

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 legal title to any and all interests in the Property as
2 tenants in common with each Party having an undivided fifty
3 percent (50%) interest in and to the Property.

4 **b. Tenancy in Common.** The Parties intend to and
5 do hereby expressly acknowledge and define the tenancy in
6 common relationship between themselves.

7 **c. Purpose.** Notwithstanding anything to the
8 contrary contained in this Agreement, the Parties' sole
9 purpose in entering into this Agreement is to provide for
10 the development, operation and management of the
11 Property. The Parties do not intend to enter into or create
12 any partnership, joint venture, or agency relationship
13 between themselves, and neither Party intends to assume the
14 liabilities or obligations of the other Party arising from
15 or in connection with the Property, nor shall this Agreement
16 be construed as creating any such partnership, joint venture
17 or agency relationship between POLA and POLB, nor shall this
18 Agreement be construed as rendering one Party liable for the
19 debts or obligations of the other Party arising from or in
20 connection with the Property.

21 **d. Management of the Property.** This Agreement
22 shall govern the development, operation and management of
23 and the Parties' interests or investments in that certain
24 real property acquired jointly by POLA and POLB which is
25 described on Exhibits "A-1", "A-2", "A-3" and "A-4"
26 attached hereto and by this reference incorporated herein,
27 the improvements now or hereafter located thereon, and the
28 fixtures, appurtenances, leases, contracts, agreements and

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1 personal property related thereto, (collectively, the
2 "Property"). Notwithstanding the foregoing, this Agreement
3 shall not govern those portions of the Property described on
4 Exhibit B attached hereto and by this reference incorporated
5 herein.

6 **2. OPERATION OF PROPERTY**

7 **a. Property Operating Committee.** A Property
8 Operating Committee is hereby established, consisting of the
9 Executive Directors of POLA and POLB or their respective
10 designees. Such persons are sometimes hereinafter referred
11 to as the "POLA Representative" and the "POLB
12 Representative", and collectively as the "Representatives".

13 **b. Meetings of Property Operating Committee.** The
14 Property Operating Committee shall meet (i) periodically,
15 generally at least once a month but in no event less than
16 once every three (3) months, and (ii) upon the written
17 request of either Representative, at a mutually convenient
18 time (which in any event must be on or before the expiration
19 of ten (10) business days after the receipt of such written
20 request). The site for the meetings shall alternate between
21 POLA and POLB, respectively, unless the Representatives
22 otherwise agree, with the first meeting to be held within
23 thirty (30) days from the effective date of this Agreement.

24 **c. Powers and Duties of Property Operating**
25 **Committee.** In connection with the operation and ownership
26 of the Property, the Property Operating Committee shall have
27 the following powers and duties:

28 **(1)** Develop lease, license, entry permit and

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1 similar forms for use in managing the Property;

2 (2) Recommend approval or disapproval of
3 contracts, agreements, leases, licenses, franchises or
4 entry permits relating to the Property to the Boards of
5 POLA and POLB;

6 (3) Communicate with the railroads operating
7 upon the Property, or any portion thereof, and all
8 tenants, occupants and governmental and quasi-
9 governmental entities with respect to issues related to
10 the Property;

11 (4) Monitor the progress of any construction
12 or maintenance work in, on, under or around the
13 Property and ensure compliance by POLA, POLB and the
14 railroads with all operating and construction
15 agreements relating to the Property;

16 (5) Develop annual operating budgets for the
17 Property, to be adopted by the Boards of POLA and POLB;

18 (6) Make recommendations to the Boards of POLA
19 and POLB regarding capital improvements or maintenance
20 of the Property and the manner in which such items are
21 to be funded;

22 (7) Establish procedures for maintaining
23 records and files related to the Property;

24 (8) Establish accounting procedures for the
25 Property;

26 (9) Recommend to the Boards of POLA and POLB
27 the amounts and types of insurance coverage to be
28 maintained for the Property and whether either or both

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1 of POLA or POLB will obtain such insurance;

2 (10) Undertake any other duties necessary to
3 efficiently and effectively operate and own the
4 Property.

5 **d. Action by the Parties.** Except as may expressly
6 be delegated in writing to the Property Manager (as
7 hereinafter defined), all actions, approvals, consents,
8 contracts, licenses, leases, agreements, waivers and other
9 decisions relating to the Property shall require the consent
10 of both the Boards of POLA and POLB.

11 **e. Inability of Parties to Reach a Decision.** If
12 the Parties are deadlocked or otherwise unable to render a
13 decision with respect to a material issue relating to the
14 Property, POLA and POLB agree to submit the issue to non-
15 binding arbitration in accordance with Section 9 below
16 before instituting any legal proceeding.

17 **f. Costs and Expenses of Property.** The costs and
18 expenses incurred in connection with the operation,
19 ownership and management of the Property shall be borne
20 equally by POLA and POLB. If a Party fails to remit any
21 payment when due and such failure to pay has not yet become
22 an Event of Default (as hereinafter defined), the other
23 Party may, at its sole option, remit such payment on behalf
24 of the non-paying Party. In such case, the non-paying Party
25 shall promptly reimburse the other Party for the full amount
26 of such payment, plus interest accruing from the date of the
27 other Party's payment until the date of reimbursement
28 thereof by the non-paying Party at the lesser of (i) ten

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1 percent (10%) per annum or (ii) the highest rate then
2 allowable by law.

3 **g. Income of Property.** All income generated from
4 ownership and operation of the Property shall be distributed
5 equally to POLA and POLB.

6 **h. Property Management.** The Parties have entered
7 into an agreement with Paragon Partners, Ltd. ("Property
8 Manager") to provide property management services pursuant
9 to the Property Management Agreement (HD-6618) (the
10 "Agreement"). Before the Agreement expires on December 10,
11 2007, the Parties shall consider extending the Agreement or
12 entering into another agreement with an independent, third-
13 party property manager to manage and administer the day-to-
14 day operations and affairs of the Property in accordance
15 with such terms and guidelines as the Parties set forth in
16 such agreement.

17 **i. Joint Execution.** Except as may expressly be
18 delegated to the Property Manager, all instruments,
19 agreements, leases, licenses, contracts, deeds and any and
20 all other documents which must be executed or entered into
21 in connection with the acquisition of the interests in the
22 Property, the maintenance and operation of the Property, or
23 in any other way connected with or to the Property, shall be
24 executed by both POLA and POLB. POLA and POLB expressly
25 agree that neither may act, and that neither will act or
26 purport to act, on behalf of the other. Any instrument,
27 agreement, lease, license, contract, deed or other document
28 which is executed by only one of the Parties hereto shall be

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1 ineffective to bind the other Party to the terms thereof
2 unless and until expressly ratified in writing by the non-
3 executing Party.

4 **j. Transfer of Interest.** During the term hereof,
5 neither Party may lease, sell, or otherwise transfer its
6 undivided interest, or any part thereof, in all or any
7 portion of the Property without the prior written consent of
8 the other Party. Any such attempt to sell, assign,
9 transfer, hypothecate, lien or encumber the Property or any
10 portion thereof in contravention of the terms hereof shall
11 be null and void, and any Party who breaches the provisions
12 of this Section 2(i) will indemnify, defend and hold the
13 non-breaching Party harmless from and against all claims,
14 liabilities, losses, damages, costs and expenses that the
15 non-breaching Party may suffer as a result of the
16 indemnifying Party's breach of the provisions of this
17 Section 2(i).

18 **3. OBLIGATIONS AND LIABILITIES INCURRED BY THE**
19 **PARTIES.**

20 **a. Joint liability.** The Parties shall share on an
21 equal basis all obligations or liabilities jointly incurred.

22 **b. Several Liability.** Any obligations or
23 liabilities incurred by one Party but not the other shall be
24 several obligations and liabilities of the Party incurring
25 the same. The non-incurring Party's interest in the
26 Property shall not be subject to or affected by such several
27 obligations and liabilities and each Party hereby agrees to
28 indemnify, defend and hold the other Party harmless from all

1 claims, liabilities, losses, damages, costs and expenses
2 arising out of such other obligations incurred by the
3 indemnifying Party.

4 **4. RESTRICTIONS AGAINST PARTITION.**

5 During the term hereof, the Parties hereby agree to
6 waive any right to involuntary partition of the Property. The
7 Parties intend hereby to create a reasonable and enforceable
8 restraint on alienation reflecting their mutual objectives in
9 acquiring the Property.

10 **5. BOOKS AND RECORDS.**

11 Upon reasonable advance notice, each Party agrees
12 to provide the other Party with access during normal business
13 hours to all books, audits, records, studies and reports in their
14 possession that relate to the Property, or any part thereof,
15 excluding therefrom any internal memoranda or other confidential
16 or proprietary materials.

17 **6. DEFAULT; REMEDIES.**

18 **a. Default.** An event of default (an "**Event of**
19 **Default**") shall occur hereunder if:

20 (1) a Party fails to make any monetary payment
21 required hereunder and such failure continues for
22 fifteen (15) days after the receipt of written notice
23 from the non-defaulting Party; or

24 (2) a Party fails to perform any non-monetary
25 obligation required hereunder and such failure
26 continues for thirty (30) days after the receipt of
27 written notice from the non-defaulting Party; provided,
28 however, that if the defaulting Party has commenced the

1 cure of such default within such thirty (30) day period
2 and is diligently pursuing such cure in good faith, the
3 defaulting Party shall have sixty (60) days after the
4 receipt of written notice from the non-defaulting Party
5 in which to effectuate the cure of such default.

6 **b. Remedies.** Upon the occurrence and during the
7 continuance of an Event of Default, the non-defaulting Party
8 may elect, in its sole discretion, to do one or more of the
9 following:

10 (1) In the case of a monetary default, remit
11 the applicable payment to the appropriate party, in
12 which case, the defaulting Party shall promptly
13 reimburse the non-defaulting Party for the full amount
14 of such payment, plus interest accruing from the date
15 of the non-defaulting Party's payment until the date of
16 reimbursement thereof by the defaulting Party at the
17 lesser of (i) ten percent (10%) per annum or (ii) the
18 highest rate then allowable by law;

19 (2) File and pursue an action, suit, or other
20 court proceeding (but only after a non-binding
21 arbitration proceeding) against the defaulting Party
22 for specific performance of this Agreement;

23 (3) File and pursue an action, suit or other
24 court proceeding (but only after a non-binding
25 arbitration proceeding) against the defaulting Party
26 for damages incurred by the non-defaulting Party which
27 arise out of or relate to the Event of Default;
28 provided, however, that the non-defaulting Party may

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1 otherwise under the terms of the Agreement, arbitration is
2 required or is agreed to by the Parties, such arbitration shall
3 be initiated and conducted in conformance with the provisions of
4 this Section 9.

5 **a.** The Party desiring to initiate arbitration
6 shall so notify the other Party in writing, specifying the
7 issue or issues to be arbitrated and providing the names of
8 at least three (3) persons acceptable to the initiating
9 Party to serve as Arbitrator. Within ten (10) business
10 days, the other Party shall acknowledge in writing the issue
11 or issues to be arbitrated and either agreeing to a person
12 to serve as Arbitrator or suggesting up to three (3)
13 additional persons. The persons so named by the Parties
14 shall be persons experienced and qualified in the subject
15 matter of the issue or issues to be arbitrated. Within five
16 (5) additional days, the Representatives of the Parties
17 shall meet to attempt to select an Arbitrator from the names
18 submitted by the Parties. If the Parties cannot agree upon
19 a selection, either Party may apply to the Presiding Judge
20 of the Superior Court in and for the County of Los Angeles
21 for selection of an Arbitrator from the lists of names
22 previously exchanged by the Parties.

23 **b.** Upon his or her selection, the Arbitrator shall
24 schedule a pre-hearing conference to resolve procedural
25 matters, arrange for the exchange of information, and narrow
26 the issue or issues, if necessary.

27 **c.** The arbitration and any pre-arbitration or
28 other meetings shall be conducted within thirty (30) miles

1 only recover its actual damages (and not any
2 consequential damages); and

3 (4) Seek any other appropriate or applicable
4 remedies available at law or in equity.

5 **7. INDEMNITY.**

6 a. **POLA Indemnity.** POLA shall indemnify, defend,
7 and hold POLB, its agents, representatives, officers,
8 directors, employees, commissioners, successors and assigns,
9 harmless from and against all liabilities, losses, costs,
10 expenses, suits, judgments, claims, demands and
11 investigations (including, without limitation, reasonable
12 attorneys' fees and costs) arising from any act or omission
13 by POLA in, on, under, around or regarding the Property.

14 b. **POLB Indemnity.** POLB shall indemnify, defend,
15 and hold POLA, its agents, representatives, officers,
16 directors, employees, commissioners, successors and assigns,
17 harmless from and against all liabilities, losses, costs,
18 expenses, suits, judgments, claims, demands and
19 investigations (including, without limitation, reasonable
20 attorneys' fees and costs) arising from any act or omission
21 by POLB in, on, under, around or regarding the Property.

22 **8. DURATION OF AGREEMENT.**

23 This Agreement shall be deemed to have commenced on
24 December 29, 1999 and shall terminate on the earlier of
25 (i) December 31, 2009 or (ii) such earlier date as may be agreed
26 to by the Parties.

27 **9. ARBITRATION.**

28 Whenever, pursuant to Sections 2.e., 6.b. or

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1 of POLA and POLB. The arbitration shall be conducted in an
2 informal manner; technical rules of evidence shall not
3 apply. The Parties may be represented by counsel or other
4 authorized person. The Parties may offer such evidence as
5 is relevant and material to the issue or issues to be
6 resolved. The Arbitrator shall determine relevance and
7 materiality.

8 d. The Arbitrator shall issue a written decision
9 as soon as reasonably possible following the conclusion of
10 the arbitration hearing, but in no event later than thirty
11 (30) days thereafter, setting forth his or her resolution of
12 the issue or issues to be resolved and a brief explanation
13 of the reasons for such decision. Each Party shall, within
14 ten (10) business days following receipt of such decision,
15 notify the other Party if the Arbitrator's decision is
16 acceptable.

17 e. Each Party shall bear its own expenses of the
18 arbitration. The fees of and expenses incurred by the
19 Arbitrator shall be shared equally by the Parties.

20 **10. MISCELLANEOUS.**

21 a. Each individual and entity executing this
22 Agreement hereby represents and warrants that he, she or it
23 has the capacity set forth on the signature pages hereof
24 with full power and authority to bind the Party on whose
25 behalf he, she or it is executing this Agreement to the
26 terms hereof.

27 b. This Agreement is the entire agreement between
28 the Parties hereto with respect to the Parties' relationship

1 as tenants in common of the Property and supersedes all
2 prior agreements between the Parties with respect
3 thereto. Any waiver, modification, consent or acquiescence
4 with respect to any provision of this Agreement shall be set
5 forth in writing and duly executed by or in behalf of the
6 Party to be bound thereby. No waiver by any Party of any
7 provision hereof or breach hereunder shall be deemed a
8 waiver of any other provision or any subsequent breach.

9 c. This Agreement may be executed in any number of
10 counterparts, each of which shall be deemed an original, but
11 all of which when taken together shall constitute one and
12 the same instrument. The signature page of any counterpart
13 may be detached therefrom without impairing the legal effect
14 of the signature(s) thereon provided such signature page is
15 attached to any other counterpart identical thereto. This
16 Agreement may be re-executed and re-acknowledged in the same
17 form in the event additional executed copies are required.

18 d. Time is of the essence in the performance of
19 and compliance with each of the provisions and conditions of
20 this Agreement.

21 e. All notices and other communications under this
22 Agreement shall be in writing and shall be deemed to have
23 been duly given (i) on the date of delivery, if delivered
24 personally to the Party to whom notice is given, or if made
25 by facsimile directed to the Party to whom notice is to be
26 given at the facsimile number listed below and receipt has
27 been confirmed either in writing or by facsimile, or (ii) on
28 receipt, if mailed to the Party to whom notice is to be

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1 given by overnight courier or first class mail, registered
2 or certified, return receipt requested, postage prepaid and
3 properly addressed as follows:

4 POLA: Port of Los Angeles
425 South Palos Verdes Street
5 P.O. Box 151
San Pedro, California 90733-0151
6 Attention: Executive Director
FAX No. (310) 831-6936

7 POLB: Port of Long Beach
8 925 Harbor Plaza
P.O. Box 570
9 Long Beach, California 90801
Attention: Executive Director
10 FAX No. (562) 901-1733

11 f. The Parties agree to execute such other
12 instruments and do such further acts as may be reasonably
13 necessary to carry out the provisions of this Agreement.

14 g. The making, execution and delivery of this
15 Agreement by the parties hereto has been induced by no
16 representations, statements, warranties or agreements other
17 than those expressly set forth herein.

18 h. Wherever possible, each provision of this
19 Agreement shall be interpreted in such a manner as to be
20 valid under applicable law, but, if any provision of this
21 Agreement shall be invalid or prohibited thereunder, such
22 invalidity or prohibition shall be construed as if such
23 invalid or prohibited provision had not been inserted herein
24 and shall not affect the remainder of such provision or the
25 remaining provisions of this Agreement.

26 i. The language in all parts of this Agreement
27 shall be in all cases construed simply according to its fair
28 meaning and not strictly for or against any of the parties

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1 hereto. Article and Section headings of this Agreement are
2 solely for convenience of reference and shall not govern the
3 interpretation of any of the provisions of this Agreement.

4 j. This Agreement shall be binding upon and inure
5 to the benefit of each of the Parties hereto and to their
6 respective transferees, successors, and assigns; provided,
7 however, that neither this Agreement nor any of the rights
8 or obligations hereunder shall be transferred or assigned by
9 either Party without the prior written consent of the other
10 Party.

11 k. All Exhibits attached hereto are incorporated
12 by reference.

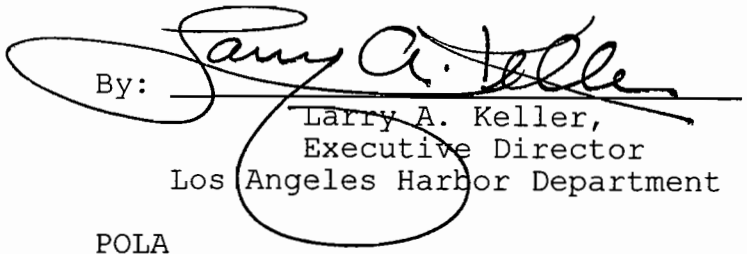
13 l. At the request of either of the Parties hereto,
14 a memorandum of this Agreement may be recorded in the
15 Official
16 Records of the County of Los Angeles, California.

17
18 **IN WITNESS WHEREOF**, the Parties hereto have caused
19 their duly authorized representatives to execute this Agreement
20 as of the date first above written.

21
22 CITY OF LOS ANGELES, a municipal
23 corporation, acting by and through
24 its Board of Harbor Commissioners

25 12-18-, 2003

26 By: _____

27 
28 Larry A. Keller,
Executive Director
Los Angeles Harbor Department

POLA

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City Attorney of Long Beach
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28

The foregoing Agreement is hereby approved as to form.

ROCKARD J. DELGADILLO,
City Attorney

Nov 29, 2003

By: Dave McLem
Name: _____
Assistant City Attorney

CITY OF LONG BEACH, a municipal
corporation, acting by and through
its Board of Harbor Commissioners

1-9, 2003⁴

By: R. D. Steinke
R. D. Steinke,
Executive Director
Long Beach Harbor Department

POLB

The foregoing Agreement is hereby approved as to form.

ROBERT E. SHANNON, City Attorney

1/8, 2004

By: Dominic Holzhaus
Dominic Holzhaus,
Principal Deputy

DH: dmp
8/12/03
C-11\COLB-COLA\03-03499

EXHIBIT A-1

Legal Description of Southern Pacific Property

All that property described in:

Exhibit A-1 - "Legal Description of the Corridor Land";

Exhibit A-2 - "Legal Description of the San Pedro Land" and,

Exhibit A-3 - "Legal Description of the PE Land"

to that certain Agreement entitled "Purchase and Sale Agreement, Alameda Corridor, dated December 22, 1994 between Southern Pacific Transportation Company, a Delaware corporation, as Seller, and The City of Los Angeles, acting by and through The Board of Harbor Commissioners of the Port of Los Angeles, and The City of Long Beach, acting by and through its Board of Harbor Commissioners, collectively as Purchaser."

EXHIBIT A-2

Legal Description of Union Pacific Property

All that property described in:

Exhibit A - "Description of Land: San Pedro Branch - Hobart Tower to Thenard Junction - Union Pacific Railroad Company - Los Angeles County, California"

to that certain Agreement entitled "Purchase and Sale Agreement among Union Pacific Railroad Company, as Seller, and City of Los Angeles and City of Long Beach, Acting By and Through Their Respective Boards of Harbor Commissioners, collectively, as Purchaser, Covering Union Pacific Railroad Company's San Pedro Branch (from Approximately Hobart Tower (M.P. 3.08) in the North to Thenard Junction (M.P. 21.71) in the South)" and dated as of December 22, 1994.

EXHIBIT A-3

Legal Description of Santa Fe Property

All that property described in Exhibit "A" - "Grant Deed" to that certain Agreement entitled: "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" and dated for reference purposes only as of December 29, 1994.

EXHIBIT A-4

Legal Description of Union Pacific Property

Acquired in 1992 Transaction

All that property described in:

Exhibit A - "Description of Rail Line A"; and

Exhibit B - "Description of Rail Line B"

to that certain Agreement entitled "Agreement for Purchase and Sale of Certain Real Property Interests from Union Pacific Railroad Company to City of Los Angeles and City of Long Beach, Acting Through Their Respective Boards of Harbor Commissioners, Covering Union Pacific Railroad Company's Rail Lines Between "J" Yard and Hobart Via Soto Street Junction and Between Thenard Junction and Brighton Beach Yard on Terminal Island" and dated December 24, 1992.

EXHIBIT B

Description of Excluded Property

As of the date this Agreement is entered into, none of the property described in Exhibits A-1 through A-4 inclusive is excluded from the provisions of this Agreement. From time to time in the future, the parties to this Agreement may agree to exclude a portion or portions of such property, in which case this Exhibit B shall be revised accordingly.

OFFICE OF THE CITY ATTORNEY
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333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 **TENANCY IN COMMON AGREEMENT**

2
3 **THIS TENANCY IN COMMON AGREEMENT** (this "Agreement") is made
4 and entered into as of _____, 20__, pursuant to Resolution No. HD-_____
5 adopted by the Board of Harbor Commissioners of the City of Long Beach at its regular
6 meeting held on _____, 20__, by and between the CITY OF LOS ANGELES,
7 a municipal corporation, acting by and through its Board of Harbor Commissioners
8 ("POLA"), and the CITY OF LONG BEACH, a municipal corporation, acting by and
9 through its Board of Harbor Commissioners ("POLB"). POLA and POLB are sometimes
10 each hereinafter referred to individually as a "Party" and collectively as "Parties."

11 RECITALS:

12 A. POLB and POLA, as tenants in common, have acquired or will
13 acquire the Property (as hereinafter defined).

14 B. In order to facilitate and govern their relationship as tenants in
15 common in and to the Property, the Parties wish to define their rights and duties
16 with respect to each other and with respect to the Property as hereinafter
17 provided.

18 NOW, THEREFORE, in consideration of the foregoing Recitals (which are,
19 by this reference, incorporated herein), the mutual covenants herein, and for other good
20 and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,
21 the Parties hereto hereby agree as follows:

22 1. LEGAL RELATIONSHIP

23 a. Legal Title, etc. The Parties shall hold legal title to any and all
24 interests in the Property as tenants in common with each Party having an
25 undivided fifty percent (50%) interest in and to the Property.

26 b. Tenancy in Common. The Parties intend to and do hereby
27 expressly acknowledge and define the tenancy in common relationship between
28 themselves.

1 c. Purpose. Notwithstanding anything to the contrary contained
2 in this Agreement, the Parties' sole purpose in entering into this Agreement is to
3 provide for the development, operation and management of the Property. The
4 Parties do not intend to enter into or create any partnership, joint venture, or
5 agency relationship between themselves, and neither Party intends to assume the
6 liabilities or obligations of the other Party arising from or in connection with the
7 Property, nor shall this Agreement be construed as creating any such partnership,
8 joint venture or agency relationship between POLA and POLB, nor shall this
9 Agreement be construed as rendering one Party liable for the debts or obligations
10 of the other Party arising from or in connection with the Property.

11 d. Management of the Property. This Agreement shall govern
12 the development, operation and management of and the Parties' interests or
13 investments in that certain real property acquired jointly by POLA and POLB which
14 is described on Exhibits A-1, A-2, A-3 and A-4 attached hereto and by this
15 reference incorporated herein, the improvements now or hereafter located
16 thereon, and the fixtures, appurtenances, leases, contracts, agreements and
17 personal property related thereto, (collectively, the "Property"). Notwithstanding
18 the foregoing, this Agreement shall not govern those portions of the Property
19 described on Exhibit B attached hereto and by this reference incorporated herein.

20 2. OPERATION OF PROPERTY

21 a. Property Operating Committee. A Property Operating
22 Committee is hereby established, consisting of the Executive Directors of POLA
23 and POLB or their respective designees. Such persons are sometimes hereinafter
24 referred to as the "POLA Representative" and the "POLB Representative", and
25 collectively as the "Representatives."

26 b. Meetings of Property Operating Committee. The Property
27 Operating Committee shall meet (i) periodically, generally at least once a month
28 but in no event less than once every three (3) months, and (ii) upon the written

1 request of either Representative, at a mutually convenient time (which in any event
2 must be on or before the expiration of ten (10) business days after the receipt of
3 such written request). The site for the meetings shall alternate between POLA and
4 POLB, respectively, unless the Representatives otherwise agree, with the first
5 meeting to be held within thirty (30) days from the effective date of this Agreement.

6 c. Powers and Duties of Property Operating Committee. In
7 connection with the operation and ownership of the Property, the Property
8 Operating Committee shall have the following powers and duties:

9 (1) Develop lease, license, entry permit and similar forms
10 for use in managing the Property;

11 (2) Recommend approval or disapproval of contracts,
12 agreements, leases, licenses, franchises or entry permits relating to the
13 Property to the Boards of POLA and POLB;

14 (3) Communicate with the railroads operating upon the
15 Property, or any portion thereof, and all tenants, occupants and
16 governmental and quasi-governmental entities with respect to issues
17 related to the Property;

18 (4) Monitor the progress of any construction or
19 maintenance work in, on, under or around the Property and ensure
20 compliance by POLA, POLB and the railroads with all operating and
21 construction agreements relating to the Property;

22 (5) Develop annual operating budgets for the Property, to
23 be adopted by the Boards of POLA and POLB;

24 (6) Make recommendations to the Boards of POLA and
25 POLB regarding capital improvements or maintenance of the Property and
26 the manner in which such items are to be funded;

27 (7) Establish procedures for maintaining records and files
28 related to the Property;

- 1 (8) Establish accounting procedures for the Property;
- 2 (9) Recommend to the Boards of POLA and POLB the
- 3 amounts and types of insurance coverage to be maintained for the Property
- 4 and whether either or both of POLA or POLB will obtain such insurance;
- 5 (10) Undertake any other duties necessary to efficiently and
- 6 effectively operate and own the Property.
- 7 d. Action by the Parties. Except as may expressly be delegated
- 8 in writing to the Property Manager (as hereinafter defined), all actions, approvals,
- 9 consents, contracts, licenses, leases, agreements, waivers and other decisions
- 10 relating to the Property shall require the consent of both the Boards of POLA and
- 11 POLB. However, the Board of Harbor Commissions at POLA shall have the
- 12 authority pursuant to the City of Los Angeles Charter Section 655 to delegate its
- 13 powers and duties to the Executive Director, which shall be done pursuant to a
- 14 formal board action delegating such powers and duties.
- 15 e. Inability of Parties to Reach a Decision. If the Parties are
- 16 deadlocked or otherwise unable to render a decision with respect to a material
- 17 issue relating to the Property, POLA and POLB agree to submit the issue to non-
- 18 binding arbitration in accordance with Section 9 below before instituting any legal
- 19 proceeding.
- 20 f. Costs and Expenses of Property. The costs and expenses
- 21 incurred in connection with the operation, ownership and management of the
- 22 Property shall be borne equally by POLA and POLB. If a Party fails to remit any
- 23 payment when due and such failure to pay has not yet become an Event of Default
- 24 (as hereinafter defined), the other Party may, at its sole option, remit such
- 25 payment on behalf of the non-paying Party. In such case, the non-paying Party
- 26 shall promptly reimburse the other Party for the full amount of such payment, plus
- 27 interest accruing from the date of the other Party's payment until the date of
- 28 reimbursement thereof by the non-paying Party at the lesser of (i) ten percent

1 (10%) per annum or (ii) the highest rate then allowable by law.

2 g. Income of Property. All income generated from ownership
3 and operation of the Property shall be distributed equally to POLA and POLB.

4 h. Property Management. The Parties have entered into an
5 agreement with Paragon Partners, Ltd. ("Property Manager") to provide property
6 management services pursuant to the Property Management Agreement
7 (HD-6618) (the "PMA"). On November 26, 2007, the Parties exercised the first of
8 two five-year term extension options under the PMA, thereby extending the term of
9 the PMA to December 10, 2012. Before the PMA expires on December 10, 2012,
10 the Parties shall consider further extending the PMA or entering into another
11 agreement with an independent, third-party property manager to manage and
12 administer the day-to-day operations and affairs of the Property in accordance with
13 such terms and guidelines as the Parties set forth in such agreement.

14 i. Joint Execution. Except as may expressly be delegated to the
15 Property Manager, all instruments, agreements, leases, licenses, contracts, deeds
16 and any and all other documents which must be executed or entered into in
17 connection with the acquisition of the interests in the Property, the maintenance
18 and operation of the Property, or in any other way connected with or to the
19 Property, shall be executed by both POLA and POLB. POLA and POLB expressly
20 agree that neither may act, and that neither will act or purport to act, on behalf of
21 the other. Any instrument, agreement, lease, license, contract, deed or other
22 document which is executed by only one of the Parties hereto shall be ineffective
23 to bind the other Party to the terms thereof unless and until expressly ratified in
24 writing by the non-executing Party.

25 j. Transfer of Interest. During the term hereof, neither Party
26 may lease, sell, or otherwise transfer its undivided interest, or any part thereof, in
27 all or any portion of the Property without the prior written consent of the other
28 Party. Any such attempt to sell, assign, transfer, hypothecate, lien or encumber

1 the Property or any portion thereof in contravention of the terms hereof shall be
2 null and void, and any Party who breaches the provisions of this Section 2(i) will
3 indemnify, defend and hold the non-breaching Party harmless from and against all
4 claims, liabilities, losses, damages, costs and expenses that the non-breaching
5 Party may suffer as a result of the indemnifying Party's breach of the provisions of
6 this Section 2(i).

7 3. OBLIGATIONS AND LIABILITIES INCURRED BY THE PARTIES.

8 a. Joint Liability. The Parties shall share on an equal basis all
9 obligations or liabilities jointly incurred.

10 b. Several Liability. Any obligations or liabilities incurred by one
11 Party but not the other shall be several obligations and liabilities of the Party
12 incurring the same. The non-incurring Party's interest in the Property shall not be
13 subject to or affected by such several obligations and liabilities and each Party
14 hereby agrees to indemnify, defend and hold the other Party harmless from all
15 claims, liabilities, losses, damages, costs and expenses arising out of such other
16 obligations incurred by the indemnifying Party.

17 4. RESTRICTIONS AGAINST PARTITION.

18 During the term hereof, the Parties hereby agree to waive any right to
19 involuntary partition of the Property. The Parties intend hereby to create a reasonable
20 and enforceable restraint on alienation reflecting their mutual objectives in acquiring the
21 Property.

22 5. BOOKS AND RECORDS.

23 Upon reasonable advance notice, each Party agrees to provide the other
24 Party with access during normal business hours to all books, audits, records, studies and
25 reports in their possession that relate to the Property, or any part thereof, excluding
26 therefrom any internal memoranda or other confidential or proprietary materials.

27 6. DEFAULT; REMEDIES.

28 a. Default. An event of default (an "Event of Default") shall occur

1 hereunder if:

2 (1) a Party fails to make any monetary payment required
3 hereunder and such failure continues for fifteen (15) days after the receipt
4 of written notice from the non-defaulting Party; or

5 (2) a Party fails to perform any non-monetary obligation
6 required hereunder and such failure continues for thirty (30) days after the
7 receipt of written notice from the non-defaulting Party; provided, however,
8 that if the defaulting Party has commenced the cure of such default within
9 such thirty (30) day period and is diligently pursuing such cure in good faith,
10 the defaulting Party shall have sixty (60) days after the receipt of written
11 notice from the non-defaulting Party in which to effectuate the cure of such
12 default.

13 b. Remedies. Upon the occurrence and during the continuance
14 of an Event of Default, the non-defaulting Party may elect, in its sole discretion, to
15 do one or more of the following:

16 (1) In the case of a monetary default, remit the applicable
17 payment to the appropriate party, in which case, the defaulting Party shall
18 promptly reimburse the non-defaulting Party for the full amount of such
19 payment, plus interest accruing from the date of the non-defaulting Party's
20 payment until the date of reimbursement thereof by the defaulting Party at
21 the lesser of (i) ten percent (10%) per annum or (ii) the highest rate then
22 allowable by law;

23 (2) File and pursue an action, suit, or other court
24 proceeding (but only after a non-binding arbitration proceeding) against the
25 defaulting Party for specific performance of this Agreement;

26 (3) File and pursue an action, suit or other court
27 proceeding (but only after a non-binding arbitration proceeding) against the
28 defaulting Party for damages incurred by the non-defaulting Party which

1 arise out of or relate to the Event of Default; provided, however, that the
2 non-defaulting Party may only recover its actual damages (and not any
3 consequential damages); and

4 (4) Seek any other appropriate or applicable remedies
5 available at law or in equity.

6 7. INDEMNITY.

7 a. POLA Indemnity. POLA shall indemnify, defend, and hold
8 POLB, its agents, representatives, officers, directors, employees, commissioners,
9 successors and assigns, harmless from and against all liabilities, losses, costs,
10 expenses, suits, judgments, claims, demands and investigations (including,
11 without limitation, reasonable attorneys' fees and costs) arising from any act or
12 omission by POLA in, on, under, around or regarding the Property.

13 b. POLB Indemnity. POLB shall indemnify, defend, and hold
14 POLA, its agents, representatives, officers, directors, employees, commissioners,
15 successors and assigns, harmless from and against all liabilities, losses, costs,
16 expenses, suits, judgments, claims, demands and investigations (including,
17 without limitation, reasonable attorneys' fees and costs) arising from any act or
18 omission by POLB in, on, under, around or regarding the Property.

19 8. DURATION OF AGREEMENT.

20 This Agreement shall be deemed to have commenced on
21 December 29, 2009 and shall terminate on the earlier of (i) December 31, 2021 or (ii)
22 such earlier date as may be agreed to by the Parties.

23 9. ARBITRATION.

24 Whenever, pursuant to Sections 2.e., 6.b. or otherwise under the terms of
25 the Agreement, arbitration is required or is agreed to by the Parties, such arbitration shall
26 be initiated and conducted in conformance with the provisions of this Section 9.

27 a. The Party desiring to initiate arbitration shall so notify the
28 other Party in writing, specifying the issue or issues to be arbitrated and providing

1 the names of at least three (3) persons acceptable to the initiating Party to serve
2 as Arbitrator. Within ten (10) business days, the other Party shall acknowledge in
3 writing the issue or issues to be arbitrated and either agreeing to a person to serve
4 as Arbitrator or suggesting up to three (3) additional persons. The persons so
5 named by the Parties shall be persons experienced and qualified in the subject
6 matter of the issue or issues to be arbitrated. Within five (5) additional days, the
7 Representatives of the Parties shall meet to attempt to select an Arbitrator from
8 the names submitted by the Parties. If the Parties cannot agree upon a selection,
9 either Party may apply to the Presiding Judge of the Superior Court in and for the
10 County of Los Angeles for selection of an Arbitrator from the lists of names
11 previously exchanged by the Parties.

12 b. Upon his or her selection, the Arbitrator shall schedule a pre-
13 hearing conference to resolve procedural matters, arrange for the exchange of
14 information, and narrow the issue or issues, if necessary.

15 c. The arbitration and any pre-arbitration or other meetings shall
16 be conducted within thirty (30) miles of POLA and POLB. The arbitration shall be
17 conducted in an informal manner; technical rules of evidence shall not apply. The
18 Parties may be represented by counsel or other authorized person. The Parties
19 may offer such evidence as is relevant and material to the issue or issues to be
20 resolved. The Arbitrator shall determine relevance and materiality.

21 d. The Arbitrator shall issue a written decision as soon as
22 reasonably possible following the conclusion of the arbitration hearing, but in no
23 event later than thirty (30) days thereafter, setting forth his or her resolution of the
24 issue or issues to be resolved and a brief explanation of the reasons for such
25 decision. Each Party shall, within ten (10) business days following receipt of such
26 decision, notify the other Party if the Arbitrator's decision is acceptable.

27 e. Each Party shall bear its own expenses of the arbitration. The
28 fees of and expenses incurred by the Arbitrator shall be shared equally by the

1 Parties.

2 10. MISCELLANEOUS.

3 a. Each individual and entity executing this Agreement hereby
4 represents and warrants that he, she or it has the capacity set forth on the
5 signature pages hereof with full power and authority to bind the Party on whose
6 behalf he, she or it is executing this Agreement to the terms hereof.

7 b. This Agreement is the entire agreement between the Parties
8 hereto with respect to the Parties' relationship as tenants in common of the
9 Property and supersedes all prior agreements between the Parties with respect
10 thereto. Any waiver, modification, consent or acquiescence with respect to any
11 provision of this Agreement shall be set forth in writing and duly executed by or in
12 behalf of the Party to be bound thereby. No waiver by any Party of any provision
13 hereof or breach hereunder shall be deemed a waiver of any other provision or
14 any subsequent breach.

15 c. This Agreement may be executed in any number of
16 counterparts, each of which shall be deemed an original, but all of which when
17 taken together shall constitute one and the same instrument. The signature page
18 of any counterpart may be detached therefrom without impairing the legal effect of
19 the signature(s) thereon provided such signature page is attached to any other
20 counterpart identical thereto. This Agreement may be re-executed and re-
21 acknowledged in the same form in the event additional executed copies are
22 required.

23 d. Time is of the essence in the performance of and compliance
24 with each of the provisions and conditions of this Agreement.

25 e. All notices and other communications under this Agreement
26 shall be in writing and shall be deemed to have been duly given (i) on the date of
27 delivery, if delivered personally to the Party to whom notice is given, or if made by
28 facsimile directed to the Party to whom notice is to be given at the facsimile

1 number listed below and receipt has been confirmed either in writing or by
2 facsimile, or (ii) on receipt, if mailed to the Party to whom notice is to be given by
3 overnight courier or first class mail, registered or certified, return receipt requested,
4 postage prepaid and properly addressed as follows:

5 POLA: Port of Los Angeles
6 425 South Palos Verdes Street
7 P.O. Box 151
8 San Pedro, California 90733-0151
9 Attention: Executive Director
10 FAX No. (310) 831-6936

11 POLB: Port of Long Beach
12 925 Harbor Plaza
13 P.O. Box 570
14 Long Beach, California 90801
15 Attention: Executive Director
16 FAX No. (562) 901-1733

17 f. The Parties agree to execute such other instruments and do
18 such further acts as may be reasonably necessary to carry out the provisions of
19 this Agreement.

20 g. The making, execution and delivery of this Agreement by the
21 parties hereto has been induced by no representations, statements, warranties or
22 agreements other than those expressly set forth herein.

23 h. Wherever possible, each provision of this Agreement shall be
24 interpreted in such a manner as to be valid under applicable law, but, if any
25 provision of this Agreement shall be invalid or prohibited thereunder, such
26 invalidity or prohibition shall be construed as if such invalid or prohibited provision
27 had not been inserted herein and shall not affect the remainder of such provision
28 or the remaining provisions of this Agreement.

i. 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. Article and Section headings of this Agreement are
solely for convenience of reference and shall not govern the interpretation of any

EXHIBIT A-1

Legal Description of Property Formerly Owned by Southern Pacific Transportation Company

All that property described in:

Exhibit A-1 - "Legal Description of the Corridor Land";

Exhibit A-2 - "Legal Description of the San Pedro Land" and,

Exhibit A-3 - "Legal Description of the PE Land"

to that certain Agreement entitled "Purchase and Sale Agreement, Alameda Corridor, dated December 22, 1994 between Southern Pacific Transportation Company, a Delaware corporation, as Seller, and The City of Los Angeles, acting by and through The Board of Harbor Commissioners of the Port of Los Angeles, and The City of Long Beach, acting by and through its Board of Harbor Commissioners, collectively as Purchaser."

EXHIBIT A-2

Legal Description of Union Pacific Property

All that property described in:

Exhibit A - "Description of Land: San Pedro Branch - Hobart Tower to Thenard

Junction - Union Pacific Railroad Company - Los Angeles County, California"

to that certain Agreement entitled "Purchase and Sale Agreement among Union Pacific Railroad Company, as Seller, and City of Los Angeles and City of Long Beach, Acting By and Through Their Respective Boards of Harbor Commissioners, collectively, as Purchaser, Covering Union Pacific Railroad Company's San Pedro Branch (from Approximately Hobart Tower (M.P. 3.08) in the North to Thenard Junction (M.P. 21.71) in the South)" and dated as of December 22, 1994.

EXHIBIT A-3

Legal Description of Santa Fe Property

All that property described in Exhibit "A" - "Grant Deed" to that certain Agreement entitled: "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" and dated for reference purposes only as of December 29, 1994.

EXHIBIT A-4

Legal Description of Union Pacific Property

Acquired in 1992 Transaction

All that property described in:

Exhibit A - "Description of Rail Line A"; and

Exhibit B - "Description of Rail Line B"

to that certain Agreement entitled "Agreement for Purchase and Sale of Certain Real Property Interests from Union Pacific Railroad Company to City of Los Angeles and City of Long Beach, Acting Through Their Respective Boards of Harbor Commissioners, Covering Union Pacific Railroad Company's Rail Lines Between "J" Yard and Hobart Via Soto Street Junction and Between Thenard Junction and Brighton Beach Yard on Terminal Island" and dated December 24, 1992.

EXHIBIT B

Description of Excluded Property

As of the date this Agreement is entered into, none of the property described in Exhibits A-1 through A-4 inclusive is excluded from the provisions of this Agreement. From time to time in the future, the Executive Director of the parties to this Agreement may agree to exclude a portion or portions of such property, in which case this Exhibit B shall be revised accordingly.

TRANSMITTAL 2
Tenancy in Common Agreement

