

**AMENDED AND RESTATED AGREEMENT OF PURCHASE AND SALE  
WILLITS SEGMENT**

**Dated April 11, 1996**

**between**

**Southern Pacific Transportation Company, as Seller**

**and**

**North Coast Railroad Authority, as Purchaser**

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## **AMENDED AND RESTATED AGREEMENT OF PURCHASE AND SALE**

### **Willits Segment**

THIS AGREEMENT, dated April 11, 1996, is by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Seller") and NORTH COAST RAILROAD AUTHORITY, a local agency created by the California legislature ("Purchaser").

### RECITALS

A. Seller owns certain land and improvements comprising that certain line of railroad known as the Northwestern Pacific Railroad line (the "NWP Line") made up in part of a segment commonly known as the Willits Segment, located in Mendocino County and Sonoma County, California, and further described in Article 1 of this Agreement.

B. Golden Gate Bridge Highway and Transportation District ("GGBHTD") and Seller entered into an Agreement for Purchase and Sale (Healdsburg) dated June 1, 1990 (the "1990 Healdsburg Agreement") and an Agreement for Purchase and Sale (Willits) dated June 1, 1990 (the "1990 Willits Agreement") pursuant to which GGBHTD agreed to buy and Seller agreed to sell certain property more particularly described in each of the 1990 Healdsburg Agreement and the 1990 Willits Agreement. GGBHTD subsequently assigned all of its rights and obligations under the 1990 Agreements to Purchaser and the Northwestern Pacific Railroad Authority ("JPA") respectively pursuant to the Agreements of Assignment among GGBHTD, Purchaser and JPA of even date herewith.

C. Seller and Purchaser now desire to amend and restate the 1990 Willits Agreement in its entirety (and to the extent applicable, the 1990 Healdsburg Agreement) in this Agreement to provide for the purchase and sale of the property more particularly described herein, subject to the terms and conditions set forth in this Agreement.

D. Purchaser has considered acquiring the Property, as defined below, by eminent domain and is prepared to do so if necessary.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements contained herein, Seller and Purchaser hereby agree as follows:

### **ARTICLE 1: PURCHASE AND SALE**

1.1 **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller shall sell and convey, and Purchaser shall purchase and pay for, the following described property (all of which is referred to herein collectively as the "Property"), excepting and reserving to Seller the rights and interests described in Article 6 of this Agreement and in any agreements entered into pursuant to this Agreement (the "Retained Rights"):

(a) the following real property (the "Real Estate"):

**Willits Segment.** All of Seller's right, title and interest in the right-of-way, trackage and structures (including any tracks, rails, ties, switches, crossings, tunnels, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, railroad communications systems, and poles) ("Right-of-Way") that are situated on or adjacent to Seller's main line extending from NWP Milepost 68.22 north of Healdsburg Station at Mill Street in the City of Healdsburg, California to NWP Milepost 142.5 ("Willits Segment"), as more particularly described in Exhibit A;

(b) All of Seller's interest in any buildings, structures and fixtures now owned by Seller to the extent located on the Real Estate (the "Improvements");

(c) All of Seller's interest in any leases (the "Leases") and any other licenses, permits, easements and agreements (the "Other Agreements") affecting all or any portion of the

Real Estate, to the extent affecting the Real Estate, except (i) that certain Lease Agreement for Northwestern Pacific Line, dated August 27, 1993 (the "Cal Northern Lease"), between Seller and California Northern Railroad Company Limited Partnership ("Cal Northern") to the extent such lease is being assigned to the JPA pursuant to the Healdsburg Agreement (as discussed in Section 1.5 hereof), and (ii) the Retained Agreements (as defined in Article 6); and

(d) All of Seller's interest in any prepaid rents for periods occurring after the Closing Date and security deposits made by tenants under the Leases and transferable deposits with utility companies, if any, arising out of the operation and maintenance of the Real Estate and Improvements.

1.2 Phased Purchase and Sale. Of the Property previously described in Section 1.1 above, those parcels of Real Estate described in Exhibit B, together with the Improvements appurtenant thereto, shall be referred to in this Agreement as the "Phased Closing Property", and the valuation assigned to the fee simple estate in the Phased Closing Property shall be referred to as the "Phased Property Valuation." The purchase and sale of the fee simple estate in the Phased Closing Property shall occur as further provided in Article 5 of this Agreement. The parcel of Real Estate described as the Willits Yard on Exhibit B may be referred to separately in this Agreement as the "Willits Yard." Property other than the Phased Closing Property shall be referred to in this Agreement as the "Initial Closing Property." The Initial Closing Property shall also include (i) a surface easement over the Phased Closing Property (except Willits Yard) pursuant to the Surface Easement Agreements, the form of which is attached hereto as Exhibit C and the assignment of all Leases and Other Agreements affecting the Phased Closing Property (except Willits Yard); and (ii) a surface easement over the Willits Yard (the "Willits Yard Surface Easement") pursuant to the Willits Yard Surface Easement Agreement, the form of

which is attached hereto as Exhibit D and the assignment of all Leases and other agreements affecting the Willits Yard.

1.3 Purchase Price. (a) The total purchase price for the Property, including the Phased Closing Property (the "Purchase Price"), is \$5,910,312. Subject to any adjustment provided for in Section 1.4, Purchaser shall pay the Purchase Price to Seller in the following manner:

(i) the sum of \$4,807,062 to Seller by wire transfer of funds or other immediately available funds, at the Initial Closing as further provided in Section 5.3(b)(1); and

(ii) the sum of \$1,103,250 (representing 75% of the Phased Property Valuation for the Phased Closing Properties) to the Escrow Holder by wire transfer of funds or other immediately available funds at the Initial Closing, to be held by said Escrow Holder pursuant to instructions agreed to by the parties. Such instructions shall provide that Purchaser shall be entitled to all interest accruing on the respective amounts deposited for each Phased Closing Property; provided, however, that once Phase II Work shall have commenced for a Phased Closing Property, Seller and Purchaser shall each be entitled to one-half of the interest accruing on the funds allocable to such Phased Closing Property, as such funds are drawn down from time to time.

1.4 Conventional Adjustments and Costs. As to any portion of the Property for which a Closing is occurring, the following prorations, adjustments and cost allocations shall apply as of the applicable Closing:

(a) Property taxes and special assessments shall be prorated with respect to the date or dates of recording falling within the applicable July 1 - June 30 tax year. Property taxes and special assessments attributable to interests, if any, in the Property retained by Seller



shall be borne entirely by Seller. Seller shall report to the State Board of Equalization any assessable interest in the Property retained by it. Purchaser shall request the cancellation of all applicable property taxes and special assessments as required by California Revenue & Taxation Code §§4986 and 5082.1, at the earliest possible date. Seller shall be entitled to receive any refunds or credits of taxes previously paid.

(b) Except for the Retained Agreements (as defined in Section 6.5 below), all rents, common area maintenance charges, other amounts paid or payable by a tenant of the Property, and other income from the Property (including rent) attributable to periods prior to the Closing for it shall be credited to Seller, and all such income attributable to and collected for periods subsequent to the applicable Closing shall be credited to Purchaser. Purchaser shall have no obligation to collect any rents or other charges due but uncollected prior to any such Closing. If Purchaser collects any such delinquent rents or charges, it shall pay to Seller such amounts as it shall collect; provided, however, that all rents collected by Purchaser shall first be applied to all current amounts then due to Purchaser. If rents or charges remain due to Seller and unpaid 120 days after the Closing, Seller may commence an action for the collection of such delinquencies and Purchaser agrees to cooperate in such efforts in all reasonable respects; however, Purchaser shall not be required to terminate any Lease on account of a default occurring prior to any Closing. Prior to the Closing, Seller shall not apply any security deposits to delinquent rents owed by tenants in possession. On the Closing for any parcel of Property, all tenant security deposits related to said Property shall be credited to Purchaser, and Purchaser shall execute a document acknowledging receipt of such deposits and agreeing to hold them in accordance with the terms in the applicable leases.

(c) Purchaser shall pay all closing costs related to each Closing, including the costs of the Title Reports (as defined in Section 2.1(b)) and the prior drafts thereof, owner's CLTA title insurance policies, the extra cost of any endorsements requested by Purchaser, all escrow or other fees of the Title Company for participating in the Closing, and all recording, filing, documentary and similar fees and taxes payable in connection with the transactions contemplated by this Agreement.

(d) Seller and Purchaser shall each pay any costs and expenses (such as attorneys' and consultants' costs and expenses) incurred by such party in connection with the transactions contemplated by this Agreement that are not otherwise adjusted or allocated as set forth in this Section 1.4 or provided for elsewhere in this Agreement.

(e) The foregoing provisions of this Section 1.4 are not intended to prorate revenue or expenses from any rail operations occurring prior to the Closing for the Property.

1.5 Cal Northern Lease. Seller and the Northwestern Pacific Railroad Authority (the "JPA") have entered into that certain Amended and Restated Agreement of Purchase and Sale (Healdsburg and Lombard Segments) dated \_\_\_\_\_, 1996 (the "Healdsburg Agreement") for the purchase and sale of the Healdsburg and Lombard Segments of the Northwestern Pacific Line. The parties acknowledge that Seller has agreed to partially assign the Cal Northern Lease to the JPA pursuant to the terms of the Healdsburg Agreement and that there shall be a single administrator under the Cal Northern Lease. The parties agree that Seller shall partially assign the Cal Northern Lease to Purchaser pursuant to the Cal Northern Partial Assignment attached to this Agreement as Exhibit E. The simultaneous occurrence of the Initial Closing hereunder and the closing of the purchase of the Healdsburg and Lombard Segments pursuant to the Healdsburg

Agreement shall be a condition precedent to the performance by the parties of their respective obligations for the Initial Closing.

## ARTICLE 2: TITLE

2.1 Permitted Exceptions. For purposes of this Agreement "Permitted Exceptions" shall mean:

- (a) a lien for real property taxes and assessments for the current year, not yet due and payable;
- (b) exceptions to title approved by Purchaser (other than mortgages, deeds of trust, mechanics' liens and other monetary liens, which shall be paid or otherwise provided for by Seller to the reasonable satisfaction of Purchaser at Closing) listed on the updated title reports covering the Property (the "Title Reports") issued by Redding Title and California Land Title Company (collectively, the "Title Company");
- (c) any matter that would be shown by survey except those matters that materially and adversely affect Purchaser's contemplated use of the Property for passenger rail operations, freight rail operations and related activities (including but not limited to parking, rapid rail, light rail, intercity rail, commuter rail and excursion rail service) (collectively, "Purchaser's Rail Uses");
- (d) all of the Leases and Other Agreements provided they (i) have been disclosed to Purchaser pursuant to this Agreement, and (ii) have not been objected to pursuant to the provisions set forth in Subsection 2.2 below;
- (e) the Retained Rights (including, without limitation, the Retained Agreements);

(f) liens and encumbrances arising out of any activity of Purchaser with respect to the Property; and

(g) matters disclosed on the attached Exhibit F.

2.2 Title Review/Notice of Defects. (a) Purchaser may give notice of a defect of title (a "Title Defect") by notifying Seller in writing of any of the following matters that, in the reasonable judgment of Purchaser, materially and adversely affect Purchaser's Rail Uses: (i) with respect to exceptions to title listed on the Title Reports by giving notice within 30 days after the execution of this Agreement, but no later than three days prior to the Initial Closing; and (ii) with respect to matters described in Subsections 2.1(c), (d) and (g) above, by giving notice within 30 days after the date of this Agreement, but no later than three days prior to the Initial Closing. Notwithstanding the time periods for giving notice provided herein, Purchaser shall have no right to give notice of a Title Defect within five days prior to the Initial Closing, except as to matters initially disclosed to Purchaser within 10 days of the Initial Closing, in which case Purchaser shall have five days after receipt of notice of such matter to give notice to Seller of a Title Defect based thereon.

(b) If, prior to the Initial Closing, Purchaser discovers that title to any portion of the Property being conveyed is subject to matters other than Permitted Exceptions that, in the reasonable judgment of Purchaser, materially and adversely affect Purchaser's Rail Uses then Purchaser may inform Seller in writing of any such matter prior to five days before the Initial Closing, except as to matters initially disclosed to Purchaser within 10 days of the Initial Closing, in which case Purchaser shall have five days after receipt of notice of such matter to give notice to Seller of a Title Defect based thereon. Purchaser may give notice of a Title Defect with respect to Phased Closing Property prior to the escrow Closing for conveyance of the fee

simple estate of such parcel only with respect to Title Defects affecting the fee simple estate that arose or were initially disclosed after the Initial Closing.

(c) If Purchaser timely objects to any Title Defect and Seller is unable or unwilling to remove or otherwise cure the Title Defect prior to Closing, then Purchaser shall have the option, by delivery of written notice to Seller at least two days prior to Closing, to: (i) terminate this Agreement and its obligation to purchase the Property, but only if Purchaser's Rail Uses are materially and adversely affected, (ii) waive such Title Defect, or (iii) receive an equitable credit to the Purchase Price representing the diminution in value due to the Title Defect.

(d) In the event that Seller does not receive written notice from Purchaser of a Title Defect on or before the applicable objection deadlines identified in Subsection 2.2(a), (b) or (c) above, Purchaser shall be deemed to have waived its right to object to such items and they shall be deemed to be Permitted Exceptions.

2.3 Review of Legal Descriptions. Purchaser shall have 30 days after the date of this Agreement or 30 days after receipt of any subsequent material revisions to the legal descriptions contained in the Title Reports, but in all events no later than five days prior to the Initial Closing, to notify Seller in writing of any reasonable objections Purchaser may have to the legal description of a parcel of the Property. If Seller receives written notice of Purchaser's objections within such time period, Seller, Purchaser and the Title Company shall use their best efforts to promptly agree on a revised legal description for such Title Report, which agreement shall not be unreasonably withheld. If those parties are unable to reach agreement on the legal description for any portion of the Property on or before the date five days prior to the Closing for such Property, Purchaser shall have the option, by delivery of written notice to the Seller prior to the Closing (a)

to terminate its obligation to purchase the Property, or (b) to submit the matter for determination by the Title Company and Brian Kangas Foulk or other mutually agreeable, licensed, local land surveyor (the "Surveyor") or, if the Surveyor is unwilling to serve, some other surveyor licensed in the State of California selected by the chief judge for the United States District Court for the Northern District of California. Such submittal shall be made by written notice to Seller and to the Title Company identifying the surveyor selected, whose determination shall be final and binding on the parties. Each party shall cooperate to expedite the final determination of any contested legal description, and the Closing shall be postponed until the third business day following such determination.

2.4 Purchaser's Use of the Property. Title to the Property shall be conveyed to Purchaser by grant deeds (for the fee and easement parcels) and quit claim deeds (for parcels held under color of title). Purchaser acknowledges and has been fully advised that Seller holds title to some parcels of the Property (designated as "limited fee" or "defeasible fee interest"), subject to restrictions for railroad use only. Purchaser hereby covenants not to use the Property in any manner that would cause a defeasance of title, and agrees to indemnify Seller and hold Seller harmless from any and all third-party claims, liabilities, costs and expenses, including reasonable attorneys' fees and disbursements, arising out of any changes in use by Purchaser that cause or are alleged to cause a defeasance of title. Purchaser has been advised that the Property is subject to public rights-of-way and state rights in tidelands, including, without limitation, streets, roads, highways, rivers, streams, navigable and nonnavigable waters and water ways as described in the Title Reports and Maps (the "Public Rights of Way and Tidelands").

2.5 Title Warranty. (a) Seller acknowledges that Purchaser is relying on the title policies to be issued pursuant to the Title Reports and the warranties of Seller set forth in this

Section 2.5, the Maps that have been delivered to Purchaser by Seller, and the copies of the instruments delivered or to be delivered to Purchaser by Seller evidencing the Defeasible Fee Interests, the Easement Interests and the Leases.

(b) Notwithstanding that the continuity of the rail corridor is subject to the Public Rights-of-Way and Tidelands and regardless of any disclosure to Purchaser or investigation by Purchaser of matters affecting title to the Property, Seller warrants that (i) the Property is the same land as is depicted on the Maps, and that the Operating Property forms a continuous corridor broken only by Public Rights-of-Way and Tidelands and the Permitted Exceptions, and (ii) even giving due consideration to the fact that the continuity of the corridor is broken as herein stated, Purchaser shall have the unimpaired right (subject only to Purchaser's covenant under Section 2.4 above not to use the Property in any manner that would cause an impairment or defeasance of title) to conduct Purchaser's Rail Uses on the Operating Property.

(c) The warranty set forth in this Section 2.5 is for the benefit of Purchaser and its successors and assigns only and shall not inure by right of subrogation or assignment to the benefit of any title insurer under any title policy or any other party.

2.6 Breach of Warranty. (a) If the warranty of title set forth in Section 2.5 is breached or if there is a claim by any third party which, if true, would create such a breach, and if such claim or breach creates any rights under any Title Policy, Purchaser shall promptly take all actions necessary to tender and diligently pursue its claim under such Title Policy until the insurer makes a determination of coverage. If, however, (i) the claim or breach of warranty does not create any claims under any Title Policy, or (ii) the Title Company, after due consideration, refuses to accept responsibility for the claim or breach on the basis of lack of coverage and Purchaser's Rail Uses are or would be adversely affected, then Purchaser may, in addition to any

other rights it may have at law or in equity, tender the claim or breach to Seller under the indemnification set forth in Subsection 2.6(b) below.

(b) Seller shall defend, indemnify and hold Purchaser harmless from any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees and disbursements, arising out of any breach or alleged breach of the title warranty in Section 2.5; provided that, with respect to Public Rights of Way and Tidelands, Seller shall not be liable or responsible for any continuing, yearly or periodic fees or payments (as opposed to initial or one-time use, license or permit fees or payments) or administrative fees, costs or expenses (as opposed to court fees, costs or expenses) incurred in connection with obtaining or attempting to obtain any permits, licenses, leases or governmental approvals.

(c) If Seller successfully defends against the claim or cures the breach, Seller shall be subrogated to all of Purchaser's rights against the Title Company. Purchaser shall cooperate with Seller in all reasonable respects to obtain full recovery from the Title Company for any title matter covered by a Title Policy.

(d) In the event that Seller shall desire to use either Seller's or Purchaser's power of eminent domain to cure any breach of its warranty, Purchaser shall fully cooperate in such use to the extent it is legal to do so, provided that Seller shall bear all reasonable costs incurred in connection with such eminent domain action (including Purchaser's reasonable attorneys' fees and disbursements, condemnation awards and other damages, if any, incurred by Purchaser).

2.7 Expiration of Warranty. Except as to matters for which Purchaser shall have already given notice to Seller as provided in Section 2.2, Seller's obligations under Sections 2.5 and 2.6 above shall expire and be of no further force or effect: (i) with respect to any specific



claim, on the third anniversary of the date Purchaser knew or should have known of an adverse claim that could result in a breach of the warranty in Section 2.5, (ii) with respect to any portion of the Property, on the date on which the Cal Northern Lease expires or is terminated with respect to such portion of the Property, but in no event prior to five years after the Initial Closing, (iii) with respect to any portion of the Property, on the date on which freight rail operations have ceased or been interrupted for a period of time longer than six months (but such termination shall apply only as to such portion of the Property affected thereby), or (iv) with respect to any Property for which Seller's obligations under Sections 2.5 and 2.6 shall not have previously terminated or accrued, on the tenth anniversary of the Initial Closing Date.

**ARTICLE 3: PRE-CLOSING INSPECTION,  
TERMINATION AND EXTENSION RIGHTS**

3.1 **Books and Records.** (a) Within a reasonable time after the date of this Agreement, Seller shall deliver to Purchaser:

(i) true and correct copies of all Leases, Other Agreements, Maps in effect for or applicable to the Real Estate as of the date of this Agreement, and all amendments and/or supplements thereto, and, as has been requested by Purchaser, a true and correct copy of each instrument creating or evidencing any Defeasible Fee Interest or Easement Interest in the Real Estate; and

(ii) all material outstanding governmental directives, notices or correspondence with respect to the environmental condition of the Property received by Seller during the last three years, and all material environmental studies and reports in the possession or under the control of Seller, relating to the Real Estate (the "Environmental Reports"). Purchaser acknowledges that Seller has previously delivered to Purchaser many of the Leases, Other

Agreements and Maps. Seller agrees to use its best efforts to supply Purchaser with such additional documentation as Purchaser may reasonably deem necessary to complete Purchaser's records.

(b) Subject to the limitations on preserving confidentiality under applicable law, until after the applicable Closing, none of the information received by Purchaser respecting the applicable portion of the Property or its operation shall be disclosed to any third parties except to the extent such disclosure is necessary to obtain funding or otherwise consummate the Closing of this transaction, in which case the disclosure to such third parties shall be limited to the information necessary to so effectuate the Closing. Unless required by law, Purchaser shall not disclose any information regarding environmental matters affecting any property retained by Seller.

3.2 Inspection of the Property. (a) Upon not less than five days' advanced written notice to Seller and Cal Northern, Purchaser and Purchaser's agents may enter onto all or any portion of the Property at all times during the Environmental Due Diligence Period (as hereinafter defined) to conduct physical inspection and, except with respect to the Phased Closing Property, environmental inspection of the Property, including, without limitation, conducting tests, surveys, studies and other inspections. Purchaser shall conduct its environmental due diligence inspections only as provided in Subsection (d) below and shall not conduct any environmental due diligence inspections on the Phased Closing Property except as provided in Section 5.4. Purchaser shall conduct all of its inspections pursuant to the terms of the Right of Entry Agreement (as defined below). Any entry by Purchaser or Purchaser's agents pursuant to this Section 3.2 shall be subject to the terms of (i) the Right of Entry Agreement of even date herewith between Purchaser and Seller (the "Right of Entry Agreement"), (ii) the

Leases, Other Agreements and Retained Agreements, burdening the Property to be inspected and (iii) other Permitted Exceptions, and shall be made in a manner which permits Purchaser to complete the necessary due diligence but results in the least interference with the use of the Property by Seller, Cal Northern or any third party that has been granted rights of possession, use or enjoyment of the Property and whose interest has been disclosed to Purchaser. Purchaser shall indemnify and defend Seller and Cal Northern against, and hold Seller, Cal Northern and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees and disbursements), damages, claims, liabilities, liens, encumbrances and charges arising out of or in any way related to any entry by Purchaser or Purchaser's agents upon the Property, except to the extent such matters arise from the sole and active negligence or willful misconduct of Seller or Cal Northern. The foregoing obligation of Purchaser shall survive the Closing or the termination of this Agreement. Purchaser shall repair any damage to the Property as a result of or caused by the entry by Purchaser or Purchaser's agents onto the Property and restore the Property to the condition existing on the date immediately prior to Purchaser's entry onto the Property.

(b) Except as otherwise set forth in this Agreement or in agreements entered into pursuant to this Agreement, all costs incurred in connection with tests, surveys, studies, inspections, reviews, approvals, determinations and applications made by or on behalf of Purchaser under this Agreement or in connection with Purchaser's proposed use of the Property shall be the sole responsibility of and be paid by Purchaser. In the event of the recordation of any claim of lien against the Property for materials supplied or labor or professional services performed on behalf of Purchaser, Purchaser shall promptly satisfy and discharge such lien at Purchaser's sole cost and expense upon demand therefor by Seller.

(c) At Seller's reasonable request, in addition to Purchaser's obligations under Section 3.2(b) above, Purchaser shall promptly provide to Seller a copy of each report, study and governmental notice obtained by Purchaser in connection with its investigation of the Property prior to the Initial Closing, at no cost to Seller. In addition, if the transaction contemplated by this Agreement is not consummated for any reason with respect to any portion of the Property, Purchaser shall deliver to Seller free of charge all of the engineering and architectural studies, drawings, reports, surveys and similar materials prepared by or on behalf of Purchaser respecting the physical condition or proposed development of such Property to the extent Purchaser is not otherwise prohibited by law from doing so. Notwithstanding the foregoing, Purchaser shall not be required to provide Seller with copies of any such materials that concern matters reasonably considered confidential by Purchaser.

(d) In order to determine the existence or presence of any Hazardous Materials (as defined in Section 3.4 below) in or about the Property (except the Phased Closing Property), Purchaser shall have the right to conduct such studies, evaluations, audits or surveys as Purchaser deems appropriate, subject to the limitations below. The "Environmental Due Diligence Period" for the Initial Closing Property (exclusive of the Phased Closing Property) shall commence on the date of execution of this Agreement and end three days prior to the Initial Closing. Other environmental inspections of the Property shall be governed by other agreements between the parties as contemplated herein, and, with respect to Phased Closing Property, in accordance with the terms of Section 5.4. The environmental investigations and the "Environmental Due Diligence Period" for the Phased Closing Property shall be as set forth in Section 5.4, below.

(e) Purchaser shall have until the expiration of the Environmental Due Diligence Period to terminate this Agreement if (i) information obtained during the Due

Diligence Period identifies Hazardous Materials (as defined in Section 3.4) below Action Levels (as defined in Section 3.3(c)) or for which no Action Levels have been determined affecting the Initial Closing Property (exclusive of the Phased Closing Property) that have a material and adverse effect on Purchaser's valuation of the Initial Closing Property and (ii) Seller has refused to enter into an Environmental Remediation Agreement (as defined in Section 3.3(d)(iii)) with terms regarding remediation of such Hazardous Materials that are satisfactory to Purchaser. This provision does not impair Seller's obligation to enter into an Environmental Remediation Agreement at the Initial Closing for Hazardous Materials present on the Initial Closing Property at or above Action Levels.

(f) Purchaser's termination of this Agreement shall not relieve Purchaser from any liability for any damages incurred by Seller or Cal Northern by reason of a breach by Purchaser of any of the terms of this Section 3.2.

3.3 Remediation. (a) Seller has caused Consultant to conduct certain investigations and analyses of the environmental condition of the Initial Closing Property (exclusive of the Phased Closing Property) ("Phase II Investigation") in accordance with a plan of investigation and environmental assessment prepared by Consultant dated September 23, 1994, as amended by letter agreement from Consultant, dated March 30, 1995 (the "Phase II Plan"). A written report of the results of such investigation of such Initial Closing Property has been prepared by Consultant (the "Phase II Report").

(b) Immediately after the execution of this Agreement and payment of one-half of the costs of the Phase II Investigation and Report by Purchaser (or the JPA), Seller shall cause Consultant to deliver a copy of the Phase II Report to Purchaser and Consultant will confirm to Purchaser that the work required by the Phase II Plan has been completed in a manner

consistent with good environmental engineering practices. Thereafter, Consultant shall cooperate fully with Purchaser in reviewing the physical and environmental condition of the Initial Closing Property (exclusive of the Phased Closing Property) and the manner, means, results, assumptions and other factors used or applied by Consultant in completing the Phase II Investigation and the Phase II Report. The cost of such consultation and review shall be shared equally by Seller and Purchaser. As between Purchaser and Seller, upon the delivery of the Phase II Report, no privilege or claim of confidentiality shall apply with respect to the work completed or to be completed by Consultant in connection with such Initial Closing Property, and there shall be no impairment of the Consultant's duty of candor and good faith to both parties respecting the environmental and physical condition of such Initial Closing Property.

(c) If the Phase II Report reveals the presence of Hazardous Materials on any parcel of the Initial Closing Property (exclusive of the Phased Closing Property), Consultant shall provide its written evaluation of whether such contamination is at or above "Action Levels." An "Action Level" shall mean the level (whether due to volume, concentration, toxicity or other characteristic of Hazardous Materials) at which the federal, state or local governmental agencies with jurisdiction over the environmental condition of the Property ("Agencies") require further investigation, removal or remedial action, using a standard for setting clean-up levels based upon property uses consistent with the existing uses of the affected parcel (e.g., industrial, commercial or rail corridor uses). Notwithstanding the foregoing, if Seller and/or Purchaser disagrees with Consultant's determination of the appropriate Action Levels, or if Agency determination is required for funding the acquisition of the Property, then the determination of Action Levels shall be based upon consultation and negotiation with the Agencies by the parties (or their designees) and Consultant. Seller or Purchaser may elect to determine Action Levels in

such a manner by providing written notice of such election to Consultant and the other party within 30 days after receipt of Consultant's determination of Action Levels.

For such parcels of the Initial Closing Property which were the subject of the Phase II Investigation, but for which testing of the soil or groundwater was not done, or where the results of the tests did not identify detectable levels of Hazardous Materials, Consultant shall specify whether or not Consultant, in the exercise of its professional judgment, recommends any further or supplemental investigation ("Supplemental Investigation").

Where the Consultant recommends a Supplemental Investigation of the Initial Closing Property (exclusive of the Phased Closing Property), it shall be expediently commenced and concluded. If as a result of such Supplemental Investigation, Hazardous Materials are discovered, Consultant shall determine if such materials are at or above Action Levels (in accordance with the procedure provided above in this Section 3.3(c)).

(d) If the Consultant (or, if applicable, an Agency) determines that Hazardous Materials are at or above Action Levels on one or more parcels of the Initial Closing Property (exclusive of the Phased Closing Property), the following procedure shall apply:

(i) (A) within 10 business days after the determination by the Consultant that the contamination of such Property is at or above Action Levels, Seller shall use diligent efforts to cause Consultant to complete such additional sampling and analysis, if any, as is necessary for Consultant to estimate the nature and extent of such contamination and all environmental work necessary to achieve Closure (as defined in this subsection (i)), and (B) within 15 days after Consultant has completed its analysis, Consultant shall deliver to the parties a detailed work plan together with a schedule for completion, which Consultant will confirm has been prepared in accordance with good environmental engineering practices (the "Proposed

Remediation Program"). "Closure" shall mean that the affected parcel has been adequately investigated and/or remediated such that, under applicable laws and regulations, no further action (whether investigation, characterization, removal, response, remediation or any other action) is required by the Agencies with respect to the presence of Hazardous Materials on the affected parcel of the Property;

(ii) All further investigation, characterization, removal, response, remediation or any other action required by the Agencies to achieve Closure shall be diligently undertaken and completed by Seller at its sole cost;

(iii) At the Initial Closing the parties shall enter into a mutually acceptable environmental remediation agreement (the "Environmental Remediation Agreement") which shall incorporate the Proposed Remediation Program provided the same has been approved by Purchaser and Seller, which approvals shall not be unreasonably withheld; and

(iv) After the Closing, Seller shall timely undertake the action specified in the Environmental Remediation Agreement to achieve Closure for each affected parcel (the "Remedial Work"), and shall engage Consultant or some other third party reasonably acceptable to Purchaser to complete the Remedial Work for each affected parcel of the Initial Closing Property. In connection with its obligations under the Environmental Remediation Agreement, Seller shall have a right of access to the Property as provided under the terms of the Environmental Indemnity Agreement.

(e) Should Purchaser in good faith disagree with Consultant's determination that the Agencies would deem the completed Remedial Work sufficient to achieve Closure or if such is required by the California Transportation Commission or by any successor agencies (hereinafter, collectively, the "CTC") pursuant to its funding authority, Purchaser may require



that Seller obtain the written agreement of the Agencies that no further work is required for any affected portion of the Initial Closing Property (exclusive of the Phased Closing Property).

Should Seller disagree with Consultant's determination that the completed Remedial Work is not sufficient to achieve Closure, Seller may seek to obtain the written agreement of the Agencies that no further work is required for any affected portion of the Initial Closing Property (exclusive of the Phased Closing Property). Upon the parties' receipt of satisfactory evidence that the Agencies require no further action whatsoever for a parcel identified pursuant to Section 3.3(d)(i), it shall be conclusively established that Closure has occurred with respect to such parcel for purposes of this Agreement.

(f) If Consultant determines that no further environmental due diligence work is warranted beyond the Phase II Investigation, Purchaser may nevertheless, at its own expense, require such supplemental environmental investigations ("Supplemental Investigations") as it deems appropriate in its reasonable judgment. If as a result of such Supplemental Investigation, Hazardous Materials at or above Action Levels are discovered, Seller shall thereafter proceed as set forth in Subsection 3.3(d), above.

3.4 Hazardous Materials-Definition. For the purposes of this Section 3, the term "Hazardous Material" shall mean: (i) any substances defined, regulated or listed (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; (B) the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq.; (C) the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (D) the Clean Water Act, 33 U.S.C. §1251 et seq.; (E) California Health and Safety

Code §§25115-25117, 25249.5, 25249.8, 25281, and 25316; (F) the Clean Air Act, 42 U.S.C. §7901 et seq.; and (G) California Water Code §13050; (ii) any amendments to such enumerated statutes or acts; and (iii) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated as of the Closing Date under any other applicable federal, state or local environmental laws, including, without limitation, friable asbestos, polychlorinated biphenyls, petroleum (or any fraction thereof), natural gas and synthetic fuel products and byproducts.

#### **ARTICLE 4: REPRESENTATIONS AND WARRANTIES**

4.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser as follows:

- (a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.
- (b) Seller has taken all corporate action necessary to authorize the execution and delivery of this Agreement by it and the performance of its obligations hereunder.
- (c) This Agreement and all documents contemplated hereby have been or will be duly authorized and executed (and acknowledged where necessary) on behalf of Seller, and all other necessary actions have been taken, so that this Agreement and all documents contemplated herein shall constitute legal, valid and binding obligations of Seller enforceable in accordance with their terms.

(d) The execution and performance of this Agreement and the documents contemplated hereby do not violate and are not restricted by any other agreement, contractual obligation, court order or law to which Seller is a party or by which Seller is bound.

(e) Except as set forth on Exhibit G, (i) Seller has not received any notice of any existing or threatened condemnation, material violation of law (including, without limitation, environmental law), or other legal action of any kind involving the Property to any material and adverse extent, and (ii) there is no pending or, to the actual knowledge of Seller, threatened, litigation, administrative action, governmental investigation or examination, claim, or demand (including, but not limited to, environmental investigations, examinations, claims and demands) whatsoever relating to the Property which materially and adversely would affect Purchaser's contemplated use thereof.

(f) To the best of Seller's knowledge, there is no material violation by any party of those Leases listed on Exhibit H except as set forth on Exhibit I (the Cal Northern Lease and the Leases listed on Exhibit H shall collectively be referred to as the "Material Leases").

(g) To Seller's best knowledge, no tenant or other third party has any agreement or right senior to Purchaser's to purchase all or any part of the Property.

(h) Seller shall promptly notify Purchaser in writing if any of the foregoing representations and warranties becomes untrue in any material respect prior to the Closing Date. In such event, Purchaser may elect to (i) terminate this Agreement or (ii) purchase the Property and enforce any remedy it may have at law or in equity against Seller.

4.2 Purchaser's Representations and Warranties. As of the date of this Agreement and as of the Closing, Purchaser represents and warrants as follows:

(a) Purchaser has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) Purchaser has taken all action necessary to authorize the execution and delivery of this Agreement by it and the performance of its obligations hereunder.

(c) This Agreement and all documents contemplated hereby have been or will be duly authorized and executed (and acknowledged where necessary) on behalf of Purchaser, and all other necessary actions have been taken, so that this Agreement and all documents contemplated herein shall constitute legal, valid and binding obligations of Purchaser, enforceable in accordance with their terms.

(d) The execution and performance of this Agreement and the documents contemplated hereby do not violate and are not restricted by any other agreement, contractual obligation, court order or law to which Purchaser is a party or by which Purchaser is bound.

(e) This transaction does not require the filing of a parcel map under the provisions of the Subdivision Map Act division of the California Government Code because it constitutes a conveyance to a governmental agency or public entity, and no showing has been made under Section 66428 of such Act that public policy necessitates that a parcel map be filed in connection with this transaction.

(f) Purchaser shall promptly notify Seller in writing if any of the foregoing representations and warranties becomes untrue in any material respect prior to the Closing Date. In such event, Seller may elect to (i) terminate this Agreement or (ii) sell the Property to Purchaser and enforce any remedy it may have at law or in equity against Purchaser.

4.3 Pre-Closing Covenants of Seller. Following the execution of this Agreement and until the Initial Closing Date, Seller shall, or, as applicable, Seller shall cause Cal Northern to:

(a) conduct its business involving the Property in the ordinary course consistent with past operations of the Property; (b) continue to enforce the Cal Northern Lease in all material respects, (c) at Purchaser's request, require Cal Northern to remove debris from the Property in accordance with the terms of the Cal Northern Lease; (d) not materially alter or remove any of the Improvements except in accordance with the Cal Northern Lease; (e) not cancel, terminate or modify any Material Lease in any material way adverse to the lessor's interest (except in accordance with and as required by the provisions of any such Material Lease) without Purchaser's prior written consent, which shall not be unreasonably withheld, nor enter into new leases without Purchaser's prior written consent, which shall not be unreasonably withheld, unless such leases are for month-to-month tenancies and are on terms equivalent to or better than (from Lessor's perspective) existing leases of similar space; (f) pay all taxes and assessments affecting the Property prior to the date such taxes and assessments are legally due; (g) comply with all material terms, conditions and provisions of the Material Leases; and (h) not materially and adversely encumber or permit to be encumbered any part of the Property, or otherwise impair the state of title to the Property.

4.4 Pre-Closing Covenant of Purchaser. Following the execution of this Agreement, Purchaser shall use its best efforts to obtain funds sufficient to perform its obligations hereunder in a timely manner and shall keep Seller informed with respect to such matters on a frequent basis.

## **ARTICLE 5: CLOSING**

5.1 Closing. The closing(s) of the transactions contemplated by this Agreement (each, a "Closing") shall occur at the offices of Hanson, Bridgett, Marcus, Vlahos & Rudy, 333

Market Street, Suite 2300, San Francisco, California 94105-2173, at 10:00 a.m. The Closing of the Initial Closing Property ("Initial Closing") shall occur on or before April 30, 1996 (the "Initial Closing Date") and the Closings for the Phased Closing Properties shall occur as provided in accordance with Section 5.4 below (each a "Phased Closing").

5.2 Conditions Precedent to the Initial Closing. (a) Purchaser shall have no obligation to close on the Initial Closing Property unless each of the following conditions has occurred on or before the Initial Closing Date or such condition has been waived in writing by Purchaser:

(i) Seller shall have delivered to Purchaser (A) a copy of each material Lease, Map, and provided Purchaser shall have paid one-half of the cost of the Phase II Plan, Seller shall also have delivered the Environmental Reports, (B) to the extent in Seller's possession or control, a true and correct copy of each instrument reasonably requested by Purchaser creating or evidencing any Defeasible Fee Interest or Easement Interest that is part of such Property, (C) a true and correct copy of each Other Agreement that may have a material effect on Purchaser's Rail Uses;

(ii) Seller's representations and warranties shall be true and correct in all material respects as of the Initial Closing;

(iii) Purchaser shall be reasonably satisfied that the Title Company is committed to issuing a CLTA owner's form of title policy for the Initial Closing Property, and a commitment to insure title to the Phased Closing Property at the Phased Closing in form reasonably satisfactory to Purchaser, together with such endorsements as Purchaser reasonably deems necessary or appropriate, with coverage in the face amount of the Purchase Price applicable to each such portion of the Property, with title insured on the basis of legal

descriptions approved as provided in this Agreement, and showing title to the Initial Closing Property being conveyed by grant deed as vested in Purchaser subject only to the Permitted Exceptions and the Retained Rights;

(iv) Seller shall have duly performed in all material respects each of its covenants and obligations to be performed prior to the Initial Closing, including those under Section 5.3, below;

(v) the JPA closes on its acquisition of the Healdsburg and Lombard Segments simultaneously with the Initial Closing;

(vi) Purchaser shall have secured sufficient funding to perform its obligations hereunder;

(vii) timely filings with the Surface Transportation Board shall have been made to permit the Closing and (A) either (1) the Surface Transportation Board shall have approved or exempted Purchaser's acquisition of the Property, or (2) the time period specified in the applicable statute and regulations for determining the effective date of a Notice of Exemption shall have elapsed without any petition to revoke being filed by or at the Surface Transportation Board, and the Surface Transportation Board shall not have revoked any such exemption, and (B) no stay order with respect to the proposed transaction shall have been issued by the Surface Transportation Board or any court with proper jurisdiction;

(viii) Purchaser, Seller, the JPA and Cal Northern shall have entered into agreements with terms reasonably acceptable to Purchaser, relating to the transfer from Cal Northern to Purchaser of the freight rail rights over the NWP Line; and

(ix) Purchaser and the JPA shall have entered into an agreement for the conveyance of an easement to Purchaser over the Healdsburg and Lombard Segments and providing terms regarding the rights and obligations of Purchaser with respect thereto.

(b) Seller shall have no obligation to close on the Initial Closing Property unless each of the following conditions has been fulfilled or waived by Seller in writing on or before the Initial Closing Date:

(i) Purchaser shall have duly performed in all material respects each of its covenants and obligations to be performed prior to the Initial Closing, including those under Section 5.3 below;

(ii) Purchaser's representations and warranties shall remain true and correct in all material respects as of the Initial Closing;

(iii) Purchaser shall have secured sufficient funding to perform its obligations hereunder;

(iv) timely filings with the Surface Transportation Board shall have been made to permit the Closing and (A) either (1) the Surface Transportation Board shall have approved or exempted Purchaser's acquisition of the Property, or (2) the time period specified in the applicable statute and regulations for determining the effective date of a Notice of Exemption shall have elapsed without any petition to revoke being filed by or at the Surface Transportation Board, and the Surface Transportation Board shall not have revoked any such exemption, and (B) no stay order with respect to the proposed transaction shall have been issued by the Surface Transportation Board or any court with proper jurisdiction;

(v) Seller shall have approved the legal descriptions for the Property, which approval shall not be unreasonably withheld;



(vi) all conditions precedent to the closing of the transaction contemplated by the Healdsburg Agreement shall have been met or waived and the closing of such transaction shall occur simultaneously with the Initial Closing; and

(vii) Purchaser, Seller, the JPA and Cal Northern shall have entered into agreements, with terms reasonably acceptable to Seller, relating to the transfer from Cal Northern to Purchaser of the freight rail rights over the NWP Line.

5.3 Closing Obligations of the Parties. The party so designated shall perform each of the following at the Initial Closing, each such performance being a condition precedent to the others but all being deemed to have occurred simultaneously (and all documents shall be in form and substance reasonably acceptable to Seller and Purchaser):

(a) Seller shall execute and deliver to Purchaser the following:

(i) grant deeds in the form of Exhibit J conveying to Purchaser title to that portion of the Initial Closing Property (other than the Phased Closing Property) currently held by Seller in fee simple (as identified in the Title Reports), and to that portion of the Initial Closing Property currently held by Seller by right of easement (as identified in the Title Reports), subject to the Permitted Exceptions and reserving to Seller the Retained Rights;

(ii) Surface Easement Agreements conveying to Purchaser surface easements over each of the Phased Closing Properties (except Willits Yard);

(iii) quitclaim deeds in the form of Exhibit K, quitclaiming to Purchaser all of Seller's right, title and interest to the portion of the Initial Closing Property (other than the Phased Closing Property) currently held by Seller under color of title, reserving to Seller the Retained Rights;

- (iv) the Willits Yard Surface Easement Agreement conveying to Purchaser a surface easement over the Willits Yard;
- (v) a bill of sale for the Improvements located on Willits Yard in the form of Exhibit L (the "Willits Yard Bill of Sale");
- (vi) an assignment and assumption agreement conveying to Purchaser all of Seller's interests in and to the Leases and Other Agreements (the "Assignment and Assumption Agreement");
- (vii) the Fiber Optics Easement Agreement in the form of Exhibit M;
- (viii) the original Leases, Other Agreements and any assignments thereof, and any security deposits and prepaid rents made by tenants under the Leases for periods occurring after the Closing;
- (ix) the Environmental Remediation Agreement (if applicable);
- (x) a certificate of the Secretary of State of Delaware, dated not earlier than 60 days prior to the Closing, showing that the Seller is a validly existing corporation and in good standing under the laws of such state;
- (xi) a certificate setting forth the officer(s) of Seller authorized to execute and deliver the closing documents certified by Seller's secretary;
- (xii) notices to all tenants under the Leases of the transfer of ownership of the Property being conveyed;
- (xiii) an affidavit of Seller stating that Seller is not a foreign person in compliance with the requirements pursuant to Section 1445 of the Internal Revenue Code;
- (xiv) an Environmental Indemnity Agreement in the form of Exhibit N;
- (xv) assignments of existing State Land Commission permits, if any;

(xvi) an opinion of Seller's in-house legal counsel that the documents to be delivered by Seller pursuant to this Agreement have been duly authorized by Seller, and that this Agreement and its related documents are the valid, binding and enforceable obligations of Seller;

(xvii) the EDD Agreement (as defined in Section 5.4(a));

(xviii) the certificate described in Section 1.5(d)(i) or (ii) of the Healdsburg Agreement;

(xix) the Cal Northern Partial Assignment;

(xx) the agreements relating to the transfer from Cal Northern to Purchaser of the freight rail rights over the NWP Line; and

(xxi) such affidavits and other documents as may be reasonably required or requested by Purchaser to effect the consummation of the transactions contemplated hereby.

(b) Purchaser shall execute and deliver, or cause to be executed and delivered to Seller the following:

(i) the Purchase Price by wire transfer of funds or other immediately available funds, adjusted or allocated pursuant to Sections 1.3 and 1.4;

(ii) executed acceptances of all deeds and easement agreements;

(iii) countersigned copies of the Willits Yard Surface Easement Agreement, the Willits Yard Bill of Sale, the EDD Agreement, the Assignment and Assumption Agreement, the Fiber Optics Easement Agreement, the Environmental Remediation Agreement (if applicable), the Environmental Indemnity Agreement and the Cal Northern Partial Assignment;

(iv) an opinion of Purchaser's legal counsel that (A) the documents to be delivered by Purchaser pursuant to this Agreement have been duly authorized by Purchaser; (B) that this Agreement and such documents are the valid, binding and enforceable obligations of Purchaser, subject to insolvency and other standard qualifications; (C) that Purchaser has the power of eminent domain and (D) the proposed conveyance of the Property does not require the filing of a parcel map under the Subdivision Map Act;

(v) documents to support Seller's filings with taxing authorities, as described in Section 1.4(a);

(vi) change of ownership report(s);

(vii) the agreements relating to the transfer from Cal Northern to Purchaser of the freight rail rights over the NWP Line; and

(viii) such affidavits and other documents as may be reasonably required or requested by Seller to effect the consummation of the transactions contemplated hereby.

(c) Purchaser and Seller shall each execute settlement statements showing adjustments to the Purchase Price .

(d) Unless otherwise expressly provided in this Agreement or any related closing documents, at the Initial Closing, Seller shall surrender possession of the Initial Closing Property, surrender possession of the Phased Closing Property (except the Willits Yard) in accordance with the respective Surface Easement Agreement, and surrender possession of the Willits Yard in accordance with the Willits Yard Surface Easement Agreement.

5.4 Closings for Phased Closing Properties. Anything to the contrary contained within this Section 5.4 notwithstanding, all of the provisions of this Section 5.4 are subject to terms, conditions and limitations set forth in Subsection 5.4(b) herein. The Closing for each of

the Phased Closing Properties shall proceed on a seriatim basis at such time as either: (i) such Phased Closing Property has been adequately investigated and/or remediated to the point of Closure as determined by Consultant or, upon election by either Seller or Purchaser, as determined in writing by the Agencies after consultation and negotiation with Seller (or its designee) and Consultant, or (ii) Consultant has confirmed in writing to Purchaser that it has completed its environmental investigation in accordance with good environmental engineering standards and determined that there is no evidence that Hazardous Materials at or above Action Levels are currently present on the particular Phased Closing Property (the satisfaction of (i) or (ii) above shall hereafter be referred to as "Environmental Readiness").

(a) Purchaser and Seller shall cause Consultant to perform a Phase II environmental study of each of the Phased Closing Properties (the "Phase II Work"), which shall be conducted in accordance with Consultant's reasonable recommendations and consistent with good environmental engineering practices and in accordance with an environmental due diligence agreement (the "EDD Agreement") to be entered into by the parties prior to the Initial Closing. Purchaser and Seller shall share equally in the cost of the Phase II Work. Consultant shall first commence the Phase II Work on the "Phased Closing Property" under the Healdsburg Agreement. The parties acknowledge that Phase II Work shall be commenced on (1) Santa Rosa within six months after the Initial Closing, and shall be commenced on the next Phased Closing Property approximately every six months thereafter in the following order: (2) Petaluma, (3) Healdsburg, and (4) Fulton. Phase II Work to be performed on the Phased Closing Properties described in this Agreement shall be conducted beginning six months after Phase II Work on the last of the Healdsburg Phased Closing Properties is commenced. Phase II Work on the Phased Closing Properties shall be conducted hereunder in the following order: (5) Calpella, (6) Willits

Yard, (7) Ukiah, and (8) Laughlin. Such work shall be completed in each instance within the time frame described in the EDD Agreement to be entered into by the parties prior to the Initial Closing.

(b) Upon 30 days' written notice to Seller and Consultant prior to commencement of Phase II Work on the next Phased Closing Property, Purchaser may in its reasonable discretion revise the order in which the Phase II Work for the remaining Phased Closing Properties shall be completed under this Agreement and, if agreed upon by JPA, under the Healdsburg Agreement. Phase II Work shall not, however, be reordered to provide that Phase II Work is begun on Willits Yard prior to commencement of Phase II Work on five other Phased Closing Properties (both hereunder and under the Healdsburg Agreement) (i.e., Willits Yard may only be reordered to be the seventh or eighth Phased Closing Property upon which Phase II Work is commenced).

Notwithstanding anything to the contrary contained herein, Seller's obligation to commence or perform Phase II Work and/or Remedial Work on Phased Closing Properties shall be subject to the "3 Property Limitation." The "3 Property Limitation" shall mean that: (i) Seller shall not be required by this Agreement to commence or perform Phase II Work and/or Remedial Work (as defined in Section 5.4(f)(iv)) on more than three Phased Closing Properties at any one time (including the "Phased Closing Properties" under the Healdsburg Agreement), so that until a Phased Closing has occurred (pursuant to Section 5.6 below) on at least one Phased Closing Property, Seller shall have no obligation to commence Phase II Work on a fourth or subsequent Phased Closing Property, and (ii) Seller shall not be required to initiate Phase II Work on more than one Phased Closing Property every six months (including the "Phased Closing Properties" under the Healdsburg Agreement). The 3 Property Limitation shall not apply and Seller shall

commence Phase II work on a fourth or subsequent Phased Closing Property if (x) it has been more than three years since commencement of Phase II Work on a particular Phased Closing Property and (y) the estimated costs for achieving Closure for such parcel are less than \$110,000 per year.

The parties acknowledge that the order and timing of Phase II Work and Remedial Work on the Phased Closing Properties may be altered and amended by Agency requirements, and if an Agency requests that Seller commence Phase II Work or Remedial Work on a Phased Closing Property, the commencement and diligent pursuit of such work by Seller (consistent with the standards set forth for such work had it been initiated pursuant to Purchaser's designation under Section 5.4) shall fulfill Seller's obligation under Subsection 5.4(a) to "commence work on the next Phased Closing Property" for the next succeeding six-month period, and Seller's obligation to commence Phase II Work or Remedial Work on subsequent Phased Closing Properties shall be preempted and delayed accordingly.

(c) On or before commencement of Phase II Work on a particular Phased Closing Property, Seller and Purchaser shall enter into a right of entry agreement for such parcel, substantially in the form of the Right-of-Entry Agreement.

(d) Promptly upon completion thereof, and in no event later than six months after commencement of Phase II Work on a particular Phased Closing Property, Consultant shall prepare a written report of the results of such Phase II Work (the "Phase II Report") on behalf of Seller and Purchaser. Once Phase II Work has begun, no privilege or claim of confidentiality shall apply between Purchaser and Seller with respect to Phase II Work undertaken or completed by Consultant on a particular Phased Closing Property, and Consultant shall have a duty of candor and good faith to both parties regarding the environmental and physical condition of such

Phased Closing Property. Purchaser shall, however, keep the results of such Phase II Report confidential to the extent not inconsistent with applicable laws, rules and regulations or any obligations imposed by the funding requirements for acquisition of the Property or by Purchaser's organizational documents. Consultant shall affirm to the parties that the Phase II Work and the Phase II Report were performed, prepared and completed in accordance with the EDD Agreement, as such may be amended from time to time by mutual agreement of the parties.

(e) If Consultant recommends that additional investigation be conducted in accordance with good environmental engineering practices, then such work shall promptly be performed as additional Phase II Work and the results of such additional Phase II Work shall be included in the Phase II Report.

(f) If the Phase II Report reveals the presence of Hazardous Materials on a Phased Closing Property, then Consultant shall provide its written evaluation of whether Hazardous Materials are present at or above Action Levels for such Phased Closing Property. If Consultant determines that Hazardous Materials are present at or above Action Levels for a particular Phased Closing Property, then the following procedure shall apply:

(i) (A) Within 10 business days after Consultant's determination that Hazardous Materials are at or above Action Levels, Consultant shall, at Seller's sole cost, use diligent efforts to complete such additional sampling and analysis, if any, as is necessary for Consultant to estimate the nature and extent of such contamination and the total costs of completing all environmental work necessary to achieve Closure of such parcel ("Estimated Closure Costs") and (B) within 15 days after Consultant has completed its analysis, Consultant shall deliver to the parties a detailed work plan, a budget, a schedule for completion and the Estimated Closure Costs (collectively, the Proposed Remediation Program"), which Consultant



shall confirm has been prepared in accordance with good environmental engineering practices.

The Proposed Remediation Program shall be designed to achieve Closure for the affected parcel and shall be subject to the approvals of Seller and Purchaser, which approvals shall not be unreasonably withheld or delayed.

(ii) Seller shall, at its sole cost and expense, cause the Proposed Remediation Program and all further investigation, characterization, removal, response or remediation necessary to achieve Closure on such parcel to be diligently undertaken and completed;

(iii) If the Estimated Closure Costs for a particular Phased Closing Property exceed \$200,000, then 100 percent of the Estimated Closure Costs for such parcel shall be allocated from the escrowed amount for such Phased Closing Property and shall be segregated from the general escrow account into an interest-bearing account held in trust in accordance with the provisions of this Section 5.4(f) for the benefit of each party ("Remediation Trust Account"). If the Estimated Closure Costs for a particular Phased Closing Property are less than or equal to \$200,000, then no Remediation Trust Account shall be established for such parcel, but funds from the general escrow account that are attributable to the Purchase Price for the fee simple estate in such Phased Closing Property shall be released to Seller at the Phased Closing for such parcel. Interest accrued on funds in the general escrow account and/or the Remediation Trust Account shall be the property of and shall, from time to time, be distributed to Purchaser until such time as Phase II Work shall have commenced on a Phased Closing Property. Upon the commencement of Phase II Work on a particular Phased Closing Property and until the applicable Phased Closing, interest accruing on funds in the Remediation Trust Account for such parcel or on amounts held in the general escrow account that are attributable to the Purchase

Price for the fee simple estate in such Phased Closing Property shall be the property of and shall be distributed, from time to time upon request, to Purchaser and to Seller in equal proportions.

(iv) Seller shall timely and diligently undertake and perform the Proposed Remediation Program for the Phased Closing Properties to completion and to achieve Closure for each parcel containing Hazardous Materials at or above Action Levels (the "Remedial Work"), and shall engage Consultant or some other third party reasonably acceptable to Purchaser to complete the Remedial Work for each affected parcel of the Phased Closing Property.

(v) From time to time Seller shall submit invoices in reasonable detail to Purchaser evidencing the out-of-pocket costs actually incurred by Seller in completing the Remedial Work in connection with the Proposed Remediation Program on a particular Phased Closing Property (including without limitation, Consultants' costs and fees, testing costs, analysis and laboratory costs, permit fees, operating and maintenance costs and monitoring fees). Subject to (vi) below and provided the invoiced costs are within the categories of costs for which Estimated Closure Costs are calculated, within 30 days after each such submission, Seller shall be reimbursed the full amount of such invoices out of the Remediation Trust Account. The Remediation Trust Account shall not, however, be drawn down below \$50,000 (the "Retention Amount") until (A) Consultant confirms in writing to Purchaser that all of the Remedial Work for such parcel has been satisfactorily completed and that Closure has occurred, and (B) Purchaser approves of such a determination, which approval shall not be unreasonably withheld or delayed (provided that Purchaser may withhold its approval pending Agency agreement regarding Closure if such is required by the CTC as provided below). If Purchaser does not object in writing to Consultant's confirmation that Closure has occurred within ten days after

receipt thereof, Consultant's confirmation shall be deemed accepted and approved by Purchaser. Should Purchaser in good faith disagree with Consultant's confirmation that the Agencies would deem the completed Remedial Work to be sufficient to achieve Closure or if required by the CTC pursuant to its funding authority, Purchaser may require that Seller obtain the written agreement of the Agencies that Closure has been achieved for the affected parcel. Upon receipt of evidence of such agreement by the applicable Agency, the Retention Amount shall be promptly released to Seller together with the interest to which Seller is entitled on amounts in the Remediation Trust Account (or one-half of the interest that accrued on funds that were allocated to such Phased Closing Property in the general escrow account).

(vi) On a quarterly basis Consultant shall report in writing on the progress of the Remedial Work and advise Purchaser whether the Remediation Trust Account is sufficient to pay for all Estimated Closure Costs (as such estimate may need to be adjusted from time to time to accurately reflect the costs to achieve Closure) for a particular Phased Closing Property. If Consultant declares a shortfall in the Remediation Trust Account to pay for all required Remedial Work on such Phased Closing Property, Seller shall not be entitled to any further reimbursements from such Remediation Trust Account until such time as the Estimated Closure Costs (as such may be adjusted from time to time) for such parcel are less than or equal to the funds remaining in the Remediation Trust Account.

(g) Nothing herein shall preclude Purchaser from conducting such reasonable inspection activities on any Phased Closing Property, for which Phase II Work has been commenced by Seller, as Purchaser may deem necessary or appropriate, and in accordance with the terms of Seller's right-of-entry permit. If Purchaser desires to conduct such additional testing, however, Purchaser shall bear the entire cost thereof. If such testing reveals Hazardous

Materials at or above Action Levels, Seller shall remediate the contamination at its own cost as provided in Section 5.4(f).

(h) Subject to reimbursement from the Remediation Trust Account as provided herein, Seller shall be responsible for all costs of the Remedial Work. Seller and Purchaser shall each pay one-half of the fees and expenses of the escrow agent in administering the Remediation Trust Accounts.

(i) The Closings for the fee simple estates of each of the Phased Closing Properties shall occur on a date that is not later than 30 days after the date of Environmental Readiness for any such parcel.

(j) Purchaser shall have the right to terminate its obligation to purchase any Phased Closing Property if Seller breaches its obligation under this Section 5.4 to commence Remedial Work on a Phased Closing Property within six months after the date of the final Phase II Report that was prepared for such parcel, by providing written notice to Seller of termination prior to Seller's commencement of Remedial Work on such parcel. Should Purchaser so elect to terminate its right to purchase the fee interest in any Phased Closing Property, the surface easement over such parcel shall automatically terminate unless Purchaser elects to pay to Seller an amount equal to the difference between the fair market value of a perpetual surface easement over such parcel and the amounts paid to Seller at the Initial Closing for the surface easement over such parcel; provided that such amount shall not exceed the total of (i) the amount paid to Seller at the Initial Closing for the surface easement over such parcel, plus (ii) the amount placed in the general escrow account for such parcel at the Initial Closing. If Purchaser elects to terminate hereunder and pays the above-described amount to Seller, the surface easement over such Phased Closing Property shall thereupon become perpetual. Purchaser's remedy provided in

this Section 5.4(j) shall not be exclusive of its other rights and remedies in the event of a breach of Seller's obligation to commence Remedial Work.

5.5 Conditions Precedent to Closing-Phased Closing Properties. Neither party shall have any obligation to close on the transfer of the fee simple estate in any Phased Closing Property unless Environmental Readiness has been achieved.

5.6 Closing Obligations of the Parties- Phased Closing Properties. The following events shall occur at the Closing of the transfer of the fee simple estate in each Phased Closing Property, each being a condition precedent to the others but all being deemed to have occurred simultaneously (and all documents shall be in a form and substance reasonably acceptable to Seller and Purchaser):

(a) Seller shall execute and deliver to Purchaser the documents and other deliverables specified in Section 5.3(a), to the extent applicable to the Phased Closing Property being transferred.

(b) Purchaser shall (i) cause the release to Seller of the remaining funds in the Remediation Trust Account (with remaining interest allocable to Seller) for such Phased Closing Property, (ii) cause the release to Seller of the remaining funds from the general escrow account that are attributable to the Purchase Price for the fee simple estate in such Phased Closing Property (with remaining interest allocable to Seller), and (iii) shall execute and deliver or cause to be delivered to Seller the documents and other deliverables specified in Section 5.3(b) to the extent applicable to the Phased Closing Property being transferred. Remaining interest allocable to Purchaser on funds attributable to the Purchase Price for the fee simple estate in such Phased Closing Property shall be released to Purchaser at such Phased Closing.

The parties agree to deliver the foregoing documents and deliverables into escrow at the Initial Closing under this Agreement to the extent practicable.

#### **ARTICLE 6: RETAINED RIGHTS**

Seller shall reserve from all documents transferring or conveying any interest in the Property and in any applicable agreements between the parties the following, which shall be referred to collectively as the "Retained Rights":

6.1 a perpetual, nonexclusive easement for fiber optics as more particularly described in the Deeds and the Fiber Optics Agreement (the "Fiber Optics Easement").

6.2 all oil, gas and other minerals of whatever kind or character whether now known or hereafter discovered, in and under the Property at a depth of 500 feet or more (and all agreements or leases related thereto), provided however that Seller shall not have a right of surface entry on or from the Property, or the right to remove or impair the lateral or subjacent support of the Property;

6.3 nonexclusive access easements for roadway and remediation purposes at Calpella, SP Milepost 119.9 and Laughlin, SP Milepost 123.9 in the forms attached as Exhibit O;

6.4 a nonexclusive access easement over the Phased Closing Property for the purpose of conducting environmental testing and remediation work thereon in accordance with the terms of this Agreement as more particularly described in the Surface Easement Agreement and the Willits Yard Surface Easement Agreement; and

6.5 the following (collectively, the Retained Agreements):

(a) certain of the "Related Agreements" as provided in Section 1.04 of the Cal Northern Lease; and

- (b) Fiber Optics easements or agreements.

#### ARTICLE 7: CONDITION OF THE PROPERTY

7.1 Investigation. Purchaser acknowledges that prior to each Closing hereunder it will be afforded extensive access to that portion of the Property then being conveyed and to information relating to said Property. Purchaser will continue to have the right to examine documents relating to the Property as provided in Section 3.1 and to make an on-site inspection of the Property as provided in Section 3.2, and will otherwise investigate the Property to Purchaser's satisfaction; provided that Purchaser shall have no right to conduct any environmental inspection or investigation of any of the Phased Closing Properties until the Phase II Investigation (with respect to each such Phased Closing Property) has been commenced in accordance with the terms of this Agreement.

7.2 No Other Warranties by Seller. Purchaser expressly acknowledges that Purchaser is buying the Property in an "as is" condition, that, except as set forth in Section 2.5, Seller is not warranting title to the quitclaim parcels, and that Purchaser is relying on its own inspections and examinations and has not relied on any warranties, promises, understandings or representations, express or implied, of Seller or any agent of Seller relating to the Property, any Lease or any other document relating to the Property, except as otherwise set forth in this Agreement and the agreements and documents to be executed and delivered pursuant to Article 5. Purchaser acknowledges that any and all feasibility or marketing reports, Environmental Reports, engineering studies and other information of any type that Purchaser has received or may receive from Seller or its agents are furnished on the express condition that Purchaser shall make an

independent verification of the accuracy of any and all such information, all such information being furnished without any warranty whatsoever.

7.3 Release of Seller. Purchaser releases Seller, its successors and assigns, and their respective shareholders, officers, directors, agents and employees from all responsibility and liability regarding the condition, valuation or utility of the Property other than that arising out of Seller's obligations expressly and specifically set forth in this Agreement and the agreements to be executed and delivered pursuant to Article 5.

#### **ARTICLE 8: RISK OF LOSS**

If, between the date of this Agreement and the Initial Closing for any portion of the Property, any material part of the Property is damaged or destroyed by fire or other casualty, and such damage or destruction is material in the reasonable judgment of Purchaser, and on condition that such damage or destruction is not covered by Section 1.5(d) of the Healdsburg Agreement, or if any part of the Property is taken in condemnation or under the right of eminent domain (other than by JPA or any member agency of JPA), whether material or not, or proceedings for such taking shall be pending or threatened, Purchaser shall have the right to terminate this Agreement by notice given to Seller within 10 days after receiving notice thereof. Seller shall promptly notify Purchaser of each occurrence of the kind specified above and shall give Purchaser such information relating thereto as Purchaser may thereafter reasonably request. Alternatively, Purchaser may elect to purchase the property so damaged or condemned notwithstanding the damage or taking, (a) without any abatement or diminution of the Purchase Price in the case of a condemnation, in which case Seller shall, at Closing, pay to Purchaser outside of escrow any condemnation awards received by Seller, or (b) in the case of damage or



destruction of the Property that is not covered by Section 1.5(d) of the Healdsburg Agreement:

(i) Seller shall pay to Purchaser at Closing an amount agreed upon by the parties, equal to a reasonable estimate of the costs of repair of such damage or destruction, and such payment shall be the final adjustment on account of such damage or destruction, or (ii) if the parties cannot agree upon such amount prior to Closing, Seller shall pay to Purchaser its estimate of the costs of repair of such damage or destruction at Closing; and thereafter, either party may submit the matter to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the costs of which shall be borne equally by the parties). Agreement as to the amount to be paid on account of damage or destruction (whether by arbitration or otherwise) shall be binding and final. Seller shall be responsible for recovering any applicable insurance proceeds and assumes the risk of any deficiency in insurance proceeds as well as the benefit of any excess in insurance proceeds. Purchaser shall, however, cooperate with Seller in recovering any proceeds or awards attributable to Seller's insurance or pursuant to the Cal Northern Lease.

#### **ARTICLE 9: DEFAULT AND REMEDIES**

9.1 **Remedies.** In the event that Purchaser or Seller fails to perform or comply with any of its obligations or the terms contained in this Agreement, the injured party shall have all rights and remedies available at law or in equity, including damages, specific performance (but only with respect to the conveyance of the Property) and termination of this Agreement, which remedies shall be cumulative and not exclusive, except for circumstances where an exclusive remedy is specified elsewhere in this Agreement.

9.2 Costs of Enforcement. In any action to enforce this Agreement, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, the prevailing party shall also be entitled to collect all its costs in such action, including the costs of investigation, settlement, expert witnesses and reasonable attorneys' fees, together with all additional costs incurred in enforcing or collecting any judgment rendered.

#### **ARTICLE 10: LABOR PROTECTION**

Seller shall be solely responsible for all of its obligations to its employees, whether represented or unrepresented, including such obligations arising out of any federal or state labor law or regulation and all collective bargaining agreements, by and between Seller and any third-party. Seller shall be solely responsible, at its expense, for resolution of any claims or grievances asserted against it and Purchaser with respect to Seller's employees, whether represented or unrepresented, including claims or grievances asserted pursuant to collective bargaining agreements or otherwise. Purchaser does not assume any obligation to Seller's employees or for any collective bargaining agreements by and between Seller and any third party. Seller does not assume any obligation to Purchaser's employees or for any collective bargaining agreements by and between Purchaser and any third party.

#### **ARTICLE 11: MISCELLANEOUS MATTERS**

11.1 Brokers. Seller and Purchaser each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fees arising from the execution of this Agreement or the

closing of the purchase and sale hereunder alleged to be payable because of any act, omission or statement of the indemnifying party.

11.2 Recording. Neither party shall record this Agreement or any memorandum of it, and any such recording shall be a material default hereunder.

11.3 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, or (ii) on receipt, if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Seller:

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105  
Attention: Mr. Robert F. Starzel  
Phone No.: 415-541-1474  
Telecopy No.: 415-541-2098

and

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105  
Attention: Louis Warchot, Esq., Associate  
General Counsel  
Phone No.: 415-541-1754  
Telecopy No.: 415-495-5436

with a copy to:

Holme Roberts & Owen LLC  
1401 Pearl Street, Suite 400  
Boulder, CO 80302  
Attention: Jill K. Rood  
Phone No.: 303-444-5955  
Telecopy No.: 303-444-1063

To Purchaser:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attention: Edward M. McLaughlin  
Phone No.: 704-444-8055  
Telecopy No.: 707-441-1324

with a copy to:

Christopher J. Neary, Esq.  
110 S. Main Street, Suite C  
Willits, CA 95490  
Phone No.: 707-459-5551  
Telecopy No: 707-459-3018

Any party may change its address by giving notice in the manner set forth herein.

11.4 Willits Yard.

(a) Improvements. At the Initial Closing, Seller shall quitclaim to Purchaser the Improvements located on Willits Yard pursuant to the Willits Yard Bill of Sale.

(b) Purchaser shall have the option to require the early closing of the transfer of the fee simple estate in the Willits Yard prior to Environmental Readiness on condition that (i) the remaining Remedial Work required to achieve Closure on Willits Yard is limited to monitoring of groundwater and (ii) the estimated remaining costs for achieving Closure for Willits Yard are less than \$110,000 per year. Purchaser may exercise such option by providing Seller 30 days prior written notice of election to so exercise. Purchaser's exercise of its option to

close early on the Willits Yard shall not otherwise affect Seller's obligation to achieve Environmental Readiness with respect to Willits Yard.

## **ARTICLE 12: DEFINITIONS**

The following capitalized terms are used in this Agreement with the following meanings:

"Action Level" shall have the meaning set forth in Section 3.3(c) of this Agreement.

"Agencies" shall have the meaning set forth in Section 3.3(c) of this Agreement.

"CTC" shall have the meaning set forth in Section 3.3(e) of this Agreement.

"Closing" shall have the meaning set forth in Section 5.1 of this Agreement.

"Closure" shall have the meaning set forth in Section 3.3(d)(ii) of this Agreement.

"Consultant" shall mean Geomatrix Consultants, Inc.

"Defeasible Fee Interests" shall mean those interests in the Property which are subject to a power of termination (as defined in the Marketable Record Title Act), without regard to whether such power of termination is currently enforceable under the Marketable Record Title Act.

"Easement Interests" shall mean that portion of the Property owned by Seller as an easement.

"EDD Agreement" shall have the meaning set forth in Section 5.4(a) of this Agreement.

"Environmental Due Diligence Period" shall have the meaning set forth in Section 3.2(a) of this Agreement.

"Environmental Readiness" shall have the meaning set forth in Section 5.4 of this Agreement.

"Environmental Remediation Agreement" shall have the meaning set forth in Section 3.3(d)(iii) of this Agreement.

"Environmental Reports" shall have the meaning set forth in Section 3.1(a)(ii) of this Agreement.

"Environmental Surveys" shall have the meanings set forth in Section 3.2(d) of this Agreement.

"Escrow Holder" shall mean California Land Title Company, Redding Title Company and/or another willing escrow agent agreed to by both parties.

"Estimated Closure Costs" shall have the meaning set forth in Section 5.4(f)(ii) of this Agreement.

"Fee Interests" shall mean that portion of the Property owned by Seller in fee.

"Fiber Optics Easement" shall have the meaning set forth in Section 6.1(a) of this Agreement.

"Hazardous Materials" shall have the meaning set forth in Section 3.4 of this Agreement.

"Improvements" shall have the meaning set forth in Section 1.1(b) of this Agreement.

"Initial Closing" shall have the meaning set forth in Section 5.1 of this Agreement.

"Initial Closing Date" shall have the meaning set forth in Section 5.1 of this Agreement.

"Initial Closing Property" shall have the meaning set forth in Section 1.2 of this Agreement.

"Leases" shall have the meaning set forth in Section 1.1(c) of this Agreement.

"Limited Fee" shall have the same meaning as "Defeasible Fee Interests" hereunder.

"Maps" shall mean the maps of the Real Estate referenced in Exhibit A hereto and delivered by Seller to Purchaser in accordance with this Agreement.

"Material Leases" shall have the meaning set forth in Section 4.1(f) of this Agreement.

"Operating Property" shall mean that portion of the Right-of-Way within 25 feet on either side of the centerline of the railroad track (as such track is located as of the date of this Agreement).

"Other Agreements" shall have the meaning set forth in Section 1.1(ii)(c) of this Agreement.

"Permitted Exceptions" shall have the meaning set forth in Section 2.1 of this Agreement.

"Phase II Investigation" shall have the meaning set forth in Section 3.3(a) of this Agreement.

"Phase II Plan" shall mean the environmental audit plan for the Property proposed by Consultant and approved by Seller and Purchaser as provided in Section 3.3(a) of this Agreement.

"Phase II Report" shall have the meaning set forth in Sections 3.3(a) and 5.4(d) of this Agreement.

"Phase II Work" shall have the meaning set forth in Section 5.4(a) of this Agreement.

"Phased Closing" shall have the meaning set forth in Section 5.1 of this Agreement.

"Phased Closing Properties" shall mean those portions of the Property described in Exhibit B.

"Phased Property Valuation" shall have the meaning set forth in Section 1.2 of this Agreement.

"Property" shall have the meaning set forth in Section 1.1 of this Agreement.

"Proposed Remediation Program" shall have the meaning set forth in Section 3.3(d)(ii) of this Agreement.

"Public Rights-of-Ways and Tidelands" shall have the meaning set forth in Section 2.4 of this Agreement.

"Purchase Price" shall have the meaning set forth in Section 1.3(a) of this Agreement.

"Purchaser" shall mean the North Coast Railroad Authority, a local agency created by the California legislature.

"Purchaser's Rail Uses" shall have the meaning set forth in Section 2.1(c) of this Agreement.

"Real Estate" shall have the meaning set forth in Section 1.1(a) of this Agreement.

"Related Agreements" shall have the meaning set forth in Section 6.5 of this Agreement.



"Remediation Trust Account" shall have the meaning set forth in Section 5.4(f)(iii) of this Agreement.

"Remedial Work" shall have the meaning set forth in Sections 3.3(d)(iv) and 5.4(f)(iv) of this Agreement.

"Retained Agreements" shall have the meaning set forth in Section 6.5 of this Agreement.

"Retained Rights" shall have the meaning set forth in Section 6 of this Agreement.

"Retention Amount" shall have the meaning set forth in Section 5.4(d)(iii) of this Agreement.

"Right-of-Way" shall have the meaning set forth in Section 1.1(a) of this Agreement.

"Seller" shall mean Southern Pacific Transportation Company, a Delaware corporation.

"Supplemental Investigation" shall have the meaning set forth in Section 3.3(c) of this Agreement.

"3 Property Limitation" shall have the meaning set forth in Section 5.4(b) of this Agreement.

"Title Company" shall mean California Land Title Company and/or Redding Title Company.

"Title Defect" shall have the meaning set forth in Section 2.2(a) of this Agreement.

"Title Policy" shall have the meaning set forth in Section 2.5 of this Agreement.

"Title Reports" shall have the meaning set forth in Section 2.1(b) of this Agreement.

"Willits Yard" shall have the meaning set forth in Section 1.2 of this Agreement.

"Willits Yard Surface Easement" shall have the meaning set forth in Section 1.2 of this Agreement.

### **ARTICLE 13: INTERPRETATION OF AGREEMENT**

13.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California as applied to contracts and performed entirely in California without regard to conflict of law provisions.

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

13.3 **Saturdays, Sundays and Holidays.** If any payment or delivery of any document is required pursuant to any term of this Agreement to be made on a date which falls on a Saturday, Sunday or legal holiday in the State of California, such payment or delivery shall be made on the first business day following such Saturday, Sunday or legal holiday.

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

13.5 **Effect of Agreement.** All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Agreement, the Healdsburg Agreement, and agreements entered into pursuant to such agreements. This

instrument, together with the Healdsburg Agreement and such related agreements, set forth the entire agreement between the parties. No provision of this Agreement shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be charged with such amendment, revocation or waiver. Subject to the provisions of Section 13.9, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

13.6 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.

13.7 Survival. The following provisions shall survive the Closing: Sections 2, 3.3, 4, 5.4, 6, 7, 8, 9, 10, and 11.

13.8 Time. Time is of the essence to this Agreement. If any of the conditions or obligations in this Agreement are not timely met by Purchaser or Seller (including but not limited to tendering funds and signing of closing documents on or before the Closing Date), then Purchaser or Seller, as the case may be, shall be deemed to be in default hereunder, and the non-defaulting party may, at its option, exercise its rights under Article 9.

13.9 Restriction on Assignment. Purchaser may not assign its rights under this Agreement to any other party other than the JPA without the prior written consent of the Seller.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it as of this day and year first above written.

13.10 Exhibits. The Exhibits attached to this Agreement are a part of this Agreement and are incorporated herein by this reference.

**SELLER:**

**SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a Delaware corporation**

By: Michael D. Ongath  
Title: Vice President

**PURCHASER:**

**NORTH COAST RAILROAD AUTHORITY, a  
local agency created by the California legislature**

By: [Signature]  
Title: [Signature]

By: \_\_\_\_\_  
Title: X

**APPROVED AS TO FORM:**

[Signature]

**EXHIBIT A**

**WILLITS SEGMENT**

**Healdsburg - Outlet**

NWP M.P. 68.22 (at Mill Street) - M.P. 142.5

All those parcels on NWP Val. Sec. 2, Map Nos. 12-30, excepting Parcel No. 377 of Map 20, and Parcel Nos. 480 and 496 of Map 26, and including all those parcels on NWP Val. Sec. 3, Map No. 1.

The above-described parcels are shown on the set of railroad valuation maps provided by Southern Pacific Transportation Company, initialled and dated April 5, 1995 by Austin D. Ward, County of Marin Real Estate Department, L.H. Phipps, Southern Pacific Transportation Company, and John H. Williams, North Coast Railroad Authority. These maps are on file with the North Coast Railroad Authority, 4 West Second Street, Eureka, California 95501.

**EXHIBIT B**

**PHASED CLOSING PROPERTY**

Please refer to the attached Maps delineating the Phased Closing Properties as follows:

<u>Page #</u>	<u>Property</u>
B-2 and B-3	Ukiah
B-4	Calpella
B-5	Laughlin
B-6	Willits Yard

MASON STREET

114

CLAY STREET

PERKINS STREET

LESLIE STREET

Earl's Auto and Tire

110' x 24' parcel on adjacent parcel

Ukiah Recycle and Salvage

Automotive Service Center

Ukiah Gas Company

Ukiah Oil Company

Shell Oil of Calif.

Continental Petroleum Corporation

EXPLANATION  
Indicates historical leach which no surface feature were observed

Monitoring well, installed November 1989

NWPRR milepost

Property boundary

0 100 Feet

UKIAH STATION (SOUTH)  
Northwestern Pacific Railroad  
Mendocino County, California



Project No. 2153

Baker Beverage Distributor (former freight station)

Passenger's station

Sandercock & Dawson tank platform

5.754 Acres

PHASED CLOSING PARCEL

Debris and soil pile

Area of recent surface scraping or excavation activity

100' x 110' house

140' x 110' house

Motor car house

80-foot diameter vaultable

Oil sump

24-foot diameter oil tank

Oil column

10' square drain sump

24' x 11' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

10' x 10' house

Surface staining observed

Gas and hydrocarbon emissions

MW-8

3 - 10' to 100' diameter tanks

Ukiah Gas Company

Ukiah Oil Company

Shell Oil of Calif.

Continental Petroleum Corporation

Ukiah Recycle and Salvage

Automotive Service Center

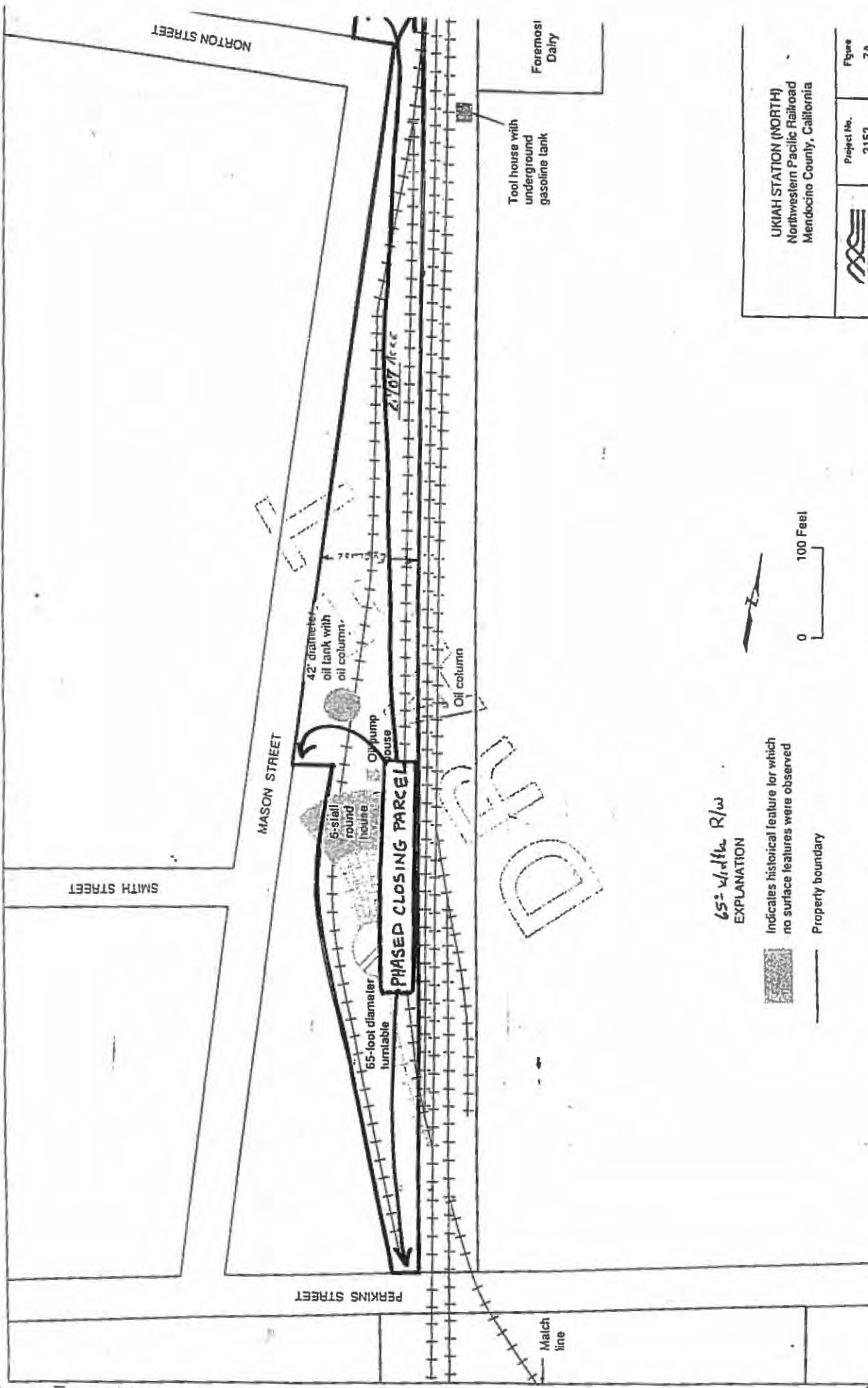
Ukiah Gas Company

Ukiah Oil Company

Shell Oil of Calif.

Continental Petroleum Corporation





65' width R/W  
EXPLANATION

- Indicates historical feature for which no surface features were observed
- Property boundary

UKIAH STATION (NORTH)  
Northwestern Pacific Railroad  
Mendocino County, California

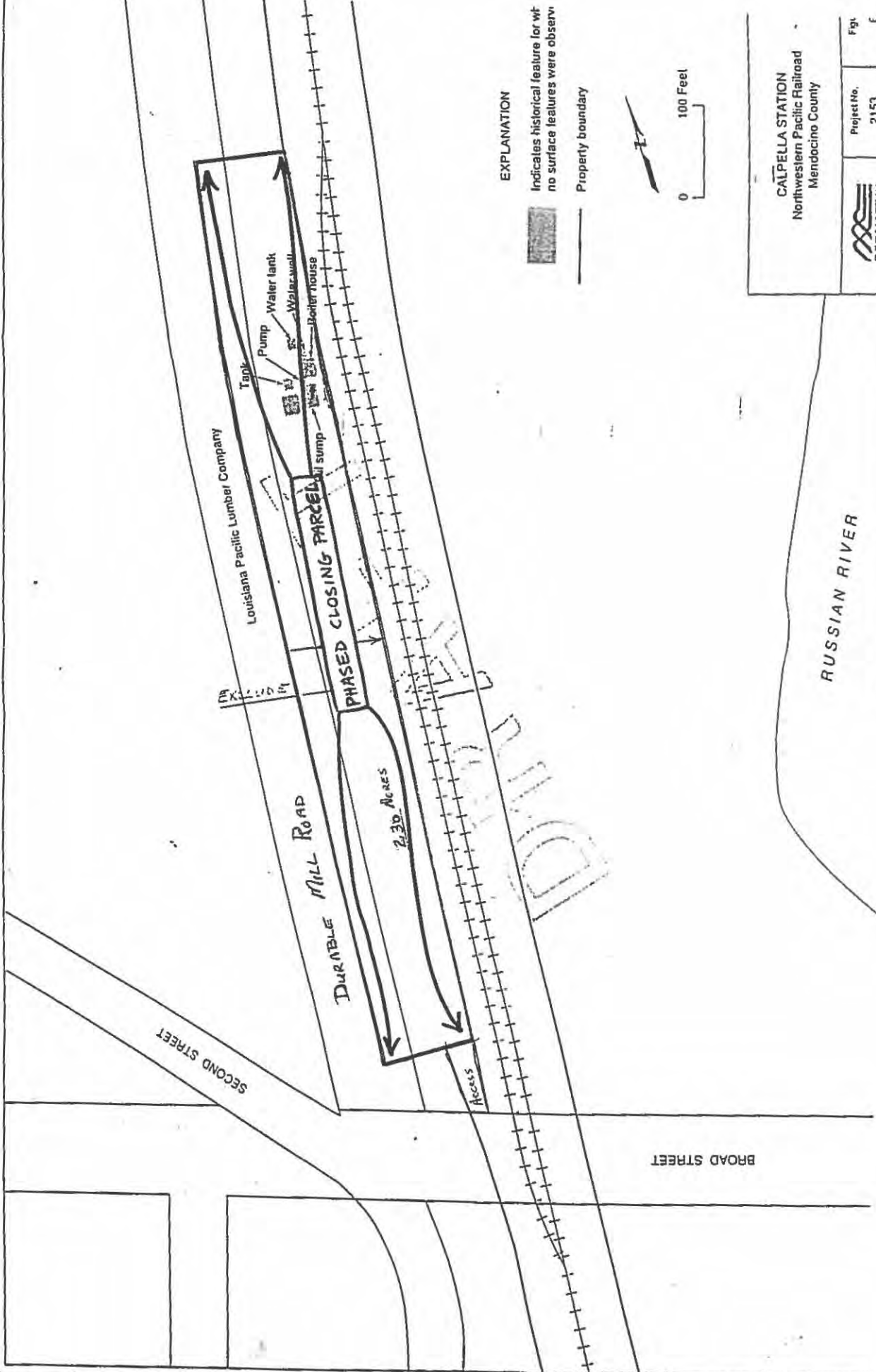
DEGMATRIN

Project No. 2153

Figure 7A

PACF R-1

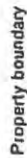




**EXPLANATION**



Indicates historical feature for which no surface features were observed



Property boundary



0 100 Feet

**CALPELLA STATION**  
 Northwestern Pacific Railroad  
 Mendocino County



Project No.  
 2153

Fig.

C

DRAFT

RUSSIAN RIVER

SECOND STREET

BROAD STREET

DURABLE MILL ROAD

2.30 Acres

PHASED CLOSING PARCEL

Louisiana Pacific Lumber Company

Tank

Pump

Water tank

Water well

Boiler house

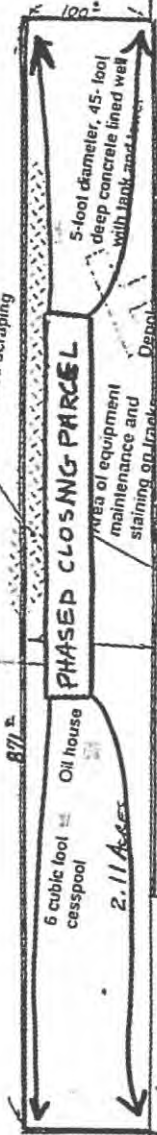
sump

Access

LAUGHLIN WAY

Vineyard

EXCLUDE



Residence

Undeveloped field

DRAFT

EXPLANATION

Indicates historical feature for which no surface features were observed

Property boundary



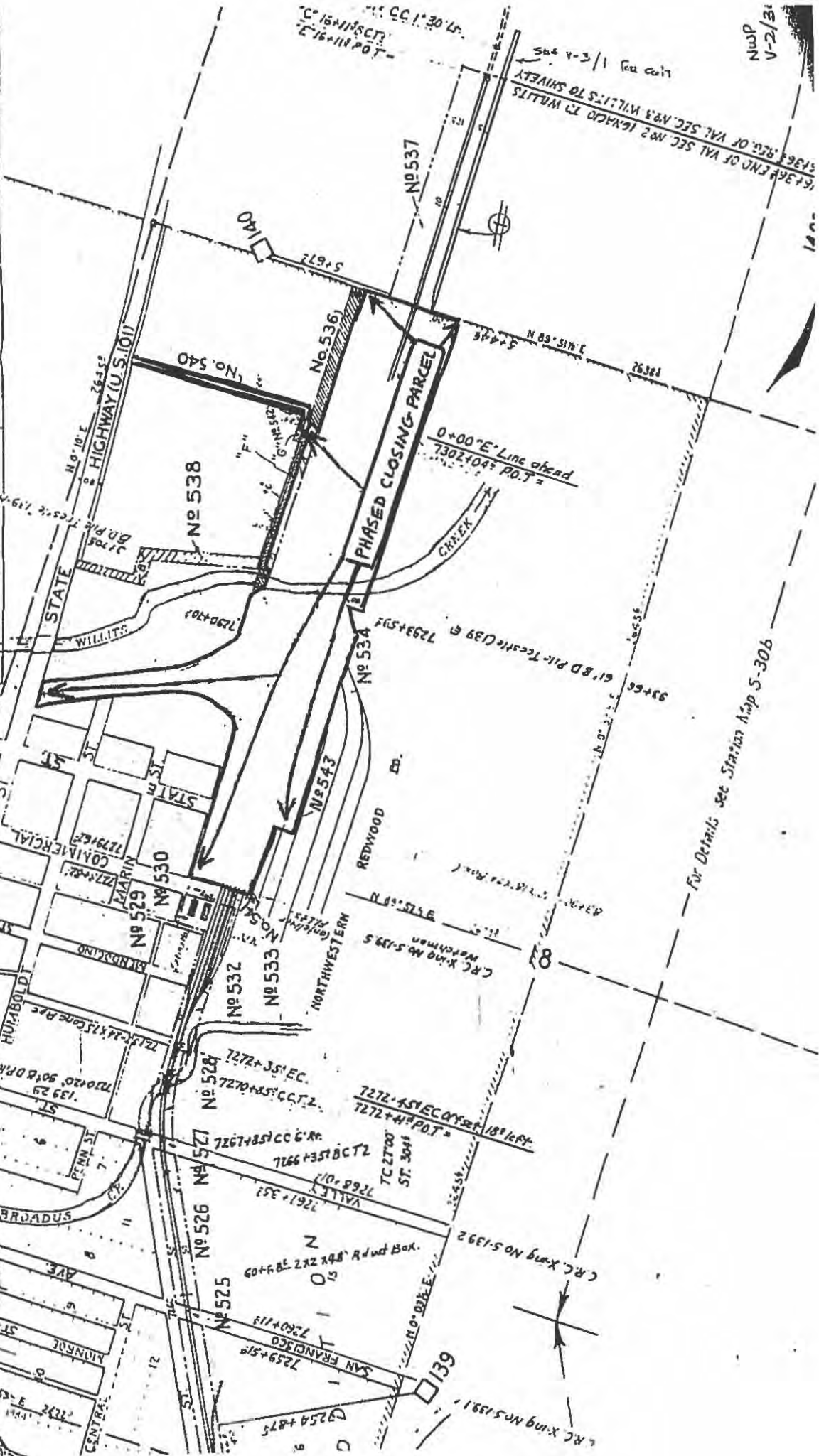
LAUGHLIN STATION  
Northwestern Pacific Railroad  
Mendocino County, California

EDMATEK

Project No.	2153	Page
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PAGE B-5

Parcel No.	Owner	Date
540	Willits Union High School Dist.	Aug. 15, 1954
542	N.W.P.R.R. Co.	Sept. 10, 1953 O.A.
543	Union Lumber Co.	Apr. 18, 1967 O.A.
544	Willits Redwood Products Co.	Oct. 6, 1967
545	N.W.P.R.R. Co.	Grant/Deed Dec. 13, 1968 D.B.
546	Willits Unified School District	Nov. 1, 1967
547	N.W.P.R.R. Co.	



For Details see Station Map S-306

NWSP  
V-2/31

**EXHIBIT C**

After recording return to:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

Mail tax statements to:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

**SURFACE EASEMENT AGREEMENT**

\_\_\_\_\_ Parcel

This Surface Easement Agreement - \_\_\_\_\_ Parcel (this "Agreement") dated \_\_\_\_\_, 1996 is between Southern Pacific Transportation Company, a Delaware corporation ("Grantor") and North Coast Railroad Authority, a local agency created by the California legislature ("Grantee").

**Recitals**

- A. Grantor and Grantee have entered into that certain Amended and Restated Agreement of Purchase and Sale (Willits Segment) dated \_\_\_\_\_, 1996 (the "Willits Agreement"), which provides for the grant of a surface easement over certain property more particularly described in the attached Exhibit A and commonly known as the "\_\_\_\_\_ Parcel" (the "Easement Property") subject to the terms and conditions contained in this Agreement.
- B. Pursuant to the terms of the Willits Agreement, Grantor has deposited in Escrow a grant deed for the Easement Property (the "Grant Deed") and Grantee has deposited in Escrow the purchase price for the fee interest in the Easement Property (the "Purchase Price"), each of which shall be released to the parties as provided in the Willits Agreement.
- C. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Willits Agreement.

## Agreement

1. (a) Easement Grant. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby sells, transfers, grants and conveys to Grantee, an exclusive surface easement on, in and over the Easement Property (including, without limitation, an easement for the use of any existing improvements on the Easement Property to the extent of Seller's interest therein), in which area Grantee, its successors or assigns, shall have the right to construct, reconstruct, maintain, use, operate and/or remove railroad, rail and railroad related improvements, equipment and facilities for Purchaser's Rail Uses and for all other purposes except to the extent inconsistent with those rights reserved to Grantor in Section 2 (the "Easement"). During the term of this Easement, Grantor or its successors or assigns shall retain the ownership of and/or the fee interest in all fixtures and improvements presently existing on the Easement Property.

(b) Permitted Exceptions. The parties acknowledge that the Easement granted hereunder is subject to the Permitted Exceptions, including, without limitation, the Cal Northern Lease.

### 2. Reservations from Easement Grant.

(a) Retained Rights. Grantor hereby reserves from the grant of the Easement, the Retained Rights (as such term is defined in the Willits Agreement), including, without limitation, the Mineral Reservation and those rights and interests reserved by Grantor in that certain Fiber Optics Easement Agreement of even date herewith between Grantor and Grantee.

(b) Remediation Easement. Grantor hereby reserves from the grant of the Easement, an easement in, on, over, under and through the Easement Property for the purposes of full and unrestricted access to, testing and remediation of the Easement Property in accordance with the terms of the Willits Agreement (the "Remediation Easement"). Grantee covenants that it shall not and shall not permit its agents, permittees, licensees or lessees to interfere with Grantor's Remediation Easement or the activities of Grantor or its agents in connection therewith; provided that to the extent practical, Grantor shall use the Remediation Easement in a manner that minimizes interference with Grantee's use of the Easement. This Remediation Easement shall expire upon the termination of this Agreement.

3. Term. This Agreement and the Easement shall terminate upon the closing of the escrow for the purchase and sale of the fee interest in the Easement Property, pursuant to terms of the Willits Agreement, or at such earlier time as the parties may mutually agree in writing.

4. No Warranties. Except as expressly set forth in the Willits Agreement, Grantor makes no representations or warranties, express or implied, relating to the Easement Property or the Easement, and the use thereof shall be subject to all Permitted Exceptions (as such term is defined in the Willits Agreement).

5. Indemnification. Subject to the terms of the agreements described in Section 6 hereof, Grantee hereby indemnifies, defends and holds harmless Grantor, its officers, directors, agents, permittees, successors and assigns from and against all, losses, liabilities, claims and demands arising from or relating to Grantee's or its agents' use of the Easement or activities on the Easement Property except as may arise from Grantor's negligence or intentional acts. The provisions of this Section 5 shall survive the termination of the Easement and this Agreement.

6. Other Agreements. The parties acknowledge that certain other rights, obligations and indemnities exist between them with respect to the Easement Property pursuant to certain other agreements between them, including, without limitation, the Willits Agreement, the Environmental Indemnity Agreement, the EDD Agreement and the Environmental Remediation Agreement.

7. Memorandum of Willits Agreement. The parties agree that this Agreement shall also constitute a memorandum of the Willits Agreement to provide record notice of Grantee's right to purchase the Easement Property pursuant to the terms and conditions contained in the Willits Agreement. The execution of this Agreement shall not modify or amend any provision of the Willits Agreement with respect to Grantee's right to purchase the Easement Property and in the event of any conflict or inconsistency between the provisions of this Agreement and the Willits Agreement with respect to Grantee's right to purchase the Easement Property, the terms of the Willits Agreement shall control.

IN WITNESS WHEREOF, each of Grantor and Grantee has executed this instrument as of \_\_\_\_\_, 1996.

GRANTOR:

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_







EXHIBIT A  
Easement Property

CERTIFICATE OF ACCEPTANCE

(Pursuant to Government Code § 27281) this is to certify that the interest in the real Property conveyed by the Surface Easement Agreement dated as of \_\_\_\_\_, 1996, from Southern Pacific Transportation Company, a Delaware corporation, to the North Coast Railroad Authority, a local agency created by the California legislature, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. \_\_\_\_\_ adopted by the North Coast Railroad Authority on \_\_\_\_\_, 1996, and the Grantee consents to recordation thereof by its duly authorized representative.

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Attorney

**EXHIBIT D**

After recording return to:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

Mail tax statements to:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

**WILLITS YARD SURFACE EASEMENT AGREEMENT**

This Willits Yard Surface Easement Agreement (this "Agreement") dated \_\_\_\_\_, 1996 is between Southern Pacific Transportation Company, a Delaware corporation ("Grantor") and North Coast Railroad Authority, a local agency created by the California legislature ("Grantee").

**Recitals**

A. Grantor and Grantee have entered into that certain Amended and Restated Agreement of Purchase and Sale (Willits Segment) dated \_\_\_\_\_, 1996 (the "Willits Agreement"), which provides for the grant of a surface easement over certain property more particularly described in the attached Exhibit A and commonly known as Willits Yard (the "Easement Property") subject to the terms and conditions contained in this Agreement.

B. Pursuant to the terms of the Willits Agreement, Grantor has deposited in escrow a grant deed for the Easement Property (the "Grant Deed") and Grantee has deposited in escrow the purchase price for the fee interest in the Easement Property (the "Purchase Price"), each of which shall be released to the parties as provided in the Willits Agreement.

C. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Willits Agreement.

## Agreement

1. (a) Easement Grant. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby sells, transfers, grants and conveys to Grantee an exclusive surface easement on, in and over the Easement Property, in which area Grantee, its successors or assigns, shall have the right, pursuant to the terms of this Agreement, to maintain, use, operate and/or remove railroad, rail and railroad related improvements, equipment and facilities for Purchaser's Rail Uses and for all other purposes except to the extent inconsistent with those rights reserved to Grantor in Section 5 hereof (the "Easement"). Pursuant to the Willits Yard Bill of Sale of even date herewith, all improvements presently existing on the Easement Property have been quitclaimed from Grantor to Grantee.

(b) Permitted Exceptions. The parties acknowledge that the Easement granted hereunder is subject to the Permitted Exceptions, including, without limitation, the Cal Northern Lease.

### 2. Hazardous Materials.

(a) Use. During the term of this Agreement, Grantee shall not (i) use, generate, manufacture, produce or store on, under or about the Easement Property, any Hazardous Materials except in compliance with the terms of this Agreement, or (ii) allow its employees, agents, contractors, invitees, trespassers or any other person or entity (collectively, "Grantee's Agents") to do so except in compliance with the terms of this Agreement.

(b) Environmental Laws. In connection with Grantee's or Grantee's Agents' use of Hazardous Materials on the Easement Property, Grantee shall comply with and shall cause Grantee's Agents to comply with all Environmental Laws (as defined in Subsection 2(h) below). Neither Grantee nor Grantee's Agents shall violate or cause the Easement Property to be in violation of any Environmental Laws. Grantee shall, at its own expense and prior to Grantee's use and occupancy of the Easement Property, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Grantee's or Grantee's Agents' use of the Easement Property.

(c) Reports and Plans. Grantee agrees to provide Grantor with: (i) a copy of any hazardous material management plan or similar document required by any federal, state or local governmental or regulatory authority to be submitted by Grantee or Grantee's Agents; (ii) copies of all permits, licenses and other governmental and regulatory approvals with respect to the Grantee's and/or Grantee's Agents' use of Hazardous Materials in connection with the Easement Property; and (iii) copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Easement Property after the date of this Agreement (collectively, the "Documents"). Grantee shall deliver all Documents to Grantor promptly following the earlier of (i) Grantee's or Grantee's Agents' submission of such Documents to the requesting governmental agency, or (ii) Grantee's or Grantee's Agents' receipt of such Documents.

Upon commencing any activity involving Hazardous Materials on the Easement Property, and continuing thereafter throughout the term of this Agreement, Grantee shall initiate and maintain the following systems to ensure the routine monitoring of the levels of Hazardous Materials which may be present on, under or about the Easement Property or properties adjoining or in the vicinity of the Easement Property as the result of the activities of Grantee or Grantee's Agents and to ensure continued compliance with the procedures and regulations concerning the handling, storage, use and disposal of Hazardous Materials set forth in the following (collectively, "Plans"): (x) each permit, license or other governmental or regulatory agreement or approval, (y) each plan for handling and disposing of Hazardous Materials necessary to comply with Environmental Laws prepared by or on behalf of Grantee or Grantee's Agents (whether or not required to be submitted to a governmental agency).

(d) Periodic Reporting. Not less often than semi-annually during the term of this Agreement, Grantee shall provide Grantor with a written report that shall set forth the results of the use of Hazardous Materials on the Easement Property during the previous six-month period. Grantor may elect (but shall not be obligated) to retain an independent consultant experienced in the use and management of Hazardous Materials for the purpose of reviewing any information received by Grantor in connection with Hazardous Materials.

(e) Testing. Grantor may install permanent or other testing wells or devices at or about the Easement Property, and may cause the ground water to be tested to detect the presence of Hazardous Materials at any time during the term of this Agreement by the use of such wells or devices as are then customarily used for such purposes. If Grantee so requests in writing, Grantor shall supply Grantee with a copy of any such test results.

(f) Inspection. Grantor and its representatives shall have the right, upon 24 hours' prior written notice, to enter the Easement Property and to: (i) conduct any testing, monitoring and analysis for Hazardous Materials; (ii) review any documents, materials, inventory, financial data or notices or correspondence to or from private parties or governmental or regulatory authorities in connection with Hazardous Materials; and (iii) review all storage, use, transportation and disposal facilities and procedures associated with the storage, use, transportation and disposal of Hazardous Materials in connection with the Easement Property (collectively, "Inspection").

(g) Notice. Grantee shall use best efforts to give prompt written notice to Grantor of:

(i) any proceeding or inquiry by, notice from, or order of any governmental authority with respect to the presence of any Hazardous Material on, under or about the Easement Property or the migration thereof from or to other property;

(ii) all claims made or threatened by any third party against Grantee or the Easement Property relating to any loss or injury resulting from any Hazardous Materials in connection with the Easement Property;

(iii) any spill, release, discharge or non-routine disposal of Hazardous Materials that occurs with respect to the Easement Property or operations at the Easement Property by Grantee or Grantee's Agents;

(iv) all matters of which Grantee is required to give notice pursuant to any Environmental Laws; and

(v) Grantee's discovery of any occurrence or condition on, under or about the Easement Property or any real property adjoining or in the vicinity of the Easement Property that could cause the Easement Property to be subject to any restrictions on the ownership, occupancy, transferability or use of the Easement Property under any Environmental Laws.

(h) Environmental Laws. The term "Environmental Laws" shall mean all federal, state and local laws, ordinances, regulations, orders and directives of every kind and nature whatsoever which identify or regulate the use, disposal, transportation, remediation, investigation, storage or treatment of Hazardous Materials or which otherwise pertain to Hazardous Materials in, at, on or under the Easement Property or any portion thereof.

(i) Grantee's Indemnity. Grantee shall protect, defend, indemnify and hold harmless Grantor, its directors, officers, employees, agents, successors and assigns from and against any and all claims, fines, judgments, penalties, losses, damages, costs, expenses and liabilities (including attorneys' fees and disbursements) (collectively, a "Liability") directly or indirectly arising out of or attributable to Grantee's or Grantee's Agents' use, generation, manufacture, production, storage, release, discharge, disposal or transportation to or from the Easement Property of any Hazardous Material on, under or about the Easement Property, regardless of whether such Liability arises during or after the term of this Agreement. For purposes of this Section 2(i), any acts or omissions of Grantee or Grantee's Agents (whether or not such acts are negligent, intentional, willful or unlawful) shall be strictly attributable to Grantee. Grantee's obligations under this Section 2(i) shall survive the expiration or earlier termination of this Agreement.

3. Construction of Improvements. Grantor hereby grants to Grantee the option to construct improvements on the Easement Property subject to the terms and conditions contained in this Section 3. Grantee may exercise its construction option by delivery to Grantor of written notice of its election to exercise.

(a) Improvements. During the term of this Agreement, Grantee shall not, without Grantor's prior written consent, make any alterations, improvements or additions of any kind in, on or about the Easement Property ("Improvements"); provided that Grantor shall not withhold or delay its consent to Improvements if such will not disturb the ground more than two feet below existing surface ground level and such Improvements will not interfere with or increase the costs of Grantor's remediation obligations. Any Improvements that Grantee desires to make shall be presented to Grantor in written form with proposed detailed plans and such other information as Grantor may request.

(b) Compliance With Laws. If Grantor gives its consent to any Improvements, such consent shall be deemed to be conditioned upon Grantee's acquisition of all applicable governmental permits and approvals and compliance with all applicable laws, rules and regulations in connection with such Improvements, all at Grantee's sole cost and expense. Grantee agrees that all work upon or in connection with Improvements shall be done at such times and in such manner so as not to interfere with Grantor's use of the Remediation Easement (as defined herein).

(c) Inspection. Grantor shall have the right (but not the obligation) to inspect construction activities in connection with Improvements and Grantee shall cooperate with and permit Grantor access for such purpose.

(d) Ownership of Improvements. The Improvements constructed on the Easement Property by Grantee shall be the property of Grantee.

(e) Conditions to Construction. Prior to obtaining Grantor's consent to the construction of Improvements on the Easement Property, Grantee shall deliver to Grantor such information as Grantor may require, including, without limitation: (i) prints of the plans and specifications for the Improvements; (ii) a written estimate by a reputable architect or engineer of the costs thereof or a bid from a responsible contractor to perform the same; (iii) a completion, labor and materials bond in sufficient amount to cover such cost or other security payment reasonably satisfactory to Grantor; (iv) such additional general accident and public liability policies of insurance and evidence of Workmen's Compensation coverage as required by Grantor; and (v) the contract with the proposed contractor, which shall provide that contractor indemnifies and holds harmless Grantor from any claims, losses, liabilities or damages suffered or incurred by any person or property arising out of contractor's presence or work on the Easement Property.

(f) Liens. Grantee shall pay for all labor and services performed for, and all materials used by or furnished to, Grantee or its agents with respect to the construction and/or work on Improvements on the Easement Property. Grantee shall indemnify and hold Grantor harmless from and keep the Easement Property free from any liens, claims, demands, encumbrances or judgments, including all costs, liabilities and attorneys' fees with respect thereto, created or suffered by reason of any labor or services performed for, or materials used by or furnished to, Grantee or its agents with respect to the Easement Property. The foregoing obligation of Grantee shall survive the termination of this Agreement. Grantor shall have the right, at all times, to post and keep posted on the Easement Property any notices permitted or required by law, or which Grantor may deem proper, for the protection of Grantor and the Easement Property, and any other party having an interest therein, from mechanics' and materialmen's liens, including, without limitation, a notice of nonresponsibility. In the event Grantee is required to post an improvement bond with a public agency in connection with any work performed by Grantee on or to the Easement Property, Grantee shall include Grantor as an additional obligee.

#### 4. Reservations from Easement Grant.

(a) Retained Rights. Grantor hereby reserves from the grant of the Easement, the Retained Rights (as such term is defined in the Willits Agreement), including, without limitation, the Mineral Reservation and those rights and interests reserved by Grantor in that certain Fiber Optics Easement Agreement of even date herewith between Grantor and Grantee.

(b) Remediation Easement. Grantor hereby reserves from the grant of the Easement, an easement in, on, over, under and through the Easement Property for the purposes of full and unrestricted access to, testing and remediation of the Easement Property in accordance with the terms of the Willits Agreement (the "Remediation Easement"). Grantee covenants that it shall not and shall not permit its agents, permittees, licensees or lessees to interfere with Grantor's Remediation Easement or the activities of Grantor or its agents in connection therewith; provided that to the extent practical, Grantor shall use the Remediation Easement in a manner that minimizes interference with Grantee's use of the Easement. This Remediation Easement shall expire upon the later of (i) termination of this Agreement, or (ii) Environmental Readiness and Closure with respect to the Easement Property.

5. Term. This Agreement and the Easement shall terminate upon the closing of the escrow for the purchase and sale of the fee interest in the Easement Property, pursuant to terms of the Willits Agreement, or at such earlier time as the parties may mutually agree in writing.

6. No Warranties. Except as expressly set forth in the Willits Agreement, Grantor makes no representations or warranties, express or implied, relating to the Easement Property or the Easement, and the use thereof shall be subject to all Permitted Exceptions (as such term is defined in the Willits Agreement).

7. Indemnification. Subject to the terms of the agreements described in Section 8 hereof, Grantee hereby indemnifies, defends and holds harmless Grantor, its officers, directors, agents, permittees, successors and assigns from and against all, losses, liabilities, claims and demands arising from or relating to the use of the Easement or activities on the Easement Property by Grantee or Grantee's Agents (including, without limitations, the use, presence or release of Hazardous Materials on the Easement Property originating or occurring after the date hereof and the construction of Improvements on the Easement Property) except as may arise from Grantor's negligence or intentional acts. The provisions of this Section 5 shall survive the termination of the Easement and this Agreement.

8. Other Agreements. The parties acknowledge that certain other rights, obligations and indemnities exist between them with respect to the Easement Property pursuant to certain other agreements between them of even date herewith, including, without limitation, the Willits Agreement, the Environmental Indemnity Agreement, the EDD Agreement and the Environmental Remediation Agreement.

9. Memorandum of Willits Agreement. The parties agree that this Agreement shall also constitute a memorandum of the Willits Agreement to provide record notice of Grantee's right to purchase the Easement Property pursuant to the terms and conditions contained in the Willits Agreement. The execution of this Agreement shall not modify or amend any provision of



the Willits Agreement with respect to Grantee's right to purchase the Easement Property and in the event of any conflict or inconsistency between the provisions of this Agreement and the Willits Agreement with respect to Grantee's right to purchase the Easement Property, the terms of the Willits Agreement shall control.

IN WITNESS WHEREOF, each of Grantor and Grantee has executed this instrument as of \_\_\_\_\_, 199.

GRANTOR:

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:

NORTH COAST RAILROAD AUTHORITY, a  
local agency created by the California legislature

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney



EXHIBIT A

Easement Property

CERTIFICATE OF ACCEPTANCE

(Pursuant to Government Code § 27281) this is to certify that the interest in the real Property conveyed by the Surface Easement Agreement dated as of \_\_\_\_\_, 1996, from Southern Pacific Transportation Company, a Delaware corporation, to the North Coast Railroad Authority, a local agency created by the California legislature, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. \_\_\_\_\_ adopted by the North Coast Railroad Authority on \_\_\_\_\_, 1996, and the Grantee consents to recordation thereof by its duly authorized representative.

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Attorney

**EXHIBIT E**

**CAL NORTHERN PARTIAL ASSIGNMENT**

(Form to be agreed upon prior to Initial Closing)

## **EXHIBIT F**

### **TITLE WARRANTY DISCLOSURES**

1. Conditions and reservations as contained in the deed to Northwestern Pacific Railroad Company, recorded May 2, 1910 in Book 118 of Deeds at Page 45.  
(Affects Parcels 529, 530 and 531, Val Map NWP V-2/30, Mendocino County);
2. Conditions and exceptions as contained in the deed to Northwestern Pacific Railroad Company recorded May 2, 1910 in Book 118 of Deeds at Page 51.  
(Affects Parcels 535 and 538, Val Map NWP V-2/30, Mendocino County);
3. Conditions as contained in the deed to the Cloverdale and Ukiah Railroad Company recorded April 30, 1888 in Book 43 of Deeds at Page 494.  
(Affects Parcels 414 and 415, Val Map NWP V-2/23, Mendocino County);
4. Conditions as contained in the deed to The San Francisco and North Pacific Railroad Company recorded December 28, 1889 in Book 51 of Deeds at Page 1.  
(Affects Parcel 395, Val Map NWP V-2/22, Mendocino County);
5. Conditions and provisions contained in the deed to The San Francisco and North Pacific Railroad Company recorded November 22, 1871 in Book 36 of Deeds at Page 92.  
(Affects Parcels 206 and 207, Val Map NWP V-2/12, Sonoma County);
6. Conditions contained in the deed to The San Francisco and North Pacific Railroad Company recorded November 23, 1871 in Book 36 of Deeds at Page 97.  
(Affects Parcels 209 and 210, Val Map NWP V-2/12, Sonoma County);
7. Conditions contained in the deed to The San Francisco and North Pacific Railroad Company recorded November 23, 1871 in Book 36 of Deeds at Page 102.  
(Affects Parcels 211, 223, 224, 225, 226 and 227, Val Map NWP V-2/12, Sonoma County);
8. Conditions and provisions contained in the deed to The San Francisco and North Pacific Railroad Company recorded May 14, 1892 in Book 138 of Deeds at Page 116.  
(Affects Parcel 304, Val Map NWP V-2/15, Sonoma County);
9. Conditions contained in the deed to The San Francisco and North Pacific Railroad Company recorded on August 15, 1894 in Book 152 of Deeds at Page 588.  
(Affects Parcel 254, Val Map NWP V-2/13, Sonoma County);
10. Any easements or claims of easements based on prescription by or implied dedication to the public over said land or any parts thereof for access to such streams, creeks, rivers and sloughs as may exist upon, through or adjacent to said land.

(Affects various portions of the Property);

11. Rights and easements for commerce, navigation, fishery, hunting, bathing and swimming and preserving in their natural states those parts of the land which may be below the ordinary high water marks of such streams, creeks, rivers and sloughs as may exist upon, through or adjacent to said land.  
(Affects various portions of the Property);
12. Any adverse claims based upon the assertion that said land or any part thereof is now or at any time has been included within a navigable river, slough or other navigable body of water and/or tidelands.  
(Affects various portions of the Property);
13. Public rights of way, crossings or public roadway easements over, across or through said land; and
14. Any discrepancies between the legal descriptions contained in the title reports listed below and the location of the railroad parcels as shown on the Valuation Section Maps which delineate the sale area.

<u>Preliminary Title Report #</u>	<u>Date</u>	<u>County</u>
59169-M Supplemental	07/07/1995	Mendocino
50169-S Supplemental	07/07/1995	Sonoma

## **EXHIBIT G**

### **NOTICES OF CONDEMNATIONS, VIOLATIONS, ZONING CHANGES, PENDING LITIGATION OR OTHER LEGAL ACTIONS**

1. City of Healdsburg Condemnation Proceedings for the Healdsburg Avenue Widening Project, filed January 17, 1996 under Case No. 212591 in the Superior Court, Sonoma County, California. (Affects Parcel 247 on Val Map NWP V-2/S-12d)
2. California Department of Transportation Condemnation Proceedings in Cloverdale for freeway purposes filed on June 18, 1992 under Case No. 199245 in the Superior Court, Sonoma County, California.  
(Affects Parcels 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 325, 326, 333, 334, 335, 336, 337, 338, 339 and 340 on Val Maps NWP V-2/16 and NWP V-2/17)
3. Encroachment of cars parked on right-of-way by European Autoworks onto Seller's property at Ukiah, Milepost 114.3.  
(Affects Parcel 425 on Val Map NWP V-2/S-24)
4. Encroachment of building behind laundromat by Fraser onto Seller's property at Calpella, Milepost 120.  
(Affects Parcel 466 on Val Map NWP V-2/S-25)
5. Encroachment of a trucker facility, Building #307 onto Seller's property at Ukiah, Milepost 114, used by a logging company, name unknown.  
(Affects Parcel 422 on Val Map NWP V-2/S-24)
6. Encroachment of arbor behind a private home at 6251 N. State St., Milepost 120.0, ownership unknown.  
(Affects Parcel(s) 466 on Val Map NWP V2/S-25).
7. Encroachment of chain link fencing by Ukiah Foods, 207 Clara Avenue, in Ukiah at approximately Milepost 114.4.  
(Affects Parcel(s) 427 on Val Map NWP V-2/S-24).
8. Encroachment of fencing and apartment building on the West Side of the railroad right-of-way at 610 Mason Street in Ukiah at approximately Milepost 114.5.  
(Affects Parcel(s) 434 on Val Map NWP V-2/S-24).
9. Former lessee, Weiss Enterprises, is trespassing onto Seller's property in Healdsburg at Milepost 68.8. Weiss Enterprises is claiming prescriptive rights and is unwilling to enter



into a new lease. This matter has been turned over to Seller's in-house counsel, Jerry Sullivan for further handling.  
(Affects Parcel 233 on Val Map NWP V-2/S-12c)

**EXHIBIT H**  
**MATERIAL LEASES**

<u>Lease #</u>	<u>Lessee</u>	<u>Effective Date</u>	<u>MP</u>
6024	Piedmont Lumber Co.	03/30/89	119.92
714341	Skip Gibbs Company	07/15/94	121.95
4436	Pacific Bell Telephone	07/07/80	72.14
4726	Georgia Pacific Corp.	05/16/75	139.50
707554	Estaban Gonzales	10/30/91	100.10
5227	Mendocino Coast Railway	09/18/80	139.50
4474	Baker Beverage	04/27/72	113.97
5760	J. L. Cox	09/15/82	111.83
5226	Mendocino Coast Railway	09/18/80	139.47
4574	E & M Electric & Machine	05/05/73	68.34
4798	Louisiana Pacific Corp.	01/01/76	83.61
4637	One-O-One, Inc.	05/23/74	139.50
4350	Simi Winery, Inc.	02/04/71	70.47
5850	Willits Unified School District	05/03/84	139.50

**EXHIBIT I**  
**DISCLOSURES WITH RESPECT**  
**TO MATERIAL LEASES**

None.

**EXHIBIT J**

RECORDING REQUESTED BY:

North Coast Railroad Authority

AND WHEN RECORDED MAIL TO:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

MAIL TAX STATEMENTS TO:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attention: Edward M. McLaughlin

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument is exempt from  
Recording Fees (Govt. Code §27383)  
and from Documentary Transfer Tax  
(Rev. & Tax Code §11922)

## GRANT DEED

\_\_\_\_\_ County, California

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Southern Pacific Transportation Company, a Delaware corporation and successor in interest to the Central California Railroad Company, a corporation, the Central Pacific Railway Company, a corporation, and Southern Pacific Company, a Kentucky corporation ("Grantor"), sells, transfers, grants and conveys to North Coast Railroad Authority, a local agency created by the California legislature, ("Grantee"), having its principal office at 4 West 2nd Street, Eureka, CA 95501, (a) that portion of Grantor's Northwestern Pacific railroad line located in the County of \_\_\_\_\_, State of California, more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the "Land"); (b) all of Grantor's interest, if any, in the improvements on the Land ("Improvements"); (c) all fixtures, if any, that Grantor owns and uses in the operation and maintenance of the Land and the Improvements; and (d) all appurtenances to the foregoing property, including, without limitation, all strips, gaps and gores (the Land, the Improvements, such fixtures and such appurtenances being referred to herein collectively as the "Property"), subject to the Permitted Exceptions (as defined in the Amended and Restated Agreement of Purchase and Sale (Willits Segments) dated \_\_\_\_\_, 1996 between Grantor and Grantee (the "Purchase Agreement")).

### Mineral Reservation

Grantor excepts from the Property hereby conveyed and reserves unto itself and its successors and assigns all oil, gas, and other minerals of whatever kind or character whether now known or hereafter discovered, in and under the Property at a depth of five hundred (500) feet or more; provided that Seller shall not have a right of surface entry on or from the Property or the right to remove or impair the lateral or subjacent support of the Property.

### Fiber Optics Easement Reservation

Grantor excepts from the Property hereby conveyed and reserves unto itself and its successors and assigns a perpetual, nonexclusive easement (the "Fiber Optics Easement") as more particularly described in and subject to the terms of that certain Fiber Optics Easement Agreement of even date herewith between Grantor and Grantee, the provisions of which are incorporated herein by this reference, together with necessary rights of access in, on, over and across the Property. The location of the Fiber Optics Easement (the "Fiber Optics Easement Property") shall be determined as provided in the Fiber Optics Easement Agreement. Grantor and its lessees, sublessees, licensees, successors and assigns shall have the right in, on, under, over and across the Fiber Optics Easement Property to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and future fiber optics communication systems, lines and facilities.

This Grant Deed is given pursuant to the Purchase Agreement and the representations, warranties and other provisions thereof are incorporated herein by this reference and shall survive the recordation hereof. Except as expressly set forth in the Purchase Agreement, Grantor makes no warranties, promises, understandings or representations, express or implied, relating to the Property.

IN WITNESS WHEREOF, Grantor has set its hand and seal as of \_\_\_\_\_, 1996.

GRANTOR:

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a Delaware corporation

ATTEST:

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

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

[SEAL]

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 1996, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

EXHIBIT A

(Attached to and made a part of  
the Grant Deed  
from Southern Pacific Transportation Company  
to North Coast Railroad Authority)

THE LAND

[Please refer to the attached Legal Description  
consisting of \_\_\_\_\_ pages]



CERTIFICATE OF ACCEPTANCE  
(pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by Grant Deed dated as of \_\_\_\_\_, 1996, from Southern Pacific Transportation Company, a Delaware corporation to the North Coast Railroad Authority, a local agency created by the California legislature, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. \_\_\_\_\_, adopted by the North Coast Railroad Authority on \_\_\_\_\_, 199\_\_, and the grantee consents to recordation thereof by its duly authorized representative.

Date: \_\_\_\_\_, 1996

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

STATE OF CALIFORNIA        )  
   ) ss.  
COUNTY OF \_\_\_\_\_     )

On this \_\_\_\_ day of \_\_\_\_\_, 1996, before me, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[seal]

\_\_\_\_\_  
Notary Public

**EXHIBIT K**

RECORDING REQUESTED BY:

North Coast Railroad Authority

AND WHEN RECORDED MAIL TO:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

MAIL TAX STATEMENTS TO:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument is exempt  
from Recording Fees  
(Govt. Code §27383) and  
from Documentary Transfer Tax  
(Rev. & Tax Code §11922)

**QUITCLAIM DEED**

\_\_\_\_\_ County, California

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Southern Pacific Transportation Company, a Delaware corporation and successor in interest to the Central California Railroad Company, a corporation, the Central Pacific Railway Company, a corporation, and Southern Pacific Company, a Kentucky corporation ("Grantor"), remises, releases and quitclaims to North Coast Railroad Authority, a local agency created by the California legislature ("Grantee"), having its principal office at \_\_\_\_\_, all right, title, interest, claim and demand which Grantor has in and to that portion of Grantor's Northwestern Pacific railroad line located in the County of \_\_\_\_\_, State of California, more particularly described on Exhibit A attached hereto and by this reference made a part hereof together with improvements, if any, located thereon and all appurtenances thereto, including without limitation, all strips, gaps and gores (collectively, the "Property"), subject to the reservations set forth below.

**Mineral Reservation**

Grantor excepts from the Property hereby quitclaimed and reserves unto itself and its successors and assigns all oil, gas, and other minerals of whatever kind or character whether now known or hereafter discovered, in and under the Property at a depth of five hundred (500) feet or more; provided that Seller shall not have a right of surface entry on or from the Property or the right to remove or impair the lateral or subjacent support of the Property.

**Fiber Optics Easement Reservation**

Grantor excepts from the Property hereby quitclaimed and reserves unto itself, and its successors and assigns a perpetual, nonexclusive easement (the "Fiber Optics Easement") as more particularly described in and subject to the terms of that certain Fiber Optics Easement Agreement of even date herewith between Grantor and Grantee, the provisions of which are incorporated herein by this reference, together with necessary rights of access in, on, over and across the Property. The location of the Fiber Optics Easement (the "Fiber Optics Easement Property") shall be determined as provided in the Fiber Optics Easement Agreement. Grantor and its lessees, sublessees, licensees, successors and assigns shall have the right in, on, under, over and across the Fiber Optics Easement Property to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and future fiber optics communication systems, lines and facilities.

IN WITNESS WHEREOF, Grantor has set its hand and seal as of

\_\_\_\_\_, 199\_\_.

GRANTOR:

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a Delaware corporation

ATTEST:

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

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

[SEAL]

STATE OF \_\_\_\_\_ )  
 ) ss.  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 199\_\_, the undersigned, a Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

EXHIBIT A

(Attached to and made a part of the  
Quitclaim Deed dated \_\_\_\_\_, 199\_\_,  
from Southern Pacific Transportation Company  
to the North Coast Railroad Authority)

THE PROPERTY

[Please refer to the attached Legal Description  
consisting of \_\_\_\_\_ pages]

CERTIFICATE OF ACCEPTANCE  
(pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by Quitclaim Deed dated as of \_\_\_\_\_, 199\_\_, from Southern Pacific Transportation company, a Delaware corporation to the North Coast Railroad Authority, a local agency created by the California legislature, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. \_\_\_\_\_, adopted by the North Coast Railroad Authority on \_\_\_\_\_, 199\_\_, and the grantee consents to recordation thereof by its duly authorized representative.

Date: \_\_\_\_\_, 199\_\_

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

STATE OF CALIFORNIA        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[seal]

\_\_\_\_\_  
Notary Public

## EXHIBIT L

### WILLITS YARD BILL OF SALE

This Bill of Sale dated \_\_\_\_\_, 1996 is from Southern Pacific Transportation Company ("Seller") to North Coast Railroad Authority ("Purchaser") with an address of 4 West 2nd Street, Eureka, CA 95501.

#### Recitals

A. Seller and Purchaser are parties to the Amended and Restated Agreement of Purchase and Sale (Willits Segment) (the "Agreement"), dated \_\_\_\_\_, 1996, pursuant to which Seller agreed to sell to Purchaser certain property including certain improvements described herein, which improvements are appurtenant to the land described on the attached Exhibit A (the "Willits Yard").

B. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

#### Agreement

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, transfers, assigns and quitclaims unto Purchaser, its successors and assigns, all of Seller's right, title and interest, if any, in and to the personal property and improvements owned by Seller and located on the Willits Yard (including, without limitation, any tracks, rails, ties, switches, crossings, tunnels, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, railroad communications systems, and poles) (the "Improvements"). Seller conveys the Property "as is", "where is" and with "all faults" and has not made and does not make any representations or warranties as to the physical condition, operation, fitness for a particular purpose, or any other matter with respect to the Improvements.

The parties acknowledge that the Willits Yard and Purchaser's use of the Improvements on the Willits Yard are subject to the terms of the Agreement and the Willits Yard Surface Easement Agreement of even date herewith.

Executed as of the date first set forth above.



SELLER:

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PURCHASER:

NORTH COAST RAILROAD AUTHORITY, a local  
agency created by the California legislature

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 1996, the undersigned, a Notary Public,  
personally appeared \_\_\_\_\_, personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the persons whose names are subscribed to the within  
instrument and acknowledged to me that he/she executed the same in his/her authorized capacity,  
and that by his/her signature on the instrument the person, or the entity upon behalf of which the  
person acted, executed the instrument.

WITNESS my hand and official seal.

(Notarial Seal)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 1996, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Notarial Seal)

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT A

(Attached to and forming a part of Bill of Sale  
from Southern Pacific Transportation Company to North Coast Railroad Authority)

Willits Yard

## EXHIBIT M

**Recording Requested by:**  
**SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**When recorded mail to:**  
**HOLME ROBERTS & OWEN LLC**  
**1401 Pearl Street, Suite 400**  
**Boulder, Colorado 80302**  
**Attention: Jill K. Rood, Esq.**

### FIBER OPTICS EASEMENT AGREEMENT

THIS FIBER OPTICS EASEMENT AGREEMENT (this "Agreement") dated effective as of \_\_\_\_\_, 199\_\_ (the "Effective Date"), is by and between North Coast Railroad Authority, a local agency created by the California legislature ("NCRA") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SP").

#### RECITALS

A. Pursuant to that certain Grant Deed of even date herewith from SP to NCRA and that certain Quitclaim Deed of even date herewith from SP to NCRA (collectively, the "Deeds"), SP has conveyed to NCRA certain property more particularly described on the attached Exhibit A (the "Property") and has reserved a "Fiber Optics Easement" in such Deeds. (The Fiber Optics Easement reserved in the Deeds is referred to herein as the "Easement.") The Easement reserved in the Deeds burdens the Property.

B. SP and NCRA desire to set forth the specific terms and conditions of the Easement and to make provisions for determining the precise location of the Easement on the Property (the "Easement Property").

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. Easement.

a. General Easement Rights. The Easement shall be a perpetual, non-exclusive easement five feet in width, burdening the Property. SP and its lessees, sublessees, licensees, successors and assigns shall have the right in, on, under, over and across the Easement Property to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and/or future fiber optics communication systems, lines and facilities and all necessary

appurtenances thereto (collectively, "Fiber Optics Improvements"). SP shall also have a reasonable right of access to and egress from the Easement Property across the Property for such purposes.

b. Easement Property Location. (1) The precise location of the Easement Property for existing Fiber Optics Improvements shall be located within and along the Property 2.5 feet on either side of the centerline of the existing Fiber Optics Improvements, the general location of which shall be verified for NCRA by certified as-built drawings provided by SP and by markers located on the Property.

(2) The precise location of the Easement Property for future Fiber Optics Improvements within the Property shall be established by agreement in accordance with the following procedure: Either party may propose a location for the Easement Property within and along the length of the Property by providing written notice to the other party designating with engineering specificity the particular location proposed. The proposed location shall automatically become the Easement Property at the expiration of 30 days after the foregoing written notice is received by the addressee thereof, unless the other party reasonably objects to the proposed location in the writing to the proposing party within such 30 day period and details (i) its reasonable objections to the proposed fixed location; and (ii) an alternative proposed fixed location with engineering specificity. If the parties cannot agree on the particular location of the Easement Property within 60 days after the initial written notice proposing a fixed location is received by the addressee, either party may subject the matter to arbitration pursuant to the rules of the American Arbitration Association for its decision. The decision of the arbitrator as to the fixed location of the Easement Property shall be final and binding on the parties. The costs and expenses of the arbitrator shall be borne equally by the parties and arbitration shall be the exclusive forum for resolving any disagreement between the parties in connection with this issue. The parties hereto agree, and the arbitrator, if applicable, shall be advised, that it is the intent of this Agreement to permit SP to construct, install, repair, replace, maintain, operate and use Fiber Optics Improvements, reasonable and necessary appurtenances thereto, and such reasonable rights of access to and egress from the Property for such purposes in a commercially reasonable manner; provided, however, SP's use of the Easement Property shall not unreasonably interfere with NCRA's use of the Property for transit or railroad operation purposes, including without limitation, grade separations, system electrification, transit facilities or other railroad related improvements (collectively "NCRA's Rail Uses"). The precise location of the Easement Property for future Fiber Optics Improvements shall be established prior to commencement of construction of any future Fiber Optics Improvements under Section 2 below.

c. Character of Easement. The Easement is an easement in gross.

d. Non-Exclusiveness of Easement. The Easement is non-exclusive. NCRA shall have no right to use or interfere in any material manner with the Fiber Optics Improvements nor SP's use thereof. Subject to the foregoing, NCRA, its successors and assigns, shall have the right to use the surface, above ground and subsurface areas on, over and under the Easement Property.

e. Scope of Easement. Notwithstanding any other provision contained herein, the Easement described herein allows and shall allow SP to honor its grant and fulfill its other obligations pursuant to the following agreements and the terms of all easements granted thereby (as amended from time to time, the "Existing Fiber Optics Easements") burdening the Property, and SP is entitled to collect the rents, issues and profits from the Existing Fiber Optic Easements: (i) Grant of Easement and Agreement dated April \_\_, 1993 between SP and Pacific Bell, (ii) Easement Agreement dated September 30, 1991, between SP and Southern Pacific Telecommunications Company, as amended; and (iii) [Easement Agreement dated November 9, 1987, between SP and MCI Telecommunications Corporation ("MCI") as amended from time to time. NCRA agrees, for itself and its successors and assigns, promptly following any sale or lease of the Property, to deliver, or cause to be delivered to MCI a written notice of the name and address of such grantee or lessee, at the following address: MCI Telecommunications Corporation, 400 International Parkway, Attention: Senior Manager-Department 1238, Richardson, Texas 75081 and to MCI Telecommunications Corporation, 1133 19th Street N.W., Attention: Assistant General Counsel-Department 0598, Washington, D.C. 20036. For purposes of the preceding sentence, a "lease" means a commercial or industrial lease (but not a trackage rights agreement) which provides for a fixed initial term of at least one year and which requires ninety days or more notice of termination.] **[delete bracketed material at closing if no notice from MCI]**

The intent of this Section 1e. is that the terms of this Agreement be interpreted and applied in a manner consistent with the terms of the Existing Fiber Optics Agreements (with respect to the rights and easements provided in the Existing Fiber Optics Agreements). The terms of this Agreement, including, without limitation, those in Section 1b. shall apply, except to the extent there is an irreconcilable inconsistency or conflict between the terms of this Agreement and the terms of the Existing Fiber Optics Easement Agreements.

f. Term of Easement. The Easement and the agreements herein contained shall be perpetual, and shall constitute covenants running with the land.

g. Relocation of Easement. Neither party has the right to relocate the Easement or the Easement Property to any other portions of the Property, or to any other parcel of land that NCRA may now or hereafter own, except as expressly set forth in Paragraph 3 below.

h. Cooperation. NCRA shall cooperate with SP as may be reasonably necessary to enable SP to seek and obtain any and all governmental approvals necessary for the use and enjoyment by SP of the Easement Property for the purposes set forth in Paragraph 1.a. above. Similarly, SP shall cooperate with NCRA in the same manner as set forth above, as applicable.

i. Ownership of Improvements. The improvements placed on or under the Easement Property by SP or its permittees, lessees or licensees shall remain the property of SP or its permittees, lessees or licensees (as the case may be) in perpetuity notwithstanding any relocation of the Easement Property in accordance with Paragraph 3 below.

2. Construction of Fiber Optics Improvements.

a. Construction Procedures. SP, at its sole cost and expense, shall have the right to construct Fiber Optics Improvements, subject to the following terms and conditions.

(i) Notice to NCRA. SP shall notify NCRA in writing of its intent to construct Fiber Optics Improvements on the Easement Property not less than 90 days prior to commencement of work, together with copies of the plans and specifications for the work.

(ii) Construction Standards. SP, at SP's sole cost and expense, shall cause all work in connection with the construction of the Fiber Optics Improvements to be performed in conformance with prevailing industry standards, in a good and workerlike manner and in compliance with all applicable laws and regulations, including the NCRA's reasonable safety policies regarding entry to and construction upon its property.

(iii) Costs. SP shall bear all costs incurred in connection with the development and construction of the Fiber Optics Improvements, including, without limitation, the costs of permits and other governmental obligations in connection with the Fiber Optics Improvements, and NCRA shall have no obligation for any costs incurred with respect to the development and construction of the Fiber Optics Improvements.

b. Right to Inspect. SP shall afford NCRA the reasonable right to inspect such work during construction, and shall cooperate with and permit NCRA reasonable rights of access in connection therewith.

c. Indemnification: Reimbursement. SP shall indemnify, defend and hold NCRA and its successors and assigns, their respective directors, officers and employees, harmless from and against any cost, liability, damage or expense that such indemnified party may suffer or incur, including, without limitation, court costs and attorneys' fees, arising out of construction of Fiber Optics Improvements on the Easement Property pursuant to this Paragraph 2, except to the extent caused in whole or in part by any indemnitee's negligence or intentional misconduct. Nothing expressed or implied in this Paragraph 2.c is intended to or shall be construed to: (i) confer upon or to give any third party any right or benefit under or by reason of this Paragraph 2, or (ii) limit or restrict either party hereto from seeking damages, indemnification, redress or other relief from any third party.

3. Relocation of Easement.

a. Relocation of Easement. NCRA shall have the right to relocate the Easement Property, including without limitation, Fiber Optics Improvements, at NCRA's sole cost and expense, subject to the following terms and conditions including, without limitation, the provisions of Section 3(j):

b. Relocation: Notice to SP.

(i) General. In the event NCRA desires to relocate the Easement Property and/or any Fiber Optics Improvements, NCRA shall notify SP in writing of such desire not less than 180 days prior to the proposed effective date of such relocation (the "Relocation Notice"). The Relocation Notice shall set forth all of the following: (A) the proposed location of the Substitute Easement Property (as hereinafter defined); (B) the proposed effective date of the relocation of the Easement Property; (C) the estimated costs of such relocation; (D) a description of the means by which SP will retain uninterrupted use (to the extent required by the Existing Fiber Optics Easements) of the Easement pending the relocation of the Easement Property and Fiber Optics Improvements; and (E) the source and availability of funds to finance the costs of such relocation (including the NCRA's assessment of who is the responsible party to pay such relocation costs). The Easement Property as relocated shall be referred to hereinafter as the "Substitute Easement Property."

(ii) Specific. SP acknowledges that the Easement Property may be relocated within the Property, provided that any such relocation does not materially reduce the commercial value of the Easement and/or increase the cost of operation or maintenance of the Fiber Optics Improvements or the cost of use of the Easement.

c. Construction.

(i) Costs of Construction. NCRA shall bear all costs incurred in connection with the relocation of the Easement Property and Fiber Optics Improvements, including, without limitation, (A) acquisition, installation and construction of the Fiber Optics Improvements, and (B) the costs of permits and other governmental obligations for the foregoing, and SP shall have no obligation for any costs incurred with respect thereto. Notwithstanding any of the foregoing to the contrary, NCRA shall not bear the costs incurred in the acquisition, installation and construction of the Fiber Optics Improvements on the Substitute Easement Property in the event that (A) the relocated portion of the Easement Property is relocated separate and apart from the balance of the Easement, and (B) the Fiber Optics Improvements had not yet been constructed on the Easement Property in the first instance; provided, however, all other obligations of NCRA with respect to the conditions to the relocation of all or any portion of the Easement Property and the Fiber Optics Improvements, without limitation, shall remain unmodified and in full force and effect.

(ii) Construction Standards. NCRA, at NCRA's sole cost and expense, shall cause all work in connection with the development of and construction on the Substitute Easement Property, including, without limitation, the construction of any Fiber Optics Improvements, to be performed in a good and workerlike manner and in compliance with all applicable approved plans, approved specifications, laws and regulations.

(iii) Approval of Improvements. Within 30 days after receipt by SP of the Relocation Notice, NCRA shall submit to SP for its review and approval final plans and specifications for the Substitute Easement Property and Fiber Optics Improvements that NCRA intends to submit to the appropriate governmental authority to obtain a permit or other governmental approval therefor. SP shall be permitted 60 days from the date of receipt by SP of



any such plans and specifications to indicate its written approval thereof. If SP fails to indicate in writing its approval or disapproval within such 60 day period; NCRA's plans and specifications shall be deemed approved; provided, further, that SP's express disapproval with respect to any relocation of the Easement Property may not be unreasonable. Any approval by SP of the plans and specifications of NCRA shall not be deemed an approval by SP of the safety or structural sufficiency or adequacy of the Substitute Easement Property or Fiber Optics Improvements to be located thereon, and such approval shall not release NCRA, its agents, contractors, or subcontractors, from any and all liability arising in connection with the planning, design, development and construction thereof. NCRA shall not commence construction unless and until the plans and specifications are approved by SP and all applicable permits, approvals or consents of governmental authorities are obtained by NCRA.

(iv) Construction Review. SP and its agents and contractors shall have the right at any time to enter upon the Property and the Substitute Easement Property to inspect the Substitute Easement Property and Fiber Optics Improvements. SP shall have the right to review and approve all aspects of the construction of the Substitute Easement Property and Fiber Optics Improvements.

d. Indemnification: Reimbursement. NCRA shall indemnify, defend and hold SP harmless from and against any cost, liability, damage or expense that SP may suffer or incur, including, without limitation, court costs and attorneys' fees and disbursements, arising out of any relocation of the Easement or the Fiber Optics Improvements pursuant to this Paragraph 3, except to the extent caused in whole or in part by SP's negligence or willful misconduct. Additionally, NCRA shall reimburse SP for any and all costs reasonably incurred by SP in connection with any proposed relocation or actual relocation of the Easement Property and Fiber Optics Improvements in accordance with this Paragraph 3. Nothing expressed or implied in this Paragraph 3d is intended to or shall be construed to limit or restrict either party from seeking damages, indemnification, redress or other relief from any third party.

e. Effective Date of Relocation. Notwithstanding anything to the contrary in the foregoing, SP shall not be required to discontinue its use of the Easement Property, nor to commence use of the Substitute Easement Property, until (i) the Substitute Easement Property shall have been granted to SP; (ii) the Fiber Optics Improvements located thereon shall have been completed to the reasonable satisfaction of SP, and (iii) the use of the Substitute Easement Property and the Fiber Optics Improvements shall have been approved by all appropriate governmental authorities so that the continuity of the Easement is maintained at all times.

f. Substitute Easement Agreement. In the event that the Easement Property is relocated in accordance with and pursuant to the provisions of this Paragraph 3, NCRA agrees to immediately execute, acknowledge and deliver to SP an amendment to this Agreement establishing the rights and obligations arising hereunder as to the Substitute Easement Property as a matter of record.

g. Quitclaim Deed. In the event that the Easement is relocated in accordance with and pursuant to the provisions of this Paragraph 3, SP agrees to execute, acknowledge and deliver to NCRA upon written request therefor, a quitclaim deed or such other documentation as may be necessary to terminate all of SP's rights and interests in and to the use of the Easement Property for which Substitute Easement Property has been substituted .

h. Ownership of Improvements. Notwithstanding anything to the contrary in the foregoing, the improvements on the Substitute Easement Property shall be the property of SP or its permittees, licensees or lessees (as the case may be).

i. Relocation Comprehensive. Any relocation of the Easement Property and Fiber Optics Improvements pursuant to this Paragraph 3 shall include the relocation of all permitted uses of the Easement Property and Fiber Optics Improvements by SP.

j. Reimbursement of NCRA for Relocation Costs.

(i) SP acknowledges that NCRA (or its predecessors) have entered into agreements with certain holders of Existing Fiber Optics Easements regarding the reimbursement of NCRA for relocation costs for which NCRA is responsible under the terms of this Agreement.

(ii) To the extent the terms of any Existing Fiber Optics Easements provide that such holders are responsible for the costs and expenses of relocation of the Easement Property and Fiber Optics Improvements made at the request of SP, SP agrees to use diligent efforts to recover such relocation costs and expenses from such holder and, to the extent recovered by SP, SP shall reimburse NCRA therefore.

(iii) SP shall not enter into any new or future agreements or easements allowing parties to use the Easement unless either SP or such user enters into an agreement with NCRA, which agreement provides that SP or such user will pay the reasonable costs and expenses of one relocation of Fiber Optics Improvements and the Easement Property per any single location on the Easement Property if such relocation is necessary for NCRA's Rail Uses. NCRA will exercise reasonable judgment in approving the terms of any such agreement, and shall respond promptly to SP's request to execute such agreement.

(iv) In the event SP desires to install any of its own new or future Fiber Optics Improvements on the Easement Property (other than in connection with its obligations under Existing Fiber Optics Easements) SP will agree to pay the reasonable costs and expenses of one relocation of Fiber Optics Improvements and the Easement Property per any single location on the Easement Property if such relocation is necessary for NCRA's Rail Uses. NCRA will exercise reasonable judgment in approving the terms of any such agreement, and shall respond promptly to SP's request to execute such agreement.

(v) Notwithstanding this subparagraph j, NCRA shall at all times remain primarily responsible for relocation costs and expenses for any relocations requested by NCRA.

4. Damage and Destruction. In the event that the whole or any part of the Property, including, without limitation, the Easement Property is damaged or destroyed by any cause whatsoever, both NCRA and SP, at their respective cost and expense, shall repair, restore and rebuild that portion of the Property subject to the exclusive use of such party, subject, however to the provisions of Paragraph 2 above. In the event SP is unable to commence repairs or restoration to the Easement Property until such time as NCRA completes any repairs on the Property, NCRA shall exercise due diligence and its best efforts to complete such repairs as promptly as possible so as to limit any inconvenience to SP. If NCRA fails to commence or complete such construction within a reasonable period of time after such damage or destruction, and provided that such delay is causing injury (economic or otherwise) to SP, SP shall be permitted to undertake such repairs or restoration at NCRA's sole cost and expense, and is hereby granted a reasonable right of ingress to, and egress from, the Property for such purposes.

5. Condemnation.

a. Total Taking. If the Easement Property is totally taken by condemnation, this Agreement shall remain in full force and effect, except that SP may elect to terminate this Agreement at any time following such total taking, if SP, in its sole discretion, determines that any alternate location for the Easement Property on the Property as proposed by NCRA is not suitable for SP's intended use thereof, and any condemnation award directly attributable to the Easement Property, the Easement and the use thereof, shall be paid to SP and NCRA as their interests thereto appear.

b. Partial Taking. If a portion of the Easement Property is taken by condemnation, this Agreement shall remain in full force and effect, except that SP may elect to terminate this Agreement at any time following such partial taking if SP, in its sole discretion, determines that the remaining portion of the Easement Property is not suitable for SP's intended use thereof. Any condemnation award directly attributable to that portion of the Easement Property, the Easement and the use thereof, subject to the taking, shall be paid to SP and NCRA as their interests thereto may appear.

c. Temporary Taking. If all or any portion of the Easement Property is taken temporarily by condemnation, this Agreement shall remain in full force and effect, and the full amount of any condemnation award attributable directly to the Easement Property, the Easement and the use thereof, shall be paid to SP.

d. Relocation of Easement. In the event of a total or partial taking of the Easement Property, NCRA shall propose to SP an alternate location for the Easement Property so as to enable SP to continue those operations conducted or that may be conducted by SP on the Easement Property prior to such taking. Nothing herein contained shall modify SP's

right to terminate this Agreement in the event of a total or partial taking of the Easement Property as aforesaid.

6. Compliance with Governmental Regulations. Each party, at its sole cost and expense, shall take all action as is necessary to comply with any and all orders or requirements affecting the Property or the Easement Property, as applicable, placed thereon by federal, state, county and municipal authority having jurisdiction thereover.

7. Notices. All notices required or permitted to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery, or by overnight courier, to the appropriate address indicated below or at such other place or places as either NCRA or SP may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served four (4) days after the date of mailing thereof or upon personal delivery.

To SP: Southern Pacific Transportation Company  
Southern Pacific Building  
One Market Plaza, Room 870  
San Francisco, California 94105  
Attn: Assistant Vice President  
cc: Law Department

With copy to: Southern Pacific Transportation Company  
Southern Pacific Building  
One Market Plaza, Room 870  
San Francisco, California 94105  
Attn: Mike Casey

and: Holme Roberts & Owen LLC  
1401 Pearl Street, Suite 400  
Boulder, Colorado 80302  
Attn: Jill K. Rood, Esq.

To NCRA: North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin

With copy to: Christopher J. Neary, Esq.  
110 S. Main Street, Suite C  
Willits, CA 95490

8. Miscellaneous Provisions.

a. No Waiver. No waiver of any default or breach of any covenant by either party hereunder shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then the waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition herein by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either party of any act by the other party shall not be deemed to waive consent or approval to any subsequent similar acts.

b. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

c. Relation of the Parties. It is hereby expressly agreed and understood that in the performance of the terms provided herein (i) SP and SP's employees and agents shall be deemed to be independent of NCRA and not agents or employees of NCRA and SP shall not be liable to NCRA or any persons, whether employees or agents of NCRA or otherwise, for any death, injuries, or damage arising out of SP's proper performance of this Agreement; and (ii) NCRA and SP's employees and agents shall be deemed to be independent of SP and not agents or employees of SP and NCRA shall not be liable to SP or any persons, whether employees or agents of SP or otherwise, for any death, injuries, or damage arising out of NCRA's proper performance of this Agreement.

d. Attorneys Fees. If any suit or action be instituted to enforce the rights of either party under this Agreement, the successful party shall be entitled to reasonable attorneys' fees and disbursements and court costs.

e. Successors and Assigns. SP shall have the right, power and authority to assign this Agreement or any portion hereof or to delegate any duties or obligations arising hereunder, either voluntarily, involuntarily or by operation of law, without first obtaining the consent of NCRA. Notwithstanding the foregoing, in the event of a voluntary assignment of this entire Agreement by SP, SP shall provide to NCRA the following: (i) not less than 30 days prior written notice to NCRA of the assignment; (ii) a duly executed and authorized agreement confirming the assignee's assumption of all of SP's obligations under this Agreement, in a form reasonably satisfactory to NCRA; and (iii) a duly executed and authorized agreement confirming the release of all of NCRA's obligations to SP hereunder, in a form reasonably acceptable to NCRA. If NCRA reasonably determines that such entity is not creditworthy (and such entity would be permitted to self-insure hereunder) such entity shall obtain general public liability insurance in an amount not less than Five Million Dollars (\$5,000,000), naming NCRA as an additional insured thereunder. In the event of a sale of substantially all of the assets of SP or a controlling interest in SP, the rights of SP arising under this Agreement shall be deemed assigned to, and fully enforceable by, such successor to SP. NCRA shall have no right, power, or authority to assign this Agreement or any portion hereof or to delegate any duties or obligations arising hereunder, either voluntarily, involuntarily or by operation of law, without the prior

written approval of SP, which SP may withhold in its sole discretion; provided, however, NCRA shall have the right to assign its rights and obligations under this Agreement to a credit-worthy governmental entity or to a purchaser of the fee interest in the Property, subject to the following conditions: (i) NCRA gives SP not less than 30 days prior written notice of the proposed assignment; (ii) the assignee delivers to SP a duly executed and authorized agreement confirming the assumption of all of NCRA's obligations under this Agreement, in a form reasonably satisfactory to SP, NCRA and assignee; and (iii) NCRA delivers to SP a duly executed and authorized agreement confirming the release of all of SP's obligations to NCRA under this Agreement, in a form reasonably satisfactory to SP. Upon the satisfactory completion of all of the foregoing, the proposed assignment shall be effective. All of the rights, benefits, duties, liabilities and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective permitted successors and assigns, and upon a permitted assignment hereunder, the assigning party shall have no further duties and obligations arising after the date of such assignment .

f. Time. Time is of the essence of this Agreement and every provision herein contained.

g. Headings. The title and headings of the Paragraphs hereof are intended solely for means of reference and are not intended to modify, explain or construe any of the provisions of this Agreement.

h. Construction. The language set forth in this Agreement shall in all cases be simply construed in accordance with its fair meaning and not strictly construed for or against either party. The neuter gender includes the feminine and masculine and the singular number includes the plural, as the context so dictates, and the word "person" shall include individuals and all legal entities .

i. Entire Agreement. This Agreement, all exhibits hereto, and all documents referred to herein, constitute the entire agreement between the parties. There are no oral or parol agreements existing between the parties which are not expressly set forth herein and therein. This Agreement may not be modified, amended or otherwise changed in any manner except by a writing executed by the party to be charged.

j. Exhibits. All exhibits attached hereto are incorporated herein by this reference.

k. Further Assurances. Each of the parties hereto agree to do any further acts, or execute any further documents, that may be reasonably necessary or required in order to carry out the purpose of this Agreement.

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







EXHIBIT A

PROPERTY

EXHIBIT B

MAP

**EXHIBIT N**  
**ENVIRONMENTAL INDEMNITY AGREEMENT**

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this "Indemnity Agreement") is dated \_\_\_\_\_, 1996 and is between Southern Pacific Transportation Company, a Delaware corporation ("SPT") and North Coast Railroad Authority, a local agency created by the California legislature ("NCRA").

**ARTICLE I. RECITALS**

1.1 On \_\_\_\_\_, SPT and NCRA entered into that certain Amended and Restated Agreement of Purchase and Sale (Willits Segment) (the "Agreement") under which SPT agreed to sell to NCRA and NCRA agreed to purchase from SPT, certain real property in Sonoma and Mendocino Counties, California, known as the Willits Segment (defined in the Agreement and referred to herein as the "Property").

1.2 Pursuant to the terms of the Agreement, SPT and NCRA must enter into this Environmental Indemnity Agreement ("Indemnity Agreement") as a condition to the closing of NCRA's proposed purchase of the Property.

1.3 By this Indemnity Agreement, the parties intend to create an efficient and responsive mechanism for addressing any contamination of the Property by Hazardous Materials, as herein defined. To accomplish that goal, the parties agree that the prompt response and remediation of such contamination shall take precedence over the prosecution of any legal challenge respecting SPT's obligation to provide a defense and indemnity. Therefore, upon a tender of the defense and indemnity, SPT shall first diligently defend Purchaser (as hereafter

defined) and discharge its indemnity and remediation obligations described herein, unless and until a court of competent jurisdiction or Private Judge, as hereafter defined, has relieved SPT of that duty.

## ARTICLE II. DEFINITIONS

2.1 Except as otherwise set forth in this Indemnity Agreement, all capitalized terms used in this Indemnity Agreement shall have the definitions specified in the Agreement. For purposes of this Indemnity Agreement, the following definitions shall apply.

2.1.1 The term "Hazardous Materials" shall mean: (a) any substances defined, regulated or listed (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (v) California Health and Safety Code §§ 25115-25117, 25249.5, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 U.S.C. § 7901 et seq.; and (vii) California Water Code § 13050; (b) any amendments to such enumerated statutes or acts; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated as of the Environmental Indemnity Date under any other applicable federal, state or local environmental laws, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum (or any fraction thereof), natural gas and synthetic fuel products and by-products.

2.1.2 The term "Hazardous Release" shall have the same meaning as the term "release" under CERCLA [42 U.S.C. § 9601(22)] as it applies to a release of any Hazardous Materials: (a) due to the operations, acts or omissions of SPT, its agents, representatives, employees, lessees, joint venturers, invitees, affiliates, contractors and co-owners prior to the Environmental Indemnity Date; or (b) into, from, through or upon the Property, including without limit, (i) the air, soils or any improvements located thereon; (ii) surface water or ground water on or under the Property; or (iii) the sewer, septic system or waste treatment, storage or disposal system servicing any part of the Property. The term shall also include the presence of asbestos or other Hazardous Materials in, on or above the Property, if the same existed in such quantities or quality as to be subject to regulatory enforcement proceedings under the Environmental Laws; or otherwise subjects Purchaser to Environmental Claims or Environmental Expenses.

2.1.3 For purposes of this Indemnity, the term "Environmental Claim" shall mean any actual or threatened (a) complaint, demand for information, legal action or administrative proceeding, lien, order, directive, claim, citation or notice by any governmental authority, including, without limit, any and all enforcement, clean-up, removal or other governmental regulatory action initiated, completed, pending or threatened, which arises out of a Hazardous Release, including, without limit, any remedial or enforcement actions of any kind; or (b) complaint, order, judgment, legal action or administrative proceeding, lien, directive, claim, demand, citation or notice by any person or entity, including, without limit, any and all claims made, threatened or prosecuted by any third party, arising out of or relating in any way to any Hazardous Release, including, without limitation, any proceeding for the recovery of damages, indemnification, contribution, cost recovery, compensation, loss or injury.

2.1.4 The term "Environmental Laws" shall mean all federal, state and local laws, ordinances, regulations, orders and directives of every kind and nature whatsoever which identify or regulate the use, disposal, transportation, remediation, investigation, storage or treatment of Hazardous Materials or which otherwise pertain to Hazardous Materials in, at, on or under the Property or any portion thereof, including, without limitation, those laws identified in subsection 2.1.1, above.

2.1.5 The term "Environmental Expenses" shall mean all costs and expenses reasonably incurred by Purchaser or SPT in response to (a) a Hazardous Release; (b) an Environmental Claim; or (c) due to the requirements of the Environmental Laws, in investigating, characterizing, responding to, removing or remediating Hazardous Materials existing or allegedly existing in, on or over the Property. By way of example, and not limitation, it includes reasonable consulting and investigation fees, feasibility studies, repair, detoxification, closure or other clean-up costs, reasonable attorney's fees incurred (including, without limit, fees incurred in evaluating, reviewing and supervising the response, removal and remediation measures and in negotiating, litigating, satisfying or settling the Environmental Claims), and a reasonable recovery for actual administrative overhead costs incurred in having in-house personnel provide engineering, administrative and other support functions in responding to Environmental Claims or the occurrence of a Hazardous Release on the Property. Subject to the limitations set out in this section 2.1.5, such costs and expenses shall, without limit, be at least coextensive with the types and categories of reimbursable costs and expenses and administrative overhead recoverable by the United States government in its cost recovery actions under CERCLA (without regard to whether the clean-up and remediation efforts were consistent with the National Contingency Plan).

2.1.6 The term "Purchaser" shall hereinafter include: (a) the NCRA; (b) any person or entity, including a successor in interest by statute or contract, which derives its interest in the Property from the NCRA for the use or operation of the Property primarily for transportation, railroad or communication purposes (i.e., the incidental use of the Property for other purposes shall not affect the entity's status as a "Purchaser"); (c) any person or entity financing (or holding a security interest as a consequence of financing) the initial acquisition of the Property (including the California Department of Transportation); (d) any person or entity providing subsequent financing (in whole or in part) for the use or operation of the Property primarily for transportation, railroad or communication purposes; and (e) all officers, directors, employees, members, agents and representatives of each of the entities identified in (a) through (d) above. Neither the leasing nor any other transfer by any Purchaser of an interest in the Property shall affect that entity's status as a "Purchaser" hereunder, nor limit or otherwise affect that Purchaser's right to a defense and indemnity hereunder. A private for-profit organization holding an interest in the Property and which thereafter engages in purely commercial activities on the Property, whether or not it involves the operation of a transportation or communication business, shall not be a "Purchaser" under this Indemnity Agreement.

2.1.7 The term "Environmental Indemnity Date" shall mean the date of this Indemnity Agreement.

2.1.8 The term "PRP" shall mean "potentially responsible party" and shall mean third parties (including without limitation, tenants or former tenants of the Property or owners of other properties) who may be held legally responsible under the Environmental Laws for the response to or the removal and remediation of the Hazardous Materials described herein.

2.1.9 The term "Agency" shall mean any governmental agency having jurisdiction over any Hazardous Materials located in, on, above, or under the Property.

### ARTICLE III. INDEMNITY

3.1 Subject only to the provisions of section 3.4, below, SPT hereby unconditionally agrees at its sole cost to indemnify, protect and to hold Purchaser harmless from, and to defend Purchaser (with counsel selected by SPT and approved by Purchaser in its reasonable discretion) against, any and all (a) Environmental Claims; (b) Environmental Expenses; and (c) liabilities, losses, damage, fines, penalties, charges, orders, judgments or liens; to the extent any of them arise, directly or indirectly, in whole or in part out of: (i) a Hazardous Release on or before the Environmental Indemnity Date and under Sections 3.3(d) and 5.4(f) of the Agreement (with respect to SPT's post Initial Closing activities related to remediation); (ii) any act or omission by SPT in discharge of its obligations under this Indemnity Agreement, including without limit, the handling, investigation, treatment, storage, decontamination, remediation, removal, transport or disposal of any Hazardous Materials; or (iii) a breach of this Indemnity Agreement. (Collectively all such events triggering an indemnity obligation shall sometimes be referred to as a "Liability.") Subject to the provisions of section 3.4, below, SPT's liability hereunder is absolute and does not depend on whether it resulted from any act or omission of SPT, or if so caused, whether SPT's acts or omissions were legal, negligent, or within its control.

3.2 Purchaser's rights to the indemnity and defense identified herein, and the obligations undertaken by SPT herein to provide such indemnity and defense for any Liability shall supersede all other agreements between the parties as of the Environmental Indemnity Date



which are in conflict with these provisions, and shall not be affected or diminished in any manner by any other obligations assumed or undertaken by Purchaser under the terms of the Agreement (e.g., as lessor under an assigned leasehold interest). Furthermore, to the extent they conflict with the rights and obligations of the parties hereunder, any contrary rights SPT or Purchaser may have at common law or by statute are waived by SPT and Purchaser respectively. No inspection, nor any failure by Purchaser to inspect the Property, nor any failure to exact any particular form of representation or warranty from SPT shall be construed to modify, eliminate or diminish the indemnity obligations of SPT hereunder, nor to increase, eliminate or modify any legal duty of SPT to disclose to Purchaser any information known by SPT about the environmental condition of the Property. Nothing in this Indemnity Agreement is meant to affect the rights of any third party or governmental agency to proceed against either party under any federal, state or local law.

3.3 If Purchaser suffers an Environmental Claim, incurs an Environmental Expense, or identifies a Hazardous Release, or otherwise incurs or suffers a Liability, and Purchaser, in good faith, believes itself entitled to the benefits of the indemnity herein granted, Purchaser shall give SPT prompt notice of its claim of indemnity and defense under this Indemnity Agreement (herein the "Indemnity Claim"), stating, to the extent known, the nature of the Hazardous Release or Hazardous Materials involved, and its general location, the Agency or private party asserting the Environmental Claim, if any, respecting such release, a copy of the claim, if any, and the basis for the Indemnity Claim. Purchaser shall thereafter reasonably cooperate with SPT in identifying the location, nature and extent of the contamination, in providing reasonable access to SPT for investigation and remediation of the affected area as

described in Article 3.10, and in cooperatively handling Agency inquiries. Purchaser's costs of such cooperation, if any, shall be treated as Environmental Expenses.

3.4 The indemnity specified in section 3.1, above, shall not apply:

(a) if SPT carries its burden of proof in establishing, by a final judgment from a court of competent jurisdiction, or by an unappealed decision from a Private Judge (selected pursuant to § 3.5(c) and (d) below), that either:

(i) the Hazardous Materials came to be on, under or in the Property after the Environmental Indemnity Date, and such condition was not caused directly or indirectly by SPT or its licensees, lessees, tenants, agents, employees, successors or assigns (other than Purchaser); if such condition was caused or contributed to by SPT or such affiliated third party entities, the indemnity shall be equitably adjusted to the extent SPT or such affiliated third parties caused or contributed to the condition; or

(ii) if the Hazardous Release occurred before the Environmental Indemnity Date, that as of the Environmental Indemnity Date, for the particular Hazardous Release, Hazardous Materials, or Environmental Claim identified in the Indemnity Claim, SPT would not have (X) been legally obligated to take responsive action, remove or remediate the Hazardous Material under the Environmental Laws; (Y) incurred any Environmental Expenses; nor (Z) been liable under the Environmental Claim so identified; or

(iii) the Hazardous Materials or Hazardous Release was limited to a chemical release, caused by the chemical treatment by creosote (or other legal chemical treatment) of railroad ties which are located on and form a part of the Property's improvements.

It is understood that SPT may cease to provide a defense or indemnity following the entry of an appealable order or judgment in its favor, i.e., upon a finding that SPT is not liable under one of the provisions of section 3.4(a), above. Should such a determination thereafter be reversed, and a final judgment is then entered adjudging SPT liable under this Indemnity Agreement, any failure by SPT to provide the defense and indemnity between the time it was adjudged exonerated and the final judgment reversing such a decision and holding SPT liable, shall not give rise to a claim of punitive damages, and any interest on the loss, costs or damages suffered by Purchaser during such interim period shall be limited to ten percent (10%) per annum.

(b) for any Indemnity Claim received by SPT : (i) with respect to Initial Closing Property, after the date which is seventeen and one-half (17.5) years after the Environmental Indemnity Date, and (ii) with respect to a Phased Closing Property, after the date which is the later of (A) seventeen and one-half (17.5) years after the Environmental Indemnity Date or (B) seven years after the date of the applicable Phased Closing (the "Limitation Date"), unless it related to a Hazardous Release which was the subject of an Indemnity Claim made prior to the Limitation Date, or it was known to exist by SPT prior to the Limitation Date, but was not revealed by SPT to Purchaser by such date.

(c) for any Environmental Expenses relating to actual administrative overhead costs incurred by Purchaser if incurred during the period prior to SPT's Response, as defined below, and SPT does not thereafter default under this Indemnity Agreement.

(d) for any consequential damages suffered by Purchaser. (This limitation shall not be construed to extend to and limit Purchaser's indemnification rights and remedies hereunder in the event of any claim against Purchaser by a third party for consequential damages.)

3.5 (a) As soon as diligence allows and in any event not later than forty-five (45) days after receipt of the Indemnity Claim, SPT shall respond in writing to the tender of the Indemnity Claim ("SPT's Response") by either: (i) accepting the tender and waiving any reservation of rights to thereafter contest the Purchaser's right to an indemnity and defense for the specified Indemnity Claim; or (ii) accepting the tender with a reservation of such rights as to all or a part of the Indemnity Claim, and providing an explanation to Purchaser of the basis for any such reservation of rights in such detail as a reasonably diligent investigation of the facts will permit. SPT shall thereafter advise Purchaser of any new basis for any reservation or rights as soon as reasonably practicable after the discovery of the relevant facts would permit.

(b) It shall be the obligation of SPT to accept the tender and to promptly provide a defense and indemnity, and to undertake all necessary investigative, responsive and remedial activities for the Indemnity Claim mandated by the Environmental Laws, and to otherwise discharge all of its obligations hereunder, until and unless a court of competent jurisdiction or Private Judge appointed or selected under § 3.5(d), below, has entered a judgment or appealable order relieving SPT of these obligations or finds that SPT is not responsible for the particular indemnity obligation claimed by Purchaser. Any legal challenge by SPT to the Indemnity Claim shall be limited to the rights of reservation enumerated by SPT within the time periods specified by section 3.5, above, for its response to the Indemnity Claim.

(c) For any Indemnity Claim for which notice is given six years or more after the Environmental Indemnity Date, (i) SPT shall not be liable for the first One Thousand Dollars (\$1,000.00) of Environmental Expenses incurred by Purchaser for any Indemnity Claim (all notices from Purchaser to SPT relating to contamination arising out of the same Hazardous Release incident causing the claim shall be considered part of the same Indemnity Claim) and

(ii) either SPT or Purchaser may elect to proceed by the alternative dispute resolution process ("ADR") set out in § 3.5(d), below, provided the election is made in writing not later than (X) ninety (90) days after a written demand for the election has been given by either party to the other or (Y) ninety (90) days after SPT's Response has been given, whichever is later; otherwise, it shall be deemed waived.

(d) Upon timely and due written election by SPT or Purchaser, SPT's defenses to its obligation to provide the defense and indemnity set forth in this Indemnity Agreement shall be heard and determined by binding adjudication before a neutral private judge ("Private Judge"), mutually agreed upon by SPT or Purchaser, and if no such agreement can be reached, then by appointment by the Chairperson of the Environmental Section of the California Bar Association. The selection or appointment shall be made within thirty (30) days after the date notice of the election to proceed by ADR is given. The hearing on the matter shall be scheduled before the Private Judge within one hundred eighty (180) days after the election to proceed by ADR is given, unless the parties mutually agree to extend that time period. The matters so submitted to the Private Judge for hearing shall be limited to the determination of whether and to what extent any of the defenses set forth in § 3.4, above, are established by SPT and exonerate SPT from its obligation to provide the defense and indemnity herein specified. Witnesses shall testify under oath and the hearing shall be governed by the applicable substantive law and Federal Rules of Civil Procedure, except to the extent the parties mutually agree to modify the same.

As soon as appointed or selected, the Private Judge shall establish a discovery schedule and hear all matters concerning discovery and any pre-hearing procedure relating to the dispute. Discovery shall be liberally allowed to the extent practicable, in the reasonable discretion of the Private Judge. Each party recognizes that the expedited hearing may prevent a

thorough investigation of all salient facts respecting the claims of the parties before the scheduled hearing date, and each recognizes that the constrained timetable may work some prejudice on a party's ability to prepare for the hearing. Nevertheless, such a hearing will proceed within the specified 180 days, except as otherwise provided in this subsection 3.5(d) above, or where the Private Judge determines that either party has acted to materially prejudice the opportunity of the other party to prepare for the scheduled hearing, in which event the judge may either (i) impose sanctions on 15 days' notice and hearing; (ii) postpone the hearing to mitigate the prejudice; or (iii) make such other orders or determinations as the judge reasonably determines are required to restore the equities and permit the aggrieved party to prepare for trial.

The decision of the Private Judge on SPT's defense and indemnity obligation shall be made within thirty (30) days of the last date of the hearing, and shall include findings of fact and conclusions of law if requested by a party. Either party shall have the right, at its expense, to prepare a complete transcript of the proceedings. In any arbitration where the amount in controversy exceeds \$500,000, the determination of the matter in controversy may be tried de novo in a court of appropriate jurisdiction in a county where the Property is located by filing an action within thirty (30) days of receipt of the Private Judge's decision. If the complaint is not timely filed for retrial of the controverted issue, the Private Judge's determination may be enforced by entry of judgment in accordance with the law governing enforcement of arbitration awards generally.

(e) In the event SPT successfully challenges the Indemnity Claim, it shall be entitled to recover its Environmental Expenses, plus interest thereon at the rate of ten percent (10%) per annum, to the extent the Environmental Expenses were incurred on matters which are adjudged to be outside the scope of SPT's defense and indemnity obligations herein. If

a court of competent jurisdiction or the Private Judge finds that Purchaser did not tender an Indemnity Claim in good faith, the amount recoverable by SPT on the resulting Environmental Expenses shall bear interest at the maximum rate allowed by law, without limiting SPT's other remedies. Similarly, where it is found that SPT has failed to perform its obligations hereunder in good faith, Purchaser shall recover interest on its Environmental Expenses at the maximum rate allowed by law, without limiting Purchaser's other remedies. Furthermore, in any such litigation, the prevailing party shall be entitled to recover its reasonable attorneys' fees, as provided for in § 5.12 below.

(f) If SPT fails to timely remit SPT's Response to the Indemnity Claim in the manner required by § 3.5(a), above, and perform its indemnification obligations (subject to any reservation or rights enumerated by SPT), after default notice by Purchaser under section 5.01 and SPT's failure to cure, Purchaser shall have the sole right, but not the obligation, to handle, treat, store, decontaminate, transport, dispose, investigate, report, respond, remove and remediate any Hazardous Material on the Property, and to prosecute, defend, compromise, settle, agree to remediation work plans and mandates from any Agency, pay and otherwise perform in accordance with any order, directive, judgment or settlement relating to a Liability, all as Purchaser reasonably deems appropriate. The exercise of such control shall not in any manner waive or affect any of Purchaser's rights or remedies hereunder, or under statutory or common law (to the extent these rights have not otherwise been waived pursuant to § 3.2, above). In the event Purchaser exercises the right to such exclusive control, and a court of competent jurisdiction or the Private Judge subsequently finds that SPT was legally responsible for providing the defense and indemnity for the Indemnity Claim, SPT shall be liable for all Environmental Expenses incurred by Purchaser in good faith and in its reasonable judgment,

from the date incurred, together with interest at the maximum rate allowed by law. The provisions of this Section 3.5(f) shall not apply to any Phased Closing Property until such portion of the Phased Closing Property shall have been transferred in fee to JPA.

3.6 If SPT timely accepts the tender without any reservations, and so long as it does not thereafter breach its obligations to Purchaser under this Indemnity, Purchaser agrees that: (a) SPT shall be relieved of all liability for any Environmental Expenses incurred by Purchaser after the date the written notice of SPT's acceptance of the Indemnity Claim ("Acceptance Notice") is received by Purchaser (except to the extent additional Environmental Expenses are thereafter incurred based on Purchaser's response to requests for cooperation, due to emergency circumstances, or such expenses cannot be reasonably avoided immediately on receipt of such Acceptance of Notice); (b) Purchaser shall permit SPT to have reasonable access to the Property and to relevant nonprivileged information in its possession and control concerning the Indemnity Claim; (c) Purchaser shall not take any action (whether by compliance, compromise, settlement, contest or otherwise) respecting the Hazardous Release without SPT's prior written consent, which shall not be unreasonably withheld or delayed; and (d) SPT shall be the lead party in all contacts with the Agencies, but shall advise Purchaser respecting all material actions, proposals or settlements with the Agency, or other administration of the Indemnity Claim. Purchaser shall have the absolute right at any time to request, and shall promptly receive, copies of all communications between SPT and any other party respecting SPT's response to the Indemnity Claim, except to the extent such communication is privileged under law.

3.7 If SPT accepts the tender of the Indemnity Claim, and either then or thereafter asserts a reservation of its rights to subsequently establish that it was not liable under this Indemnity Agreement or was entitled to recover its excess indemnity, and if SPT is then



adjudged to be legally obligated to provide the indemnity and defense demanded, then so long as such reservation of rights was maintained by SPT, it shall be responsible for all Environmental Expenses reasonably incurred by Purchaser: (i) in monitoring SPT's activities and response to the Indemnity Claim; (ii) in obtaining legal counsel to represent Purchaser's interests respecting the rights of challenge reserved by SPT; and (iii) in taking such steps which are reasonable and believed in good faith to be necessary to protect Purchaser from the Liability.

3.8 Upon receiving notice of an Indemnity Claim, SPT shall promptly commence and diligently pursue all appropriate actions to investigate, respond to, and remediate the Hazardous Release or the Hazardous Materials identified in the Indemnity Claim to the point of closure, all as required by applicable Environmental Laws, and as otherwise required by this Indemnity Agreement. SPT shall promptly pay all costs and expenses incurred in response to any such Indemnity Claims. Purchaser agrees that during the period leading up to SPT's Response, as referred to in § 3.5, above, it shall exercise good faith efforts to limit its Environmental Expenses.

Without limiting the scope of SPT's indemnity and defense obligations under section 3.1, in the event of an Environmental Claim against Purchaser, SPT shall undertake the defense of such action by legal counsel selected by SPT and reasonably satisfactory to Purchaser. Such legal counsel may also defend SPT (if named in such action) unless in the reasonable judgment of Purchaser, representation of both Purchaser and SPT would cause a conflict of interest which would render such joint representation inappropriate. If such joint representation is deemed inappropriate by Purchaser, Purchaser shall be defended by alternate counsel selected by Purchaser and reasonably satisfactory to SPT. Each party shall cooperate with counsel in all

reasonable respects with regard to such legal action; however, the resulting costs shall then be recoverable as Environmental Expenses.

3.9 Promptly after completing the required remediation, SPT shall submit to Purchaser evidence reasonably satisfactory to Purchaser establishing that the remediation and closure of any Hazardous Release has been completed to the satisfaction of the Environmental Laws.

3.10 Purchaser hereby grants to SPT, its employees, contractors and agents, a license to enter onto that portion of the Property affected by Hazardous Materials as identified in the Indemnity Claim on substantially the same terms as the Right of Entry Agreement attached as Exhibit B and incorporated by this reference. Purchaser reserves the right to amend the terms of any future right of entry agreement in the event of a change in the assessment of the risk in connection with the Option Properties as reasonably determined by Purchaser.

3.11 To the extent SPT incurs any Environmental Expenses in performing its obligations hereunder, and the right to recover, or to receive reimbursement, from potentially responsible parties ("PRPs") for such expenses nevertheless requires Purchaser's assignment of such right, Purchaser hereby assigns to SPT Purchaser's present and future rights to recover for these Environmental Expenses from such PRPs. However, if SPT is in default hereunder at the time such rights to recover or be reimbursed accrue, or at any time thereafter, then so long as the default remains uncured Purchaser (i) shall have a lien on the proceeds of any recovery under such assignment to the extent of any damages suffered by Purchaser as a result of such default, (ii) such assignment shall be conditioned on the execution and filing or recording of documentation to evidence and perfect such lien in a form reasonably acceptable to Purchaser, and (iii) if SPT has not instituted proceedings to effectuate such recovery from the PRPs within

ninety (90) days of the filing or recording of the lien documents, as applicable, or within thirty (30) days after written notice to do so from Purchaser, whichever is later, Purchaser shall have the right to institute such action or proceeding in the name and on behalf of SPT against such PRPs without prejudice to any other rights or remedies Purchaser may have hereunder.

Provided SPT is not in default hereunder, SPT shall also have the right, in Purchaser's name, but at SPT's sole risk, to cause any and all of such PRPs to remediate the Hazardous Materials or Hazardous Release. Purchaser agrees to cooperate fully with SPT in SPT's attempts to cause such PRPs to undertake the remediation actions contemplated hereunder; however, Purchaser's costs of such cooperation shall be reimbursed by SPT as Environmental Expenses within 60 days of receiving an accounting thereof.

#### ARTICLE IV: DEFAULT AND REMEDIES

4.1 Default: SPT shall be in breach of this agreement if it:

(a) fails to cure any default in the performance of any obligation to be performed by that party, within ten (10) calendar days of the giving of notice, except that: (i) a failure to timely deliver an SPT Response shall be a breach without further notice, and (ii) for any default in the performance of an obligation which by its nature cannot be cured within ten (10) calendar days of the giving of notice, the period to cure shall be not more than a reasonable time to cure using best efforts and due diligence to do so;

(b) suffers or permits the appointment, pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of SPT, or files a petition in bankruptcy or participates in any other insolvency proceeding or assignment for the benefit of creditors, or admits in writing of its inability to pay its debts as they become due.

4.2 **Remedies:** Without limiting the remedies set forth elsewhere in this Indemnity Agreement, SPT or Purchaser may enforce the terms of this agreement by any other remedy allowed at law or in equity.

#### ARTICLE V: MISCELLANEOUS

5.1 **Notices.** All notices and other communications under this Indemnity Agreement shall be in writing and shall be deemed to have been duly given (a) 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, or (b) on receipt, if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To SPT:

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105  
Attention: Mr. Robert F. Starzel  
Phone No.: 415-541-1474  
Telecopy No.: 415-541-2098

and

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105  
Attention: C.Y. Harvey, Esq., General Counsel  
Phone No.: 415-541-1781  
Telecopy No.: 415-495-5436

with a copy to:

Holme Roberts & Owen LLC  
1401 Pearl St., Suite 400  
Boulder, Colorado 80302  
Attention: Jill K. Rood, Esq.  
Phone No.: 303-444-5955  
Telecopy No.: 303-444-1063

To Purchaser:

North Coast Railroad Authority  
4 West 2nd Street  
Eureka, CA 95501  
Attn: Edward M. McLaughlin  
Phone Number: \_\_\_\_\_  
Telecopy No. \_\_\_\_\_

with a copy to:

Christopher J. Neary, Esq.  
110 S. Main Street, Suite C  
Willits, CA 95490  
Phone No.: 707-459-5551  
Telecopy No.: \_\_\_\_\_

5.2 Governing Law. This Indemnity Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

5.4 Saturdays, Sundays and Holidays. If any payment or delivery of any document is required pursuant to any term of this Indemnity Agreement to be made on a date which falls on a Saturday, Sunday or legal holiday in the State of California, such payment or delivery shall be made on the first business day following such Saturday, Sunday or legal holiday.

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

5.6 Effect of Indemnity Agreement. This instrument sets forth the entire agreement between the parties concerning its subject matter. All negotiations relative to the matters contemplated by this Indemnity Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Indemnity Agreement. No provision of this Indemnity Agreement shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be charged with such amendment, revocation or waiver. Subject to the provisions of section 5.13, this Indemnity Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5.7 Severability. If any clause or provision of this Indemnity 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 Indemnity Agreement shall not be affected but shall remain in full force and effect.

5.8 Payment; Interest. All payment obligations of SPT to Purchaser (or vice versa) hereunder shall be payable immediately upon demand. If not paid within sixty (60) days after demand, they shall bear interest at ten percent (10%) per annum, unless otherwise specified herein. Where the specified interest rate exceeds the maximum rate allowed by law, the rate shall be deemed restated at the maximum legal rate.

5.9 Survival. Regardless of any other provision of this Indemnity Agreement or any provision contained in the Agreement to the contrary, SPT hereby acknowledges and agrees that

the obligations of SPT under this Indemnity Agreement shall survive any transfer of title to the Property.

5.10 Independent Obligations. SPT's obligations hereunder are independent of all of its other obligations to Purchaser, and Purchaser may enforce any of its rights hereunder independently of any other right or remedy that it may at any time hold.

5.11 Cumulative Remedies; No Waiver. The rights, powers and remedies of Purchaser hereunder are cumulative and not exclusive of any other right, power or remedy that Purchaser may otherwise have. No failure or delay on the part of Purchaser in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor shall any single or partial exercise of any right, power or remedy preclude the further exercise thereof or the exercise of any other right, power or remedy. Any change in the rights and remedies of Purchaser shall only be by written agreement, executed by Purchaser; change shall not arise by conduct or implication.

5.12 Attorneys' Fees. If any attorney is engaged by either party to enforce or defend any provision of this Indemnity Agreement, regardless of whether any legal action or proceeding is filed, the prevailing party shall recover its reasonable attorneys' fees and costs incurred. If either party brings any action pertaining to this Indemnity Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs as the court or Private Judge may determine.

5.13 Binding Agreement; Assignment; Amendment. This Indemnity Agreement and the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of SPT and Purchaser, and their respective successors and assigns, except that SPT shall not be permitted to transfer, convey or assign this Indemnity Agreement or any right or obligation hereunder without the prior written consent of Purchaser (and any attempt to do so shall be void). Neither

this Indemnity Agreement nor any provision hereof may be amended, modified, waived or terminated except by an instrument in writing duly signed by SPT and Purchaser.

5.14 Third-Party Beneficiaries. The parties hereby expressly acknowledge and agree that this Indemnity Agreement is made and entered into for the express protection and benefit of Purchaser, as herein defined, and SPT, and no other party or entity whatsoever, and there are no other third-party beneficiaries to this Indemnity Agreement.

5.15 Jurisdiction. SPT and Purchaser hereby expressly consent to, and will not contest, the exercise of jurisdiction by a competent court of the State of California.

5.16 Construction. Whenever the context requires, all terms used herein in the singular shall be construed in the plural and vice versa, and each gender shall include each other gender. Section headings in this Indemnity Agreement are included for convenience of reference only, and are not a part of this Indemnity Agreement for any other purpose.

5.17 No Party Deemed Drafter. Each party participated in the preparation of this Indemnity Agreement personally and with the benefit of counsel. If this Indemnity Agreement is ever construed by a court of law or equity, such court shall not construe this Indemnity or any provision hereof more harshly against any party by virtue of its role as drafter.

5.18 Time Is of the Essence. Each party recognizes that time is of the essence in the performance of this Indemnity Agreement.

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



SPT:

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a Delaware corporation

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

Title: \_\_\_\_\_

NCRA:

NORTH COAST RAILROAD AUTHORITY, a local  
agency created by the California legislature

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

Title: \_\_\_\_\_

**EXHIBIT O**

**CALPELLA EASEMENT RESERVATION**

(to be inserted in deed covering Mendocino County portion of the Willits Segment)

Grantor hereby excepts from the Property conveyed and reserves unto itself and its successors and assigns a nonexclusive easement (the "Calpella Access Easement") in, on, over, across, under and through the property described on Exhibit \_\_ attached hereto, for use as a roadway to allow vehicular and pedestrian ingress to and egress from the adjacent property described on Exhibit \_\_ attached hereto (the "Calpella Property") in connection with the remediation of the Calpella Property as provided in the Purchase Agreement.

Grantor shall indemnify, defend and hold Grantee harmless from and against any and all demands, claims, causes of action or judgments, reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred in connection with any injury to person, loss of life or damage to property arising out of Grantor's use of the Calpella Access Easement except to the extent caused by Grantee's negligence or willful misconduct.

The Calpella Access Easement shall terminate upon completion of remediation of the Calpella Property and the closing of the purchase and sale of the fee interest in the Calpella Property, all as provided in the Purchase Agreement.

Exhibit \_\_\_\_  
Calpella Access Easement Property

**Exhibit \_\_\_\_**  
**Calpella Property**

## **LAUGHLIN EASEMENT RESERVATION**

(to be inserted in deed covering Mendocino County portion of the Willits Segment)

Grantor hereby excepts from the Property conveyed and reserves unto itself and its successors and assigns a nonexclusive easement (the "Laughlin Access Easement") in, on, over, across, under and through the property described on Exhibit \_\_ attached hereto, for use as a roadway to allow vehicular and pedestrian ingress to and egress from the adjacent property described on Exhibit \_\_ attached hereto (the "Laughlin Property") in connection with the remediation of the Laughlin Property as provided in the Purchase Agreement.

Grantor shall indemnify, defend and hold Grantee harmless from and against any and all demands, claims, causes of action or judgments, reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred in connection with any injury to person, loss of life or damage to property arising out of Grantor's use of the Laughlin Access Easement except to the extent caused by Grantee's negligence or willful misconduct.

The Laughlin Access Easement shall terminate upon completion of remediation of the Laughlin Property and the closing of the purchase and sale of the fee interest in the Laughlin Property, all as provided in the Purchase Agreement.

**Exhibit \_\_\_\_**  
**Laughlin Access Easement Property**

**Exhibit \_\_\_\_**  
**Laughlin Property**