COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

JAMES A. NOYES, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: MP-2

July 2, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

PRIVATE DRAIN NO. 2067 - PRIVATE ROAD ENCROACHMENT AGREEMENT
UNINCORPORATED COUNTY AREA
SUPERVISORIAL DISTRICT 5
3 VOTES

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find this transaction categorically exempt from the provisions of the California Environmental Quality Act (CEQA).

2. Approve the enclosed 20-year Private Road Encroachment Agreement between Union Pacific Railroad Company (UPRR) and the Los Angeles County Flood Control District for access to and maintenance of Private Drain No. 2067 (PD 2067), located east of Sierra Highway, between Jakes Way and Canyon Park Boulevard, in the unincorporated area of the County of Los Angeles.

3. Instruct the Chair to sign the Agreement and authorize delivery to UPRR.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

This action will allow the District to access and maintain PD 2067, which was constructed by American Beauty Homes, Inc., as a condition of Parcel Map 17271. A portion of the drain crosses the mainline track of UPRR, located east of Sierra Highway, between Jakes Way and Canyon Park Boulevard, in the unincorporated area of the County of Los Angeles. Upon execution of this Agreement and the acquisition of

additional right of way from the Metropolitan Transportation Authority, we will recommend your Board accept PD 2067 for operation and maintenance pursuant to Section 13-3/4 of the Los Angeles County Flood Control Act. We expect to submit this recommendation shortly.

Implementation of Strategic Plan Goals

This action is consistent with the Strategic Plan Goal of Service Excellence since the maintenance of our flood control facilities is needed to provide flood protection that improves the quality of life to the residents in the area.

FISCAL IMPACT/FINANCING

American Beauty Homes has deposited with the County the one-time fee of $15,000 which will be paid to UPRR prior to execution of this Agreement by UPRR.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of this Agreement is 20 years. This Agreement was reviewed and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

With respect to the requirements of CEQA, this transaction is categorically exempt, as specified in Class 1(u) of the revised Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, Synopsis 57, and Section 15301 of the State CEQA Statutes and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

None.

CONCLUSION

This action is in the best interest of the District. Enclosed are three originals of the Agreement. Please have all originals signed by the Chair and acknowledged by the Executive Officer. Please return two originals to this office and retain one original for your files.

One approved copy of this letter is requested.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

DR:fr
2:DR BrdLtr

Enc.

cc: Chief Administrative Office
County Counsel

PRE 880806 A
Form Approved, AVP-Law

PRX 880806
Standard Form Approved, AVP-Law

Folder Number: 02100-78

PRIVATE ROAD ENCROACHMENT AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter "Licensor"), and **LOS ANGELES COUNTY FLOOD CONTROL DISTRICT**, a body politic of the State of California, whose address is 900 South Fremont St., Alhambra, California 91803 (hereinafter "Licensee").

RECITALS:

The Licensee desires the construction, maintenance and use of a non-exclusive private road encroachment access upon and along the property of the Licensor (hereinafter "Road Encroachment"), consisting of gravel and dirt surface and all appurtenances thereto, including but not limited to any gates, cattle guards, stop signs, identification signs, drainage facilities, on and over the Licensor's right of way at Mile Post , at or near Humphreys, County, California, in the location shown on the attached print dated August 19, 2002 marked Exhibit "A".

The Licensor is willing to grant the Licensee the right to use the Road Encroachment on the terms set forth below.

Article I. LICENSOR GRANTS RIGHT.

The Licensor grants the Licensee the right to use that portion of the Licensor's right of way for a Road Encroachment at the location shown on Exhibit A, subject to the terms set forth herein and in the attached Exhibit B. In consideration of the license and permission granted herein, the Licensee agrees to observe and abide by the terms and conditions of this agreement.

Article II. TERM.

DCL 5/22/13 PR 5/22/03

The term of this Lease is for twenty (20) years beginning on ~~March~~ July 1, 2003, and expiring on ~~February~~ June 30 ~~28~~, 2023, unless sooner terminated as provided in this Lease.

Article III. RENT

A. Licensee shall pay to Licensor advance fixed rent of Fifteen Thousand Dollars ($15,000.00) for the term.

B. If Licensor terminates this Agreement for any reason other than Licensee's default, or if this Agreement is terminated under Section 19 of Exhibit B, then Licensor shall refund to Licensee the unearned fixed rent paid in advance for the term. The refund shall be calculated on a pro rata basis using a 360-day year. (For example, if the term is for 20 years and the Agreement is cancelled by the Licensor at the end of 10 years, the refund is then 50% of the advanced payment.

PRE 880806 A
Form Approved, AVP-Law

Article IV. LIABILITY INSURANCE.

A. The Licensee shall provide the Licensor with a certificate, **identifying Folder No. 02100-78,** issued by the insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this Agreement in a policy which contains the following type endorsement.

> UNION PACIFIC RAILROAD COMPANY ("Licensor") is named as additional insured with respect to all liabilities arising out of Insured's (as Licensee) construction, maintenance and use of the road encroachment on Licensor's property.

Licensee WARRANTS that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

B. All insurance correspondence shall be directed to: Union Pacific Railroad Company, Real Estate Department, 1800 Farnam Street, Omaha, NE 68102, with reference to Folder No. 02100-78.

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

UNION PACIFIC RAILROAD COMPANY

By_____
General Manager – Real Estate

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By_____
Title:_____

Note: New agreement

APPROVED AS TO FORM
LLOYD W. PELLMAN, County Counsel
BY Francis G. Scott
DEPUTY

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code which authorized the use of facsimile signatures of the Chair of the Board on all papers, documents, or instruments requiring his/her signature.

The undersigned hereby certifies that on this _____day of_____, 20_____, the facsimile signature of_____, Chair of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT was affixed hereto as the official execution of this document. The undersigned further certifies that on this date, a copy of the document was delivered to the Chair of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.

VIOLET VARONA-LUKENS, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By_____
Deputy

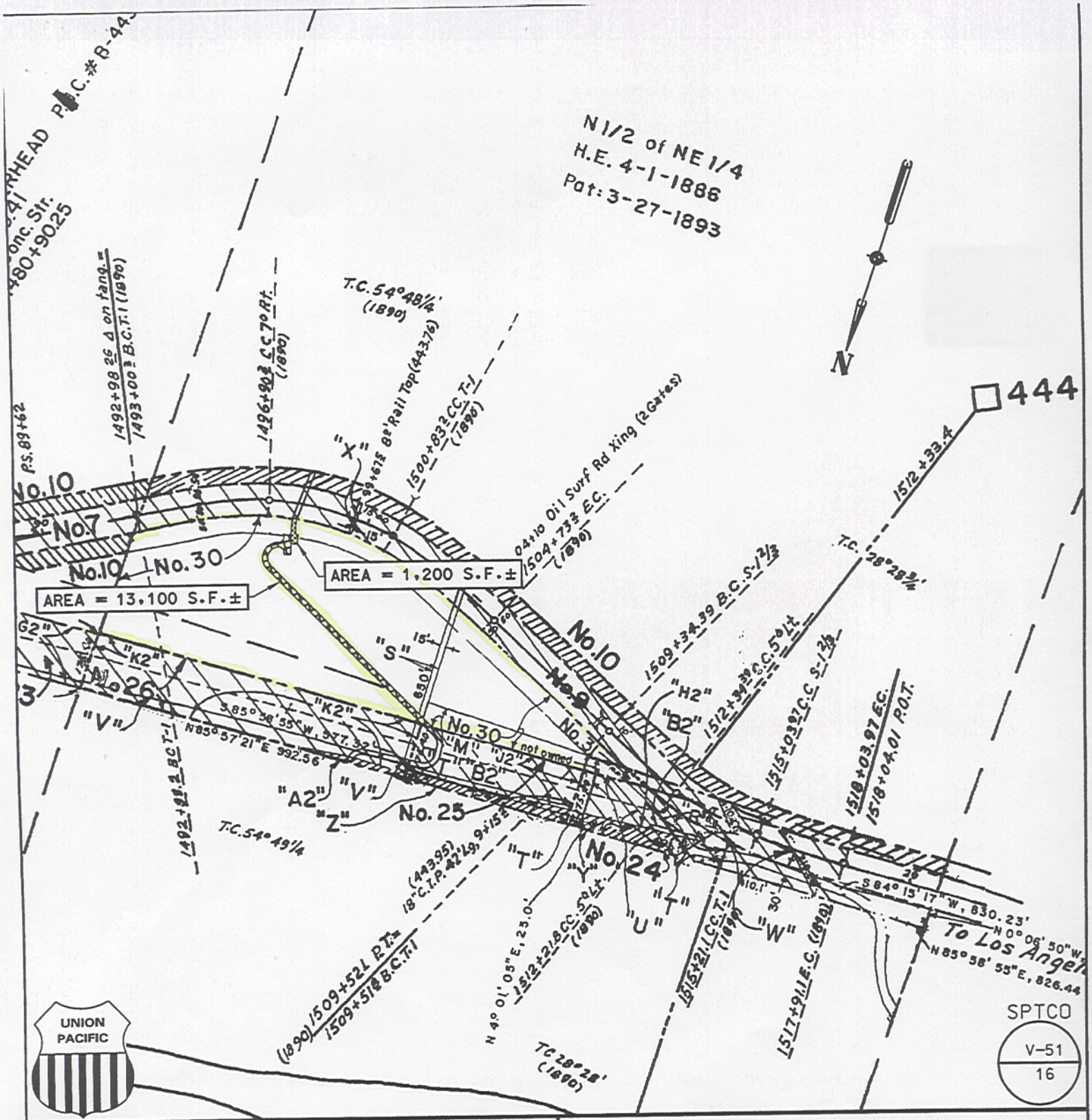
(LACFCD-SEAL)

APPROVED as to form

LLOYD W. PELLMAN, County Counsel

By_____
Deputy

(PD 2067-20 Year Private Road Encroachment Agreement)



LEGEND:

ROAD ENCROACHMENT SHOWN--------

STORM DRAINAGE EASEMENT SHOWN

UPRRCO. R/W OUTLINED ----------

CADD FILENAME	2100-78.dgn
SCAN FILENAME	p:/speng/ca/50s/51/cav51016.tif

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

HUMPHREYS, LOS ANGELES COUNTY, CALIFORNIA

M.P. 443.79 – SCRRA

TO ACCOMPANY AGREEMENT WITH
LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT

SCALE: 1" = 400'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 8/19/2002

RLH FILE: 2100-78

EXHIBIT B

SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to the Licensee are subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire railroad right of way, and are also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, wire lines, pipelines and other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The Licensee's rights are also subject to all outstanding superior rights (including those in favor of licensees, lessees of said right of way, and others) and the right of the Licensor to renew and extend the same, and are granted without covenant of title or quiet enjoyment.

SECTION 2. ROAD ENCROACHMENT TO BE STRICTLY PRIVATE.

It is expressly stipulated that the Road Encroachment is to be a strictly private one and is not intended for public use. The Licensee, without expense to the Licensor, will take any and all necessary action to preserve the private character of the Roadway and prevent its use as a public road.

SECTION 3. CONSTRUCTION, MAINTENANCE AND USE.

(a) The Licensee shall bear the entire cost and expense, furnish all necessary labor and material and perform all grading necessary for the construction, maintenance, repair or renewal of the Road Encroachment, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, or otherwise.

(b) The Licensee shall, at its sole expense, maintain, repair, renew and replace any gates, fences, cattle guards, drainage facilities, traffic signs or devices, identification signs approved by the Licensor or other appurtenances shown on Exhibit A. The Licensee shall, at its own expense, install and thereafter maintain any such appurtenances that may be required by the Licensor, by law, or by any public authority having jurisdiction. All work performed by the Licensee on the right of way shall be done to the satisfaction of the Licensor.

(c) The Licensee shall keep gates affording access to the Road Encroachment closed and locked at all times except during the time of actual passage. The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property.

(d) The Licensee, at the request of the Licensor and at Licensee's own expense, shall erect a fence or barrier on the trackside of the Road Encroachment to protect the Licensor's tracks and/or property.

(e) The Licensee shall not use the Road Encroachment for the storage of any material without the written consent and approval of the Licensor and in no event shall the Licensee place material any closer than twenty (20) feet from the centerline of the track.

SECTION 4. NOTICE OF COMMENCEMENT OF WORK.

The Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon or entrance onto property of the Licensor in connection with the construction, maintenance, repair, modification, reconstruction, relocation, or renewal of the Road Encroachment. All such work shall be prosecuted diligently to completion.

SECTION 5. MODIFICATION OR RELOCATION OF ROAD ENCROACHMENT.

Whenever the Licensor deems it necessary or desirable to modify or relocate the Road Encroachment, the Licensee shall, at the Licensee's sole expense, modify or move the Road Encroachment and the appurtenances thereto. All the terms of this agreement shall govern the continued maintenance and use of the modified or relocated Road Encroachment.

SECTION 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved,

arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Licensor's premises.

(b) In addition to the liability terms elsewhere in this Agreement, the Licensee shall indemnify and hold the Licensor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Licensee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by the Licensee, and/or its contractor, agents and/or employees, on Licensor's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

SECTION 7. INDEMNITY.

The Licensee assumes the risk of and shall indemnify and hold harmless the Licensor and other railroad companies which use the property of the Licensor, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever, (including officers, agents and employees of the Licensor and of the Licensee, as well as other persons); (2) loss of or damage to property whatsoever (including damage to property of or in the custody of the Licensee and damage to the roadbed, tracks, equipment or other property of or in the custody of the Licensor and such other railroad companies; or (3) violation by the Licensee of any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

(a) the construction of the Road Encroachment;

(b) any work done by the Licensee on or in connection with the Road Encroachment;

(c) the use of said Road Encroachment by the Licensee, or the officers, agents, employees, patrons or invitees, or by any other person;

(d) the use of the Road Encroachment by the Licensee's successors or assigns or the officers, agents, employees, patrons or invitees of the Licensee's successors or assigns until the Licensee either assigns the agreement or terminates the agreement as provided herein; or

(e) the breach of any covenant or obligation assumed by or imposed on the Licensee pursuant to this agreement; the failure of the Licensee to promptly and fully do any act or work for which the Licensee is responsible pursuant to this agreement;

regardless of whether such Loss is caused solely or contributed to in part by the negligence of the Licensor, its officers, agents or employees.

SECTION 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Road Encroachment, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance, request, or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Road Encroachment, to prevent the same from becoming a charge or lien upon property of the Licensor and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction, maintenance or use of the Road Encroachment or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's personal property located upon the property of the Licensor as compared with the entire value of such property.

SECTION 9. TERMINATION ON BREACH OR ON NOTICE.

(a) The breach of any covenant, stipulation or condition herein contained to be kept and performed by the Licensee shall, at the option of the Licensor, forthwith work a termination of this agreement and all rights of the Licensee hereunder. A waiver by the Licensor of a breach by the Licensee of any covenant or condition of this agreement shall not impair the right of the Licensor to avail itself of any subsequent breach thereof.

(b) This agreement may be terminated by either party on thirty (30) days' written notice to the other party.

SECTION 10. REMOVAL OF ROAD ENCROACHMENT AND RESTORATION OF PREMISES.

(a) Prior to termination of this agreement howsoever, Licensee shall, at its own expense, remove the Road Encroachment and restore the premises to as good condition as existed prior to Licensee's work on the premises. Failure by the Licensee to restore the premises within 10 days following termination shall be deemed authorization by Licensee for Licensor to restore the premises at Licensee's expense.

(b) In the event the Licensee removed, relocated or disturbed any fence or other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Road Encroachment, with or without the Licensor's consent, the Licensee shall, at Licensee's sole expense, restore such fence or other property to the same condition it was in before such fence or other property was removed, relocated or disturbed.

SECTION 11. ASSIGNMENT.

The Licensee shall not assign this agreement, or any interest therein to any purchaser, Licensee or to any other person, without the written consent of the Licensor. If the Licensee fails to secure the Licensor's consent to any assignment, the Licensee will continue to be responsible for obligations and liabilities assumed herein.

SECTION 12. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 11 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

PRX 880805
PRE 880805
PRX&E 880805

FORM B

EXHIBIT B-1

Small Commercial
Private Grade Crossing and/or Encroachment
Insurance Requirements

Licensee and/or its Contractor/Subcontractor shall, at its own and/or its Contractor's/Subcontractor's sole cost and expense, procure the following kinds of insurance and promptly pay when due all premiums for that insurance. If it so elects, Licensor shall have the right to obtain such insurance and Licensee shall promptly reimburse Licensor for that expense. The following insurance shall be kept in force during the life of this Agreement:

General Public Liability insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least $1,000,000 each occurrence or claim and a general aggregate limit of at least $2,000,000. This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, Broad Form Property Damage, a waiver of governmental immunity (ISO Form GL 24 14 or equivalent), coverage for construction or demolition work on or near the railroad tracks, severability of interests and name Licensor as an additional insured with respect to all liabilities arising out of Licensee's obligation to Licensor in the Agreement. If coverage is purchased on a 'claims-made' basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled.

Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least $1,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Licensor as an additional insured with respect to all liabilities arising out of Licensee's obligation to Licensor in the Agreement.

Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employer's Liability. also compliance with all laws of states which require participation in their state workers' compensation fund.

The Licensee and/or its Contractor/Subcontractor hereby waives its right of subrogation, as respects the above insurance policy(ies), against Licensor for payments made to or on behalf of employees of Licensee or its agents and for loss of its owned or leased property or property under its care, custody and control while on or near Licensor's right-of-way or other real property. Licensee's and/or its Contractor's/Subcontractor's insurance shall be primary with respect to any insurance carried by Licensor.

Licensee and/or its Contractor/Subcontractor shall furnish to Licensor certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Licensor in writing at least thirty (30) days prior to making any material alteration, including any change in the retroactive date in any 'claims-made' policies or substantial reduction of aggregate limits (if such limits apply), or cancellation of any policy(ies).

The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Licensor or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the state(s) affected by this Agreement.