert that the negligence or willful misconduct of the Corridor Dispatcher, the Corridor Maintenance Contractor or any other third party contractor working under a contract approved pursuant to the Original Agreement (or in a separate agreement among Owner and the Railroads) or by Owner and Railroads through

Mutual Agreement by Owner and Railroads is or should be imputed to ACTA under any agency or other legal theory.

(c) Each of POLA, POLB, UP and BNSF hereby waives, to the extent permitted by applicable law with respect to ACTA only, the provisions of California Civil Code Section 2782 (which Section places limitations on indemnifications in certain construction contracts).

POLA: _____ POLB: _____ UP: _____ BNSF: _____

11.8 Survival. The provisions of this Article XI shall survive the expiration or earlier termination of this Agreement.

ARTICLE XII

Reserved.

ARTICLE XIII

OWNER NOT A CARRIER; NO JOINT VENTURE

13.1 Common Carrier Obligations. Each of the Railroads shall have all of their respective duties, responsibilities and obligations arising under the Interstate Commerce Act (as amended) (and any other applicable federal or state statute) which require such Railroad to serve existing and future rail freight shippers. Each Railroad acknowledges and agrees that nothing in this Agreement or in any agreement to be executed in connection with this Agreement shall be construed to obligate or require POLA, POLB and/or ACTA to assume or acquire any obligation to provide rail freight service or any other kind of service to any current or future shipper or receiver of any of the Railroads or to otherwise impose upon POLA, POLB and/or ACTA any obligation or responsibility associated with the status of being a railroad or common carrier.

13.2 No Joint Venture. Nothing contained in this Agreement shall have the effect of creating a joint venture or partnership between or among any of the parties, or of rendering one liable for any of the debts or obligations of any other, unless expressly provided in this Agreement.

13.3 Labor Protection Matters. Each Railroad shall be solely responsible for all labor protection matters relating to such Railroad's employees or former employees and resulting from such Railroad shifting its operation of Through Trains to the Rail Corridor. None of POLA, POLB or ACTA shall be subject to labor protection matters relating to any Railroad's employees or former employees and resulting from such Railroad shifting its operation of Through Trains to the Rail Corridor, and each Railroad shall indemnify, defend and hold POLA, POLB and ACTA harmless from and against any losses resulting from such matters.

ARTICLE XIV

DEFAULT AND REMEDIES

14.1 Defaults.

- Railroad:
- (a) Any of the following events shall be deemed a default hereunder by a Railroad:
 - (i) Failure to pay any sums payable hereunder (including M&O Charges, Capital Expenses, Use Fees or Container Charges) within 15 days after receipt of notice of such failure.
 - (ii) Failure to perform any other obligation hereunder or under any rule, regulation or procedure adopted pursuant to the Original Agreement or this Agreement within 45 days after receipt of written notice by Owner or ACTA; provided that if such Railroad commences to cure such failure but such failure cannot be cured within such 45- day period despite diligent pursuit of such cure, such Railroad shall be entitled to an extension of 45 days to cure such default if such Railroad continues to diligently pursue such cure.
 - (b) Any of the following events shall be deemed a default hereunder by Owner:
 - (i) Failure to pay any sums payable hereunder (including Shortfall Advances) within 15 days after receipt of notice of such failure.
 - (ii) Failure to perform any other obligation hereunder or under any rule, regulation or procedure adopted pursuant to the Original Agreement or this Agreement within 45 days after receipt of written notice by ACTA or by any Railroad; provided that if Owner commences to cure such failure but such failure cannot be cured within such 45-day period despite diligent pursuit of such cure, Owner shall be entitled to an extension of 45 days to cure such default if Owner continues to diligently pursue such cure.
 - (c) The failure by ACTA to perform any of its obligations hereunder within 45 days after receipt of written notice by any Railroad or Owner shall be deemed a default hereunder by ACTA; provided that if ACTA commences to cure such failure but such failure cannot be cured within such 45-day period despite diligent pursuit of such cure, ACTA shall be entitled to an extension of the period of time necessary to cure such failure if ACTA continues to diligently pursue such cure.

14.2 Remedies. The parties hereto acknowledge that in the event of a default or breach of any of the terms of this Agreement, damages may not be an adequate remedy, and the non-defaulting party(ies) may seek the entry of decrees for specific performance or injunctive relief in favor of such party(ies). The parties agree that their remedies under this Agreement shall consist of actual damages, specific performance or any other remedy available at law or in equity. In addition, any payment required by a party under this Agreement that is not made when

due shall bear interest at the Overdue Rate until such payment is made. Each Railroad acknowledges and agrees that in no event shall ACTA have any liability to the Railroads or any of them for a breach or default under this Agreement by the Corridor Dispatcher or Corridor Maintenance Contractor, or by the other Railroad.

14.3 Transfer of Freight Service Rights by Operation of Law. After the occurrence of a material default or breach of the terms of this Agreement by a Railroad and the failure of such Railroad to cure such material default or breach within the cure periods set forth in Section 14.1, in addition to any other remedies Owner and ACTA have at law, in equity or under the terms of this Agreement, Owner and ACTA each shall have the right either to terminate such Railroad's rights under this Agreement to operate on the Rail Corridor and Port-Owned Tracks, or require such Railroad to transfer all of its rights under this Agreement to another Railroad on terms and conditions acceptable to Owner and ACTA but which do not discriminate against any other Railroad, provided that, (i) to the extent required under applicable law, such termination or transfer shall not take effect until it has been approved by any judicial or regulatory body with jurisdiction over such matters, and (ii) if the amounts and obligations listed in Section 7.3(b) have not been paid in full, then Owner and ACTA may only exercise such transfer right and may not terminate this Agreement. Upon such termination or transfer, such Railroad shall (i) immediately cease all rail freight service on the Rail Corridor and Port-Owned Tracks; (ii) remove from the Rail Corridor and Port-Owned Tracks, within 30 days of such termination or transfer, all trains and other equipment owned by such Railroad; and (iii) surrender to Owner, within 30 days of such transfer, all rights under this Agreement to operate overhead rail freight service over the Rail Corridor, and this Agreement shall thereupon terminate with respect to such Railroad.

14.4 Mediation.

(a) In the event of a claim or dispute arising out of this Agreement or the Settlement Agreement, the Parties involved with the claim or dispute shall make good faith efforts to resolve the matter through negotiations for a period of thirty (30) days after receipt of written notice of the claim or dispute, which notice shall reference this Section 14.4. After expiration of such thirty (30) day period for negotiation, any Party may request non-binding Mediation regarding such claim or dispute by serving a written request for Mediation, identifying the nature of the claim or dispute, on any other Party ("**Mediation Notice**"). Mediation shall be completed as soon as practicable after receipt by the Parties to the claim or dispute of the Mediation Notice and, unless otherwise agreed by all Parties to the Mediation, in no event later than one hundred and twenty (120) days after receipt by the last Party served with the Mediation Notice.

(b) The Parties shall attempt to agree on a mediator within fifteen (15) days after receipt by all Parties of the Mediation Notice. If the Parties are unable to agree on a mediator, any Party may make a written request to the Los Angeles office of JAMS to provide the Parties the names of three mediators, each of whom must be a retired state or federal judge who is available within the remaining time period for completion of the Mediation. If the Parties are unable to agree to one of the three mediators, JAMS shall select one of the three proposed mediators. The mediator's fees and costs shall be shared as may be agreed upon by the Parties in advance of the Mediation or, in the absence of agreement, one-half by ACTA, POLA, and POLB

and one half by the Railroad(s) regardless of the number of Parties actually participating in the Mediation. However, in disputes between ACTA, POLA and /or POLB only, the Railroads shall not contribute toward the fees and costs, and in disputes between BNSF and UP only, ACTA, POLA and POLB shall not contribute toward the fees and costs. Mediation under this Section shall be confidential.

(c) In the event a claim or dispute submitted to Mediation under this Section is not resolved by Mediation, any subsequent lawsuit based upon such claim or dispute shall be initiated in Superior Court for the County of Los Angeles.

14.5 Right to Sue for Damages. Nothing in this Agreement shall be deemed to prohibit any party hereto from bringing an action against a party who defaulted hereunder to recover damages suffered as a result of the default; provided that ACTA shall have the exclusive right to bring any action to recover Use Fees, Container Charges, Shortfall Advances, M&O Charges or other sums (including interest thereon) required to be paid to ACTA under the terms of this Agreement.

14.6 Survival. The provisions of this Article XIV shall survive the termination of this Agreement.

ARTICLE XV

MISCELLANEOUS MATTERS

15.1 Assignment.

(a) The qualifications and reputation of the parties hereto are material inducements to the other parties in entering into this Agreement. Therefore, except as provided in Section 7.1(c), Section 14.3 and in this Section 15.1, no party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other parties.

(b) Notwithstanding the foregoing, (i) Owner may assign its rights (without any modification thereof) under this Agreement to ACTA or another joint powers authority or government or public entity in which POLA and POLB are members (which entity must agree in writing to perform all of the obligations of Owner hereunder), (ii) POLA and POLB may transfer, lease or grant a license, permit or other rights in or to the Rail Corridor property to ACTA or another entity without assigning their rights under this Agreement, (iii) Owner may assign any of its obligations (without any modification thereof) under this Agreement to an entity reasonably acceptable to the Railroads (which entity must agree in writing to perform all of the obligations of Owner hereunder), and (iv) Owner shall have the right to permit other Class I railroads, or financially responsible and experienced regional railroads, to use the Rail Corridor, provided that such use shall be on all of the terms and conditions of this Agreement. Furthermore, at such time as the ACTA Financing described in Section 7.3 is paid in full, Owner shall have the right to cause ACTA to terminate all further activities and involvement in connection with the Rail Corridor (which right shall be exercised by Owner's delivery of written notice of such election to BNSF and UP) and, from and after such election, (x) ACTA shall have no further rights, duties or obligations under this Agreement (provided that nothing shall relieve ACTA from any liability it may have under this Agreement arising prior to such termination),

and (y) wherever in this Agreement the term ACTA is used, such term shall instead be deemed to refer to Owner.

(c) No Railroad may assign its rights under this Agreement (including the right to use the Rail Corridor) without Owner's consent, which may be withheld in Owner's sole discretion, provided, however, notwithstanding any other provision of this Agreement, (i) any Railroad may assign all (but not less than all) of its rights under this Agreement to another of the Railroads, or any other Class I railroad or a financially responsible and experienced regional railroad, without Owner's consent, provided that such other Railroad or railroad assumes all of the assigning Railroad's obligations under this Agreement, and (ii) any Railroad may assign all (but not less than all) of its rights under this Agreement to its successor entity pursuant to a merger or reorganization, without Owner's consent, provided that the successor entity assumes all of the obligations of that Railroad under this Agreement.

(d) Notwithstanding anything to the contrary set forth in this Agreement, Owner reserves the right, subject to the terms of the Port Rail Agreements, to grant to a third party such trackage rights or operating easements over the Rail Corridor and the Port-Owned Tracks as may be necessary to gather, distribute and switch rail cars within the Port areas (as such Port areas are shown on Page 4 of the Map) and to and from the "Manuel Sidings" described in Section 9.1, provided that such third party shall be subject to all of the terms and conditions of this Agreement.

(e) Subject to the other provisions of this Section 15.1, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective transferees, successors and assigns.

15.2 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF SUCH STATE.

15.3 Headings. The article and section headings in this Agreement are for convenience only and shall not be used in the interpretation or considered part of this Agreement.

15.4 Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.

15.5 Time. Time is of the essence of this Agreement.

15.6 Exhibits and Recitals. All Recitals herein and exhibits attached hereto are incorporated herein by this reference.

15.7 Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto for any reason (including by virtue of the fact that this Agreement may have been drafted or prepared by counsel for one of the parties, it being recognized that all parties hereto,

and their respective counsel, contributed materially and substantially to the preparation of this Agreement).

15.8 No Third Party Beneficiaries. It is the intent of each party to this Agreement that each provision of this Agreement inure only to the benefit of the parties which execute this Agreement, and their permitted successors and assignees, and shall not inure to the benefit of any other person.

15.9 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile, or if made by email directed to the party to whom notice is to be given at the email address listed below and written notice has also been sent via overnight courier or first class mail as provided in clause (ii) below, or (ii) on receipt, if mailed to the party to whom notice is to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To POLA:

Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90733
Attn: Executive Director
Telecopy No. (310) 732-0291
Confirmation No. (310) 732-3456
Email: gene_seroka@portla.org

To POLB:

Port of Long Beach
4801 Airport Plaza Drive
Long Beach, California 90815
Attn: Chief Executive
Telecopy No. (562) 283-7067
Confirmation No. (562) 283-7097
Email: chiefexecutive@polb.com

To ACTA:

Alameda Corridor Transportation Authority
3760 Kilroy Airport Way
Suite 200
Long Beach, CA 90806
Attn: Chief Executive Officer
Telecopy No. (310) 233-7483
Confirmation No. (562) 247-7070

Email: jdoherty@acta.org

To BNSF:

BNSF Railway Company
2500 Lou Menk Drive
AOG – Garden Level
Fort Worth, Texas 76131
Attn: Assistant Vice President - Contracts and Joint Facilities (with a copy to
Director - Contracts and Joint Facilities)
Telecopy No. (817) 352-7219
Confirmation No. (817) 352-4933
Email: Sarah.bailiff@bnsf.com
Email: Brian.Aman@bnsf.com

To UP:

Union Pacific Railroad Company
1400 Douglas Street – Stop 1160
Omaha, Nebraska 68179
Attn: Executive Vice President of Operations (with a copy to Director-Joint
Facilities)
Telecopy No. (402) 501-0318
Confirmation No. (402) 544-0046
Email: JointFacilityContracts@up.com

Any party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other parties.

15.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

15.11 Authority. Each of the parties to this Agreement represents and warrants (each party for itself only) to the other parties that it is fully authorized to enter into this Agreement and that this Agreement is binding and enforceable against it and its respective successors and assigns, in accordance with the terms hereof. Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

15.12 All Negotiations Incorporated. This Agreement supersedes as of the date hereof the Original Agreement and the First Amendment, provided however, that procedures, rules, regulations, practices, interpretations, courses of dealings and similar matters adopted, implemented or agreed prior to the date hereof pursuant to or with respect to the Original Agreement or the First Amendment, or the use, maintenance, operation (including financial operation) of the Rail Corridor, shall continue in full force and effect unless and until expressly

superseded or replaced by Mutual Agreement of Owner and the Railroads. The parties acknowledge that the Original Agreement superseded the MOU in all respects and, effective from and after October 12, 1998, the MOU had no further force or effect. The parties further acknowledge that the provisions of this Agreement do not, and are not intended to, amend, replace or supersede any provision set forth in the Master Trust Indenture. Nothing in this Agreement is intended to, or shall, modify or affect the terms of the Settlement Agreement.

15.13 Real Property Matters. Nothing contained in this Agreement shall be deemed or construed (i) to give or convey to any Railroad any ownership interest or rights in the Rail Corridor or the Port-Owned Tracks (including any right to grant, convey or enter into new leases, licenses or easements, or any right to receive, or any interest or rights to, income from leases, licenses or easements now existing or hereafter granted by Owner, POLA and/or POLB), or (ii) except as expressly set forth herein, to give or convey to any of the Railroads any right to approve or consent to any property management decisions relating to the Rail Corridor or the Port Owned Tracks (including the granting of leases, licenses or easements), provided that this Section 15.13 shall not alter, limit or modify provisions with respect to such matters which may be contained in existing agreements between or among POLA and/or POLB and one or more of the Railroads.

15.14 Allocation of Federal and State Environmental Benefits. Owner and the Railroads agree that, as between Owner and the Railroads, upon Substantial Completion all benefits or credits, including such credits as may be generically identified as marketable emissions credits, under the Federal Implementation Plan and/or the State Implementation Plan or a similar program administered by the South Coast Air Quality Management District of the State of California or any successor thereto, which may thereafter accrue, result, or become available from the construction of the Project, the construction of on-dock rail facilities in the Ports, and the operation of Through Trains on the Rail Corridor (including the reduction of truck trips to and from the Ports), shall be allocated one-half (50%) to Owner and one-half (50%) to Railroads, except that: (i) all such benefits or credits which may accrue or result from a Railroad's use of new, upgraded or different equipment, including locomotives utilizing alternative fuels or fuel saving improvements, more efficient prime movers (engines), traction motors, or controls, or different types of propulsion, or from other operational changes specific to such Railroad (other than simply shifting Through Train movements onto the Rail Corridor) shall be allocated entirely (100%) to such Railroad, and (ii) all such benefits or credits which may accrue or result from an increase in the speed of Through Trains operating over the Rail Corridor, or from the elimination of grade crossings shall be allocated entirely (100%) to Owner. The method by which the Railroads' one-half (50%) share of benefits or credits shall be allocated as to a specific Railroad may be addressed and in a separate agreement among the Railroads. Owner and each Railroad shall reasonably cooperate with each other with respect to claiming any benefit or credit covered by this Section 15.14; however, no party shall be required to incur any expense in connection with such cooperation unless the party requesting such cooperation agrees to reimburse the party giving the cooperation for all reasonable costs and expenses incurred in connection therewith.

15.15 Railroad Crossings and Connections. Each of the Railroads acknowledges that Owner has acquired the UP San Pedro Branch, the portion of BNSF's Harbor Subdivision between Milepost 27.6 and Milepost 28.3, and portions of UP's Long Beach Branch,

San Pedro Branch, Wilmington Branch and Vernon Line (“**Acquired Rail Lines**”). Each Railroad owns, or has an easement or trackage rights over, other rail lines (“**Other Rail Lines**”) that cross and, in certain cases, connect to, the Acquired Rail Lines. Pursuant to the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, Owner acquired, among other things, the right to use the Acquired Rail Lines to cross the Other Rail Lines, to allow others (including the Railroads) to cross the Other Rail Lines at such locations, and to make modifications and improvements to the Acquired Rail Lines (including installation of additional tracks or grade separations of the Acquired Rail Lines or the Other Rail Lines) at such locations (collectively, the “**Crossing Rights**”). Each Railroad, for itself only, hereby consents to the acquisition of the Crossing Rights by Owner and agrees that Owner may exercise the Crossing Rights at any time, whether or not (i) the Rail Corridor is under construction or completed, (ii) a default exists under any of the documents governing the crossing or connection in question or (iii) Owner is a common carrier.

15.16 Amendments. No modifications, amendments or changes herein or hereof shall be binding upon any party unless set forth in a document, duly executed and delivered by all parties. No provision of this Agreement shall be revoked or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

15.17 Recordation and Termination. Without the prior written consent of all parties hereto, no party may record this Agreement or any memorandum thereof. Upon termination of the rights granted to the Railroads or any of them hereunder, the affected Railroad(s) shall execute, acknowledge and deliver to Owner and ACTA a copy of any appropriate instrument or instruments evidencing the termination.

15.18 Attorneys’ Fees. In any action brought to declare the rights granted herein or to enforce the provisions of any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys’ fees, costs and expenses, (including fees for services rendered by a party’s internal or staff counsel) both at trial and in connection with any appeal, in any amount determined by the court or arbitrator. The provisions of this Section 15.18 shall survive the entry of any judgment.

15.19 Waiver. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

15.20 Forum. EXCEPT FOR MATTERS SUBMITTED TO MEDIATION IN ACCORDANCE WITH SECTION 14.4, THE PARTIES HERETO AGREE THAT ALL ACTIONS, SUITS, PROCEEDINGS, CLAIMS RELATED TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY MUST BE BROUGHT, FILED, PROSECUTED AND DEFENDED IN EITHER THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES OR THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

15.21 No Relocation Assistance. Each Railroad understands and agrees that nothing contained in this Agreement shall create any right in such Railroad for relocation assistance or payment upon expiration or termination of this Agreement. Each Railroad acknowledges and agrees that it shall not be entitled to relocation assistance or payment pursuant to the provisions of Title I, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.), the Uniform Relocation Assistance and Real Property Act of 1970, as amended (42 U.S.C. Section 4601 et seq.), or any similar statute with respect to any relocation of its business or activities upon the expiration or termination of this Agreement. In consideration of the rights given the Railroads under this Agreement, each Railroad expressly waives any relocation assistance which such statutes or any future statutes may allow.

15.22 Non-discrimination. Each Railroad, Owner and ACTA agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, disability, sexual orientation, AIDS, HIV status, physical handicap or Vietnam era veteran status. All assignments and transfers of interest permitted hereunder in this Agreement under or pursuant to this Agreement shall contain this provision.

15.23 Conflict of Interest. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City of Los Angeles or the City of Long Beach relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial or economic interest does exist at the inception of this Agreement, Owner may immediately terminate this Agreement without any liability therefor by giving written notice thereof.

15.24 Further Assurances. Each party shall execute all such instruments and documents and shall take in good faith all such actions as are reasonably necessary to carry out the provisions of this Agreement.

15.25 Persons Authorized to Act. The Executive Director of POLA and POLB, and the Chief Executive Officer of ACTA, respectively, and all persons designated by the respective Executive Director or Chief Executive Officer (as the case may be) of such entity to act on such entity's behalf, shall be entitled to exercise all rights and remedies of the respective entity hereunder, until a new person is designated by the respective Executive Director or Chief Executive Officer (as the case may be).

15.26 Approvals. The parties hereto agree to cooperate diligently and in good faith to obtain all necessary consents or approvals with respect to this Agreement and the joint rail freight operations by the Railroads on the Rail Corridor.

15.27 Conflicts. To the extent that the provisions of this Agreement conflict with any other agreements between Owner and any Railroad with respect to the Rail Corridor and/or the Project, the provisions of this Agreement shall control, provided that nothing in this Agreement shall in any way limit Owner's obligation to construct (or cause the construction of)

any connections, crossings or other facilities for which Owner is obligated pursuant to another agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties to this Agreement have caused their duly authorized representatives to execute it as of the day and year first above written.

“BNSF”

BNSF RAILWAY COMPANY,
a Delaware corporation

Approved as to form this ____ day of
_____, 2016

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

“UP”

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

Approved as to form this ____ day of
_____, 2016

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

(SIGNATURES CONTINUED ON NEXT PAGE)

IN WITNESS WHEREOF, the parties to this Agreement have caused their duly authorized representatives to execute it as of the day and year first above written.

“POLB”

CITY OF LONG BEACH,
through its Board of Harbor Commissioners

Approved as to form this ____ day of _____, 2016

CHARLES PARKIN, City Attorney

By: _____
Name: _____
Its: _____
Long Beach Harbor Department

By: _____
Name: _____
Its: _____

“POLA”

CITY OF LOS ANGELES,
Acting by and through the
Board of Harbor Commissioners
of the Port of Los Angeles


ATTEST:

By: _____
Name: _____
Its: _____
Los Angeles Harbor Department

By: _____
Commission Secretary
Los Angeles Harbor Dept.

Approved as to form this 7th day of Oct., 2016

MICHAEL FEUHR, City Attorney

By: 

(SIGNATURES CONTINUED ON NEXT PAGE)

IN WITNESS WHEREOF, the parties to this Agreement have caused their duly authorized representatives to execute it as of the day and year first above written.

“ACTA”

**ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY, a Joint
Powers Authority**

Approved as to form this ____ day of _____, 2016:

By: _____
Name:
Its:

By: _____
Name:
Its: Co-General Counsel

EXHIBIT A
MAP
(Maps attached)

EXHIBIT A-1

[RESERVED]

EXHIBIT B

JOINT USE CONSTRUCTION PROJECTS

1. Construction of the North End Grade Separation.
2. Santa Fe Avenue/Washington Boulevard grade separation.
3. Construction of a three-track bridge over the Los Angeles River (UP Bridge).
4. Construction of multiple mainline tracks between Carson Street and Thenard Crossing.

EXHIBIT C

TERMS GOVERNING USE OF CONNECTION TRACK IN MEAD YARD

Trackage Access to Other Carriers

In addition to the rights granted to City as set forth in 2.1.1 of the ATSF Purchase Agreement, Railroad covenants and agrees to permit Southern Pacific Transportation Company (hereinafter referred to as "SPTC") and the Atchison, Topeka & Santa Fe Railway (hereinafter referred to as "ATSF") to operate their own trains with their own crews and equipment on Railroad's trackage through Mead Yard (as such yard is defined in the ATSF Purchase Agreement), subject to the following terms and conditions:

(A) Operation through Mead Yard shall be limited to one train movement each way per day per railroad (i.e., one movement each way for SPTC and one movement each way for ATSF), and no movement shall consist of more than twenty (20) cars plus locomotives;

(B) All such movements shall be made between the hours of 8:00 a.m. and 8:00 p.m., except for emergency movements made with advance approval from Railroad's Mead Yard manager;

(C) SPTC and ATSF shall arrange each movement in advance with Railroad's manager at Mead Yard and shall coordinate the movements in accordance with instructions received from said manager. Railroad shall allow such movements to take place as soon as track space is available and other movements by Railroad will not be adversely affected;

(D) SPTC and ATSF shall have entered into an appropriate cost allocation and operating agreement with Railroad of the type described in 2.1.1 thereof, and containing the terms of Exhibit B attached thereto and incorporated herein by reference. Railroad shall have no obligation to permit SPTC or ATSF to operate through Mead Yard until such agreement has

been executed by each railroad, either individually or in a-joint agreement. In the event of a dispute concerning the terms of such agreement, both prior to and after execution, the matter shall be submitted to arbitration under Section 2.8 thereof;

(E) If SPTC or ATSF request additional or longer train movements, or operations outside the time specified above, Railroad shall have no obligation to permit such movements unless and until City authorizes Railroad to construct a running track through Mead Yard at City's sole expense. In such event, City and Railroad shall consult concerning the design and location of such track and a reimbursement agreement shall be entered into by the parties.

EXHIBIT D

SCHEDULE OF AGREEMENTS TO BE TERMINATED OR MODIFIED

Agreements Affecting Property from J Yard to Thenard ("Q" Street)

1. Document No. P.E. 7053

Agreement dated January 1, 1917 between Pacific Electric Railway Company and Los Angeles & Salt Lake Railroad Company, as amended and supplemented

2. Document No. 1682

Agreement dated December 31, 1902 between Southern California Railway Company, Southern Pacific Railroad Company and Southern Pacific Company, as amended and supplemented (for interlocking plant at Slauson and Alameda)

Agreements Relating to the Thenard Area

3. Document No. 35959

Agreement dated June 6, 1932 between Southern Pacific Railroad Company, Southern Pacific Company, Pacific Electric Railway Company, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, City of Los Angeles, as amended and supplemented (Thenard)

4. Document No. 134937

Agreement dated June 17, 1970 between Southern Pacific Transportation Company, Los Angeles & Salt Lake Railroad Company, and Union Pacific Railroad Company, as amended and supplemented (continued maintenance of Thenard Crossing). This document supplements Document No. 35959 dated June 6, 1932.

5. Document No. 135058

Agreement dated September 14, 1971 between Southern Pacific Transportation Company, Los Angeles & Salt Lake Railroad Company, and Union Pacific Railroad Company, as amended and supplemented (granting UP joint bridge rights over the Long Beach Wye)

Agreements Affecting the Long Beach Area

6. Document No. 71387

Agreement Relating to Use by BNSF of Portions of Lines of Southern Pacific and Pacific Electric in Serving the City of Long Beach, and Performance by Pacific Electric of Switching Service for BNSF in Long Beach dated October 10, 1945 between Southern Pacific Railroad Company, Southern Pacific Company, Pacific Electric Railway Company, The Atchison, Topeka and Santa Fe Railway Company, as amended and supplemented.

7. Document No. 36245

Agreement dated March 24, 1934 between Southern Pacific Railroad Company, Southern Pacific Company, Pacific Electric Railway Company, and Los Angeles & Salt Lake Railroad Company, as amended and supplemented (UP Basic Agreement).

Document No. 146296

Agreement dated January 25, 1979 between Southern Pacific Transportation Company and Los Angeles & Salt Lake Railroad Company, as amended and supplemented.

Agreements Relating to the J-Yard Area

Audit No. 53772

Agreement dated March 7, 1942, between Union Pacific and Southern Pacific, covering East Bank operations.

Audit No. 4941

Agreement dated September 16, 1924, between Union Pacific and BNSF, covering crossing gates at Santa Fe Avenue and Butte Street.

Audit No. 58103

Agreement dated April 8, 1943, between Union Pacific and Southern Pacific, covering use by SPT of UP trackage from 9th St. Jct. and Bridge Jct. to Fruitland Avenue.

Audit No. 732

Agreement dated March 12, 1906, between Union Pacific and Southern Pacific, covering Violet Alley trackage.

Audit No. 117917

Agreement dated September 27, 1971, between Union Pacific and Southern Pacific, covering connection to Violet Alley trackage.

Audit No. 6741

Agreement dated June 15, 1928 between Union Pacific and Southern Pacific, covering trackage from Butte St. to 8th St. Terminal.

Audit No. 6518

Agreement dated June 17, 1927, between Union Pacific and BNSF, covering Hobart Interlocker.

Audit No. 7384

Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering sale of land and trackage between Hobart and J-Yard and between Thenard Jct. and entrance to Brighten Beach Yard.

Audit No. 166458

Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering UP trackage rights on trackage between Hobart and J-Yard.

Agreements Affecting the Long Beach Area

Audit No. 9232

Agreement dated March 24, 1934, between Union Pacific, Southern Pacific and City of Long Beach, covering operation of municipal tracks in the City of Long Beach.

Audit No. 69519

Agreement dated February 1, 1948, between Union Pacific and Southern Pacific, covering switching by SPT of UP cars at Long Beach.

Audit No. 128752

Agreement dated January 25, 1979, between Union Pacific and Southern Pacific, covering additional connection and operating rights granted to UP for operation of unit trains to and from Port of Long Beach.

Audit No. 166460

Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering UP trackage rights on trackage between Thenard Jct. and the entrance to Brighton Beach Yard.

EXHIBIT E

SCHEDULE OF AGREEMENTS NOT SUBJECT TO REVISION

- UP: UP C&M Agreement
 Drill Track Operating Agreement
 Interim Operating Agreement
 Easement Agreement Regarding 8th Street Yard
- Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering improvements within City of Long Beach.
- UP San Pedro Branch Operating Agreement dated December 22, 1994, between City of Los Angeles, City of Long Beach and Union Pacific, covering UP San Pedro Branch.
- BNSF: Agreement dated January 15, 1906, between Union Pacific and BNSF, covering Redondo Interlocker.
- ATSF Purchase Agreement
 BNSF C&M Agreement
- Joint: Port Rail Agreements