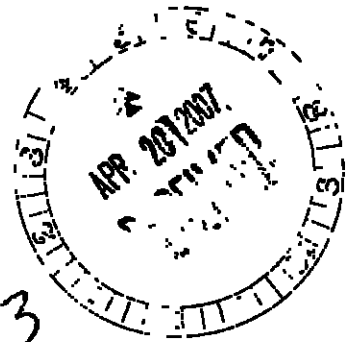




KAPLAN KIRSCH ROCKWELL

April 20, 2007



Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Utah Transit Authority – Acquisition Exemption – The Union Pacific Railroad
Company in Salt Lake County, Utah*, Finance Docket No. 35008

Dear Sir:

I am enclosing an original and ten copies of the Motion of Utah Transit Authority to Dismiss the Notice of Exemption in the above referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5 inch diskette is enclosed with this document, along with a check for the filing fee in the amount of \$200.

Sincerely,

Charles A. Spitulnik

Enclosures

cc: Joseph H. Dettmar, Esq.
Allen Weinstein, Esq.
All Parties of Record

124006

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**Before the
Surface Transportation Board**

**Finance Docket No. 35008
UTAH TRANSIT AUTHORITY --
ACQUISITION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY
IN SALT LAKE COUNTY, UTAH**

219143

**MOTION OF
UTAH TRANSIT AUTHORITY
TO DISMISS THE NOTICE OF EXEMPTION**

ENTERED
Office of Proceedings
APR 20 2007
Part of
Public Record

The Utah Transit Authority ("UTA"), a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended, hereby moves this Board for dismissal of a Verified Notice of Exemption ("NOE") filed on March 27, 2007 in this proceeding. Because UTA has not acquired either rights or obligations that implicate in any way the freight common carrier operations that remain attached to the property covered by the NOE and thus has not become a rail carrier providing transportation subject to the jurisdiction of the Board, UTA hereby respectfully requests the Board to dismiss the NOE.

I. FACTS

UTA will purchase from the Union Pacific Railroad Company ("UPRR") the following property: (1) the remaining width of a portion of the Bingham Industrial Lead, a line of railroad main track corridor (formerly The Denver and Rio Grande Western Railroad Company) as said line extends in a westerly direction from Midvale, Utah, M.P. 0.00 of said line, to Bagley, Utah, M.P. 6.60 of said line, shown on Exhibit 1 to the NOE, of which right-of-way UTA previously acquired a thirty-five foot (35') strip from UPRR as part of the transaction described in STB

F.D. No. 34170, *Utah Transit Auth – Acquisition Exemption – Certain Assets of Union Pacific R Co*¹

As part of the same transaction, UTA will also acquire track referred to as “the Dalton Spur”, which extends westerly from (former) milepost 7.5 on the Bingham Industrial Lead. That connection is on a segment of the Bingham Industrial Lead that has previously been abandoned.² The Notice of Exemption filed in this proceeding does not cover the Dalton Spur, and no separate Notice or any other request for authorization will be submitted with respect to the Dalton Spur because: (1) the track is a spur track for which no STB approval is required prior to UTA’s acquisition, 49 U.S.C. §10906; (2) the Dalton Spur connects to a piece of track that is no longer subject to this Board’s jurisdiction as a result of the abandonment approved in Docket No. AB-33 (Sub-No. 194X); and (3) there is currently no rail operation on the Dalton Spur.

On the Bingham Industrial Lead, UPRR is retaining an easement that provides it with the exclusive right to provide freight service over the Bingham Industrial Lead, subject to pre-existing rights of BNSF Railway Company (“BNSF”) that will remain unaffected by this transaction. UPRR intends to transfer its freight operating rights to Savage, Bingham & Garfield Railroad Company (“SBG”), which would thereafter fulfill the remaining common carrier freight obligations relating to the line.³ UTA has acquired no right to operate freight service on the line

¹ In a decision in F D No 34170 served on May 22, 2002, this Board dismissed the Notice of Exemption that UTA had previously filed with respect to the transaction that included the Bingham Industrial Lead. The Board concluded that “no common carrier rights or obligations are being transferred and UTA will not hold itself out to be a common carrier performing rail service”, and that UP’s ability to fulfill its retained common carrier freight obligation on the line would not be impaired by the rights and obligations UTA acquired in that transaction. F D No 34170. Decision, *slip op.*, at 4.

² Docket No AB-33 (Sub-No. 194X), *Union Pacific R Co – Abandonment Exemption – In Salt Lake County UT* (Service Date December 2, 2002)

³ SBG has already filed, and this Board has published, a Notice of Exemption with respect to its acquisition of the right to operate on the Bingham Industrial Lead and other trackage owned by UTA and currently operated by UPRR. STB F D No 35002, *Savage, Bingham & Garfield R Co. – Acquisition and Operation Exemption – Union Pacific R Co* (Service Date March 15, 2007). By decision issued on March 28, 2007, the Board stayed the effective date of that Notice of Exemption pending further review of the facts and circumstances associated with UTA’s acquisition of the line from UPRR.

and will acquire none. The agreement describing the purchase of the Bingham Industrial Lead and the Dalton Spur, the Eighth Amendment to the Purchase and Sale Agreement (the "PSA"), is attached to the NOE as Exhibit 2

The current, and all-but-final version of the Administration and Coordination Agreement between SBG and UTA (the "ACA"), which will govern the coordination of the freight and passenger operations that will occur on the Bingham line is attached to this Motion as Exhibit 1. Together, the PSA and the ACA confirm that UTA will acquire neither the right nor the obligation to provide freight service on the Bingham Industrial Lead or the Dalton Spur. The PSA specifically provides that UPRR will retain an exclusive easement for the purpose of fulfilling its rights as common carrier freight railroad. PSA at 3, §1(b)(i). In addition, the PSA also provides that UPRR has the right to transfer its freight obligations to SBG after the closing on UTA's acquisition of the Bingham Industrial Lead. *Id.* at 3, §1(b)(ii).

The ACA confirms that once any transfer to SBG is effective, SBG as transferee of UPRR's freight common carrier easement on the Bingham Industrial Lead will acquire the "exclusive right and obligation to provide Freight Rail Service" on that line. ACA at 7, §2.1. This agreement allocates to UTA the exclusive right to conduct passenger service on that right of way. *Id.* at 8, §2.2. UTA may also construct additional track or track improvements, but that construction may not interfere with SBG's ability to conduct freight operations. *Id.* at 13, §4.2.

The trackage on the Bingham Industrial Lead is divided into three categories: exclusively passenger track, exclusively freight track, and joint track. The ACA establishes SBG's exclusive right and obligation to control operations on the freight-only track (*id.* at 15, §5.2). Usage of the joint trackage is divided into an exclusive freight period between the hours of 12:00 midnight and 5:00 a.m. Monday through Friday, and an exclusive passenger period

between 5:01 a.m. and 11:59 p.m. Monday through Friday and all day Saturday and Sunday. *Id.* at 15-16, §5.4.

In addition to SBG's operation on this line, the Salt Lake City Southern Railroad Company ("SLCSR"), as agent for BNSF Railway Co, conducts freight operations.⁴ To ensure the efficiency of freight operations during the exclusive freight period, SBG has secured the agreement of UPRR to agree to prepare two blocks of cars for delivery SBG and SLCSR at Roper Yard, where the interchange will take place. *See*, Verified Statement of George Sturm, General Manager of Joint Facilities for UPRR, which is attached to this Motion as Exhibit 2 ("VS Sturm") at 2, para. 3. According to Mr. Sturm, "UPRR and SBGR addressed this issue and reached this agreement in response to concerns about potential congestion in the Midvale Yard and SBGR's ability to complete its scheduled freight service within the five (5) hour freight window provided by UTA." *Id.* at 2, para. 4.

Moreover, UTA, SBG and BNSF have agreed upon protocols for dispatching the line once the passenger service begins and the temporal separation of freight and passenger operations (implemented to satisfy the requirements of the Federal Railroad Administration, 49 C.F.R. Part 209, App. A) is triggered. According to the Dispatching and Track Access Protocols for the Bingham, Garfield and Bacchus Industrial Leads, dated June 1, 2007 ("Dispatch Protocols"), a copy of the current version of which is attached hereto as Exhibit 3, UTA will dispatch the line to ensure non-discriminatory handling of the freight movements of the two freight operators. Dispatch Protocols at 2, para. 5. The "ultimate objectives of these protocols are the safe coordination of freight passenger service, the equal, flexible and efficient treatment of freight trains on the Common Trackage, and the protection of each Freight Operator's ability

⁴ Section 8.d, at page 6 of the PSA (attached to the NOE as Exhibit 1), requires UTA to enter into an agreement with BNSF "allowing for shared freight operation on the Bingham Industrial Lead in the night time operating window."

to comply with its common carrier obligations....” *Id.* at 3, para.9. UTA's role will be limited to coordinating these operations. It will not in any way be participating in the actual conduct or holding-out of the operation of the freight service.

II. UTA HAS NOT ACQUIRED RIGHTS AND OBLIGATIONS THAT WOULD CONSTITUTE ASSUMPTION OF A COMMON CARRIER OBLIGATION, AND THE NOTICE OF EXEMPTION SHOULD BE DISMISSED.

The transaction documents confirm that UTA is acquiring none of the rights and obligations that are essential to provide freight service on the line, and that either UPRR or its transferee the SBG has or will have the sole right to provide that service. UPRR intends to transfer those rights to SBG (*see* STB F.D. No. 35002, *supra*). The Notice of Exemption should be dismissed because the transaction does not involve the transfer of any rights that would implicate this Board's jurisdiction.

This Board, like the ICC before it, has continued to rule that it need not assert jurisdiction over a transaction involving a line of railroad when the buyer has no intention or ability to assume freight operation and is not acquiring assets or rights that would “disenable ... [the seller] from meeting its common carrier obligation.” *State of Maine, DOT – Acquisition and Operation Exemption – Maine Central R. Co.*, 8 I.C.C. 2d 835, 837 (1991). Citing *State of Maine*, this Board has reiterated that “[o]ur authorization is not required, however, when only the physical assets will be conveyed and the common carrier rights and obligations that attach to the line will not be transferred.” STB F.D. No. 34170, *Utah Transit Authority – Acquisition Exemption – Certain Assets of Union Pacific R. Co.*, slip op. at 3 (citations omitted) (Service Date May 22, 2002) (“*UTA Acquisition*”).

More recently, the Board reviewed a transaction between Metro North Commuter Railroad Company and the Norfolk Southern Corporation STB F.D. No. 34293, *Metro-North*

Commuter R Co – Acquisition and Operation Exemption – Line of Norfolk Southern Ry Co and Pennsylvania Lines LLC, slip op. (Service Date May 13, 2003). There, following the transaction, Metro North had responsibility for dispatching, maintenance, and constructing capital improvements, but Norfolk Southern would continue to be fully and solely responsible for fulfilling its obligations as a freight common carrier. *Id.* at 3. The Board concluded that Norfolk Southern was “not transferring common carrier rights or obligations and that Metro-North will not hold itself out as a common carrier performing rail freight service.... As such, Metro-North will not become a rail carrier subject to ... [the Board’s] jurisdiction as a result of the transaction.” *Id. Accord*, STB F.D. No. 33046, *Sacramento-Placerville Trans. Corridor J.P.A. Acquisition Exemption – Certain Assets of Southern Pacific Trans Co., slip op.*, 1996 WL 616841 (S.T.B.) at *2 (Service Date October 28, 1996); STB F.D. Nos. 32374 and 32375. *Los Angeles Co. Trans Comm’n – Petition for Exemption – Acquisition from Union Pacific R Co.; Los Angeles Co Trans. Comm’n – Trackage Rights Exemption – Union Pacific R. Co., slip op.*, 1996 WL 408632 (S.T.B.) at *2 (Service Date July 23, 1996) (“LACTC”).

The Board should conclude that this transaction, like the transactions described in *Metro-North*, *UTA Acquisition*, *Sacramento – Placerville*, and *LACTC*, does not involve the transfer of common carrier obligations. Following this transaction, either UPRR or its transferee SBG, along with BNSF or its agent (whose rights remain in place following the transaction), will continue to hold the obligation to provide freight common carrier service on the Bingham Industrial Lead. UTA has specifically acquired no rights that would permit it to engage in such operation. There is nothing here to trigger jurisdiction because UTA will be acquiring no control over the freight operations on the line. UTA will provide, or arrange for the provision of, passenger service, but will not hold itself out as a freight carrier and will have no freight service

responsibilities. UTA may not change any aspect or feature of any of the tracks on the Bingham Industrial Spur that are used for freight operations without securing the concurrence of SBG and without ensuring that the change does not prevent SBG from fulfilling its freight common carrier obligations. As described more fully below, this Board's precedent confirms that the NOE should be dismissed because no transfer of rights and obligations that would diminish the freight railroads' ability to fulfill their common carrier obligations has been transferred.

1 *Perpetual easement*

UPRR has retained a permanent, exclusive and assignable freight operating easement over the line. PSA 3, §1(b)(1). This easement was retained for the purpose of providing freight rail service to present and future customers and otherwise fulfilling UPRR's common carrier obligations. UPRR may transfer its rights and obligations to SBG, and SBG would accordingly assume UPRR's right of access over the line pursuant to the grant of the easement.

In other cases, the Board similarly held that common carrier obligations were not transferred when the freight railroad retained a perpetual, exclusive easement. *See, e.g., Metro-North, supra*, at 2 (freight railroad retained "the exclusive, irrevocable, and perpetual right to provide or permit freight rail service on the line").

2. *Specified hours for freight operations*

The ACA provides that once passenger service commences, freight use will be limited to the hours of midnight to 5:00 a.m. ACA at 15-16, §5.4. The Board has previously held that common carrier obligations were not transferred when freight operations were limited to specific hours. *See, e.g., STB Finance Docket No. 33838, Metro Regional Transit Auth. Acquisition Exemption—CSX Transp., Inc., slip op.*, at 3, 4 (Service Date: Oct. 10, 2003) (hereinafter "METRO").

The ACA specifically acknowledges that “Freight Operator has determined that it can provide Freight Rail Service within the Exclusive Freight Period....” ACA at 16, §5.4. That is, SBG has concluded that nothing about the limitation on operating hours will prevent it from fulfilling its obligation to serve the shippers on the line. The ACA specifies that it is incumbent upon SBG to continue fulfilling its obligations within that period. Based on its own decision about its ability to fulfill its obligations, SBG will determine how to perform satisfactorily. At all times, SBG, having concluded that it can fulfill its obligations to the customers on the line in the operating window provided in the ACA, will remain in control of the decision of how to ensure that its customers receive the service they require.

3 *Maintenance of line*

Under Section 3 of the ACA (pp. 10-12), UTA is responsible for maintenance of the line and contractually undertakes to maintain the line to at least Class II track standards, and to maintain the grade crossing and signal facilities at least to the condition existing as of the effective date of the agreement. ACA at 10, §3.1.

The Board has held in numerous previous decisions that similar maintenance arrangements did not cause a transfer of common carrier rights or obligations to the public agency. For example, in STB Finance Docket No. 34793, *New Mexico Dep’t of Transp — Acquisition Exemption—Certain Assets of BNSF Railway Co., slip op.*, at 1-2 (Service Date: Feb. 6, 2006) (hereinafter “*NMDOT*”), the transit authority was given “responsibility for track maintenance upon acquisition of each segment of the line.” In *METRO. supra*, the commuter authority was responsible for track maintenance of the shared line and the freight railroad had a right to inspect the transit authority’s maintenance activities. *METRO* at 3. See also *LACTC* at *3 (commuter authority responsible for track maintenance); *Sacramento-Placerville, supra* at 2

(same). In all of these cases, the Board held that the freight railroad retained common carrier obligations.

4. *Management of line and dispatching*

The ACA, as further elaborated upon in the Dispatching Protocols, provides that, once construction of the improvements required for passenger operations commences, UTA will dispatch the freight operations on the line. ACA at 18, §5.7. Prior decisions of this Board and the ICC confirm that “[d]ispatching control has less importance in its own right than it has as a means of enforcing the service priorities accorded under the operating agreement.” *LACTC*, *supra*, at *3. In *LACTC* and other cases, the Board has held that an operating agreement that vests control of dispatching with the public agency does not transfer any common carrier rights or obligations. *See id*. *See also NMDOT*, *supra*, at 2 (“NMDOT would have right to take over dispatching”); *METRO*, *supra*, at 3 (same); *Metro-North*, *supra*, at 3 (same); *Sacramento-Placerville*, *supra*, at 2 (same).

5. *Improvements to line*

The ACA grants UTA the right to “construct any additional track improvements on the Right of Way... provided, however, that such construction shall not materially interfere with Freight Operator’s ability to conduct Freight Rail Service as contemplated by the Freight Easement.” ACA at 13, §4.2. In *Metro-North*, the Board held that a similar agreement did not disturb common carrier obligations. In that case, Metro-North was “responsible for constructing capital improvements on the line, but...must coordinate the planning and design of such improvements with [the freight railroad] to ensure that the improvements comply with clearance requirements and other applicable standards.” *Metro-North*, *supra*, at 2-3. This arrangement did

not give Metro-North "sufficient rights to materially interfere with...freight operations" and thus Metro-North did not acquire any common carrier obligations by virtue of the agreement. *Id.*

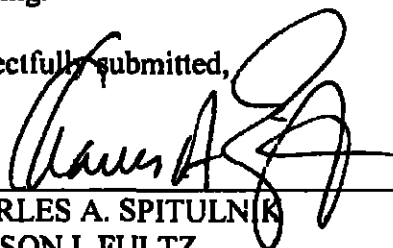
III. CONCLUSION

Consistent with prior Board rulings where an agency is acquiring sufficient interests to permit it to conduct and implement commuter or transit operations, but insufficient interests to allow it to conduct freight operations on its own or to impede the freight railroad's ability to fulfill its common carrier obligations, the Board should conclude that it need not assert jurisdiction over the transaction. Accordingly, the Motion to Dismiss should be granted.

WHEREFORE, and in view of all of the foregoing, UTA respectfully requests the Board to dismiss the Notice of Exemption in this proceeding.

Dated: April 20, 2007

Respectfully submitted,



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Counsel for the Utah Transit Authority

Certificate of Service

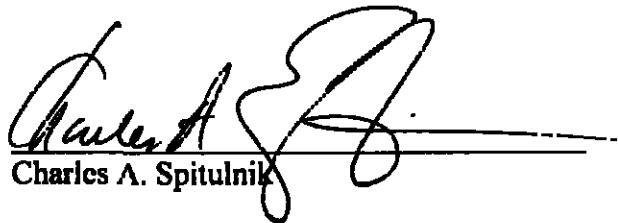
I hereby certify that I have this day caused a copy of the foregoing Motion of Utah Transit Authority to Dismiss the Notice of Exemption to be served by first class mail, properly addressed and with postage prepaid, upon the following parties of record to this proceeding:

Robert P. vom Eigen
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3000 K Street, N.W., Suite 500
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Mack H. Shumate
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Charles A. Spitulnik

Dated: April 20, 2007

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**ADMINISTRATION AND COORDINATION AGREEMENT
[Bingham Industrial Lead]**

THIS ADMINISTRATION AND COORDINATION AGREEMENT (the "Coordination Agreement") is made effective as of the [1st] day of [] 2007 by and between Savage Bingham & Garfield Railroad Company, a Delaware corporation ("Freight Operator"), and Utah Transit Authority, a public transit district organized under the laws of the State of Utah ("UTA"). Freight Operator and UTA are hereafter collectively referred to as "parties" and either may be referred to individually as "party," all as governed by the context in which such words are used.

RECITALS

WHEREAS, pursuant to a January 17, 2002 Purchase and Sale Agreement (the "Purchase Agreement") entered by and between Union Pacific Railroad Company ("UPRR") and UTA, UPRR conveyed to UTA: (a) a portion of the Bingham Industrial Lead between MP 0.18 and MP 6.60 generally consisting of the northern 35 feet of such corridor; and (b) the entire width of the Bingham Industrial Lead between MP 6.60 and MP 11.81;

WHEREAS, pursuant to a March __, 2007 Eighth Amendment to Purchase and Sale Agreement, UPRR conveyed to UTA: (a) the remaining width of the Bingham Industrial Lead between MP 0.18 and MP 6.60; and (b) the Dalton Spur (both of which, together with the property previously purchased by UTA, are hereafter collectively referred to as the "Right of Way");

WHEREAS, pursuant to the Purchase Agreement (as amended by the Eighth Amendment), UPRR reserved a permanent, exclusive easement (the "Freight Easement") over and across certain portions of the Right of Way for purposes of conducting common carrier freight railroad operations;

WHEREAS, pursuant to an Easement Quitclaim Deed, UPRR conveyed the Freight Easement to the Freight Operator, effective [_____] 1], 2007;

WHEREAS, as a result of the Purchase Agreement, and the various documents executed or to be executed pursuant to the Purchase Agreement, the parties will jointly use portions of the Right of Way;

WHEREAS, pursuant to a separate Easement Quitclaim Deed and Freight Operating Agreement, UPRR conveyed the Freight Operator the right to provide freight service on certain segments of the Garfield Industrial Lead and Bacchus Industrial Lead and on certain wye, yard and team tracks (together, as further defined below, the "Other UPRR Trackage"), all of which will be used in conjunction with the Right of Way, effective [_____] 1], 2007;

WHEREAS, as part of the consideration for acquiring the Right of Way under the Purchase Agreement, UTA has agreed to perform ongoing inspection, routine maintenance and scheduled capital replacement work with respect to the Other UPRR Trackage, all of which will continue to be owned by UPRR;

WHEREAS, the parties desire to establish and evidence their respective rights and obligations with respect to Freight Operator's common carrier freight operations and UTA's planned passenger service on the Right of Way (including UTA's planned construction of additional track improvements on the Right of Way); and

WHEREAS, the parties desire to define and allocate maintenance responsibilities with respect to the Right of Way and additional UPRR track.

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the

mutual benefits to the parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

SECTION 1. DEFINITIONS

The following terms and phrases shall be deemed to have the meanings identified below for purposes of this Coordination Agreement:

"BNSF" means the BNSF Railway Company or its agents, which conduct common carrier freight service on or over portions of the Joint Trackage and Other UPRR Trackage pursuant to a March 1, 2002 Restated and Amended Settlement Agreement and a June 1, 1996 Trackage Rights Agreement entered with UPRR.

"Coordination Agreement" shall mean this Administration and Coordination Agreement.

"Coordination Committee" shall have the meaning set forth in Section 2.4 hereof.

"Discontinued Bingham and Dalton Track" shall mean, collectively: (a) that portion of the Bingham Industrial Lead located west of MP 6.60; and (b) that portion of the Dalton Spur which UTA has acquired from UPRR. The Discontinued Bingham and Dalton Track is depicted in Exhibit A to this Agreement.

"Effective Date" shall mean the date on which Freight Operator commences Freight Rail Service under the Freight Easement, [currently scheduled to be _____ 1], 2007.

"Exclusive Freight Period" shall have the meaning set forth in Section 5.4 hereof.

"Exclusive Passenger Period" shall have the meaning set forth in Section 5.4 hereof.

"Freight Easement" shall mean the easement reserved by UPRR for common carrier rail freight operations in portions of the Right of Way, and acquired by Freight Operator pursuant to the terms of the [_____ 1], 2007 Easement Quitclaim Deed.

"Freight Operator" shall mean the Savage Bingham & Garfield Railroad Company, a Delaware corporation.

"Freight Rail Service" shall mean the common carrier or contract rail freight operations to be conducted by Freight Operator in portions of the Right of Way, as contemplated by the Freight Easement.

"Freight Trackage" shall mean: (a) all industry spur tracks and sidings (from the point on the outside of derail) located on the Right of Way and along and adjacent to the Joint Trackage; and (b) all Other UPRR Trackage used by the Freight Operator pursuant to the terms of the [_____] 1]. 2007 Freight Easement Deed and Agreement entered with UPRR. The term Freight Trackage shall include any modifications constructed by Freight Operator after the Effective Date pursuant to Section 4.1 hereof. The Freight Trackage is depicted in Exhibit A to this Agreement.

"FRA" shall mean the Federal Railroad Administration.

"Hazardous Materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, oil of any kind or in any form (including petroleum, fuel oil, diesel oil, crude oil or any fraction thereof), and any other substance defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, or any other applicable federal, state, or local environmental law, regulation, ordinance rule or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Joint Trackage" shall mean: (a) that portion of the Right of Way located between MP 0.18 and MP 6.60; and (b) any portion of the Discontinued Bingham and Dalton Track which is

later designated as Joint Trackage pursuant to the provisions of Section 2.3 of this Coordination Agreement. The term Joint Trackage shall include any modifications or realignments to the Joint Trackage performed by UTA after the Effective Date pursuant to Section 4 hereof. The Joint Trackage is depicted in Exhibit A to this Agreement

"Loss or Damage" shall mean all costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees and disbursements) and expenses (including, without limitation, defense expenses) of any nature arising from or in connection with: (a) death of or injury to persons including, without limitation, employees of the parties and passengers of UTA; (b) damage to or destruction of property including, without limitation, the Joint Trackage, the Freight Trackage or any personal property located on the Right of Way; (c) business losses (including, without limitation, the economic loss related to lost Passenger Service or lost Freight Rail Service), or the costs necessary to mitigate or cover such business losses; or (d) the failure on the part of either party to fulfill its obligations under this Coordination Agreement.

"Maintenance" shall mean (a) inspections, testing, rail profiling, adjustments, lubricating, welding, respiking, surfacing, maintenance of surfaces at grade crossings, tamping and any other routine and ordinary maintenance; and (b) repair, renewal, replacement or other capital maintenance relating to structures, fixtures, tracks, rails, ties, switches, trackbeds, bridges, culverts and other structures, signals, grade crossings and crossing protection devices, including incidental weed control and any other items that may be mandated by the FRA (or other regulatory authorities). With respect to the Other UPRR Trackage, the term "Maintenance" shall exclude any property management functions (e.g. licensing third party uses of rights of way, prohibiting trespasser use or resolving disputes with adjacent property owners) that are not specifically mandated by FRA regulations.

"Other UPRR Trackage" shall mean the Garfield Industrial Lead (between MP 4.66 and MP 17.10), the Bacchus Industrial Lead (between MP 0.00 and MP 2.01) and various wye, yard and team tracks in the vicinity of the UPRR Midvale Yard (as shown on the attached Exhibit "B," which exhibit is incorporated herein by this reference).

"Passenger Service" shall mean the transportation of passengers on all or any portion of the Right of Way, which shall be provided by UTA or its designee.

"Purchase Agreement" shall mean that certain January 17, 2002 Purchase and Sale Agreement entered by and between UTA and UPRR (as modified, for purposes relevant to this Coordination Agreement, by the March __, 2007 Eighth Amendment to Purchase and Sale Agreement) pursuant to which UTA completed its acquisition of all real estate, improvements and personal property constituting the Right of Way.

"Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping

"Right of Way" shall mean all real estate, improvements and personal property constituting: (a) the Bingham Industrial Lead as such extends from MP 0.18 to MP 6.60; (b) the Bingham Industrial Lead as such extends from MP 6.60 to 11.81, and (c) the Dalton Spur. The term Right of Way shall include, without limitation, all structures, fixtures, tracks, rails, ties, switches, crossings, tunnels, bridges, trestles, culverts, buildings, facilities, leads, spurs, turnouts, tails, sidings, team tracks, signals, crossing protection devices, railroad communications systems, poles and all other operating appurtenances that are situated on, or used in accordance with, the corridor described above.

"TRAX" shall mean the light rail transit system of UTA, including the addition which UTA intends to construct upon a portion of the Right of Way, and also including any future additions to such system.

"TRAX Control Center" shall mean the entity designated by UTA to authorize and monitor the movement of vehicles, individuals or other objects along the Joint Trackage and Freight Trackage (as described in this Coordination Agreement), which department must give advance authorization prior to either party entering, occupying or exiting the Joint Trackage.

"UTA" shall mean Utah Transit Authority, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended, together with the TRAX Control Center and any designated Passenger Service operator, and their respective successors or assigns.

SECTION 2. FREIGHT RAIL SERVICE; PASSENGER SERVICE

SECTION 2.1 Freight Operator shall have the exclusive right and obligation to provide Freight Rail Service on the Freight Trackage and the Joint Trackage. Freight Operator's rights and obligations to provide Freight Rail Service under this Coordination Agreement are limited to those provided by the Freight Easement. In the performance of Freight Rail Service on the Other UPRR Trackage, Freight Operator shall not exceed the maximum speeds authorized by the UPRR timetables in effect as of the Effective Date (UPRR Timetable #2 effective October 29, 2000). In the performance of Freight Rail Service on the Joint Trackage, Freight Operator shall comply with the maximum speeds authorized by the UPRR timetables in effect as of Effective Date until such time as UTA commences construction of Passenger Service improvements (at which time the parties will agree upon reasonable operating speeds taking into account track conditions, freight requirements, construction schedules and operating windows). Freight

Operator shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Freight Rail Service on other UTA tracks not included within the scope of this Coordination Agreement, or perform any other activity whatsoever on the Right of Way that does not promote Freight Rail Service. UTA shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Freight Rail Service on the Right of Way.

SECTION 2.2 UTA shall have the exclusive right to conduct, by itself or through UTA's designee or otherwise, Passenger Service on the Right of Way. Freight Operator shall have no right or obligation to conduct, and shall not conduct, directly or indirectly, Passenger Service on the Right of Way.

SECTION 2.3 The Right of Way includes certain property defined in this Coordination Agreement as the Discontinued Bingham and Dalton Track. UPRR filed a notice of exemption with the Surface Transportation Board to abandon its common carrier obligations with respect to the Discontinued Bingham and Dalton Track. The Discontinued Bingham and Dalton Track is not subject to the Freight Easement conveyed by UPRR, and is not currently designated as Joint Trackage. Freight Operator has expressed an interest in providing freight service to one or more customers utilizing the Discontinued Bingham and Dalton Track. To the extent Freight Operator is able to negotiate a service arrangement with this shipper, UTA agrees to negotiate in good faith with the Freight Operator to allow the Freight Operator to recommence service on the Discontinued Bingham and Dalton Track upon the terms of this Coordination Agreement. Any recommencement will be conditioned upon: (a) service being provided on discontinued track pursuant to contractual arrangements not subject to the jurisdiction of the Surface Transportation Board, (b) service being performed in a manner that will not affect the Freight Operator's ability to provide the Freight Rail Service within the Exclusive Freight Period, and (c) costs associated

with any reconstruction, rehabilitation, deferred maintenance, or capital improvements necessary to recommence freight service on the track being borne by parties other than UTA. Upon 60 days written notice, UTA agrees to designate the Discontinued Bingham and Dalton Track as Joint Trackage. Thereafter, Freight Operator's use of the Discontinued Bingham and Dalton Track will continue to be subject to the conditions outlined above in this Section 2.3.

SECTION 2.4 In order to ensure safe, economical and reliable Freight Rail Service and Passenger Service on the Right of Way, the parties shall establish a Coordination Committee. Either party may convene the Coordination Committee upon ten (10) days notice to resolve those administrative and coordination matters designated by the terms of this Coordination Agreement for Coordination Committee resolution or coordination, as well as any other matters determined by the parties. The Coordination Committee shall be composed of two representatives from each party. The chief executive officer of each party shall be an ex officio member of the Coordination Committee.

SECTION 2.5 Freight Operator shall make timely reports to all federal, state and local regulatory agencies having jurisdiction over Freight Operator's Freight Rail Service. Freight Operator shall also be responsible for performing all equipment inspections and other requirements of the FRA or other regulatory agencies as they relate to Freight Operator's Freight Rail Service (excluding maintenance and inspections performed by UTA pursuant to Section 3 of this Coordination Agreement and reports related thereto). Freight Operator hereby agrees to indemnify UTA with respect to, and hold UTA harmless from, any Losses or Damages sustained by UTA as the result of Freight Operator's failure to timely file reports or to perform other tasks required of Freight Operator under this Section 2.5. Freight Operator shall deliver to UTA one copy of every report or other document filed with or received from a federal, state or local

regulatory or safety agency related to the Right of Way. Such reports or documents shall be delivered to UTA within seven (7) business days of the filing or receipt thereof by Freight Operator.

SECTION 2.6 To the full extent of its authority to do so, Freight Operator shall make any rail yard appurtenant to the Right of Way available for inspection by UTA upon reasonable notice.

SECTION 2.7 Freight Operator's use of the Right of Way shall be limited to the movement of locomotives, freight cars and other track equipment over the Joint Trackage and Freight Trackage as necessary for the provision of Freight Rail Service in accordance with the Freight Easement. This shall include the incidental storage of freight cars on the Freight Trackage. Except for mechanical failures, accidents, derailments or similar emergencies, Freight Operator shall not be permitted to fuel, service, maintain or repair any rail vehicle or related equipment upon the Right of Way.

SECTION 3. MAINTENANCE

SECTION 3.1 UTA shall be responsible for the performance of all Maintenance on the Joint Trackage. Prior to the commencement of Passenger Service, UTA shall maintain the Joint Trackage to at least FRA Class 2 standards that will permit the Freight Operator to operate at the maximum speeds authorized by the UPRR timetables in effect as of the Effective Date (UPRR Timetable #2 effective October 29, 2000). UTA shall maintain grade crossings and signal facilities to at least the condition existing as of the Effective Date, or to such better condition as may be required by the FRA or any state or local authority having jurisdiction. UTA may improve the Joint Trackage to any higher or better track standard as may be required or desired by UTA, but not less than Class 2 standards as defined by the FRA, and capable of operating

speeds up to 25 miles per hour. Nothing herein shall relieve Freight Operator of the obligation to perform repairs for which Freight Operator has specifically assumed responsibility pursuant to other provisions of this Coordination Agreement.

SECTION 3.2 UTA shall be responsible for the performance of all Maintenance with respect to the Freight Trackage, including the Other UPRR Trackage. UTA's responsibility with respect to the Freight Trackage, including the Other UPRR Trackage, shall, subject to Section 3.3 hereof, be strictly limited to the items defined in this Coordination Agreement, including the inspection, routine maintenance and capital replacement of improvements necessary to maintain the Other UPRR Trackage to not less than Class 2 standards as defined by the FRA, and capable of operating speeds up to 25 miles per hour. UTA shall maintain grade crossings and signal facilities to at least the condition existing as of the Effective Date, or to such better condition as may be required by the FRA or any state or local authority having jurisdiction. UTA shall not have any responsibility to replace, repair or reconstruct any damage caused by the operations of Freight Operator, ordinary wear and tear excluded. UTA shall not have any responsibility to replace, repair or reconstruct any damage caused by carloads exceeding 286,000 pounds. UTA shall not have any responsibility to replace, repair or reconstruct any portion of the Freight Trackage which is damaged or destroyed by flood, fire, civil disturbance, earthquake, storm, sabotage or act of God, terrorism, accident or other catastrophic event. UTA shall not have any responsibility to manage, monitor or police third-party use of the Freight Trackage including, without limitation, issuing or enforcing utility license agreements. UTA shall be solely responsible for the performance and cost of the work for which it has assumed responsibility in this Section 3.2. Freight Operator shall grant UTA, or

UTA's contractors, ingress, egress and access to, from and on the Freight Trackage as necessary to perform the work contemplated in this Section 3.2.

SECTION 3.3 UTA acknowledges that Freight Operator is operating on the Other UPRR Trackage pursuant to an Easement Quitclaim Deed and Freight Operating Agreement which Freight Operator has entered with UPRR. Sections 4 and 5 of the Freight Operating Agreement contain certain provisions applicable to UTA's Maintenance of the Other UPRR Trackage including, without limitation: (a) minimum standards for track materials or other facilities that are replaced during the Maintenance of the Other UPRR Trackage (paragraph 4.4); (b) payment for labor and material incurred during the Maintenance of the Other UPRR Trackage, and the protection of UPRR from contractor or materialmen liens (paragraph 4.5); (c) the delivery to UPRR of reports filed with the FRA in the normal course of Maintenance (paragraph 4.6); and (d) the application of proceeds from the sale of materials salvaged from the Other UPRR Trackage (paragraph 5.1). In performing Maintenance on the Other UPRR Trackage, UTA shall assume responsibility for performing the requirements of sections 4 and 5 of the Freight Operating Agreement. The identified obligations shall bind UTA as if fully set forth in this Coordination Agreement. However, to the extent of a conflict between the allocation of Maintenance responsibility between the parties to this Coordination Agreement, as set forth in this Coordination Agreement, and that imposed upon Freight Operator in the Freight Operating Agreement, the provisions of this Coordination Agreement shall control.

SECTION 3.4 UTA's obligations to maintain the Right of Way and the other railroad facilities set forth in Section 3.2 shall not commence until the Effective Date.

SECTION 4. CONSTRUCTION; MODIFICATIONS

SECTION 4.1 If Freight Operator requires any modifications to the Freight Trackage or Joint Trackage to accommodate its Freight Rail Service, Freight Operator shall bear all expenses in connection with such modifications including, without limitation, any incremental Maintenance expenses (for so long as such modifications are a part of the Freight Trackage or Joint Trackage) for the modified track. All modifications initiated by the Freight Operator shall be coordinated through the Coordination Committee. Freight Operator shall not commence construction or other work in connection with such modifications without the written consent of UTA and until UTA has approved all plans for the proposed modifications, which consent and approval will not be unreasonably withheld or delayed. No modification requested by the Freight Operator shall interfere with or impede Passenger Service. All modifications made by Freight Operator to the Freight Trackage or Joint Trackage shall become fixtures upon completion.

SECTION 4.2 In conjunction with initiating Passenger Service, UTA intends to construct additional track improvements on the Right of Way. UTA shall have the right to construct any additional track improvements that it deems necessary, provided, however, that such construction shall not materially interfere with Freight Operator's ability to conduct Freight Rail Service as contemplated by the Freight Easement. The design and construction of additional track improvements shall be coordinated through the Coordination Committee. Freight Operator shall cooperate with UTA so as to allow for the construction of additional track improvements on the Right of Way. If necessary, UTA and Freight Operator shall cooperate to secure (from a third party independent contractor) reasonably appropriate temporary substitute service during construction. UTA shall bear the costs of any substitute service necessary to

accommodate the construction of Passenger Service improvements. UTA shall be responsible for the construction of additional track improvements for Passenger Service, and shall construct the same to the standards it deems necessary for Passenger Service; provided, however, that any track improvements made to the Joint Trackage shall be maintained to at least the condition required under Section 3.1. UTA shall bear any costs and expenses of constructing new track improvements for Passenger Service, including any temporary, incremental operations expenses incurred by Freight Operator to accommodate construction staging.

SECTION 4.3 UTA shall have the right, upon thirty (30) days written notice to Freight Operator, at UTA's sole cost and expense, to realign the Freight Trackage or Joint Trackage to accommodate Passenger Service on the Right of Way; provided, however, that no such realignment shall materially interfere with Freight Operator's ability to conduct Freight Rail Service as contemplated by the Freight Easement. All realignments shall be coordinated through the Coordination Committee. Freight Operator shall reasonably cooperate with UTA so as to allow for such realignment. UTA shall bear the cost and expense of such realignments including any temporary, incremental operations expenses incurred by Freight Operator to accommodate construction staging.

SECTION 4.4 If, after the initial construction of Passenger Service improvements, UTA determines that additional modifications the Freight Trackage or Joint Trackage are required to accommodate Passenger Service on the Right of Way, UTA shall have the right to make such modifications; provided, however, that no such modifications shall materially interfere with Freight Operator's ability to conduct Freight Rail Service as contemplated by the Freight Easement. All modifications made by UTA to Freight Trackage or Joint Trackage shall be coordinated through the Coordination Committee. UTA shall bear all expenses in connection

with the construction of additional, bettered, or altered facilities including any temporary, incremental operations expenses incurred by Freight Operator to accommodate construction staging.

SECTION 4.5 Excluding scheduled Maintenance and emergency work required for immediate safety reasons, UTA shall notify Freight Operator in writing of any proposed work on the Freight Trackage or Joint Trackage and shall submit plans for any such work to the Freight Operator through the Coordination Committee. The parties shall cooperate in good faith to ensure that such modifications do not materially interfere with or impede Freight Rail Service on the Right of Way.

SECTION 5. OPERATIONS

SECTION 5.1 OMITTED

SECTION 5.2 Subject to Sections 5.6 through 5.8, Freight Operator shall manage, direct and control its railroad and railroad-related operations on the Freight Trackage. Except as may be necessary to perform Maintenance as contemplated in this Coordination Agreement, UTA shall not have any right to operate on the Freight Trackage.

SECTION 5.3 Except as set forth in Sections 5.4 through 5.11 the trains, locomotives, rail cars and rail equipment of either party may be operated on the Joint Trackage without prejudice or partiality and in such a manner as will result in the most economical and efficient movement of all traffic.

SECTION 5.4 In order to ensure safe, economical and reliable Freight Rail Service and Passenger Service, and in order to conform to the requirements of the Freight Easement, the parties hereby establish: (a) an Exclusive Freight Period for the Joint Trackage between the hours of 12:00 midnight and 5:00 a.m., Monday through Friday, inclusive; and (b) an Exclusive

Passenger Period for the Joint Trackage between the hours of 5:01 a.m. and 11:59 p.m., Monday through Friday, inclusive, and all day Saturday and Sunday. The requirements related to time-separation are material to this Coordination Agreement, will bind any successors in interest to the Freight Operator and will be incorporated into the Freight Easement. Freight Operator shall not initially be required to operate exclusively within the Exclusive Freight Period, and such obligation shall only commence on the date UTA commences construction of Passenger Service improvements, and after UTA furnishes Freight Operator at least 30 days advance written notice of the commencement date. During such construction and prior to the commencement of Passenger Service, UTA shall cooperate with the Freight Operator to expand the Exclusive Freight Period to the fullest extent consistent with the reasonable performance of construction. Freight Operator has inspected the Right of Way and reviewed the records of the previous freight operator pertaining to Freight Rail Service on the Right of Way. Based on such investigation and review, Freight Operator has determined that it can provide Freight Rail Service within the Exclusive Freight Period (except to the extent impacted by UTA construction, as contemplated by Section 4 hereof, or by special events as described in Section 5.5 hereof). Nothing provided in this Coordination Agreement shall require the Freight Operator to comply with an Exclusive Freight Period shorter than the period applicable to the freight operations of any other common carriers operating over the Joint Trackage, including without limitation the BNSF.

SECTION 5.5 Freight Operator acknowledges the obligation of UTA to provide Passenger Service, and UTA acknowledges the common carrier obligations of Freight Operator and this Section 5.5 shall be construed consistent with and limited by such respective obligations. Freight Operator acknowledges that certain special circumstances (e.g., weather, natural disaster or other service emergencies beyond UTA's control) or unique special events (e.g., occasional

unusually-large sporting events or other unusually-large community events) may require temporary disruptions (not to exceed, in the case of special events, one (1) hour) to Freight Rail Service. UTA may operate exclusively on the Joint Trackage during such events, notwithstanding the Exclusive Freight Period; provided, however, that UTA shall provide Freight Operator with (a) at least thirty (30) days notice of modifications to the Exclusive Freight Period required by single-day special events or circumstances which permit such advance notice; (b) at least sixty (60) days notice of modifications to the Exclusive Freight Period required by multi-day special events or circumstances which permit such advance notice, or (c) in the case of emergencies, with as much prior notice as is practicable under the circumstances. UTA shall take all reasonable steps to minimize to the extent practicable the disruption to Freight Rail Service resulting from the special circumstances or special events. UTA shall not be held liable for any disruption to Freight Rail Service caused by weather or other special circumstances beyond the control of UTA. UTA shall also not be held liable for any disruption to Freight Rail Service caused by scheduled special events provided that the number of disruptions does not exceed six (6) in any calendar year. UTA will bear all actual and reasonable costs incurred and revenue lost by the Freight Operator to accommodate scheduled events exceeding the defined limit including, without limitation, the costs of temporary substitute service. UTA and Freight Operator shall cooperate to minimize, to the extent possible consistent with local public transit needs and common carrier obligations, any potential adverse impact to the Freight Rail Service customers. UTA shall not be permitted to operate on the Joint Trackage during the Exclusive Freight Period pursuant to this Section 5.5, and neither party shall be permitted to operate outside its respective exclusive operating period on the basis of an agreement between the parties resulting from other exceptional circumstances, unless and until specifically authorized by the

TRAX Control Center after proper notification is made to the other party. In such circumstances, the TRAX Control Center shall take such measures as it deems necessary and appropriate to ensure that Freight Rail Service and Passenger Service are not conducted simultaneously on the Joint Trackage.

SECTION 5.6 Prior to the time UTA commences construction of Passenger Service improvements, UTA shall manage and control access to the Joint Trackage and the entry and exit of all trains, locomotives, rail cars and rail equipment upon and from the Joint Trackage. UTA shall ensure that the BNSF (or its agent) has cleared the Joint Trackage prior to granting the Freight Operator track clearance, and shall ensure that Freight Operator has cleared the Joint Trackage prior to granting BNSF (or its agent) access. Once daily track clearance is granted, UTA shall not have any responsibility to dispatch Freight Operator's equipment and Freight Operator remains solely responsible for the movement, coordination and protection of train crews and equipment.

SECTION 5.7 At the time UTA commences construction of Passenger Service improvements, UTA shall assume responsibility to dispatch Freight Operator's trains on the Joint Trackage and the Freight Trackage. The parties contemplate that Freight Operator and BNSF will concurrently operate on the Joint Trackage and Other UPRR Trackage during the Exclusive Freight Window. In addition to granting daily operating clearance, UTA shall dispatch Freight Operator trains and BNSF trains utilizing track warrants. UTA shall dispatch trains in accordance with the joint dispatching and track access protocols attached as Exhibit B to this Agreement (as such protocols are amended by the parties from time to time).

SECTION 5.8 All daily operating clearances and track warrants shall be issued by UTA through the TRAX Control Center. The TRAX Control Center shall be staffed at all times,

including during the Exclusive Freight Period. Daily operating clearances and track warrants shall be issued on recorded telephone or radio links. A representative of Freight Operator with decision making authority and power to bind Freight Operator with respect to operational issues must be accessible by telephone or pager on a twenty-four (24) hour basis. The Freight Operator's train crews must also be equipped at all times with radios and working telephone communication in order to facilitate communications with the TRAX Control Center.

SECTION 5.9 Freight Operator shall comply in all respects with all applicable operating rules, regulations and procedures of UTA, TRAX and the TRAX Control Center.

SECTION 5.10 Freight Operator shall immediately notify the TRAX Control Center of any event causing damage to the Right of Way or appurtenant UTA property, any event which may delay the Freight Operator from clearing the Joint Trackage at the end of the Exclusive Freight Period and any other event which has the potential to delay or interfere with Passenger Service. Freight Operator shall use its best efforts to clear the Joint Trackage prior to the end of the Exclusive Freight Period.

SECTION 5.11 UTA shall immediately notify the TRAX Control Center and the Freight Operator of any event causing damage to the Right of Way, any event which may delay UTA from clearing the Joint Trackage at the end of the Exclusive Passenger Period and any other event which has the potential to delay or interfere with Freight Rail Services. UTA shall use its best efforts to clear the Joint Trackage prior to the end of the Exclusive Passenger Period.

SECTION 5.12 Freight Operator shall pay all taxes, assessments, fees, charges, costs and expenses lawfully assessed by governmental authorities (other than UTA) related solely to the provision of Freight Rail Service on the Right of Way. UTA will pay any other taxes,

assessments, fees, charges, costs and expenses lawfully assessed by governmental authorities related to the Right of Way.

SECTION 6. CLEARING OF OBSTRUCTIONS, DERAILMENTS AND WRECKS

SECTION 6.1 If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, any train, locomotive, rail car or rail equipment of Freight Operator becomes stalled or unable to proceed under its own power or unable to maintain proper speed on the Right of Way or if, in an emergency, crippled or otherwise defective cars are set out of a Freight Operator train on the Right of Way, and if the Right of Way will not be cleared by Freight Operator in a manner that would prevent interference with Passenger Service, then UTA shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such train, locomotive, car or equipment, or to properly move the disabled equipment off the Right of Way.

SECTION 6.2 In the event of any derailment or accident involving a Freight Operator train, Freight Operator shall clear the Right of Way of all obstructions in the most expedient practicable manner. Freight Operator also shall perform any rerailing or wrecking train service as may be required in connection with such derailment or accident, in accordance with industry best practices. In the event that Freight Operator does not clear the Right of Way of obstructions in the most expedient practicable manner or in the event that such derailment has the possibility of interfering with Passenger Service, UTA may immediately clear the Right of Way.

SECTION 6.3 The costs of removing disabled equipment, rerailing or wrecking equipment or otherwise clearing the Right of Way shall be borne between the parties according to the allocation formula set forth in the Section 7 of this Coordination Agreement.

SECTION 7. ALLOCATION OF LIABILITY

SECTION 7.1 Both parties shall comply with all applicable federal, state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, rules, regulations or orders with respect to the use of the Right of Way results in any fine, penalty, cost or charge being assessed against the other party, or any other Loss or Damage, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend and hold harmless the other party for such amount.

SECTION 7.2 Notwithstanding anything else contained in this Coordination Agreement or otherwise applicable law regarding the allocation of liability based on fault or otherwise, as between the parties hereto, liability for Loss or Damage resulting from or in connection with the Maintenance, construction, operations or other acts or omissions of either party shall be borne and paid by the parties as follows:

(a) Notwithstanding subsections (b) and (c) of this Section 7.2, when such Loss or Damage stems from the death or personal injury of an invitee of UTA, then such Loss or Damage shall be borne by UTA. For purposes of this Section 7.2, "invitee of UTA" means: (i) a UTA employee, maintenance contractor or other person specifically authorized to be on the Joint Trackage or Freight Trackage by UTA; or (ii) a person that enters onto the Joint Trackage or Freight Trackage in conjunction with boarding or disembarking TRAX, or otherwise intending (based on a preponderance of objective evidence) to access or utilize UTA's transportation system or assist others in doing so. Freight Operator shall bear the burden of establishing that the death or personal injury was sustained by an invitee of UTA and not by a mere trespasser to the Joint Trackage.

(b) When such Loss or Damage results from or arises in connection with the Maintenance, construction, operations or other acts or omissions of only one of the parties, regardless of any third party involvement, such Loss or Damage shall be borne by that party; and

(c) Subject to the provisions for casualty Losses as set forth in Section 11 of this Coordination Agreement, when such Loss or Damage results from or arises in connection with the Maintenance, construction, operations or other acts or omissions of both parties, or of third parties, or from unknown causes, such liability shall be borne by the party or parties responsible under applicable law.

SECTION 7.3 Each party agrees that it will pay for all Loss or Damage the risk of which it has herein assumed, the judgment of any court to the contrary and otherwise applicable law regarding liability notwithstanding, and will forever indemnify, protect, defend and hold harmless the other party, its successors and assigns, from such payment.

SECTION 7.4 In case a lawsuit or lawsuits shall be commenced against either party hereto for or on account of any Loss or Damage for which the other party may be solely or jointly liable under this Coordination Agreement, the party thus sued shall give the other party timely written notice of the pendency of such suit, and thereupon the party so notified may assume or join in the defense thereof, and if the party so notified is liable therefore under this Coordination Agreement, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from all Loss or Damage in accordance with the liability allocation set forth in this Coordination Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said

opportunity to assume or join in the defense of the action has been afforded, the party so notified shall to the extent of its liability under this Coordination Agreement be bound by such judgment.

SECTION 7.5 UTA acknowledges that the indemnities it is providing under this Section 7, and under other provisions of this Coordination Agreement, are contractual obligations for which governmental immunity has been waived pursuant to Utah Code Annotated §63-30d-301(1)(b) (as amended from time to time). UTA represents and warrants that it has the power under Utah law to indemnify Freight Operator as provided in this Coordination Agreement. UTA agrees not to assert governmental immunity as an affirmative defense to any claim for indemnity asserted under this Coordination Agreement, provided that nothing shall prohibit UTA from challenging the merits of the indemnity claim under the provisions of the Coordination Agreement. Nothing in this Section 7, or any other provisions of this Coordination Agreement, shall be construed as a waiver by UTA of any immunity, defense or requirement related to governmental immunity with respect to third parties.

SECTION 8. ENVIRONMENTAL REPORTING AND LIABILITY

SECTION 8.1 Freight Operator shall have a continuing obligation to provide UTA with detailed and updated information regarding the volume and type of Hazardous Materials which are transported on or stored along the Right of Way. In addition to its monthly reporting requirement as specified in Section 12.3, Freight Operator shall immediately notify UTA in writing of any material change in Hazardous Materials transportation or storage on the Right of Way. For purposes of this Section 8.1, a material change shall mean: (a) the introduction of a substantially different Hazardous Material along the Right of Way; or (b) an actual or projected change of more than 50% in the annual delivery volume of Hazardous Material to any destination along the Right of Way.

SECTION 8.2 Freight Operator shall defend, indemnify and hold UTA harmless against and with respect to any Loss or Damage (including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by or asserted against UTA as a direct or indirect result of Freight Operator's use, transportation or storage of Hazardous Materials; provided, however that nothing set forth in this Section 8.2 shall be construed to require Freight Operator to indemnify and hold harmless UTA against and with respect to the matters for which UTA is liable under Section 7 of this Coordination Agreement

SECTION 8.3 UTA shall defend, indemnify and hold Freight Operator harmless against and with respect to any Loss or Damage (including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by or asserted against Freight Operator as a direct or indirect result of UTA's use, transportation or storage of Hazardous Materials; provided, however that nothing set forth in this Section 8.3 shall be construed to require UTA to indemnify and hold harmless Freight Operator against and with respect to matters for which Freight Operator is liable under Section 7 of this Coordination Agreement.

SECTION 8.4 Neither party shall cause nor allow to be caused the Release of any Hazardous Materials into the track, ballast, soil or any other part of the Right of Way in violation of applicable law. Except as otherwise provided in Section 7, the party responsible for such a Release shall defend, indemnify and hold the other party harmless against and with respect to, any Loss or Damage (including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by, or asserted against such party as a direct or indirect result of such Release.

SECTION 8.5 Freight Operator shall be responsible for and shall bear the costs of prompt cleanup and removal of any Hazardous Materials, residue or other material associated with Freight Rail Service arising after the Effective Date which is found to be fouling the track, ballast, soil or any other part of the Right of Way. UTA shall be responsible for and shall bear the costs of prompt cleanup and removal of any Hazardous Materials, residue or other material associated with Passenger Service which is found to be fouling the track, ballast, soil or any other part of the Right of Way. The cleanup required by this Section 8.5 shall be undertaken in a manner which minimizes disruption to Passenger Service and Freight Rail Service.

SECTION 9. TERM; TERMINATION

SECTION 9.1 This Coordination Agreement shall be effective as of the Effective Date and shall only terminate upon the termination of the Freight Easement, or as otherwise mutually agreed between the parties.

SECTION 9.2 This Coordination Agreement shall terminate in full in the event that Freight Operator consummates an abandonment proceeding with respect to the Right of Way and Other UPRR Trackage. To the extent that portions of the Right of Way are abandoned by the Freight Operator, this Coordination Agreement shall terminate with respect to such portions.

SECTION 9.3 Termination of this Coordination Agreement shall not relieve either party of its obligations or liabilities to the other party arising prior to such termination.

SECTION 10. COMPLIANCE WITH LAWS

SECTION 10.1 UTA and Freight Operator shall comply with the provisions of all applicable laws, regulations, and rules respecting the operation, condition, inspection, and safety of their respective trains, locomotives, cars and other equipment operated over the Right of Way. UTA shall comply with the provisions of all applicable laws, regulations and rules respecting the

condition, inspection and safety of the Freight Trackage or Joint Trackage and the crossings located thereon.

SECTION 11. CASUALTY LOSSES

SECTION 11.1 In the event that any portion of the Right of Way that is being used by UTA for the continued provision of Passenger Service is damaged or destroyed by flood, fire, civil disturbance, earthquake, storm, sabotage or act of God, terrorism, accident or other catastrophic event then, UTA may either: (a) repair, or cause to be repaired, that portion of the Right of Way so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction; or (b) replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be borne by UTA.

SECTION 11.2 In the event that any portion of the Freight Trackage, including the Other UPRR Track, is damaged or destroyed by flood, fire, civil disturbance, earthquake, storm, sabotage or act of God, terrorism, accident or other catastrophic event then, Freight Operator may, but shall not be required to, in its sole discretion, elect to: (a) repair, or cause to be repaired, that portion of the Freight Trackage so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction; or (b) replace, or cause to be replaced, such portion with property of like kind condition or quality. The cost and expense of such repair or replacement elected by Freight Operator shall be borne by Freight Operator.

SECTION 12. COMPENSATION

SECTION 12.1 Except as otherwise specifically provided in this Coordination Agreement, Freight Operator and UTA shall have no obligation to pay or otherwise compensate each other in connection with this Coordination Agreement

SECTION 12.2 Excepting the obligations and liability assumed under this Coordination Agreement, Freight Operator shall not have any financial obligations with respect to the use of the Right of Way or for the Maintenance of the Freight Trackage and Joint Trackage. However, Freight Operator shall pay UTA an annual fee equal to the sum of three (3) mills (\$.003) per gross ton mile of revenue loads transported by Freight Operator on the Joint Trackage in excess of 1,700 revenue loads during such calendar year. The fee shall be payable as set forth in Section 12.4. Nothing provided in this Section 12.2 shall be construed to offset any other obligation of Freight Operator as set forth in this Coordination Agreement. No freight transported by or on behalf of the BNSF shall be counted for purposes of this Section 12.2.

SECTION 12.3 Freight Operator shall deliver to UTA, as soon as practicable after the end of each month, traffic data identifying the character and quantity of hazardous materials moved or stored along the Joint Trackage. The Freight operator shall also provide traffic information as necessary for UTA to calculate and verify the fee payable under Section 12.2 of this Agreement including, without limitation, data verifying the number of revenue loads transported and the weight and distance of loads in excess of the 1,700 annual revenue load threshold. Upon reasonable notice, UTA, UTA's auditors, and any federal and state governmental authorities with regulatory authority over UTA's operations, shall all have the right to audit and inspect traffic or other operations data related to the freight transported over the Joint Trackage. This right shall continue during the term of this Coordination Agreement and for an additional three years following the termination of this Coordination Agreement.

SECTION 12.4 All payments due to either party under this Coordination Agreement shall be paid within thirty (30) days by check delivered to the address of the payee as set forth in Section 14.3 hereof; provided, however, that in the event of a good faith dispute relating to any

such payment, the disputed portion shall be paid, with full reservation of rights to possible reimbursement upon resolution of such dispute. Any payments not made within thirty (30) days of the due date, or that are paid under protest due to a dispute and later refunded, shall be subject to interest, which shall accrue at the prime interest rate as announced by the Wall Street Journal and which interest shall accrue to the benefit of the party entitled to the overdue payment or to the refund of the protested payment (as the case may be).

SECTION 12.5 Upon request, a party disputing a payment shall be entitled to receive from the other party copies of all such supporting documentation and/or records as are kept in the ordinary course of the other party's business and which are reasonably necessary to verify the accuracy of the payment demanded. Each party shall also have the right upon reasonable notice to inspect, examine, copy and audit such books, records and supporting documents of the other party as reasonably relate to the calculation of any fees, charges, reimbursements or other assessments claimed by such other party pursuant to this Coordination Agreement. Any requests to receive copies or to inspect records must be made within two (2) years of the date when the cost was incurred.

SECTION 13. INSURANCE

SECTION 13.1 Freight Operator, at its sole cost and expense, shall procure or cause to be procured and maintain or cause to be maintained during the continuance of this Coordination Agreement:

1. railroad operating and liability insurance with a limit of not less than Ten Million Dollars (\$10,000,000) for any one accident and Twenty Million Dollars (\$20,000,000) policy aggregate; and

2. umbrella liability insurance with limits of not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence and aggregate;

Covering general liabilities assumed by Freight Operator under which Coordination Agreement and including property damage insurance. Freight Operator shall furnish to UTA certificates of insurance evidencing the above coverage in the form of a policy (or policies) prior to the effective date. Such insurance shall contain a contractual liability endorsement which will cover the obligations assumed under this Coordination Agreement and an endorsement naming UTA as an "additional insured." In addition, such insurance shall contain notification provisions whereby the insurance company agrees to give thirty (30) days written notice to UTA of any material change in or cancellation of the policy. All of these endorsements and notice provisions shall be stated on the certificate of insurance which is to be provided to UTA.

SECTION 14. DISPUTE RESOLUTION

SECTION 14.1 If any dispute, claim or question arises between any of the parties relating to this Agreement or the performance of either party's obligations hereunder (a "Dispute"), the parties shall meet promptly and endeavor to resolve the Dispute by agreement as set forth in this Section

SECTION 14.2 The parties desire to resolve any Dispute arising under this Agreement at the lowest possible level. Any Dispute shall be referred for resolution to the UTA Rail Service General Manager and the Freight Operator Senior Vice President of Industrial Rail Operations. The parties shall negotiate in good faith for not less than fourteen (14) days unless the Dispute is earlier resolved.

SECTION 14.3 If, after fourteen (14) days, the Dispute is not settled, either party may provide notice of the Dispute to the chief executive officer ("CEO") of UTA and the CEO of

Freight Operator. The CEOs shall engage in good faith negotiations aimed at reaching an amicable solution to the Dispute.

SECTION 14.4 If, after thirty (30) days, the Dispute is not settled by the CEOs, either party may give the other notice in writing of its intention to refer the Dispute for resolution to a single mediator, agreed upon by both the Freight Operator and UTA, with expertise in the operation of freight and passenger rail service. If the parties cannot agree on a single mediator, then either party may petition the most senior active judge in the United States District Court for the District of Utah to appoint the mediator. The procedure and conduct of the mediation shall be in accordance with the rules for commercial arbitration of the American Arbitration Association. The place of mediation shall be Salt Lake City, Utah. The governing laws shall be the laws of the State of Utah. Each party to the Dispute shall pay its own costs and fees, and shall share equally the costs and fees of the mediator.

SECTION 14.5 If the Dispute cannot be resolved by the mediator within 90 days from the date of a final determination by the CEOs, the Dispute may be brought before a court or other tribunal appropriate under the circumstances for de novo review. A matter may only proceed to court after exhausting the above procedure.

SECTION 14.6 Notwithstanding the foregoing provisions, the parties agree that any Dispute regarding the interpretation or enforcement of UTA's responsibility for Maintenance under Section 3.2 of this Agreement, and only Disputes involving this matter, may be submitted directly to binding arbitration without complying with Sections 14.3, 14.4 or 14.5 hereof. The arbitration shall be conducted on an expedited basis by a single arbitrator with expertise in the operation of freight and passenger rail service. If the parties cannot agree upon a single arbitrator, then either party may petition the most senior active judge in the United States District

Court for the District of Utah to appoint the arbitrator. The procedure and conduct of the arbitration shall be in accordance with the rules for commercial arbitration of the American Arbitration Association. The arbitration proceeding shall be held Salt Lake City and the laws of the State of Utah shall govern such proceeding. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on the Dispute would otherwise be barred by the applicable statute of limitations.

SECTION 14.7 Any award or decision rendered by the arbitrator pursuant to Section 14.6 of this Agreement shall be final and binding, and judgment may be entered upon it in accordance with applicable law in a court of competent jurisdiction. If either party fails to comply (which in the case of the payment of money means payment of the sum awarded within 30 days of the arbitrator's award) with the award rendered by the arbitrator, the non-complying party shall, in addition to being required to pay the arbitrator's award: (a) pay to the other party all reasonable costs and expenses (including attorneys' fees and expenses) incurred in connection with the arbitration or in connection with enforcement and/or collection of the arbitrator's award; and (b) pay interest on any unpaid amounts from the dates such amounts become due and owing until paid at the prime rate as quoted from time to time by *The Wall Street Journal*. The parties' agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction.

SECTION 15. GENERAL PROVISIONS

SECTION 15.1 This Coordination Agreement may not be amended except by an instrument in writing signed by the parties hereto.

SECTION 15.2 The waiver of any provision of this Coordination Agreement, in whole or in part, can be made only by an agreement in writing signed by the parties. The waiver of any

provision in a particular instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other existing or subsequent breach.

SECTION 15.3 A notice or demand to be given by one party to the other shall be given in writing by personal service, telegram, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

In the case of a notice or demand to UTA:

Utah Transit Authority
Attention: Rail Service General Manager
P.O. Box 30810
Salt Lake City, Utah, 84130-0810

With a copy to:
Utah Transit Authority
Attention: General Manager
P.O. Box 30810
Salt Lake City, Utah, 84130-0810

And an additional copy to
Utah Transit Authority
Attention: General Counsel's Office,
P.O. Box 30810
Salt Lake City, Utah, 84130-0810.

In the case of a notice or demand to Freight Operator

Savage Bingham & Garfield Railroad Company
Attention: Rail Services Group Leader
6340 South 3000 East, Suite 600
Salt Lake City, Utah 84121

With a copy to:
Savage Companies
Attention: General Counsel
6340 South 3000 East, Suite 600
Salt Lake City, Utah 84121

The parties may from time to time designate other individuals and addresses for notice or demand, provided that such changes in designation are dispatched as provided in this Section 15.3 All notices, demands, requests, and other communications under this Coordination Agreement shall be deemed properly served and to have been duly given: (a) on the date of delivery, if delivered personally on the party to whom notice is given; or (b) on receipt, if mailed to the party to whom notice is to be given as outlined above.

SECTION 15.4 If any provision of this Coordination Agreement shall be deemed to be or shall in fact be, illegal, invalid, inoperative or unenforceable as applied in any particular case because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained illegal, invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections of this Coordination Agreement shall not affect the remaining portions of this Coordination Agreement or any part thereof

SECTION 15.5 This Coordination Agreement contains headings only for convenience, which headings do not form part of and shall not be used in the construction of this Coordination Agreement.

SECTION 15.6 All of the terms and provisions of this Coordination Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Freight Operator may not assign this Coordination Agreement without having first obtained the expressed written consent of UTA, such consent not to be withheld unreasonably. Any assignment of this Coordination Agreement shall be

conditioned upon the assignee assuming all obligations set forth herein, and providing proof of insurance conforming to the requirements set forth in this Coordination Agreement.

SECTION 15.7 This Coordination Agreement may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute but one and the same instrument.

SECTION 15.8 This Coordination Agreement shall be governed by and construed under the laws of the State of Utah, and any Dispute regarding this Coordination Agreement shall be resolved in a court of competent jurisdiction within the State of Utah.

SECTION 15.9 In the event of a default with respect to this Coordination Agreement, the non-defaulting party shall be entitled to all remedies provided in this Coordination Agreement or otherwise provided at law or equity, including injunctive relief. Notwithstanding the foregoing, neither party shall be entitled to terminate this Coordination Agreement as a remedy for default.

SECTION 15.10 This Coordination Agreement is not intended to, and shall not be construed so as to, create any rights in third parties, and no provision of this Coordination Agreement shall inure to the benefit of any person or entity not a party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Coordination Agreement to be executed as of the date first set forth above by their duly authorized representatives.

UTAH TRANSIT AUTHORITY

SAVAGE BINGHAM & GARFIELD
RAILROAD COMPANY

By:

John M. Inglish, General Manager

By:

Name:
Title:

April 20, 2007

By. _____
Kenneth D. Montague, Jr., Treasurer

Approved as to Form:

Legal Counsel

EXHIBIT A – CONTINUED

FREIGHT TRACKAGE SHALL ALSO INCLUDE ALL INDUSTRY SPUR TRACKS AND SIDINGS (FROM THE POINT ON THE OUTSIDE OF DERAIL) ALONG THE RIGHT OF WAY INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

April 20, 2007

EXHIBIT B – DISPATCH PROTOCOLS

[INSERT DISPATCH PROTOCOLS]

2

**Before the
Surface Transportation Board**

Finance Docket No. 35008

**UTAH TRANSIT AUTHORITY --
ACQUISITION EXEMPTION --
THE UNION PACIFIC RAILROAD COMPANY
IN SALT LAKE COUNTY, UTAH**

VERIFIED STATEMENT OF GEORGE STURM

1. I am George Sturm, General Manager of Joint Facilities at Union Pacific Railroad Company ("UPRR").
2. I have been employed by UPRR for almost 37 years. The last 15 of those have been in work on joint facilities. As a result of that background, I am well familiar with UPRR's interchange agreements and practices. I have participated in the negotiation of the agreements that are the subject of this proceeding, including the agreement that will govern the interchange of traffic between UPRR and the Savage Bingham & Garfield Railroad ("SBGR") at Roper Yard near Salt Lake City.

3 Section 3 of that Agreement states the following

For the interchange from UP to SBGR, UP will build two separate blocks at Roper Yard for Equipment destined to SBGR and the Salt Lake City Southern Railroad ("SL"). If for any reason other than Force Majeure UP fails for three (3) consecutive days or for not less than five (5) days in any thirty (30) day period to provide SBGR with the blocking agreed to herein, then SBGR shall provide UP with written notice of UP failure under the Agreement. If, following a cure period of three (3) days, UP has not resumed providing the blocking agreed to herein UP will thereafter pay one hundred dollars (\$100) per car for each car delivered to SBGR under this Agreement which is misblocked. Said per car charge will continue until such time that UP has provided the blocking agreed to herein

4. UPRR and SBGR addressed this issue and reached this agreement in response to concerns about potential congestion in the Midvale Yard and SBGR's ability to complete its scheduled freight service within the five (5) hour freight window provided by UTA. We believe that this undertaking by UPRR addresses those concerns and confirms that traffic destined for the two railroads that receive traffic from UPRR at Roper Yard will be handled efficiently.

City of Salt Lake City)

SS:

State of Utah

VERIFICATION

I George Sturm, General Manager of Joint Facilities for the Union Pacific Railroad Company, hereby verify under penalty of perjury that I am familiar with the facts stated in the foregoing Verified Statement and that they are true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on this 18th day of April, 2007.

George Sturges

Subscribed and sworn to before me
this 18 day of April, 2007.

Notary Public

**My Commission Expires:**

3

DISPATCHING AND TRACK ACCESS PROTOCOLS FOR THE BINGHAM, GARFIELD AND BACCHUS INDUSTRIAL LEADS

June 1, 2007

As Agreed. Utah Transit Authority
 Savage Bingham & Garfield Railroad Company
 BNSF Railway Company

1. **Scope:** Utah Transit Authority ("UTA") purchased the Bingham Industrial Lead from Union Pacific Railroad Company ("UP"). UTA intends to construct a second track, a signaling system and additional improvements necessary to commence passenger operations on the Bingham Industrial Lead. The Bingham Industrial Lead is subject to a freight easement reserved by UP and transferred to the Savage Bingham & Garfield Railroad Company ("Savage"). The Bingham also provides access to the Garfield Industrial Lead and Bacchus Industrial Lead (the three industrial leads are sometimes hereafter collectively referred to as the "Common Trackage"). Savage provides freight service on the Garfield and Bacchus pursuant to a separate freight easement with UP. The BNSF Railway Company and its agents ("BNSF") provide freight service on the Garfield Industrial Lead (through its local switching agent, the Utah Railway Company) pursuant to a UP/BNSF settlement agreement and related documents. Savage and BNSF are each sometimes called a "Freight Operator" in these protocols, and together are called the "Freight Operators". These protocols describe how the parties will coordinate freight operations on the Common Trackage prior to UTA constructing passenger improvements on the Bingham Industrial Lead. These protocols also describe how, upon commencement of UTA's construction, the parties will coordinate the respective freight operations within a designated nighttime window.
2. **Purposes:** These protocols are intended to: (a) ensure that freight operations and passenger operations are temporally separated in compliance with Federal Railroad Administration and Federal Transit Administration policies, and in a manner that will allow the safe coexistence of passenger and freight operations; (b) ensure that the respective freight operations of Savage and BNSF are performed safely on the Common Trackage; and (c) ensure that Savage and BNSF trains operating on the Common Trackage are given equal dispatch without discrimination in promptness, quality of service or efficiency, and in a manner that allows both railroads to comply with their common carrier obligations.
3. **Effective Date:** These protocols shall be effective as of [June 1, 2007].
4. **Service Prior to Construction:** Prior to UTA's initiation of construction on the Bingham Industrial Lead, Savage and BNSF will share the Common Trackage on a time-separated basis. UTA shall authorize and monitor the entry and exit of each Freight Operator's trains to and from the Common Trackage. Each Freight Operator shall be responsible for requesting daily operating clearance from the TRAX Control Center. UTA shall be responsible for confirming that one Freight Operator's trains have cleared the Common

Trackage prior to granting the other Freight Operator clearance to enter. Once permission to enter has been obtained from UTA, each Freight Operator shall be responsible for the movement of its trains along the Common Trackage. The parties shall hold regularly scheduled meetings to coordinate the respective freight operations based on expected train volumes and run times. Each Freight Operator shall continue to adhere to the industry lead rules promulgated by UP (effective October 29, 2000) and in place as of the effective date of these protocols.

5. Freight Service after Construction Commences: Thirty (30) days following receipt of written notice that UTA intends to commence construction of the passenger improvements (the "Construction Notice"), the Freight Operators shall move their respective operations into a nighttime freight window (the "Freight Window"). During construction and prior to the commencement of passenger service, UTA shall work in good faith to maximize the Freight Window in a manner consistent with the performance of construction. Thirty (30) days following receipt of a written notice that UTA intends to commence passenger operation (the "Passenger Operation Notice"), the Freight Operators shall restrict the Freight Window to the hours of 12:00 midnight and 5:00 a.m., Monday through Friday, inclusive. Upon delivery of the Construction Notice, and continuing thereafter for so long as both Freight Operators conduct freight operations on the Common Trackage, UTA shall assume dispatch responsibilities for each Freight Operator's trains. It is contemplated that Savage and BNSF will need to conduct concurrent operations on the Common Trackage in order to provide their respective freight service within the Freight Window. In addition to daily operating clearances, each Freight Operator shall be responsible for obtaining track warrants from UTA. UTA shall issue track warrants adopting the procedures and requirements set forth in Chapter 14 of UP's General Code of Operating Rules. A copy of the track warrant procedures and requirements is attached as Exhibit A to these protocols. Track warrants shall be administered and confirmed over the radio or cellular telephones, which transmissions shall be taped and recorded at UTA's TRAX Control Center. UTA shall issue track warrants in a reasonable, non-discriminatory manner. Each Freight Operator shall comply with all requirements, restrictions and limitations contained in a track warrant. The parties shall hold regularly scheduled meetings to share information regarding freight service in a manner that allows UTA to effectively and efficiently administer train warrants. All parties shall work in a reasonable and cooperative manner to facilitate concurrent operations during the freight window.
6. Reporting Requirements: Each Freight Operator shall, immediately upon discovery, report to the TRAX Control Center any hazards, equipment failures, derailments or other problems on or affecting the Common Trackage. The TRAX Control Center shall convey the reported information to the other Freight Operator.
7. TRAX Control Center: All communications required or contemplated with the TRAX Control Center under these protocols shall be directed as follows:

Telephone:

(801) ____ - ____

In person address:

Utah Transit Authority
TRAX Control Center
613 West 6960 South
Midvale, Utah 84047

Each Freight Operator shall maintain a current list of supervisory personnel on file with the TRAX Control Center, which list will designate contact information for day-to-day communications with train personnel and also provide emergency contact information.

- 8 Disagreements: The designated contact persons identified in these protocols are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them.
9. Modifications: As the ultimate objectives of these protocols are the safe coordination of freight passenger service, the equal, flexible and efficient treatment of freight trains on the Common Trackage, and the protection of each Freight Operator's ability to comply with its common carrier obligations, these protocols may be modified at any time by mutual agreement, consistent with those objectives. Modifications will be made through amended protocols that replace and supersede this document.

AGREED THIS __ DAY OF _____ 2007

Utah Transit Authority

BNSF Railway Company

By _____

By: _____

Savage Bingham & Garfield Railroad
Company

By: _____