

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) dated as of \_\_\_\_\_, 2011 is made and entered into by and between The City of San Jose (“**San Jose**”), and Union Pacific Railroad Company, a Delaware corporation (“**UP**” and, collectively with San Jose, the “**Parties**” and each, individually, a “**Party**”).

### RECITALS

**WHEREAS**, UP owns that certain approximately 9.04-acre real property located in the City of San Jose, County of Santa Clara, California commonly known as the Story Road Union Pacific Railroad Spur and more particularly described in **Exhibit A** attached hereto (the “**Property**”);

**WHEREAS**, San Jose owns certain real property located directly adjacent to the Property (to the east and west) commonly known as the Story Road landfill (the “**Landfill**”) upon which San Jose operated a municipal landfill from 1961 until its closure in approximately 1969;

**WHEREAS**, in January of 2008, UP became aware of the fact that waste materials from the Landfill, including construction debris, glass, plastic, oil residues and Hazardous Materials (as hereinafter defined) (the “**Landfill Waste**”) had migrated onto, encroached upon and contaminated the Property;

**WHEREAS**, UP and San Jose are also aware that other Hazardous Materials have become located on the Property, including arsenic and cadmium;

**WHEREAS**, after presenting a timely claim under the California Government Claims Act, on January 15, 2010, UP brought an action against San Jose in the United States District Court, Northern District of California, San Jose Division and subsequently filed a first amended complaint on March 12, 2010 alleging, among other things, that the Landfill Waste had migrated onto, encroached upon and contaminated the Property and sought damages and injunctive relief (the “**Action**”);

**WHEREAS**, the Parties entered into a Tolling and Standstill Agreement, as the same has been amended from time to time, tolling UP’s claims, and agreed to mediate the dispute; and

**WHEREAS**, the Parties attended a mediation in San Jose on July 20, 2011 before Hon. Edward A. Panelli (Ret.) during which the Parties reached a resolution of such dispute whereby San Jose will purchase the Property, assume responsibility for its remediation, and indemnify UP, all subject to the terms and conditions of this Agreement and the Purchase Agreement (as defined below).

**NOW THEREFORE**, intending to be legally bound hereby and in consideration of the mutual covenants and the mutual exchange of promises, warranties, agreements

and obligations as recited herein, and for good cause and other consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **SECTION I. PARTIES BOUND**

This Agreement applies to, is binding upon, and shall inure solely to the benefit of the Parties, their predecessors, parents, subsidiaries, affiliated corporations, unincorporated divisions, partners, members and affiliates, their legal successors and assigns, and all past, present, and future officials, officers, directors, shareholders, employees, and/or others purporting to act on their behalf. Any change in ownership, business form or corporate status of a Party, including, without limitation, any transfer of assets or real or personal property, shall in no way alter any Party's responsibilities under this Agreement.

### **SECTION II. PURCHASE AND SALE OF PROPERTY**

2.1 Concurrently with the execution and delivery of this Agreement, the Parties shall execute and deliver to each other the Agreement of Purchase and Sale attached hereto as **Exhibit B** (the "**Purchase Agreement**").

2.2 The purchase price for the Property shall be Two Million Dollars (\$2,000,000.00) (the "**Purchase Price**"). San Jose shall pay the Purchase Price to UP at Closing pursuant to the terms of the Purchase Agreement.

2.3 The consummation of the transactions contemplated by the Purchase Agreement (the "**Closing**"), as evidenced by the recording of a quitclaim deed for the Property in favor of San Jose and delivery by San Jose to UP of the Purchase Price shall be held on or before December 23, 2011 (the "**Closing Date**") in accordance with the terms and conditions of the Purchase Agreement. All capitalized terms used herein and not otherwise defined shall have the same meanings given to them in the Purchase Agreement.

### **SECTION III. REMEDIATION**

3.1 San Jose, at its sole cost and expense, shall perform all work necessary for the investigation, assessment, monitoring, removal and remediation of any waste (including Landfill Waste), Hazardous Materials (as defined below), pollutants, contaminants, building materials or other materials (collectively "**Waste**") on, about or emanating from the Property, including any contamination of soil, soil vapor, surface water or groundwater,, regardless of the source or cause of such Waste, pursuant to the direction and all lawful requirements of any agency which has jurisdiction with respect to the environmental condition of the Property (the "**Agencies**") (collectively "**Remediation Work**"). San Jose shall perform any and all monitoring, post-closure maintenance and other investigation or remediation that is required by the Agencies ("**Post-Closure Work**").

3.2 As used herein, "**Hazardous Materials**" means: (a) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or

otherwise classified pursuant to, any Environmental Laws as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant”, or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity”; and (b) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources. It is the intent of parties to this Agreement that the term “Hazardous Materials” be construed in the broadest sense possible under this Agreement.

3.3 San Jose shall comply with all applicable laws, regulations, and ordinances, as well as the direction, orders and requirements of the Agencies, in exercising its rights, duties and obligations under this Agreement and shall, at its sole expense, secure all necessary permits and authorizations in connection therewith. UP shall reasonably cooperate with San Jose in obtaining any permits and authorizations, to the extent UP’s cooperation is required.

#### **SECTION IV. INDEMNIFICATION**

San Jose shall indemnify, defend and hold harmless (with counsel acceptable to UP, UP acknowledging that counsel of San Jose’s legal department is acceptable to UP) UP, its officers, directors, shareholders and employees (collectively “**Indemnified Parties**”), from and against all claims, damages, judgments, expenses, obligations, liabilities, demands, actions, suits, damages, costs, fees, fines, orders or penalties, including, without limitation, attorneys’ fees, of any kind or nature, whether known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated (“**Claims**”), asserted by any third party, including the Agencies, against Indemnified Parties arising out of or in any way related to (1) any act or omission of San Jose, its agents, employees, contractors or subcontractors in performing the Remediation Work or Post-Closure Work; (2) any and all past or currently existing Waste on, under or emanating from the Property, including contamination of soil and groundwater; (3) any personal injury or property damage occurring on the Property on or after the Closing Date; (4) any failure to perform or other breach of the terms of this Agreement (collectively referred to herein as the “**Indemnified Claims**”).

#### **SECTION V. RELEASES AND COVENANTS NOT TO SUE**

5.1 In consideration of the payment of the Purchase Price and the performance of other San Jose obligations herein and in the Purchase Agreement, UP hereby forever releases, discharges and covenants not to sue San Jose, and its subsidiaries, parents, officials, employees, attorneys and agents, of and from any and every Claim arising directly or indirectly out of or related in any way to the allegations, transactions or

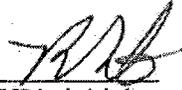
subject matter of the Action, to the Property, or to any Hazardous Materials thereon. San Jose understands and agrees that this release does not include a release of any contractual duty or obligation assumed under this Agreement or the Purchase Agreement.

5.2 In consideration of UP's obligations herein and in the Purchase Agreement, San Jose hereby forever releases, discharges and covenants not to sue UP, subsidiaries, parents, associated and affiliated companies as well as all shareholders, directors, employees, attorneys, agents, principals, servants, successors, heirs, executors, trustees and administrators, of and from any and every Claim arising directly or indirectly out of or related in any way to the allegations, transactions or subject matter of the Action, to the Property, or to any Hazardous Materials thereon. UP understands and agrees that this release does not include a release of any contractual duty or obligation assumed under this Agreement or the Purchase Agreement.

5.3 The Parties understand and agree that this Agreement is a full and final release applying to all unknown, unsuspected, unasserted and unanticipated Claims with respect to the matters released above. The Parties warrant that each explicitly took this into account in determining the consideration for the giving of this release, and a portion of said consideration, having been bargained for between the Parties with the knowledge of the possibility of such unknown, unsuspected, unasserted and unanticipated claims, was given in exchange for a full accord, satisfaction and discharge of all such claims. The Parties expressly waive all rights under California Civil Code Section 1542 which provides:

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

\_\_\_\_\_  
San Jose's initials

  
\_\_\_\_\_  
UP's initials

**SECTION VI. NO ADMISSIONS**

Entering into this Agreement and the Purchase Agreement, and any conduct of any Party in executing and implementing the terms of this Agreement and the Purchase Agreement, shall not constitute or be used as evidence of any admission of liability on any issue of fact or law or any admission of fact or law by any Party or by any other person or entity not a Party, except as to the obligations expressly assumed herein. This Agreement and the Purchase Agreement may not be used in any fashion or be admitted as evidence in any subsequent legal proceeding, except that this Agreement and the Purchase Agreement may be used as evidence against a Party in a legal proceeding

brought by another Party to enforce the terms of and the obligations and responsibilities contained in this Agreement or the Purchase Agreement.

#### **SECTION VII. SURVIVAL**

Except as specifically provided to the contrary in this Agreement, each and every agreement, obligation, warranty, representation, covenant and indemnification of the Parties contained herein shall survive the Closing and the transfer and conveyance of the Property and any and all performances hereunder and under the Purchase Agreement.

#### **SECTION VIII. NO MODIFICATION**

No modification to this Agreement shall be effective unless in writing and executed by all Parties.

#### **SECTION IX. ENTIRE AGREEMENT**

The Parties each warrant and represent that no promise, inducement or agreement not expressed herein has been made in connection with this Agreement, and that this Agreement and the Purchase Agreement constitute the entire agreements between the Parties and supersede any and all other agreements and negotiations, whether oral or in writing. The Parties hereby agree and acknowledge that they will not claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

#### **SECTION X. THIRD PARTY BENEFICIARIES**

Any person or entity released by either Party pursuant to this Agreement, who is not a Party to this Agreement, shall be an intended third party beneficiary of the releases provided for in this Agreement. Except as set forth herein, this Agreement shall not be deemed or construed in any way to result in the creation of any rights in favor of any person or entity not a Party to this Agreement.

#### **SECTION XI. NO ASSIGNMENT OF CLAIMS**

Each Party represents and warrants to the other Party that it has not assigned or otherwise transferred (or purported to assign or otherwise transfer) any right to or interest in any of the Claims released pursuant to this Agreement. If a Party breaches this representation and warranty, the breaching Party shall indemnify, defend and hold the non-breaching Party harmless against any and all Claims asserted against the non-breaching Party based on, arising out of or in connection with such breach.

## **SECTION XII. CHOICE OF LAW; DISPUTE RESOLUTION**

12.1 This Agreement shall be governed and construed in accordance with the substantive laws of the State of California without reference to principles of conflicts of law.

12.2 In the event of any disagreement arising hereunder, the Parties shall meet and confer to resolve their disagreement. If the Parties are unable to informally resolve such disagreement, they will engage in mediation before initiating litigation regarding their disagreement. Unless the Parties otherwise agree in writing, the limitations period(s) relating to the disagreement shall be tolled from and after the date upon which one Party provides written notice to the other of an intent to engage in mediation under this paragraph; provided that, such tolling period specifically includes any time period relating to compliance with the California Government Claims Act, California Government Code §§ 900 *et seq.*

## **SECTION XIII. HEADINGS**

The headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

## **SECTION XIV. PARTIAL INVALIDITY**

To the fullest extent they may effectively do so under applicable law, the Parties waive any provision of law which renders any provision of this Agreement invalid, illegal or unenforceable in any respect. If any provision of this Agreement is held to be invalid, illegal or unenforceable and the waiver in the immediately preceding sentence is ineffective to eliminate such invalidity, illegality or unenforceability, such invalidity or illegality or unenforceability shall not invalidate the whole of this Agreement but, rather, this Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced to carry out the terms of this Agreement in a reasonable manner.

## **SECTION XV. NO ASSIGNMENT**

Neither Party shall be entitled to assign any right or benefit conferred by this Agreement to any other person, unless the other Party consents to such assignment, which consent shall not be unreasonably withheld.

## **SECTION XVI. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**SECTION XVII. ATTORNEYS' FEES AND COSTS**

If either Party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Section XVII, attorneys' fees and disbursements include, without limitation, reasonable imputed fees and actual disbursements of in-house counsel.

**SECTION XVIII. CROSS DEFAULT**

Any breach of or default under the Purchase Agreement shall constitute a breach of and default under this Agreement by the defaulting Party. Any breach of or default under this Agreement shall constitute a breach of and default under the Purchase Agreement. In the event this Agreement becomes null and void for any reason, then the Purchase Agreement shall automatically terminate at the same time (unless the Closing thereunder has already occurred). In the event the Purchase Agreement terminates for any reason, then this Agreement shall automatically become null, void and of no further force or effect.

**SECTION XIX. CONDITIONS TO EFFECTIVENESS**

Anything contained herein to the contrary notwithstanding, this Agreement shall be of no force or effect unless and until the Closing occurs under the Purchase Agreement. If, after the Purchase Agreement is executed, the Closing does not occur by December 23, 2011, then this Agreement shall be null and void and of no force or effect.

**SECTION XX. WARRANTY AND AUTHORITY**

Each of the Parties hereby warrants and declares that this Agreement is executed and delivered voluntarily, without any duress of any type or nature whatsoever, whether economic or otherwise, or undue influence or misrepresentation by any of the Parties, their agents or attorney. Each of the Parties and signatories to this Agreement warrant that they have the requisite authority to execute this Agreement and bind the Parties on whose behalf they are signing. The Parties agree to provide reasonable written evidence of such authority to each other upon request including without, limitation, corporate resolutions, articles of incorporation, by-laws and charters or other documents conferring governmental authority. Each of the Parties agrees that this Agreement is supported by

contemporaneous, fair and legally sufficient consideration, including, without limitation, the forbearance of legal rights and remedies, compromise of claims, releases, indemnities, and covenants contained herein.

**SECTION XXI. ADVICE OF COUNSEL**

The Parties acknowledge that they have (a) had an equal role in drafting this Agreement, (b) read each of the provisions of this Agreement and understand the same, and (c) signed this Agreement of their own volition based upon the explicit advice of their counsel. Because each of the Parties has participated in drafting this Agreement, there shall be no presumptions in interpretation and construction against any Party on the ground that such Party was responsible for preparing the Agreement or any part of it.

*[remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation

By:   
Name: Richard L. Gooch  
Title: DIRECTOR  
SPECIAL PROPERTIES

THE CITY OF SAN JOSE

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

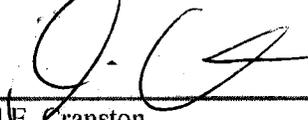
APPROVED AS TO  
FORM

[SAN JOSE CITY ATTORNEY]

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

APPROVED AS TO  
FORM

GREENBERG GLUSKER FIELDS CLAMAN &  
MACHTINGER LLP

By:   
David E. Cranston  
Attorneys for Union Pacific Railroad Company

**EXHIBIT A****Legal description of Property**

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

**PARCEL 1:**

ALL THAT LAND DESCRIBED AS PARCEL NO. 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED JUNE 25, 1921, IN BOOK 533 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS AND ALL THAT LAND CONVEYED BY REMILLARD BRICK COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY THE WESTERN PACIFIC RAILROAD COMPANY TO HERMAN RICHTER IN THE INDENTURE DATED OCTOBER 6, 1922 AND RECORDED DECEMBER 1, 1922 IN BOOK 564 OF DEEDS, PAGE 448, SANTA CLARA COUNTY RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE LOT LINE BETWEEN 500 ACRE LOTS 10 AND 11, NORTH 37° 53' WEST 206.67 FEET FROM THE INTERSECTION OF SAME WITH THE NORTHERLY LINE OF KEYES STREET, SOMETIMES KNOWN AS STORY ROAD, SAID POINT BEING ALSO 75 FEET DISTANT WESTERLY, MEASURED AT RIGHT ANGLES TO THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES TO SAN JOSE; THENCE ALONG SAID 500 ACRE LOT LINE, NORTH 37° 53' WEST 77.76 FEET TO A POINT; THENCE SOUTH 70° 23' EAST, 44.56 FEET TO A POINT 75 FEET DISTANT, WESTERLY, MEASURED AT RIGHT ANGLES TO SAID CENTER LINE OF SAID RAILROAD; THENCE SOUTH 7° 32 1/2' EAST, 75 FEET FROM AND PARALLEL TO SAID CENTER LINE OF SAID RAILROAD A DISTANCE OF 46.95 FEET TO THE POINT OF BEGINNING

**PARCEL 2:**

ALL THAT LAND DESCRIBED AS PARCEL 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION IN THE DOCUMENT RECORDED NOVEMBER 22, 1963 IN BOOK 6284, PAGE 388 OF OFFICIAL RECORDS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 11.17 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM KATE C. W. POST, ET VIR, TO STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, DATED MARCH 18, 1921, RECORDED MARCH 21, 1921, IN BOOK 529 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS, AT THE SOUTHERNMOST CORNER OF THAT CERTAIN 40.00 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JUNE 13, 1921, RECORDED JUNE 23, 1921 IN BOOK 535 OF DEEDS, PAGE 392, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 58' 30" EAST ALONG THE SOUTHEASTERLY LINE OF SAID 11.17 ACRE TRACT AND ALONG THE NORTHEASTERLY PROLONGATION THEREOF 129.04 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF THAT CERTAIN 7.36 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM REMILLARD BRICK COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A

CORPORATION, DATED MARCH 4, 1921, RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS; THENCE SOUTH  $08^{\circ} 46' 30''$  WEST ALONG THE WESTERLY LINE OF SAID 7.36 ACRE TRACT, 817.05 FEET; THENCE LEAVING SAID LAST MENTIONED LINE AND RUNNING NORTH  $02^{\circ} 02' 30''$  EAST, 724.96 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

ALL THE LAND CONVEYED BY HERMANN RICHTER ET. UX. TO THE WESTERN PACIFIC RAILROAD COMPANY IN THE INDENTURE RECORDED MAY 17, 1921 IN BOOK 537 OF DEEDS AT PAGE 57, RECORDS OF SANTA CLARA COUNTY, BEING DESCRIBED AS FOLLOWS:

A TRIANGULAR PARCEL OF LAND LYING ON EACH SIDE OF THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES OR NEAR NILES, IN ALAMEDA COUNTY, TO SAN JOSE IN SANTA CLARA COUNTY, AS THE SAME IS STAKED OUT AND LOCATED ACROSS THE PROPERTY NOW OR FORMERLY OF H. RICHTER AND KATE RICHTER, BEING A PART OF LOTS 21 AND 24, OF BLOCK 69, OF THE C. FREYSCHLAG SUBDIVISION, AND A PART OF THE LAND CONVEYED TO KATE RICHTER BY JOSEPH PARTMANN, ET UX, JANUARY 3, 1907, RECORDED IN BOOK 314 OF DEEDS, PAGE 72, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA. THE NORTHEASTERLY SIDE OF SAID PARCEL BEING THE LINE BETWEEN THE PROPERTIES OF KATE RICHTER AND THE PROPERTY NOW OR FORMERLY BELONGING TO THE STANDARD REALTY & DEVELOPMENT COMPANY. THE SOUTHEASTERLY SIDE OR END OF SAID PARCEL BEING THE NORTHERLY LINE OF KEYES STREET, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 24, OF BLOCK 69, AS SHOWN ON THE MAP OF THE C. FREYSCHLAG SUBDIVISION IN REED'S ADDITION TO THE CITY OF SAN JOSE, RECORDED FEBRUARY 4, 1888, IN BOOK "C" OF MAPS, PAGE 53, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE SOUTHERLY SIDES OF SAID LOT 24, OF BLOCK 69, AND NORTHERLY LINE OF KEYES STREET, SOUTH  $59^{\circ} 8'$  WEST, A DISTANCE OF 24.47 FEET TO A POINT WHICH IS 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE SAID LOCATED CENTER LINE; THENCE NORTHERLY ON A CURVE PARALLEL TO THE SAID LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY, A DISTANCE OF 121.52 FEET, THE CHORD OF WHICH CURVE BEARS NORTH  $11^{\circ} 21'$  WEST, A DISTANCE OF 121.5 FEET TO A POINT ON THE EASTERLY LINE OF THE AFOREMENTIONED PROPERTY CONVEYED BY PARTMANN, ET UX, TO KATE RICHTER; THENCE SOUTH  $37^{\circ} 53'$  EAST ALONG THE EASTERLY LINE OF SAID LAND CONVEYED BY PARTMANN TO RICHTER, A DISTANCE OF 115.38 FEET, TO A POINT IN THE NORTHERLY LINE OF KEYES STREET, WHICH POINT IS THE SOUTHEASTERLY CORNER OF THE AFOREMENTIONED TRACT CONVEYED BY PARTMANN TO RICHTER; THENCE SOUTH  $59^{\circ} 8'$  WEST, ALONG SAID NORTHERLY LINE OF KEYES STREET, A DISTANCE OF 30.23 FEET TO THE PLACE OF BEGINNING.

**EXHIBIT B**

**Agreement of Purchase and Sale**

## AGREEMENT OF PURCHASE AND SALE

THIS Agreement of Purchase and Sale (this "**Agreement**") dated as of \_\_\_\_\_, 2011 (the "**Effective Date**"), is entered into by and between THE CITY OF SAN JOSE ("**Buyer**"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Seller**"). Buyer and Seller are sometimes referred to in this Agreement collectively as the "**Parties**" and individually as a "**Party**."

### RECITALS

WHEREAS, Seller owns that certain approximately 9.04-acre real property located in the City of San Jose, County of Santa Clara, California, which is a portion of a former spur track commonly known as the San Jose Industrial Spur and more particularly described in Section 1.1 below and in Exhibit A attached hereto (the "**Real Property**");

WHEREAS, Buyer owns certain real property located directly adjacent to the Real Property (to the east and west) commonly known as the Story Road landfill (the "**Landfill**") upon which Buyer operated a municipal landfill from 1961 until its closure in approximately 1969;

WHEREAS, in July of 2008, Seller presented a claim to Buyer under the California Government Claims Act alleging that waste materials from the Landfill, including construction debris, glass, plastic, oil residues and Hazardous Materials (as hereinafter defined) (the "**Landfill Waste**") had migrated onto, encroached upon and contaminated the Real Property;

WHEREAS, on January 15, 2010, Seller brought an action against Buyer in the United States District Court, Northern District of California, San Jose Division and subsequently filed a first amended complaint on March 12, 2010 alleging, among other things, that the Landfill Waste had migrated onto, encroached upon and contaminated the Real Property and sought damages and injunctive relief (the "**Action**");

WHEREAS, the Parties entered into a Tolling and Standstill Agreement, as the same has been amended from time to time, tolling Seller's claims, and agreed to mediate the dispute; and

WHEREAS, the Parties attended a mediation in San Jose on July 20, 2011 before Hon. Edward A. Panelli (Ret.) during which the Parties reached a resolution of such dispute and have entered into that certain Settlement Agreement dated concurrently herewith (the "**Settlement Agreement**") to settle the dispute with respect to the Real Property. All of the capitalized terms used herein and not otherwise defined herein shall have the same meanings as in the Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the Parties contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is conclusively acknowledged, the Parties agree as follows:

**ARTICLE I  
PURCHASE AND SALE OF REAL PROPERTY**

**Section 1.1 Agreement to Sell and Purchase.** Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, all of Seller's right, title and interest in the Real Property, together with all of the railroad trackage, ties and appurtenances thereto ("**Trackage**") located on the Real Property, and the railroad bridge over Coyote Creek existing on the Real Property and any appurtenances thereto (the "**Bridge**").

**Section 1.2 Escrow.** An escrow (the "**Escrow**") to consummate the sale and purchase of the Property shall be opened with First American Title Company (the "**Escrow Agent**"), whose address is 1737 North First Street, San Jose, CA 95112; Attention: Linda Tugade. Within one (1) business day after full execution of this Agreement, the Parties shall deposit with the Escrow Agent a fully executed copy of this Agreement which, in addition to constituting the agreement of the Parties, shall serve as escrow instructions to the Escrow Agent. The Parties shall execute such additional escrow instructions as the Escrow Agent may require in order to perform its duties hereunder, provided that such additional instructions do not impose any additional obligations on the Parties. Such further instructions shall not modify the provisions of this Agreement unless otherwise expressly set forth therein and any inconsistency between the provisions of such additional instructions and the provisions of this Agreement shall be resolved in favor of this Agreement.

**Section 1.3 Purchase Price.** The purchase price of the Real Property shall be Two Million Dollars (\$2,000,000.00) (the "**Purchase Price**").

**Section 1.4 Payment of Purchase Price.** Buyer shall pay the Purchase Price to Seller at Closing through Escrow. Buyer shall deposit an amount equal to the Purchase Price into Escrow on or before the Closing Date.

**ARTICLE II  
SIGNBOARD**

Buyer understands, acknowledges and agrees that there is currently located on the Real Property a signboard and appurtenances thereto, including, without limitation, facilities and equipment for electrical service to said signboard (collectively, the "**Signboard**") pursuant to rights contained in that certain Master Signboard Site License Agreement between Seller and Eller Media Company, now known as Clear Channel Outdoor, Inc. ("**Clear Channel**") dated September 30, 1997 (the "**Eller Agreement**"). A copy of a redacted version of the Eller Agreement is attached as **Exhibit B** hereto. Seller represents and warrants to Buyer that there are no provisions in the Eller Agreement which are not set forth on **Exhibit B** which would deprive Seller of its right to withdraw the Signboard from the Eller Agreement or which would allow Clear Channel the right to remain on the Real Property under the Eller Agreement despite Seller's withdrawal. Buyer has requested that Seller withdraw the Signboard from the Eller Agreement and Seller has agreed with such request, upon the following terms and conditions:

(a) Upon Closing, Seller shall deliver or cause to be delivered to Clear Channel written notice of withdrawal of the Signboard from the Eller Agreement. Such written notice to Clear Channel shall be provided in accordance with the provisions of the Eller

Agreement, and the withdrawal will be effective not less than thirty-five (35) days after the notice of withdrawal is delivered to Clear Channel (which date may be after the Closing Date);

(b) Notwithstanding the foregoing, Seller will have no duty to enforce the obligations of Clear Channel with respect to withdrawal of the Signboard, including, without limitation, any obligations of Clear Channel to remove the Signboard after the withdrawal. Seller will, upon written request from Buyer on or before the Closing, assign to Buyer any of Seller's rights to enforce any such obligations of Clear Channel;

(c) The fee of approximately \$9,772.00 required under the Eller Agreement to be paid by Seller to Clear Channel for withdrawal of the Signboard (the "**Signboard Withdrawal Fee**") will be paid by Buyer to Seller at Closing through Escrow; and

(d) Buyer acknowledges and agrees that as of the Closing Date, the Signboard will remain on the Property.

### ARTICLE III BUYER'S EXAMINATION AND DISCLAIMERS

**Section 3.1 Acknowledgements, Releases and Assumptions by Buyer.** As an essential inducement to Seller to enter into this Agreement (without which Seller was unwilling to enter into this Agreement), Buyer expressly acknowledges, understands and agrees as follows:

(a) **Acknowledgment Regarding Buyer's Due Diligence.**

(i) Buyer is solely responsible for determining (1) the physical and environmental condition of the Property, (2) the laws, ordinances, rules and regulations of the County of Santa Clara and other federal state and local governmental agencies having jurisdiction over the Real Property (collectively, the "**Governmental Agencies**") applicable to the development, use, occupancy, enjoyment or disposition of the Real Property and Buyer's ability to procure entitlements and any permits and approvals from Governmental Agencies required therefor, (3) the suitability of the Real Property for Buyer's proposed use or investment, and (4) the condition of title to the Real Property; and

(ii) Buyer has or has had the opportunity to thoroughly inspect and examine the Real Property to the extent deemed necessary by Buyer in order to enable Buyer to evaluate the purchase of the Real Property and has satisfied itself with respect to (1) any and all matters related to the physical condition of the Real Property, including the Bridge and Trackage, and the environmental condition of the Real Property, (2) the planning, zoning, and land use status of the Real Property and the suitability and economic viability of the Real Property for Buyer's ownership and intended purposes, (3) the condition of title to the Real Property, and (4) the condition of the Real Property in all other respects;

(iii) Buyer expressly acknowledges and agrees that it has been made aware of the presence of Hazardous Materials (as defined below) on and under the Real Property, including the Landfill Waste, arsenic, cadmium and chemicals that may have been used in the treatment of wood used in the Trackage and in the construction of the Bridge; and

(iv) Buyer expressly acknowledges and agrees that the Real Property may be subject to licenses and other third party rights, other than the Licenses (the “**Unidentified Licenses**”) that have not been identified by Seller from a review of Seller's records, and that it is the sole responsibility of Buyer to determine if any such Unidentified Licenses exist. If any such Unidentified Licenses are identified after the Effective Date, Seller’s right, title, interest and obligations in, to and under such Unidentified Licenses shall be assigned to and assumed by Buyer at or after Closing by Assignment Agreement (as hereinafter defined).

(v) Buyer is relying solely upon Buyer’s own inspections, examination and evaluation of the Real Property in purchasing the Real Property. Buyer represents to Seller that Buyer is experienced in the ownership of real estate, including, without limitation, real estate that is contaminated, and, to the extent that Buyer’s own expertise with respect to any matter is insufficient to enable Buyer to reach an informed conclusion, Buyer has engaged the services of persons qualified to advise Buyer with respect to such matters.

(b) **Acknowledgement Regarding Materials and Other Matters.**

(i) Any information provided or to be provided by Seller or any member, agent, attorney, representative, employee, or other person or entity acting on Seller’s behalf (collectively, the “**Seller-Related Parties**”) with respect to the Real Property has been and is solely for Buyer’s convenience;

(ii) Such information was or may be obtained from a variety of sources and Seller has not made any independent investigation or verification of such information and makes no representation as to the accuracy or completeness of such information;

(iii) Seller shall not be liable for any failure of Buyer to investigate the Real Property; and

(iv) Seller shall not be bound by or liable for any verbal or written statements, representations, appraisals, reports, or other information pertaining to the Real Property furnished by Seller or any Seller-Related Parties.

**Section 3.2 Disclaimers by Seller; Sale “As Is, Where Is”.** IT IS UNDERSTOOD AND AGREED THAT SELLER HAS NOT AT ANY TIME MADE AND IS NOT NOW MAKING, AND SELLER SPECIFICALLY DISCLAIMS, ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO (1) MATTERS OF TITLE, (2) ENVIRONMENTAL MATTERS RELATING TO THE REAL PROPERTY OR ANY PORTION THEREOF, INCLUDING THE PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR IN THE VICINITY OF THE REAL PROPERTY, AND INCLUDING COMPLIANCE WITH ENVIRONMENTAL LAWS, (3) GEOLOGICAL CONDITIONS, INCLUDING SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER, AND GEOLOGIC FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE FAULTING, (4) WHETHER, AND TO THE EXTENT TO WHICH, THE REAL PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER,

WETLANDS, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY, RIPARIAN AREA OR SPECIAL FLOOD HAZARD, (5) DRAINAGE, (6) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING, (7) THE PRESENCE OF ENDANGERED SPECIES OR ANY ENVIRONMENTALLY SENSITIVE OR PROTECTED AREAS, (8) ZONING OR ENTITLEMENTS TO WHICH THE REAL PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT OR THE EXTENT TO WHICH BUILDING OR OTHER ENTITLEMENTS FOR THE REAL PROPERTY OR ANY PORTION THEREOF MAY BE OBTAINED OR ANY CONDITIONS THAT MAY BE IMPOSED IN CONNECTION THEREWITH, (9) THE AVAILABILITY OF ANY UTILITIES TO THE REAL PROPERTY OR ANY PORTION THEREOF INCLUDING WATER, SEWAGE, GAS AND ELECTRIC, (10) USAGES OF ADJOINING PROPERTY, (11) ACCESS TO THE REAL PROPERTY OR ANY PORTION THEREOF, (12) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE REAL PROPERTY OR ANY PORTION THEREOF, OR ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE REAL PROPERTY OR ANY PART THEREOF, (13) THE CONDITION OR USE OF THE REAL PROPERTY OR COMPLIANCE OF THE REAL PROPERTY OR ANY PROPERTY INFORMATION WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS, (14) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS, SURFACE IMPOUNDMENTS, OR LANDFILLS, (15) ANY IMPROVEMENTS MADE TO THE REAL PROPERTY, (16) ANY OTHER MATTER AFFECTING THE STABILITY AND INTEGRITY OF THE REAL PROPERTY, (17) THE POTENTIAL FOR DEVELOPMENT OF THE REAL PROPERTY, (18) THE MERCHANTABILITY OF THE REAL PROPERTY OR FITNESS OF THE REAL PROPERTY FOR ANY PARTICULAR PURPOSE, (19) THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY INFORMATION OR ANY INFORMATION RELATING TO THE REAL PROPERTY, (20) TAX CONSEQUENCES, (21) REQUIREMENTS OR CONDITIONS OF APPROVAL APPLICABLE TO THE REAL PROPERTY OR ANY REQUIREMENTS OR CONDITIONS FOR THE DEVELOPMENT, USE, SALE OR OCCUPANCY OF THE REAL PROPERTY, (22) THE EXTENT TO WHICH SECURITY FOR THE REAL PROPERTY IS NECESSARY TO PREVENT VANDALISM AND OTHER UNAUTHORIZED USES OR OCCUPANCY, (23) THE SUITABILITY OF THE REAL PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT OR WISH TO CONDUCT THEREON, (24) THE FACT THAT ALL OR A PORTION OF THE REAL PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE OR LOCATED IN AN ALQUIST-PRIOLO SPECIAL STUDY ZONE, (25) THE CONDITION OF THE BRIDGE AND ITS SUFFICIENCY FOR ANY PURPOSE, OR (25) ANY OTHER MATTER OR THING WITH RESPECT TO THE REAL PROPERTY. EXCEPT AS SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND QUITCLAIM TO BUYER AND BUYER SHALL ACCEPT THE REAL PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS". EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT,

BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND THE SELLER HAS NOT MADE AND IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE REAL PROPERTY OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ANY PROPERTY MANAGER, REAL ESTATE BROKER, AGENT OR THIRD PARTY REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

**Section 3.3 Release.** In the event the Closing occurs hereunder, Buyer, for itself, its successors and assigns, hereby waives releases, remises, acquits and forever discharges Seller and all Seller-Related Parties and their respective successors and assigns, from any and all claims, actions, causes of action, demands, rights, damages, costs, penalties, fines, expenses or compensation whatsoever, direct or indirect, which Buyer now has or which Buyer may have in the future on account of or in any way arising out of or in connection with, the condition of the Real Property or any development rights or potential with respect to the Real Property, including without limitation, the known or unknown physical or environmental condition of the Real Property (including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Real Property), or the Real Property's compliance with any federal state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, Environmental Laws. Buyer shall not look to Seller or any Seller-Related Party or their respective successors and assigns in connection with the foregoing for any redress or relief and the foregoing applies regardless of any negligence or strict liability of Seller or any Seller-Related Party or their respective successors and assigns. This release shall be given full force and effect according to each of its expressed terms and provisions, including those relating to unknown and unsuspected claims, damages and causes of action, and Buyer waives any rights or benefits of any applicable laws to the contrary. This release is in addition to and not instead of the release in the Settlement Agreement, and the provisions of this Section 3.3 and the release in the Settlement Agreement are not to be construed as contradictory in any way. The terms of the Settlement Agreement, including, but not limited to the release and indemnity provisions contained therein, are incorporated herein by this reference. Buyer expressly waives all rights and benefits under California Civil Code Section 1542 which provides:

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

\_\_\_\_\_  
Buyer's Initials

**Section 3.4 Survival.** This Article III shall survive the termination of this Agreement or the Closing Date and shall not be deemed to have merged into any of the documents executed or delivered at Closing. To the extent required to be operative, the disclaimers or warranties

contained herein are “conspicuous disclaimers” for the purposes of any applicable law, rule, regulation or order.

**Section 3.5 Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) **“Environmental Laws”** means any and all present and future federal, state and local law (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto and other requirements of governmental authorities relating to the environment or to any Hazardous Materials, including but not limited to: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601, et seq.); (b) the Resources Conservation and Recovery Act on 1976; (c) the Federal Water Pollution Control Act; (d) the Federal Resource Conservation and Recovery Act; (e) the U.S. Environmental Protection Agency Regulations at 40 C.F.R., Part 261; (f) the Clean Water Act; (g) the Safe Drinking Water Act; (h) the Hazardous Materials Transportation Act; (h) the Toxic Substance Control Act; (i) the applicable provisions of the California Health and Safety Code and California Water Code; and (j) amendments to and regulations, rules, orders and requirements promulgated under any of the foregoing.

(b) **“Hazardous Materials”** means: (a) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant”, or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity”; and (b) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources. It is the intent of parties to this Agreement that the term “Hazardous Materials” be construed in the broadest sense possible under this Agreement.

**Section 3.6 No Material Changes.** Between the date of this Agreement and the Closing Date or any sooner termination of this Agreement, Seller shall not voluntarily make any material changes to the Real Property.

## ARTICLE IV TITLE

### Section 4.1 Delivery of Title.

(a) At the Closing, Seller shall deliver to Buyer a quitclaim deed in the form attached hereto as **Exhibit C** (the “**Deed**”) and incorporated herein by this reference.

(b) At the Closing, Seller shall assign the following license agreements (“**Licenses**”) to Buyer, to the extent such Licenses affect the Real Property, by an Assignment

and Assumption Agreement in the form attached hereto as **Exhibit D** (the “Assignment Agreement”) and incorporated herein by this reference:

(i) Wire Line Agreement-Longitudinal Encroachment dated May 23, 1988, between Union Pacific Railroad Company, a Utah corporation (predecessor-in-interest to Seller), and Pacific Gas and Electric Company, identified in Seller’s records as Audit No. 143946;

(ii) Application for Underground Wireline Crossing and Consent Letter dated September 1, 1993, between Union Pacific Railroad Company, a Utah corporation (predecessor-in-interest to Seller), and Buyer, identified in the records of Seller as Audit No. 168619; and

(c) Pipeline Agreement-Longitudinal Encroachment dated October 11, 1993 between between Union Pacific Railroad Company, a Utah corporation (predecessor-in-interest to Seller), and Buyer, identified in the records of Seller as Audit No. 169121.

**Section 4.2 Title.** Buyer acknowledges receipt of a preliminary title report prepared by Escrow Holder, dated September 20, 2011, Order No. 242721A, a copy of which is attached hereto as **Exhibit E** respecting title to the Real Property (“Title Report”). Buyer shall acquire the Property subject to the exceptions as described in the Title Report (collectively, “Approved Exceptions”). It shall be a condition to the Close of Escrow that Buyer, at its sole cost and expense, be able to obtain a title insurance policy insuring Buyer’s title to the Real Property subject only to the Approved Exceptions (the “Title Policy”).

## ARTICLE V REPRESENTATIONS AND WARRANTIES

**Section 5.1 Representations and Warranties of Seller.** Seller represents and warrants to Buyer that:

(a) Seller is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business in California.

(b) The execution and delivery by Seller of, and Seller’s performance under, this Agreement are within Seller’s powers and have been duly authorized by all requisite action, and the person executing this Agreement on behalf of Seller has the authority to do so.

(c) This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are intended, provided Buyer has duly executed those documents requiring Buyer’s signature, to be legal, valid and binding obligations of Seller, subject to laws applicable generally to creditors’ rights, applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(d) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under, any agreement, instrument or judicial order to which Seller is a party or by which Seller is bound.

**Section 5.2 Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that:

(a) Buyer is a charter city, duly organized, validly existing, and in good standing under the laws of the State of California.

(b) The execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's powers and have been duly authorized by all requisite action of the City of San Jose and its City Council, and the person executing this Agreement on behalf of Buyer has the authority to do so.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to creditors' rights, applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(d) Performance of this Agreement by Buyer will not result in a breach of, or constitute any default under, any agreement, instrument or judicial order to which Buyer is a party or by which Buyer is bound.

(e) Buyer: (a) is not in receivership or dissolution; (b) has not made any assignment for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law, or any similar law or statute of the United States and any state; and (f) does not have any such petition described in subsection (e) filed against Buyer.

## ARTICLE VI

### RISK OF LOSS AND INSURANCE/CONDEMNATION PROCEEDS

Seller shall give Buyer written notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Real Property prior to the Closing. In the event that all or any portion of the Real Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then this Agreement shall continue in full force and effect and upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Seller as a result of any such damage or destruction or condemnation (but in no event shall the amount of such credit exceed the Purchase Price). If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to Buyer, except to the extent needed to reimburse Seller for sums expended to collect such proceeds, and Buyer shall not receive any credit against the Purchase Price with respect to such proceeds or awards. The provisions of this Article 6 shall survive the Closing.

## ARTICLE VII

### BROKERS AND EXPENSES

**Section 7.1 Brokers.** The Parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions

contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Buyer or Seller, then the Party through whom such person makes his claim shall defend the other Party (the "**Indemnified Party**") from such claim, and shall indemnify the Indemnified Party and hold the Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Indemnified Party in defending against the claim. The provisions of this Section 7.1 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

**Section 7.2 Expenses.** Except as provided in Section 8.5 below, each Party shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

## ARTICLE VIII CLOSING AND ESCROW

**Section 8.1 Escrow Instructions.** Upon execution of this Agreement, the Parties shall deposit an executed counterpart of this Agreement with the Escrow Agent pursuant to Section 1.2 above.

**Section 8.2 Closing.** The consummation of the transactions contemplated by this Agreement (the "**Closing**") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made by Escrow at the offices of the Escrow Agent on or before December 23, 2011 (the "**Closing Date**"). Such date is of the essence and may not be extended without the prior written approval of both Seller and Buyer, except as otherwise expressly provided for in this Agreement and the Settlement Agreement.

**Section 8.3 Delivery of Documents.**

(a) At or before the Closing, Seller shall deposit into Escrow the following items:

(i) an original duly executed and acknowledged **Deed** transferring all of Seller's right, title and interest in and to the Real Property to Buyer;

(ii) an original duly executed separate Statement of Documentary Transfer Tax, which shall be attached to the Deed after recording, in a form acceptable to the Title Company;

(iii) two (2) original duly executed counterparts of the Treated Wood Acknowledgement attached hereto as **Exhibit F** and incorporated herein by reference;

(iv) two (2) original duly executed counterparts of the Assignment Agreement;

(v) an original executed affidavit pursuant to Section 1445(b)(2) of the United States Internal Revenue Code of 1986, as amended (the "**Federal Code**"), and on which Buyer is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Code; and

(vi) an original executed California Form 593 (in the appropriate version for this transaction) certifying that Seller has a permanent place of business in California or is qualified to do business in California.

(b) At or before the Closing, Buyer shall deposit into Escrow the following items:

- (i) funds necessary to close the transaction contemplated herein;
- (ii) two (2) original duly executed counterparts of the Treated Wood Acknowledgement attached hereto as **Exhibit F** and incorporated herein by reference;
- (iii) two (2) original duly executed counterparts of the Assignment Agreement; and
- (iv) an original executed Preliminary Change of Ownership Report.

(c) Buyer and Seller shall each deposit such other instruments as are reasonably required by Escrow Agent or otherwise required to close the Escrow and consummate the purchase and sale of the Real Property in accordance with the terms hereof. Buyer and Seller hereby designate Escrow Agent as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Code and the regulations promulgated thereunder.

#### **Section 8.4 Conditions Precedent.**

(a) The obligation of Buyer to complete the purchase of the Real Property and to close under this Agreement is subject to the satisfaction of each of the following conditions:

(i) Seller shall have performed or complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Seller prior to or at the time of the Closing.

(ii) The representations and warranties of Seller set forth in this Agreement shall remain true and correct in all material respects on and as of the Closing Date.

(iii) Buyer is able to obtain at Closing the Title Policy in the amount of the Purchase Price, insuring fee simple title to the Real Property vested in Buyer, subject only to the Approved Exceptions.

(iv) There shall have been no material change to the physical condition of the Real Property.

If any of such conditions to Closing set forth in this Section 8.4(a) are not satisfied (or waived by Buyer in writing), then, without limiting any other rights or remedies Buyer may have in connection therewith, Buyer shall have the right to terminate this Agreement by notifying Seller of the same in writing, without limitation of such rights and remedies Buyer may have pursuant to Section 10.10 of this Agreement.

(b) The obligation of Seller to complete the sale of the Real Property and to close under this Agreement is subject to the satisfaction of each of the following conditions:

(i) Buyer shall have delivered into Escrow the Purchase Price pursuant to Sections 1.4 and 8.3 and the Signboard Withdrawal Fee pursuant to Section 2(c).

(ii) Buyer shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the time of the Closing.

(iii) The representations and warranties of Buyer set forth in this Agreement shall remain true and correct in all material respects on and as of the Closing Date.

(iv) There shall not have been filed by or against Buyer at any time prior to the Closing Date any bankruptcy, reorganization or arrangement petition.

If any of such conditions to Closing set forth in this Section 8.4(b) are not satisfied (or waived by Seller in writing), then, without limiting any other rights or remedies Seller may have in connection therewith, Seller shall have the right to terminate this Agreement by notifying Buyer of the same in writing, , without limitation of such rights and remedies Seller may have pursuant to Section 10.10 of this Agreement.

#### **Section 8.5 Prorations.**

(a) With respect to the Real Property, Seller shall be entitled to all income produced from the operation of the Real Property which is allocable to the period prior to Closing and shall be responsible for all expenses allocable to that period; and Buyer shall be entitled to all income and responsible for all expenses allocable to the period beginning at 12:01 A.M. on the day Closing occurs. At the Closing, all items of income and expense with respect to the Real Property listed below shall be prorated in accordance with the foregoing principles and the rules for the specific items set forth hereafter:

(i) Seller has paid the sum of \$7,080.21 in respect of the real estate taxes attributable to the Real Property for the period ending June 30, 2012. At Closing, Buyer shall pay to Seller through Escrow Buyer's share of such real property taxes from the date of Closing through June 30, 2012. For example, if Closing occurs on December 23, 2011, then Seller may collect real property taxes from December 23, 2011 to and including June 30, 2012 in the amount of \$3,704.99, i.e., \$19.40 per day times 191 days. Seller shall cooperate as reasonably requested by Buyer to facilitate reimbursement to Buyer of any taxes paid as a part of Seller's SBE assessment but subsequently cancelled due to Buyer's acquisition of the Real Property.

(ii) If, at the time of Closing, any portion of the Real Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, extending beyond one calendar year or is for one of the purposes contemplated in the penultimate sentence of this Section 8.5, and an installment payment of such assessment is then due, then such installment will be prorated as of 12:01 a. on the Closing Date. All installments not then yet due whether or not the same have been prepaid will not be prorated and Buyer shall assume such bonds or assessments. Any prepaid

assessments made in advance of its due date will be credited to Seller. In addition, Buyer shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by the City of San Jose, and those for (a) common area improvements, whether or not specifically set forth in this Agreement, (b) local assessment or improvement districts, (c) any special tax assessments, (d) traffic mitigation improvements, (e) park and recreation fees, and/or (f) any other public facility infrastructure or traffic mitigation required or imposed by the City of San Jose. Buyer shall assume all such bonds or future assessments without offset or adjustment.

(b) Buyer shall pay the premium for the Title Policy, if any, as well as the cost of any endorsements, the cost of any related title examination charges, and the cost of any chain-of-title search, provided, however, that the issuance of any requested endorsements to the Title Policy shall not be a condition to the Closing. Buyer shall pay any state, county or city documentary transfer taxes. Seller and Buyer shall each pay fifty percent (50%) of any escrow fees and expenses. Seller and Buyer shall pay their respective attorneys' fees. All other costs and expenses applicable to the Closing shall be split between Buyer and Seller in accordance with customary practice for Santa Clara County, California.

(c) The provisions of this Section 8.5 shall survive the Closing.

#### **ARTICLE IX CROSS DEFAULT**

Any breach of or default under the Settlement Agreement shall constitute a breach of and default under this Agreement by the defaulting Party. Any breach of or default under this Agreement shall constitute a breach of and default under the Settlement Agreement by the defaulting Party. In the event this Agreement terminates for any reason, then the Settlement Agreement shall automatically terminate at the same time. If the event the Settlement Agreement terminates for any reason, then this Agreement shall automatically terminate at the same time (unless the Closing hereunder has already occurred).

#### **ARTICLE X MISCELLANEOUS**

**Section 10.1 Notices.** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt, or (c) by facsimile or telecopy with a confirmation copy delivered the following day by a commercial overnight courier that provides a receipt, and such notices shall be addressed as follows:

To Buyer:	City of San Jose 200 East Santa Clara Street, 17 <sup>th</sup> Fl Tower San Jose, CA 95113 Phone No.: (408) 535-8181 Fax No.: (408) 292-6719 Attn: Director of Economic Development
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With a copy to: City Attorney's Office  
 City of San Jose  
 200 East Santa Clara Street, 16<sup>th</sup> Fl Tower  
 San Jose, CA 95113  
 Phone No.: (408) 535-1900  
 Fax No.: (408) 998-3131  
 Attn: City Attorney

To Seller: Union Pacific Railroad Company  
 50 California Street, Suite 1563  
 San Francisco CA 94111  
 Phone No.: (415) 439-5345  
 Fax No.: (402) 997-3014  
 Attn: Richard Gooch

With a copy to: Greenberg Glusker LLP  
 1900 Avenue of the Stars, 21<sup>st</sup> Floor  
 Los Angeles, CA 90067  
 Phone No.: (310) 201-7417  
 Fax No.: (310) 201-2317  
 Attn: Dennis B. Ellman, Esq.

or to such other address as either Party may from time to time specify in writing to the other Party. Any notice shall be deemed delivered when actually delivered or upon attempted delivery (if delivery is attempted during a business day during normal business hours), or upon the date of the fax transmission as evidenced by the confirmation of transmission.

**Section 10.2 Entire Agreement; Successors and Assigns.** This Agreement together with the Settlement Agreement contain all representations, warranties and covenants made by Buyer and Seller and constitute the entire understanding between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Settlement Agreement. Subject to Section 10.5 below, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**Section 10.3 Time.** The Parties acknowledge and agree that, upon the execution of this Agreement, each Party shall proceed in good faith and use all commercially reasonable efforts to ensure that the Parties' respective obligations are completed prior to or on the Closing Date. Time is of the essence in the performance of each of the Parties' respective obligations contained herein.

**Section 10.4 Attorneys' Fees.** If either Party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either Party in

enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Section 10.4, attorneys' fees and disbursements include, without limitation, reasonable imputed fees and actual disbursements of in-house counsel.

**Section 10.5 No Assignment.** Buyer shall not transfer or assign this Agreement, or any interest therein, without the consent in writing of Seller, and it is agreed that any such transfer or assignment, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and shall, at the option of Seller, terminate this Agreement.

**Section 10.6 No Merger.** The obligations contained herein shall not merge with the transfer of title to the Real Property but shall remain in effect until fulfilled.

**Section 10.7 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**Section 10.8 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 10.9 Interpretation of Agreement.** The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

**Section 10.10 Specific Performance.** The Parties hereby agree that in the event of a default by the other Party of its obligations under this Agreement, in addition to any and all other remedies available at law, in equity or under this Agreement, the non-defaulting Party shall have the right to bring an action against the other Party for specific performance of its obligations under this Agreement.

**Section 10.11 Survival.** Notwithstanding anything in this Agreement to the contrary, each and every agreement, obligation, warranty, representation, covenant and indemnification of Seller and Buyer contained herein shall survive the Closing hereunder and the transfer and conveyance of the Real Property and any and all performances hereunder.

**Section 10.12 General Rules of Construction.** The Parties acknowledge that this Agreement has been freely negotiated by both Parties, that each Party has had the opportunity to review and revise this Agreement, that each Party has had the opportunity to consult with counsel with regard to this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

**Section 10.13 Conditions to Effectiveness.** Anything contained herein to the contrary notwithstanding, this Agreement shall be of no force or effect unless and until the Settlement Agreement is mutually executed and delivered.

**Section 10.14 Amendments.** This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

**Section 10.15 Severability.** If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

**Section 10.16 Exhibits.** All exhibits attached to this Agreement are incorporated into this Agreement by reference.

**Section 10.17 Further Assurances.** Buyer and Seller agree that at any time, or from time to time after the execution of this Agreement, and whether before or after the Closing Date, they will, upon request of the other, execute and deliver such other documents and do such further acts and things as such other party may reasonably request in order to fully effect the purpose of this Agreement or of any document delivered pursuant to this Agreement.

*[remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the Effective Date.

**SELLER**

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By:   
Its: DIRECTOR  
SPECIAL PROPERTIES

**BUYER**

**THE CITY OF SAN JOSE**

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

**APPROVED AS TO  
FORM**

**[SAN JOSE CITY ATTORNEY]**

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

## EXHIBIT A

### LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

#### PARCEL 1:

ALL THAT LAND DESCRIBED AS PARCEL NO. 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED JUNE 25, 1921, IN BOOK 533 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS AND ALL THAT LAND CONVEYED BY REMILLARD BRICK COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY THE WESTERN PACIFIC RAILROAD COMPANY TO HERMAN RICHTER IN THE INDENTURE DATED OCTOBER 6, 1922 AND RECORDED DECEMBER 1, 1922 IN BOOK 564 OF DEEDS, PAGE 448, SANTA CLARA COUNTY RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE LOT LINE BETWEEN 500 ACRE LOTS 10 AND 11, NORTH 37° 53' WEST 206.67 FEET FROM THE INTERSECTION OF SAME WITH THE NORTHERLY LINE OF KEYES STREET, SOMETIMES KNOWN AS STORY ROAD, SAID POINT BEING ALSO 75 FEET DISTANT WESTERLY, MEASURED AT RIGHT ANGLES TO THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES TO SAN JOSE; THENCE ALONG SAID 500 ACRE LOT LINE, NORTH 37° 53' WEST 77.76 FEET TO A POINT; THENCE SOUTH 70° 23' EAST, 44.56 FEET TO A POINT 75 FEET DISTANT, WESTERLY, MEASURED AT RIGHT ANGLES TO SAID CENTER LINE OF SAID RAILROAD; THENCE SOUTH 7° 32 1/2' EAST, 75 FEET FROM AND PARALLEL TO SAID CENTER LINE OF SAID RAILROAD A DISTANCE OF 46.95 FEET TO THE POINT OF BEGINNING

#### PARCEL 2:

ALL THAT LAND DESCRIBED AS PARCEL 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION IN THE DOCUMENT RECORDED NOVEMBER 22, 1963 IN BOOK 6284, PAGE 388 OF OFFICIAL RECORDS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 11.17 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM KATE C. W. POST, ET VIR, TO STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, DATED MARCH 18, 1921, RECORDED MARCH 21, 1921, IN BOOK 529 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS, AT THE SOUTHERNMOST CORNER OF THAT CERTAIN 40.00 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JUNE 13, 1921, RECORDED JUNE 23, 1921 IN BOOK 535 OF DEEDS, PAGE 392, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 58' 30" EAST ALONG THE SOUTHEASTERLY LINE OF SAID 11.17 ACRE TRACT AND ALONG THE NORTHEASTERLY PROLONGATION THEREOF 129.04 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF THAT CERTAIN 7.36 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM REMILLARD BRICK COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED MARCH 4, 1921, RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 08° 46' 30" WEST ALONG THE

WESTERLY LINE OF SAID 7.36 ACRE TRACT, 817.05 FEET; THENCE LEAVING SAID LAST MENTIONED LINE AND RUNNING NORTH 02° 02' 30" EAST, 724.96 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

ALL THE LAND CONVEYED BY HERMANN RICHTER ET. UX. TO THE WESTERN PACIFIC RAILROAD COMPANY IN THE INDENTURE RECORDED MAY 17, 1921 IN BOOK 537 OF DEEDS AT PAGE 57, RECORDS OF SANTA CLARA COUNTY, BEING DESCRIBED AS FOLLOWS:

A TRIANGULAR PARCEL OF LAND LYING ON EACH SIDE OF THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES OR NEAR NILES, IN ALAMEDA COUNTY, TO SAN JOSE IN SANTA CLARA COUNTY, AS THE SAME IS STAKED OUT AND LOCATED ACROSS THE PROPERTY NOW OR FORMERLY OF H. RICHTER AND KATE RICHTER, BEING A PART OF LOTS 21 AND 24, OF BLOCK 69, OF THE C. FREYSLAG SUBDIVISION, AND A PART OF THE LAND CONVEYED TO KATE RICHTER BY JOSEPH PARTMANN, ET UX, JANUARY 3, 1907, RECORDED IN BOOK 314 OF DEEDS, PAGE 72, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA. THE NORTHEASTERLY SIDE OF SAID PARCEL BEING THE LINE BETWEEN THE PROPERTIES OF KATE RICHTER AND THE PROPERTY NOW OR FORMERLY BELONGING TO THE STANDARD REALTY & DEVELOPMENT COMPANY. THE SOUTHEASTERLY SIDE OR END OF SAID PARCEL BEING THE NORTHERLY LINE OF KEYES STREET, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 24, OF BLOCK 69, AS SHOWN ON THE MAP OF THE C. FREYSLAG SUBDIVISION IN REED'S ADDITION TO THE CITY OF SAN JOSE, RECORDED FEBRUARY 4, 1888, IN BOOK "C" OF MAPS, PAGE 53, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE SOUTHERLY SIDES OF SAID LOT 24, OF BLOCK 69, AND NORTHERLY LINE OF KEYES STREET, SOUTH 59° 8' WEST, A DISTANCE OF 24.47 FEET TO A POINT WHICH IS 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE SAID LOCATED CENTER LINE; THENCE NORTHERLY ON A CURVE PARALLEL TO THE SAID LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY, A DISTANCE OF 121.52 FEET, THE CHORD OF WHICH CURVE BEARS NORTH 11° 21' WEST, A DISTANCE OF 121.5 FEET TO A POINT ON THE EASTERLY LINE OF THE AFOREMENTIONED PROPERTY CONVEYED BY PARTMANN, ET UX, TO KATE RICHTER; THENCE SOUTH 37° 53' EAST ALONG THE EASTERLY LINE OF SAID LAND CONVEYED BY PARTMANN TO RICHTER, A DISTANCE OF 115.38 FEET, TO A POINT IN THE NORTHERLY LINE OF KEYES STREET, WHICH POINT IS THE SOUTHEASTERLY CORNER OF THE AFOREMENTIONED TRACT CONVEYED BY PARTMANN TO RICHTER; THENCE SOUTH 59° 8' WEST, ALONG SAID NORTHERLY LINE OF KEYES STREET, A DISTANCE OF 30.23 FEET TO THE PLACE OF BEGINNING.

**EXHIBIT B**  
**ELLER AGREEMENT (REDACTED)**

**MASTER SIGNBOARD SITE LICENSE**

This Master Signboard Site License (the "License") is entered into effective September 30, 1997 ("Grant Date"), between UNION PACIFIC RAILROAD COMPANY, a Utah corporation, CHICAGO & WESTERN INDIANA RAILROAD COMPANY, an Illinois corporation, and CHICAGO HEIGHTS TERMINAL TRANSFER RAILROAD COMPANY, an Illinois corporation (collectively, "Railroad"), and ELLER MEDIA COMPANY, a Delaware corporation ("Eller").

**ARTICLE I**  
**LICENSE OF SIGNBOARD SITES**

1.1 Grant of License. Subject to the terms of this License, Railroad grants to Eller the license to use the properties and rights-of-way listed on **Exhibit A** attached hereto and made a part hereof (the "Signboard Sites") for the sole purpose of constructing, operating, maintaining and replacing signboards. Each Signboard Site comprises the land surface directly below the signboard (the "sign shadow"), the land surface occupied by any poles or footings, and within five feet (5') outside the perimeter of the sign shadow or any poles or footings (but not including any land surface within fifteen feet (15') of the centerline of any railroad tracks). Eller acknowledges that Railroad has excluded from this transaction certain sites used for signboard purposes, and that this Master License covers only the sites listed on **Exhibit A** and such New Sites as may be added to the Signboard Sites pursuant to Article V. This License includes the right of Eller to use the Signboard Sites for signboards owned by Eller, and for signboards owned and/or operated by third parties provided that the third party signboard owner/operator enters into a sublicense with Eller that meets the requirements of Section 6.3.

09/26/97

**ARTICLE IV**  
**WITHDRAWAL OF SITES**

4.1 Withdrawal at Railroad Election. Railroad may withdraw sites from the Signboard Sites as determined necessary or desirable by Railroad at Railroad's sole and absolute discretion, for reasons of safety, operations, right-of-way abandonment or title preservation, or real property sales or leasing only, and in no event for purposes of granting a third party the right to use the site for signboard purposes. If Railroad sells or leases a Signboard Site without reserving Eller's rights to use the Signboard Site for signboard purposes for the remainder of the Term and on all other terms and conditions of this License, Railroad shall be required to withdraw the site. Site withdrawals shall be upon not less than thirty (30) days notice from Railroad to Eller or, in emergency situations involving a potential threat to safety or disruption of operations, upon such shorter notice as is not unreasonable under the circumstances.

4.3 Withdrawal Fee. Not less than sixty (60) days after Eller has complied with the removal and restoration requirements of Section 9.3 as to a withdrawn site, Railroad shall pay to Eller a fee for withdrawal ("Withdrawal Fee") for a site withdrawn by Railroad pursuant to Sections 4.1 or 4.2. The Withdrawal Fee shall be calculated by multiplying the number of years remaining in the Term (after the effective date of the withdrawal) by the quotient of the Attributable Portion (or, for New Sites, the Additional Consideration referred to in Section 5.2) for the withdrawn site divided by twenty-five (25), plus simple interest thereon at the rate of 9.9% per annum from the Grant Date (or, for New Sites, from the date the New Site was added to the Signboard Sites) to the effective date of the

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withdrawal. For example, if twenty-three (23) years remain in the Term, the Attributable Portion for the withdrawn site is Ten Thousand Dollars (\$10,000.00) and the time period from the Grant Date to the effective date of the withdrawal is 730 days, then the Withdrawal Fee shall be Eleven Thousand Twenty-One Dollars (\$11,021.00) [(23x\$10,000.00/25=\$9,200.00, plus interest of \$1,821.00)].

09/26/97

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9.3 Removal and Restoration. Upon expiration of this License, or earlier entire or partial termination of this License, or withdrawal of a Signboard Site pursuant to Article IV, Eller shall remove from the affected Signboard Site(s) all signboards, including, without limitation, all concrete footings and poles (to two feet below surface unless Railroad requests removal to a lower depth or total removal), all other subsurface improvements, and all other appurtenances and property relating to Eller's use of the Signboard Site(s), and restore the affected Signboard Sites to their original condition, including, without limitation, the filling and capping of any holes or pits, any required compaction of the soil, and the removal of debris and rubbish, all to Railroad's reasonable satisfaction. If Eller has not completed such removal and restoration within thirty (30) days after <sup>withdrawal</sup> termination of this License, Railroad may, at its election, and at any time or times, (a) perform any or all of the work and Eller shall reimburse Railroad for the cost thereof, and/or (b) take title to all or any portion of such signboards or other property by giving notice of such election to Eller. Notwithstanding the foregoing, Eller shall not remove any signboard or appurtenances covered by a sublicense or Existing License that Railroad elects to assume under Section 6.3(c).

or in the event of termination, within 90 days after notice of Railroad's election under Section 6.3(c),

**EXHIBIT C  
QUITCLAIM DEED**

**RECORDING REQUESTED BY, AND  
WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:**

City of San Jose  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

*Space Above for Recorder's Use Only*  
**Documentary Transfer Taxes:**  
**Filor requests tax not be shown**  
**per R&TC 11932-11933**  
**x** \_\_\_\_\_

**QUITCLAIM DEED**

**FOR VALUABLE CONSIDERATION, UNION PACIFIC RAILROAD COMPANY, a  
Delaware corporation ("Grantor")**

**HEREBY REMISES, RELEASES AND QUITCLAIMS TO: THE CITY OF SAN JOSE  
("Grantee")**

**the following property (the "Property") in the County of Santa Clara, State of California:**

See Legal Description attached hereto as **Exhibit "A"** and incorporated herein by  
this reference.

APNs: 472-01-040 (portion)  
472-01-041 (portion)  
472-12-073 (portion)

Dated: \_\_\_\_\_, 2011

**Attest:**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

\_\_\_\_\_  
Assistant Secretary

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

(Seal)

The notarial acknowledgment for the above signatures appears on a separate sheet which is attached to this  
QUITCLAIM DEED and incorporated into it by reference.

**NOTARIAL ACKNOWLEDGMENT**

**STATE OF NEBRASKA )**  
**)**  
**COUNTY OF DOUGLAS )**

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, who are the \_\_\_\_\_ and Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

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

(SEAL)

## **EXHIBIT A TO QUITCLAIM DEED**

### **LEGAL DESCRIPTION**

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

#### **PARCEL 1:**

ALL THAT LAND DESCRIBED AS PARCEL NO. 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED JUNE 25, 1921, IN BOOK 533 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS AND ALL THAT LAND CONVEYED BY REMILLARD BRICK COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY THE WESTERN PACIFIC RAILROAD COMPANY TO HERMAN RICHTER IN THE INDENTURE DATED OCTOBER 6, 1922 AND RECORDED DECEMBER 1, 1922 IN BOOK 564 OF DEEDS, PAGE 448, SANTA CLARA COUNTY RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE LOT LINE BETWEEN 500 ACRE LOTS 10 AND 11, NORTH 37° 53' WEST 206.67 FEET FROM THE INTERSECTION OF SAME WITH THE NORTHERLY LINE OF KEYES STREET, SOMETIMES KNOWN AS STORY ROAD, SAID POINT BEING ALSO 75 FEET DISTANT WESTERLY, MEASURED AT RIGHT ANGLES TO THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES TO SAN JOSE; THENCE ALONG SAID 500 ACRE LOT LINE, NORTH 37° 53' WEST 77.76 FEET TO A POINT; THENCE SOUTH 70° 23' EAST, 44.56 FEET TO A POINT 75 FEET DISTANT, WESTERLY, MEASURED AT RIGHT ANGLES TO SAID CENTER LINE OF SAID RAILROAD; THENCE SOUTH 7° 32 1/2' EAST, 75 FEET FROM AND PARALLEL TO SAID CENTER LINE OF SAID RAILROAD A DISTANCE OF 46.95 FEET TO THE POINT OF BEGINNING

#### **PARCEL 2:**

ALL THAT LAND DESCRIBED AS PARCEL 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION IN THE DOCUMENT RECORDED NOVEMBER 22, 1963 IN BOOK 6284, PAGE 388 OF OFFICIAL RECORDS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 11.17 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM KATE C. W. POST, ET VIR, TO STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, DATED MARCH 18, 1921, RECORDED MARCH 21, 1921, IN BOOK 529 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS, AT THE SOUTHERNMOST CORNER OF THAT CERTAIN 40.00 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JUNE 13, 1921, RECORDED JUNE 23, 1921 IN BOOK 535 OF DEEDS, PAGE 392, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 58' 30" EAST ALONG THE SOUTHEASTERLY LINE OF SAID 11.17 ACRE TRACT AND ALONG THE NORTHEASTERLY PROLONGATION THEREOF 129.04 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF THAT CERTAIN 7.36 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM REMILLARD BRICK COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED MARCH 4, 1921, RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 08° 46' 30" WEST ALONG THE

WESTERLY LINE OF SAID 7.36 ACRE TRACT, 817.05 FEET; THENCE LEAVING SAID LAST MENTIONED LINE AND RUNNING NORTH 02° 02' 30" EAST, 724.96 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

ALL THE LAND CONVEYED BY HERMANN RICHTER ET. UX. TO THE WESTERN PACIFIC RAILROAD COMPANY IN THE INDENTURE RECORDED MAY 17, 1921 IN BOOK 537 OF DEEDS AT PAGE 57, RECORDS OF SANTA CLARA COUNTY, BEING DESCRIBED AS FOLLOWS:

A TRIANGULAR PARCEL OF LAND LYING ON EACH SIDE OF THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES OR NEAR NILES, IN ALAMEDA COUNTY, TO SAN JOSE IN SANTA CLARA COUNTY, AS THE SAME IS STAKED OUT AND LOCATED ACROSS THE PROPERTY NOW OR FORMERLY OF H. RICHTER AND KATE RICHTER, BEING A PART OF LOTS 21 AND 24, OF BLOCK 69, OF THE C. FREYSCHLAG SUBDIVISION, AND A PART OF THE LAND CONVEYED TO KATE RICHTER BY JOSEPH PARTMANN, ET UX, JANUARY 3, 1907, RECORDED IN BOOK 314 OF DEEDS, PAGE 72, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA. THE NORTHEASTERLY SIDE OF SAID PARCEL BEING THE LINE BETWEEN THE PROPERTIES OF KATE RICHTER AND THE PROPERTY NOW OR FORMERLY BELONGING TO THE STANDARD REALTY & DEVELOPMENT COMPANY. THE SOUTHEASTERLY SIDE OR END OF SAID PARCEL BEING THE NORTHERLY LINE OF KEYES STREET, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 24, OF BLOCK 69, AS SHOWN ON THE MAP OF THE C. FREYSCHLAG SUBDIVISION IN REED'S ADDITION TO THE CITY OF SAN JOSE, RECORDED FEBRUARY 4, 1888, IN BOOK "C" OF MAPS, PAGE 53, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE SOUTHERLY SIDES OF SAID LOT 24, OF BLOCK 69, AND NORTHERLY LINE OF KEYES STREET, SOUTH 59° 8' WEST, A DISTANCE OF 24.47 FEET TO A POINT WHICH IS 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE SAID LOCATED CENTER LINE; THENCE NORTHERLY ON A CURVE PARALLEL TO THE SAID LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY, A DISTANCE OF 121.52 FEET, THE CHORD OF WHICH CURVE BEARS NORTH 11° 21' WEST, A DISTANCE OF 121.5 FEET TO A POINT ON THE EASTERLY LINE OF THE AFOREMENTIONED PROPERTY CONVEYED BY PARTMANN, ET UX, TO KATE RICHTER; THENCE SOUTH 37° 53' EAST ALONG THE EASTERLY LINE OF SAID LAND CONVEYED BY PARTMANN TO RICHTER, A DISTANCE OF 115.38 FEET, TO A POINT IN THE NORTHERLY LINE OF KEYES STREET, WHICH POINT IS THE SOUTHEASTERLY CORNER OF THE AFOREMENTIONED TRACT CONVEYED BY PARTMANN TO RICHTER; THENCE SOUTH 59° 8' WEST, ALONG SAID NORTHERLY LINE OF KEYES STREET, A DISTANCE OF 30.23 FEET TO THE PLACE OF BEGINNING.

**EXHIBIT D**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), acting by and through its duly authorized officers, has ASSIGNED AND TRANSFERRED, and by these presents does ASSIGN AND TRANSFER unto THE CITY OF SAN JOSE ("Assignee"), all of Assignor's right, title and interest in and to the license agreements ("Licenses") to the extent the Licenses affect the real property described in **Exhibit A** attached hereto (the "Property"), which Licenses, and all amendments thereto, are described in **Exhibit B** attached hereto.

TO HAVE AND TO HOLD the Licenses unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

Assignee assumes all of the obligations of Assignor pursuant to the Licenses as they relate to the Property accruing on and after the date hereof, and agrees to indemnify and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Licenses as they relate to the Property on and after the date hereof, or (2) claims under the Licenses as they relate to the Property by the licensees named in the Licenses accruing on and after the date hereof.

All exhibits attached to this Agreement are incorporated herein for all purposes.

This Assignment and Assumption will inure to and be binding upon the parties, their successors and assigns.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

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

**THE CITY OF SAN JOSE**

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

## EXHIBIT A TO ASSIGNMENT & ASSUMPTION AGREEMENT

### LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

#### PARCEL 1:

ALL THAT LAND DESCRIBED AS PARCEL NO. 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED JUNE 25, 1921, IN BOOK 533 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS AND ALL THAT LAND CONVEYED BY REMILLARD BRICK COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY THE WESTERN PACIFIC RAILROAD COMPANY TO HERMAN RICHTER IN THE INDENTURE DATED OCTOBER 6, 1922 AND RECORDED DECEMBER 1, 1922 IN BOOK 564 OF DEEDS, PAGE 448, SANTA CLARA COUNTY RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE LOT LINE BETWEEN 500 ACRE LOTS 10 AND 11, NORTH 37° 53' WEST 206.67 FEET FROM THE INTERSECTION OF SAME WITH THE NORTHERLY LINE OF KEYES STREET, SOMETIMES KNOWN AS STORY ROAD, SAID POINT BEING ALSO 75 FEET DISTANT WESTERLY, MEASURED AT RIGHT ANGLES TO THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES TO SAN JOSE; THENCE ALONG SAID 500 ACRE LOT LINE, NORTH 37° 53' WEST 77.76 FEET TO A POINT; THENCE SOUTH 70° 23' EAST, 44.56 FEET TO A POINT 75 FEET DISTANT, WESTERLY, MEASURED AT RIGHT ANGLES TO SAID CENTER LINE OF SAID RAILROAD; THENCE SOUTH 7° 32 1/2' EAST, 75 FEET FROM AND PARALLEL TO SAID CENTER LINE OF SAID RAILROAD A DISTANCE OF 46.95 FEET TO THE POINT OF BEGINNING

#### PARCEL 2:

ALL THAT LAND DESCRIBED AS PARCEL 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION IN THE DOCUMENT RECORDED NOVEMBER 22, 1963 IN BOOK 6284, PAGE 388 OF OFFICIAL RECORDS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 11.17 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM KATE C. W. POST, ET VIR, TO STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, DATED MARCH 18, 1921, RECORDED MARCH 21, 1921, IN BOOK 529 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS, AT THE SOUTHERNMOST CORNER OF THAT CERTAIN 40.00 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JUNE 13, 1921, RECORDED JUNE 23, 1921 IN BOOK 535 OF DEEDS, PAGE 392, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 58' 30" EAST ALONG THE SOUTHEASTERLY LINE OF SAID 11.17 ACRE TRACT AND ALONG THE NORTHEASTERLY PROLONGATION THEREOF 129.04 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF THAT CERTAIN 7.36 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM REMILLARD BRICK COMPANY, A CORPORATION, TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED MARCH 4, 1921, RECORDED MAY 6, 1921, IN BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 08° 46' 30" WEST ALONG THE

WESTERLY LINE OF SAID 7.36 ACRE TRACT, 817.05 FEET; THENCE LEAVING SAID LAST MENTIONED LINE AND RUNNING NORTH 02° 02' 30" EAST, 724.96 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

ALL THE LAND CONVEYED BY HERMANN RICHTER ET. UX. TO THE WESTERN PACIFIC RAILROAD COMPANY IN THE INDENTURE RECORDED MAY 17, 1921 IN BOOK 537 OF DEEDS AT PAGE 57, RECORDS OF SANTA CLARA COUNTY, BEING DESCRIBED AS FOLLOWS:

A TRIANGULAR PARCEL OF LAND LYING ON EACH SIDE OF THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES OR NEAR NILES, IN ALAMEDA COUNTY, TO SAN JOSE IN SANTA CLARA COUNTY, AS THE SAME IS STAKED OUT AND LOCATED ACROSS THE PROPERTY NOW OR FORMERLY OF H. RICHTER AND KATE RICHTER, BEING A PART OF LOTS 21 AND 24, OF BLOCK 69, OF THE C. FREYSCHLAG SUBDIVISION, AND A PART OF THE LAND CONVEYED TO KATE RICHTER BY JOSEPH PARTMANN, ET UX, JANUARY 3, 1907, RECORDED IN BOOK 314 OF DEEDS, PAGE 72, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA. THE NORTHEASTERLY SIDE OF SAID PARCEL BEING THE LINE BETWEEN THE PROPERTIES OF KATE RICHTER AND THE PROPERTY NOW OR FORMERLY BELONGING TO THE STANDARD REALTY & DEVELOPMENT COMPANY. THE SOUTHEASTERLY SIDE OR END OF SAID PARCEL BEING THE NORTHERLY LINE OF KEYES STREET, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 24, OF BLOCK 69, AS SHOWN ON THE MAP OF THE C. FREYSCHLAG SUBDIVISION IN REED'S ADDITION TO THE CITY OF SAN JOSE, RECORDED FEBRUARY 4, 1888, IN BOOK "C" OF MAPS, PAGE 53, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE SOUTHERLY SIDES OF SAID LOT 24, OF BLOCK 69, AND NORTHERLY LINE OF KEYES STREET, SOUTH 59° 8' WEST, A DISTANCE OF 24.47 FEET TO A POINT WHICH IS 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE SAID LOCATED CENTER LINE; THENCE NORTHERLY ON A CURVE PARALLEL TO THE SAID LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY, A DISTANCE OF 121.52 FEET, THE CHORD OF WHICH CURVE BEARS NORTH 11° 21' WEST, A DISTANCE OF 121.5 FEET TO A POINT ON THE EASTERLY LINE OF THE AFOREMENTIONED PROPERTY CONVEYED BY PARTMANN, ET UX, TO KATE RICHTER; THENCE SOUTH 37° 53' EAST ALONG THE EASTERLY LINE OF SAID LAND CONVEYED BY PARTMANN TO RICHTER, A DISTANCE OF 115.38 FEET, TO A POINT IN THE NORTHERLY LINE OF KEYES STREET, WHICH POINT IS THE SOUTHEASTERLY CORNER OF THE AFOREMENTIONED TRACT CONVEYED BY PARTMANN TO RICHTER; THENCE SOUTH 59° 8' WEST, ALONG SAID NORTHERLY LINE OF KEYES STREET, A DISTANCE OF 30.23 FEET TO THE PLACE OF BEGINNING.

**EXHIBIT B TO ASSIGNMENT AGREEMENT****LIST OF LICENSES TO BE ASSIGNED**

1. Wire Line Agreement-Longitudinal Encroachment dated May 23, 1988 between Union Pacific Railroad Company, a Utah corporation (predecessor-in-interest to Assignor) and Pacific Gas and Electric Company, identified in the records of Assignor as Audit No. 143946.
2. Application for Underground Wireline Crossing and Consent Letter dated September 1, 1993 between Union Pacific Railroad Company, a Utah corporation (predecessor-in-interest to Assignor) and Assignee, identified in the records of Assignor as Audit No. 168619.
3. Pipeline Agreement-Longitudinal Encroachment dated October 11, 1993 between Union Pacific Railroad Company, a Utah corporation (predecessor- in-interest to Assignor) and Assignee, identified in the records of Assignor as Audit No. 169121.

**Amended**



**First American Title Insurance Company**  
**National Commercial Services**  
1737 North First Street, Suite 500  
San Jose, CA 95112

Tom Murtha  
San Jose Redevelopment Agency  
200 East Santa Clara Street, 14th Floor  
San Jose, CA 95113  
Phone: (408)535-1200

Title Officer: Mike D. Hickey  
Phone: (408)451-7905

Property: No Situs Address, San Jose, CA

**PRELIMINARY REPORT**

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

*First American Title Insurance Company*

**EXHIBIT E**

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

Dated as of September 20, 2011 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

To Be Determined

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

UNION PACIFIC RAILROAD, A DELAWARE CORPORATION

The estate or interest in the land hereinafter described or referred to covered by this Report is:

Fee Simple

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2011-2012, a lien not yet due or payable.
2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
3. The lien of bonds and assessment liens, if applicable, collected with the general and special taxes.
4. Real property taxes are currently assessed under the state board of equalization public utility tax roll. For full particulars please contact the State Board of Equalization Property Tax Validation Division, telephone number (916) 322-2323. Additional information to follow upon request.
5. Any rights, interests, or easements in favor of the public, which exist or are claimed to exist over any portion of said land covered by water.
6. An easement for The construction, operation and maintenance of an overhead highway crossing, drainage structures and incidental purposes, recorded December 9, 1969 as Instrument No. 3730907 in Book 8763, Page 731 of Official Records.  
In Favor of: State of California  
Affects: A portion of said land

*First American Title Insurance Company*

7. The terms and provisions contained in the document entitled "License" recorded May 20, 1981 as as Instrument No. 7064175 in Book G100, Page 594 of Official Records. By and between The Western Pacific Railroad Company, as Licensor and the City of San Jose, as Licensee
8. The description contained herein is for the sole purpose of the issuance of this preliminary report and is not to be used for any other purpose.

A new description of the land that is the subject of this report must be prepared by a civil engineer/surveyor and submitted to company for examination. Company reserves the right to add additional title exceptions to this report subsequent to said examination.

9. Rights of parties in possession.

**INFORMATIONAL NOTES**

1. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:
  - A. WITH RESPECT TO A CORPORATION:
    - a. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
    - b. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
    - c. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
  - B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:
    - a. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
    - b. A full copy of the partnership agreement and any amendments;
    - c. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
    - d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
  - C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:
    - a. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
    - b. A full copy of the partnership agreement and any amendment;
    - c. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
    - d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
  - D. WITH RESPECT TO A GENERAL PARTNERSHIP:
    - a. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-1), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the

*First American Title Insurance Company*

public records;

- b. A full copy of the partnership agreement and any amendments;
- c. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:

- a. A copy of its operating agreement and any amendments thereto;
- b. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
- c. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
- d. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
  - (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
  - (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
- e. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

F. WITH RESPECT TO A TRUST:

- a. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to the Company.
- b. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.

*First American Title Insurance Company*

- c. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

- a. A statement of information.

- 2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

None

- 3. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

- 4. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:

A. WITH RESPECT TO A CORPORATION:

- a. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
- b. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
- c. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:

- a. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
- b. A full copy of the partnership agreement and any amendments;
- c. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
- d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:

- a. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
- b. A full copy of the partnership agreement and any amendment;

*First American Title Insurance Company*

- c. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
- d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

D. WITH RESPECT TO A GENERAL PARTNERSHIP:

- a. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-I), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
- b. A full copy of the partnership agreement and any amendments;
- c. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:

- a. A copy of its operating agreement and any amendments thereto;
- b. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
- c. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
- d. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
  - (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
  - (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
- e. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

F. WITH RESPECT TO A TRUST:

- a. A certification pursuant to Section 18500.5 of the California Probate Code in a form satisfactory to the Company.
- b. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
- c. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

- a. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

### LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL 1:

ASS THAT LAND DESCRIBED AS PARCEL NO. 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED JUNE 25, 1921, IN BOOK 533 OF DEEDS, PAGE 469, SANTA CLARA COUNTY RECORDS AND ALL THAT LAND CONVEYED BY REMILLARD BRICK COMPANY TO THE WESTERN PACIFIC RAILROAD COMPANY BY THE INDENTURE RECORDED MAY 6, 1921, BOOK 536 OF DEEDS, PAGE 60, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY THE WESTERN PACIFIC RAILROAD COMPANY TO HERMAN RICHTER IN THE INDENTURE DATED OCTOBER 6, 1922 AND RECORDED DECEMBER 1, 1922 IN BOOK 564 OF DEEDS, PAGE 448, SANTA CLARA COUNTY RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE LOT LINE BETWEEN 500 ACRE LOTS 10 AND 11, NORTH 37° 53' WEST, 206.67 FEET FROM THE INTERSECTION OF SAME WITH THE NORTHERLY LINE OF KEYES STREET, SOMETIMES KNOWN AS STORY ROAD, SAID POINT BEING ALSO 75 FEET DISTANT WESTERLY, MEASURED AT RIGHT ANGLES TO THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES TO SAN JOSE; THENCE ALONG SAID 500 ACRE LOT LINE, NORTH 37° 53' WEST, 77.76 FEET TO A POINT; THENCE SOUTH 70° 23' EAST, 44.56 FEET TO A POINT 75 FEET DISTANT WESTERLY, MEASURED AT RIGHT ANGLES TO SAID CENTER LINE OF SAID RAILROAD; THENCE SOUTH 7° 32 1/2' EAST, 75 FEET FROM AND PARALLEL TO SAID CENTER LINE OF SAID RAILROAD A DISTANCE OF 46.95 FEET TO THE POINT OF BEGINNING

PARCEL 2:

ALL THAT LAND DESCRIBED AS PARCEL 2 AND CONVEYED BY STANDARD REALTY AND DEVELOPMENT COMPANY, A CORPORATION TO THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION IN THE DOCUMENT RECORDED NOVEMBER 22, 1963 IN BOOK 6284, PAGE 388 OF OFFICIAL RECORDS, BEING DESCRIBED AS FOLLOWS:

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60, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 08° 46' 30" WEST ALONG THE WESTERLY LINE OF SAID 7.36 ACRE TRACT, 817.05 FEET; THENCE LEAVING SAID LAST MENTIONED LINE AND RUNNING NORTH 02° 02' 30" EAST, 724.96 FEET TO THE POINT OF BEGINNING.

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ALL THE LAND CONVEYED BY HERMANN RICHTER ET. UX. TO THE WESTERN PACIFIC RAILROAD COMPANY IN THE INDENTURE RECORDED MAY 17, 1921 IN BOOK 537 OF DEEDS AT PAGE 57, RECORDS OF SANTA CLARA COUNTY, BEING DESCRIBED AS FOLLOWS:

A TRIANGULAR PARCEL OF LAND LYING ON EACH SIDE OF THE LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY'S BRANCH LINE OF RAILROAD FROM NILES OR NEAR NILES, IN ALAMEDA COUNTY, TO SAN JOSE IN SANTA CLARA COUNTY, AS THE SAME IS STAKED OUT AND LOCATED ACROSS THE PROPERTY NOW OR FORMERLY OF H. RICHTER AND KATE RICHTER, BEING A PART OF LOTS 21 AND 24, OF BLOCK 69, OF THE C. FREYSCHLAG SUBDIVISION, AND A PART OF THE LAND CONVEYED TO KATE RICHTER BY JOSEPH PARTMANN, ET UX, JANUARY 3, 1907, RECORDED IN BOOK 314 OF DEEDS, PAGE 72, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA. THE NORTHEASTERLY SIDE OF SAID PARCEL BEING THE LINE BETWEEN THE PROPERTIES OF KATE RICHTER AND THE PROPERTY NOW OR FORMERLY BELONGING TO THE STANDARD REALTY & DEVELOPMENT COMPANY. THE SOUTHEASTERLY SIDE OR END OF SAID PARCEL BEING THE NORTHERLY LINE OF KEYES STREET, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 24, OF BLOCK 69, AS SHOWN ON THE MAP OF THE C. FREYSCHLAG SUBDIVISION IN REED'S ADDITION TO THE CITY OF SAN JOSE, RECORDED FEBRUARY 4, 1888, IN BOOK "C" OF MAPS, PAGE 53, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE SOUTHERLY SIDES OF SAID LOT 24, OF BLOCK 69, AND NORTHERLY LINE OF KEYES STREET, SOUTH 59° 8' WEST, A DISTANCE OF 24.47 FEET TO A POINT WHICH IS 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE SAID LOCATED CENTER LINE; THENCE NORTHERLY ON A CURVE PARALLEL TO SAID LOCATED CENTER LINE OF THE WESTERN PACIFIC RAILROAD COMPANY, A DISTANCE OF 121.52 FEET, THE CHORD OF WHICH CURVE BEARS NORTH 11° 21' WEST, A DISTANCE OF 121.5 FEET TO A POINT ON THE EASTERLY LINE OF THE AFOREMENTIONED PROPERTY CONVEYED BY PARTMANN, ET UX, TO KATE RICHTER; THENCE SOUTH 37° 53' EAST ALONG THE EASTERLY LINE OF SAID LAND CONVEYED BY PARTMANN TO RICHTER, A DISTANCE OF 115.38 FEET, TO A POINT IN THE NORTHERLY LINE OF KEYES STREET, WHICH POINT IS THE SOUTHEASTERLY CORNER OF THE AFOREMENTIONED TRACT CONVEYED BY PARTMANN TO RICHTER; THENCE SOUTH 59° 8' WEST, ALONG SAID NORTHERLY LINE OF KEYES STREET, A DISTANCE OF 30.23 FEET TO THE PLACE OF BEGINNING.

**NOTICE I**

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

**NOTICE II**

As of January 1, 1991, if the transaction which is the subject of this report will be a sale, you as a party to the transaction, may have certain tax reporting and withholding obligations pursuant to the state law referred to below:

In accordance with Sections 18662 and 18668 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to three and one-third percent of the sales price in the case of the disposition of California real property interest by either:

1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds be sent to a financial intermediary of the seller, OR
2. A corporate seller which has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR
2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR
3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller's principal residence (as defined in Section 1034 of the Internal Revenue Code).

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The parties to this transaction should seek an attorney's, accountant's, or other tax specialist's opinion concerning the effect of this law on this transaction and should not act on any statements made or omitted by the escrow or closing officer.

The Seller May Request a Waiver by Contacting:  
Franchise Tax Board  
Withhold at Source Unit  
P.O. Box 651  
Sacramento, CA 95812-0651  
(916) 845-4900

*First American Title Insurance Company*

## Privacy Policy

### **We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

### **Applicability**

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at [www.firstam.com](http://www.firstam.com).

### **Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### **Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### **Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### **Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990**  
**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions of area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or

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created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

**Part One**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

**Part One**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

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**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations; except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy; (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992**

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**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:  
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL  
TITLE INSURANCE POLICY - 1987  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 

* land use	* land division
* improvements on the land	* environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.  
This exclusion does not limit the zoning coverage described in items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:

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- \* a notice of exercising the right appears in the public records on the Policy Date
  - \* the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.
3. Title Risks:
- \* that are created, allowed, or agreed to by you
  - \* that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
  - \* that result in no loss to you
  - \* that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
- \* to any land outside the area specifically described and referred to in Item 3 of Schedule A, or
  - \* in streets, alleys, or waterways that touch your land
- This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**11. EAGLE PROTECTION OWNER'S POLICY**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

**Covered Risks 14 (Subdivision Law Violation), 15 (Building Permit), 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability**

**EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
- |                  |                             |
|------------------|-----------------------------|
| a. building      | b. zoning                   |
| c. land use      | d. improvements on the land |
| e. land division | f. environmental protection |

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This exclusion does not limit the coverage described in Covered Risk 14; 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
- a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
- a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
- a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.
- This exclusion does not limit the coverage described in Covered Risk 11 or 18.

**12. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE WITH EAGLE PROTECTION ADDED**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or area of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a

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- defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
  3. Defects, liens, encumbrances, adverse claims or other matters:
    - (a) created, suffered, assumed or agreed to by the Insured Claimant;
    - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
    - (c) resulting in no loss or damage to the Insured Claimant;
    - (d) attaching or created subsequent to Date of Policy (this paragraph (d) does not limit the coverage provided under insuring provisions 7, 8, 16, 17, 19, 20, 21, 23, 24 and 25); or
    - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
  4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
  5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon:
    - (a) usury, except as provided under insuring provision 10 of this policy; or
    - (b) any consumer credit protection or truth in lending law.
  6. Taxes or assessments of any taxing or assessment authority which become a lien on the Land subsequent to Date of Policy.
  7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
    - (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
    - (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
    - (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
      - (i) to timely record the instrument of transfer; or
      - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
  8. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided under insuring provision 7.
  9. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting title, the existence of which are Known to the Insured at:
    - (a) The time of the advance; or
    - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than **it would have** been before the modification.
 This exclusion does not limit the coverage provided under insuring provision 7.

#### SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE.

#### 11. EAGLE PROTECTION OWNER'S POLICY

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 2008**  
**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 2008**

**Covered Risks 16 (Subdivision Law Violation), 18 (Building Permit), 19 (Zoning) and 21 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability**

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 

a. building	b. zoning
c. land use	d. improvements on the land
e. land division	f. environmental protection

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;

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- b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
- a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.
- This Exclusion does not limit the coverage described in Covered Risk 11 or 21

#### LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows: Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$10,000.00
Covered Risk 18: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21: 1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

#### 12. THIRD GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (1/01/08)

##### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

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**13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

**14. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 13 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

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**15. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

**16. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 15 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

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**EXHIBIT F**  
**TREATED WOOD ACKNOWLEDGEMENT**

This Treated Wood Acknowledgement is made and entered into effective as of \_\_\_\_\_, 2011 (the "**Effective Date**"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Seller**") and THE CITY OF SAN JOSE ("**Buyer**").

NOW THEREFORE, in consideration of the mutual covenants in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Buyer and Seller agree as set forth below.

1. The attached **Attachment 1** contains consumer information concerning the proper handling and distribution of creosote pressure-treated wood.

2. Buyer shall provide information on the safe and proper handling of chemically treated wood to each person or company to whom it sells or otherwise conveys the Bridge, any ties located on the Bridge or any components of, or wood materials from, the Bridge (collectively, "**Treated Wood**") purchased hereunder. Such information shall include, but not be limited to, delivery to each and every worker and to all persons and companies of a copy of the MSDS Data Sheet Creosote Pressure Treated Wood that is attached hereto and marked **Attachment 1**, in such translations and along with such other information as may be necessary, to allow such workers, persons and companies to understand and employ safe and proper methods of use, handling and disposal.

3. In addition to providing information, Buyer shall dispose of (and/or store if the Treated Wood is removed and stored) the Treated Wood in a safe manner and in accordance with all applicable federal, state and local laws and regulations and the lawful requirements of responsible government agencies.

4. Buyer shall require the same commitments by contract with any person or company to which it sells the Treated Wood for resale which are purchased hereunder.

5. Buyer shall defend, indemnify and save harmless Seller, its successors and assigns, from and against all costs, expenses, fines penalties and other liability whatsoever arising directly or indirectly, whether in whole or in part, out of the failure of Buyer to perform any of its obligations described herein.

*[signatures appear on the following page]*

IN WITNESS WHEREOF, Buyer and Seller have executed this Treated Wood Acknowledgement as of the Effective Date.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

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

**THE CITY OF SAN JOSE**

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

**MSDS DATA**

**CHEMICAL: Creosote Treated Wood  
UP-05323**

**General Information**

**File Name: UP-05323.msd**

**Prepared to U. S. OSHA, CMA, ANSI, and Canadian WHMIS Standards (1)**

- (1) **NOTE:** all WHMIS required information is included. It is located in appropriate sections based on the ANSI Z400.1-1993 format.

Information contained in this MSDS refers only to the specific material designated and does not relate to any process or to use with any other materials. This information is furnished free of charge and is based on data believed to be reliable as of the date hereof. It is intended for use by persons processing technical knowledge at their own discretion and risk. Since actual use is beyond our control, no guarantee, expressed or implied, and no liability is assumed by J.H. Baxter in conjunction with the use of this information. Nothing herein is to be construed as a recommendation to infringe any patents.

**PART I: What is the material and what do I need to know in an emergency?**

**1. PRODUCT IDENTIFICATION**

TRADE NAME IS (as labeled): Creosote Treated Wood

CHEMICAL CLASS: Treated Wood

MANUFACTURER'S NAME: J.H. Baxter  
ADDRESS: 1700 South El Camino Real  
San Mateo, CA 94401-0902

EMERGENCY PHONE: CHEMTREC: 1-800-424-9300

BUSINESS PHONE: 1-415-349-0201

DATE OF PREPARATION: June 14, 1994

**2. COMPOSITION & INFORMATION ON INGREDIENTS**

Chemical Name	CAS #	% w/w	Exposure Limits in Air	
			TLV mg/m <sup>3</sup>	STEL mg/m <sup>3</sup>
Creosote	8001-58-9	<15	NE	NE
Wood	Not Applicable	>85	1 (hardwood)	10 (softwood)

Chemical Name	CAS #	% w/w	Exposure Limits in Air			
			OSHA PEL mg/m3	OSHA STEL mg/m3	OSHA IDLH	OTHER
Creosote			NE	NE	NE	NIOSH REL: TWA 1 mg/m3
Wood		2.5 (Western Red Cedar)	10 (All woods except Western Red Cedar)	NE	NE	
		5 (All other)				

NE = Not Established

**3. HAZARD IDENTIFICATION**

EMERGENCY OVERVIEW:

This product consists of dark brown to black lumber or wood poles. It presents limited hazards in an emergency situation. Dusts from this product can be irritating to exposed tissue. It is a combustible material, which will decompose to produce acrid smoke and toxic gases (i.e. carbon monoxide and carbon dioxide).

HAZARDOUS MATERIAL INFORMATION SYSTEM:

- HEALTH (BLUE) 1
- FLAMMABILITY (RED) 1
- REACTIVITY (YELLOW) 0
- PROTECTIVE EQUIPMENT
- EYES
- RESPIRATORY: SEE SECTION 8
- HANDS
- BODY: SEE SECTION 8

For machining wood products.

**SYMPTOMS OF OVER EXPOSURE BY ROUTE OF EXPOSURE:**

INHALATION:

Inhalation of finely divided dusts of this product may cause irritation of the nose, throat, and other tissues of the respiratory system.

CONTACT WITH SKIN OR EYES:

Dusts which may contaminate the eyes can cause irritation and scratching of eye tissues. Prolonged and/or repeated skin contact can cause mild irritation which

disappears after exposure ends. Coal tar products, such as the creosote, can react with sunlight to produce compounds which promote sunburns.

**SKIN ABSORPTION:**

There is currently no evidence that any component of this product absorbs into the skin.

**INGESTION:**

Ingestion of this product can irritate the mouth, throat, stomach, and other tissues of the digestive system. Symptoms of ingestion may include nausea, vomiting, and irritation.

**INJECTION:**

The only way injection of this material could occur is by wood splinters puncturing the skin. The main symptoms associated with such an exposure would be redness and irritation at the point of injection.

**HEALTH EFFECTS OR RISKS FROM EXPOSURE:**

An Explanation in Lay Terms.

**ACUTE:**

The main health hazard presented by this product would be irritation of contaminated tissues — especially the skin and eyes.

**CHRONIC:**

The symptoms of long-term exposure would be similar to those for acute exposure, described above. Additionally, some individuals can become sensitized to wood dusts and develop allergy-like symptoms upon repeated exposures. Studies have been conducted focusing on employees who routinely work with wood products. The International Agency for Research on Cancer reports that there is sufficient evidence that exposure to wood dust from hardwood species may lead to an increased risk of nasal/paranasal sinus cancer.

**PART II: What should I do if a hazardous situation occurs?**

**4. FIRST-AID MEASURES**

**SKIN EXPOSURE:**

Immediately begin cleansing affected area with running water. Remove exposure or contaminated clothing, taking care to not irritate the eyes.

**EYE EXPOSURE:**

Open victim's eyes while under gentle running water. Use sufficient force to open eye lids. Have victim "roll" eyes. Minimum flushing is for 15 minutes. Victims with wood splinters in the eye must receive immediate medical attention.

**INHALATION:**

Remove victim to fresh air. If necessary, use artificial respiration to support vital functions. Remove or cover gross contamination to avoid exposure to rescuers.

**INGESTION:**

**CALL PHYSICIAN OR POISON CONTROL CENTER FOR MOST CURRENT INFORMATION.** If professional advice is not available, do not induce vomiting.

Victims of chemical exposure must be taken for medical attention if signs of irritation or other symptoms develop. Rescuers should be taken for medical attention, if necessary. Take copy of label and MSDS to physician or health professional with victim.

**5. FIRE-FIGHTING MEASURES**

**NFPA RANKING:**                      **FLAMMABILITY 2**  
   **HEALTH 1**  
   **REACTIVITY 0**

**OTHER:**

<b>FLASH POINT, Deg. C (method):</b>	Not Applicable.
<b>AUTOIGNITION TEMPERATURE, Deg. C:</b>	Not Applicable.
<b>FLAMMABLE LIMITS (in air by volume, %):</b>	Lower: Not available. Upper: Not available.
<b>FIRE EXTINGUISHING MATERIALS:</b>	Water Spray: YES Dry Chemical: YES Carbon Dioxide: YES Halon: NO Foam: YES Other: Any "A" Class.

**UNUSUAL FIRE AND EXPLOSION HAZARDS:**

This product is combustible. Dusts of this product may form explosive mixture with air. When involved in a fire, this material may decompose and produce irritating fumes and toxic gases (carbon monoxide and carbon dioxide).

Explosion Sensitivity to Mechanical Impact: Not applicable.  
Explosion Sensitivity to Static Discharge: Not applicable.

### SPECIAL FIRE FIGHTING PROCEDURES:

Incipient fire responders should wear eye protection. Structural fire fighters must wear self-contained breathing apparatus and full protective equipment.

## **6. ACCIDENTAL RELEASE MEASURES**

### SPILL AND LEAK RESPONSE:

This product can not spill or leak because the chemicals are fixed in the wood. In the event of a release of dust or chips of this product, safety goggles, mechanically-resistant gloves, and coveralls should be worn by clean-up personnel. In particularly dusty areas, use a MSHA/NIOSH approved dustmask. Sweep-up or vacuum dust and chips. If necessary, rinse the area with soap and water.

## **PART III: How can I prevent hazardous situations from occurring?**

## **7. HANDLING & STORAGE**

### WORK PRACTICES AND HYGIENE PRACTICES:

Avoid getting dusts ON YOU or IN YOU. Wash hands after handling this product. If work generates significant amounts of dust, shower and change clothes at the end of such operations. Do not eat or drink in areas where there are dusts of this product. Individuals prone to sunburns should wear sun screen (protection factor 15 or higher) when handling large quantities of this product or working in areas where there are significant quantities of product dust.

### STORAGE AND HANDLING PRACTICES:

Keep in cool, dry place away from open flame. Avoid contaminating food, feed, and water with dusts of this product. Always, use this product in areas where adequate ventilation is provided.

### PROTECTIVE PRACTICES DURING MAINTENANCE OF CONTAMINATED EQUIPMENT:

Follow practices indicated in Section 6 (Accidental Release Measures).

## **8. EXPOSURE CONTROLS - PERSONAL PROTECTION**

### **VENTILATION AND ENGINEERING CONTROLS:**

Use with adequate ventilation. Use a mechanical fan or vent area to outside.

### **RESPIRATORY PROTECTION:**

If it is anticipated that the exposure limits for dust may be exceeded during work with this product, wear a MSHA/NIOSH approved dustmask.

### **EYE PROTECTION:**

Splash goggles or safety glasses.

### **HAND PROTECTION:**

Mechanically resistant gloves.

### **BODY PROTECTION:**

Use body protection appropriate for task (i.e. coveralls).

## **9. PHYSICAL & CHEMICAL PROPERTIES**

### **VAPOR DENSITY:**

Not applicable.

### **SPECIFIC GRAVITY:**

Not available.

### **SOLUBILITY IN WATER:**

Insoluble.

### **VAPOR PRESSURE:**

mm Hg @ 20 Deg. C: Not applicable.

### **EVAPORATION RATE:**

(water=1): Not applicable.

### **MELTING POINT or RANGE:**

Not applicable.

**BOILING POINT:**

Not applicable.

**pH:**

Not applicable.

**APPEARANCE AND COLOR:**

Dark brown to black lumber or wood poles with tar-like odor.

**HOW TO DETECT THIS SUBSTANCE:**

(warning properties): There are no unusual warning properties associated with this product besides the tar-like odor.

**10. STABILITY & REACTIVITY**

**STABILITY:**

Stable.

**DECOMPOSITION PRODUCTS:**

Carbon monoxide, carbon dioxide and other toxic compounds will be released upon combustion of this product.

**MATERIALS WITH WHICH SUBSTANCE IS INCOMPATIBLE:**

This product is incompatible with strong oxidizing agents.

**HAZARDOUS POLYMERIZATION:**

Will not occur.

**CONDITIONS TO AVOID:**

Avoid contact with open flame and other sources of extreme high temperatures.  
Avoid contact with incompatible materials.

**PART IV: Is there any other useful information about this material?**

## 11. TOXICOLOGICAL INFORMATION

### TOXICITY DATA:

There is currently no toxicology information available on this product. The following information is available on creosote:

TDLo (oral, rat) = 52416 mg/kg; reproductive effects

TDLo (skin, mouse) = 99 g/kg; carcinogenic effects

LD50 (oral, rat) 755 mg/kg

LD50 (oral, mouse) = 433 mg/kg

LDLo (oral, dog) = 600 mg/kg

LDLo (oral, cat) = 600 mg/kg

LDLo (oral, rabbit) = 600 mg/kg

### SUSPECTED CANCER AGENT:

Creosote is listed in the NTP Fifth Annual Report on Carcinogens and as an IARC Group 2A Compound (probably carcinogenic to humans).

### IRRITANCY OF PRODUCT:

This product is slightly irritating to contaminated tissue.

### REPRODUCTIVE TOXICITY INFORMATION:

Listed below is information concerning the effects of this product and its components on the human reproductive system.

#### Mutagenicity:

While no data exists for the product, it is not expected to cause any fetal toxicity problems related to mutagenicity. Animal studies indicate some experimental mutagenic effects for creosote at relatively high doses.

#### Teratogenicity:

While no data exists for the product, it is not expected to cause any fetal toxicity problems related to teratogenicity.

#### Reproductive Toxicity:

While no data exists for the product, it is not expected to have an adverse effect on the male or female reproductive system or to cause any fetal toxicity problems. Animal studies indicate some experimental reproductive effects for creosote at relatively high doses.

**MEDICAL CONDITIONS AGGRAVATED BY EXPOSURE:**

Disorders involving the skin, eyes, liver, or respiratory tracts may be aggravated by occupational exposures to dusts of this product.

**RECOMMENDATIONS TO PHYSICIANS:**

Treat symptoms.

**12. ECOLOGICAL INFORMATION**

**ENVIRONMENTAL STABILITY:**

This product is treated so it will not decompose.

**EFFECT OF MATERIAL ON PLANTS OR ANIMALS:**

Do not use treated wood under circumstances where the preservative may become a component of food or animal feed. Examples of such sites would be structure or containers for storing silage of food.

**EFFECT OF CHEMICAL ON AQUATIC LIFE:**

There is currently no information available on this product's effects on aquatic life; however, it is anticipated that if large enough quantities of product dusts contaminate a water system, exposed aquatic life may experience adverse health effects.

**13. DISPOSAL CONSIDERATIONS**

**PREPARING WASTES FOR DISPOSAL:**

Waste disposal must be in accordance with appropriate Federal, State, and local regulations. Waste disposal must be done in accordance with Federal, State and local regulations.

**EPA WASTE NUMBER:**

Not applicable for wastes consisting only of this product.

**14. TRANSPORTATION INFORMATION**

THIS MATERIAL IS NOT HAZARDOUS as defined by 49 CFR 172.101 by the U.S. Department of Transportation.

**PROPER SHIPPING NAME:**

Not applicable.

**HAZARD CLASS NUMBER & DESCRIPTION:**

Not applicable.

**UNIDENTIFICATION NUMBER:**

Not applicable.

**PACKING GROUP:**

Not applicable.

**DOT LABEL(S) REQUIRED:**

Not applicable.

**EMERGENCY RESPONSE GUIDE NUMBER:**

Not applicable.

**MARINE POLLUTANT:**

Creosote is defined as a marine pollutant under 49 CFR 172.101, Appendix B; however, the creosote treated wood is not so defined.

**CTC DANGEROUS GOODS SHIPPING REGULATIONS:**

THIS MATERIAL IS NOT CONSIDERED AS DANGEROUS GOODS.

**15. REGULATORY INFORMATION (+++)**

NOTE: The regulatory information is provided on this sheet is for the creosote component contained in the treated wood. Chemical components of the treated wood are fixed into the wood and are not reportable under SARA or CERCLA.

**SARA REPORTING REQUIREMENTS:**

Creosote solution is subject to the reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act; however, the creosote treated wood is not.

**TSCA INVENTORY STATUS:**

The chemical in this product are listed on the TSCA Inventory.

**CERCLA REPORTABLE QUANTITY**

(RQ):Creosote = 1 pound.

**STATE REGULATORY INFORMATION:**

Chemicals in this product are covered under specific State regulations, as denoted below:

- Alaska - Designated Toxic and Hazardous Substances: None.
- California - Permissible Exposure Limits for Chemical Contaminants: None.
- Florida - Substance List: Creosote.
- Illinois - Toxic Substance List: None.
- Kansas - Section 302/313 List: None
- Massachusetts - Substance List: Creosote.
- Minnesota - List of Hazardous Substances: None.
- Missouri - Employer Information/Toxic Substance List: None.
- New Jersey - Right to Know Hazardous Substance List: None.
- North Dakota - List of Hazardous Chemicals, Reportable Quantities: Creosote.
- Pennsylvania - Hazardous Substance List: Creosote.
- Rhode Island - Hazardous Substance List: None.
- Texas - Hazardous Substance List: None.
- West Virginia - Hazardous Substance List: None.
- Wisconsin - Toxic and Hazardous Substances: None.

**CALIFORNIA PROPOSITION 65:**

Creosote is on the California Proposition 65 lists as a chemical known to the State of California to cause cancer.

**LABELING** (Precautionary Statements):

**CAUTION!** Dusts of this product can irritate the skin, eyes, nose, throat, on other tissues of the respiratory system. Dusts can also scratch the eyes, and splinters of this product can puncture the skin. Avoid contact with skin and eyes. Avoid breathing dust.

**TARGET ORGANS:**

(For Dusts of Product) Skin, Eyes, Respiratory System.

**WHMIS SYMBOL:**

Not applicable.

**16. OTHER INFORMATION**

**PREPARED BY:** CHEMICAL SAFETY ASSOCIATES, Inc.  
9163 Chesapeake Drive, San Diego, CA 92123-1002  
619/565-0302

**DISTRIBUTED BY:** Pennington Crossarm Co., Po Box 2236, Eugene, Or 97402

**MATERIAL SAFETY DATA SHEET**  
**Chemical: Pentachlorophenol Treated Wood**

**GENERAL INFORMATION**

Chemical Name / Synonym / Trade Name:  
Pentachlorophenol Treated Wood  
Pentachlorophenol Treated Wood (063191)

**Manufacturer Name:**  
KOPPERS INDUSTRIES, INC.  
Chemical Family Name:  
CAS Number:  
DOT Classification:  
NA Number:  
UN Number:

**MATERIAL SAFETY DATA SHEET**  
KOPPERS INDUSTRIES, INC.  
436 SEVENTH AVENUE  
PITTSBURGH, PA. 15219-1800

**MEDICAL EMERGENCIES:**  
1 800 553-5631

**OUTSIDE U.S.A.:**  
412 227-2001

**GENERAL INFORMATION:**  
412 227-2884

**CHEMTREC ASSISTANCE**  
1 800 424-9300

**CANUTEC:**  
1 613 996-6666

**Prepared By:**  
Occupational Health and Product Safety Department

**REVISION DATE:**  
06/91

**SPECIFICATION SHEET NUMBER:**

**COMMODITY NUMBER:**  
00000034

**CODE NUMBER:**  
WPR00097JU9109

**REPLACES SHEET:**  
WPR00097JL8908

**SUPPLIER INFORMATION:**  
Same as manufacturer.

**NOTICE:**

While the information and recommendations set forth herein are believed to be accurate as of the date hereof, Koppers Industries makes no warranty with respect thereto and disclaims all liability from reliance thereon.

## SECTION I — PRODUCT IDENTIFICATION

**PRODUCT NAME:** Pentachlorophenol Treated Wood  
**COMMODITY NUMBER:** 00000034  
**SYNONYM:** None  
**PRODUCT USE:** Treated Wood  
**CHEMICAL FAMILY:** NA  
**FORMULA:** Preserved Wood  
**CAS NUMBER:** None  
**DOT PROPER SHIPPING NAME:** None  
**DOT HAZARD CLASS:** None  
**UN/NA NUMBER:** None  
**CANADIAN PRODUCT CLASSIFICATION:** Exempted - wood product

## SECTION II—HEALTH/SAFETY ALERT

### CAUTION:

Handling may cause splinters.  
Preservative treatment may cause eye and skin irritation.  
Observe good hygiene and safety practices when handling this product.  
Do not use this product until MSDS has been read and understood.

### WARNING:

This product contains a chemical known to the state of California to cause cancer.  
Do not burn in open fires, stoves, fireplace or residential boilers.

## SECTION III - HEALTH HAZARD INFORMATION

**EYE:** Treated or untreated wood dust or preservative may cause irritation.  
**SKIN:** Prolonged and/or repeated direct contact with treated or untreated wood may cause mild, transient irritation. See Section XII for additional information.

**INHALATION:**

Finely divided wood dust, treated or untreated, may cause nose, throat or lung irritation and other respiratory effects. Preservative vapor may cause respiratory tract irritation. If exposed in a closed space, vapors may produce headache, drowsiness, and possible weakness and incoordination. See Section XII - COMMENTS.

**INGESTION:**

Eating treated sawdust may cause mouth, throat and stomach irritation. Nausea, vomiting and diarrhea can occur.

**SECTION IV - EMERGENCY AND FIRST AID PROCEDURES**

**EYE CONTACT:**

Gently flush any particles from the eye with large amounts of cold water. **DO NOT RUB EYES.** Flush with clean, cool water for 15 minutes.

**SKIN CONTACT:**

Rinse skin free of material with water to avoid abrasion of skin. **DO NOT RUB** until skin is free of material then wash thoroughly with soap and water.

**INHALATION:**

Remove from exposure. If breathing has stopped or is difficult, administer artificial respiration or oxygen as indicated. Seek medical aid.

**INGESTION:**

Wipe material from mouth and lips. If symptoms appear, seek medical aid.

**NOTE TO PHYSICIAN:**

There is no specific antidote for effects from overexposure to this material. Treatment should be directed at the control of symptoms and the clinical condition.

**SECTION V — FIRE AND EXPLOSION HAZARD INFORMATION**

**FLASH POINT & METHOD:**

NA

**AUTOIGNITION TEMP:**

NA

**FLAMMABLE LIMITS (% BY VOLUME/AIR):**

LOWER: NA  
UPPER: NA

**TDG FLAMMABILITY CLASSIFICATION:** None

**EXTINGUISHING MEDIA:** Use water stream/spray/fog.

**FIRE-FIGHTING PROCEDURES:**

Wear complete fire service protective equipment, including full-face MSHA/NIOSH approved self-contained breathing apparatus. Use water to cool fire-exposed container/structure/protect personnel.

**FIRE AND EXPLOSION HAZARDS:**

Dust (powder) may form explosive mixture in air. When heated (fire conditions), vapors/decomposition products may be released forming flammable/explosive mixtures in air.

**SENSITIVITY TO MECHANICAL IMPACT:** ND

**SENSITIVITY TO STATIC DISCHARGE:** ND

**SECTION VI - SPILL, LEAK AND DISPOSAL INFORMATION**

**SPILL OR LEAK PROCEDURES (PRODUCT):** Not applicable

**WASTE DISPOSAL:**

Dispose of treated wood by ordinary trash collection or burial. Treated wood should not be burned in open fires or in stoves, fireplaces or residential boilers because toxic chemicals may be produced as part of the smoke and ashes. Treated wood from commercial or industrial use (e.g., construction sites) may be burned only in commercial or industrial incinerators or boilers in accordance with state and federal regulations.

**SECTION VII - RECOMMENDED EXPOSURE LIMIT/HAZARDOUS INGRED. EXPOSURE LIMIT (PRODUCT):**

- (\*) (hard wood dust)
- (\*\*) (soft wood dust)
- (\*\*\*) Based on treatment at a level of 0.6 lbs/ft<sup>3</sup> and wood density of 36 lbs/ft<sup>3</sup> actual percentage may vary due to differences in wood stock treatment.

HAZARDOUS INGREDIENTS	CAS NUMBER	%BY WT.	EXPOSURE LIMIT (PPM;MG/M3)
Pentachlorophenol	87-86-5	<0.01	ACGIH-TWA - 0.5skin OSHA-PEL - 0.5skin OSHA-TWA - 0.5

Fuel Oil	68476-34-6	<0.02	ACGIH-TWA -	5
			ACGIH-STEL -	10
Wood		>99.9	ACGIH-TWA -	1(*)
			-	5(**)
			ACGIH-STEL -	10(**)

SARA TITLE III SECTION 313 CHEMICALS  
(SEE SECTION VII FOR CAS NUMBERS AND PERCENTAGES)  
Pentachlorophenol

### SECTION VIII - PERSONAL PROTECTION INFORMATION

#### EYE PROTECTION:

Industrial safety glasses, minimum. As necessary to comply with 29 CFR 1910.133 and work area conditions: use side shields, goggles or face shield. When power-sawing and machining, wear goggles.

#### SKIN PROTECTION:

Industrial resistant heavy duty-type flexible gloves required for prolonged or frequent contact. For dusty operations (areas) wear necessary resistant protective apparel to include required head, hand and safety-type footwear items. Wear tightly woven coveralls or long sleeved shirts and long pants.

#### RESPIRATORY PROTECTION:

When existing conditions, OSHA regulations, and manufacturer "Instructions" and "Warnings" permit, Organic vapor/acid gas cartridges or canisters may be used. When sawing or machining treated wood, wear a MSHA/NIOSH approved dustmask (TC-21C).

#### VENTILATION:

Provide sufficient general/local exhaust ventilation in pattern/volume to control inhalation exposures below current exposure limits and areas below explosive dust concentrations.

### SECTION IX - PERSONAL HANDLING INSTRUCTIONS

#### HANDLING:

Avoid prolonged or repeated contact with skin or breathing of dusts. Observe good personal hygiene practices and recommended procedures. Avoid prolonged or repeated contact with skin or eyes. Do not wear contaminated clothing. Launder separately from household clothing before reuse, or discard.

**STORAGE:** No special storage is required.

**OTHER:**

Showering and clothing change recommended at the end of each shift. If oily preservatives/sawdust soil clothes, launder before reuse. Urethane, shellac, latex epoxy enamel, and varnish are acceptable sealers for pentachlorophenol-treated wood. Whenever possible, sawing/machining treated wood should be performed outdoors to avoid accumulations of airborne treated wood sawdust.

**SECTION X — REACTIVITY DATA**

**CONDITIONS CONTRIBUTING TO INSTABILITY:**

Stable under normal conditions.

**INCOMPATIBILITY:**

Open flame.

**HAZARDOUS REACTIONS/DECOMPOSITION/COMBUSTION PRODUCTS:**

Combustion of this product may produce/release chlorinated dibenzodioxins and dibenzofurans.

**CONDITIONS CONTRIBUTING TO HAZARDOUS POLYMERIZATION:**

None

**SECTION XI — PHYSICAL DATA**

<b>BOILING POINT:</b>	NA
<b>MELTING POINT:</b>	NA
<b>VAPOR PRESSURE:</b>	NA
<b>VAPOR DENSITY (AIR=1):</b>	NA
<b>SOLUBILITY (WATER):</b>	NA
<b>VOC:</b>	ND
<b>COEFFICIENT OF WATER/OIL DISTRIBUTION:</b>	ND
<b>APPEARANCE/ODOR:</b>	Light tan to brown wood with fuel oil odor.
<b>SPECIFIC GRAVITY:</b>	NA
<b>% VOLATILE BY VOL:</b>	NA

**EVAPORATION RATE (ETHER=1):** NA

**VISCOSITY:** NA

**pH:** NA

## **SECTION XII — COMMENTS**

Persons with pre-existing disease in or a history of ailments involving the skin, liver, eye, respiratory tract may be at a greater than normal risk of developing adverse health effects from woodworking operations with this product.

### **UNTREATED WOOD DUST OR SAWDUST:**

The principal health effects reported from occupational exposure to sawdust or wood dust generated from untreated wood are dermatitis, rhinitis, conjunctivitis reduced or suppressed mucociliary clearance rates, chronic obstructive lung changes, and nasal sinus cancer. Skin and respiratory sensitization have been reported from exposure to hardwood dust.

Epidemiological studies have been reported on carcinogenic risks of employment in the furniture-making industry, the carpentry industry, and the lumber and sawmill industry. IARC has reviewed these studies and reports that there is sufficient evidence that nasal carcinomas have been caused by employment in the furniture-making industry where the excess risk is associated with exposure to untreated wood dust or sawdust from hardwood species. IARC concluded that epidemiological data are not sufficient to make a definite assessment of the carcinogenic risks of employment as a carpenter or worker in a lumbermill or sawmill.

### **PENTACHLOROPHENOL PRESERVATIVE:**

Volume 41 of the IARC Monographs states that there is limited evidence for the carcinogenicity of occupational exposure to chlorophenols including pentachlorophenol. Pentachlorophenol is fetotoxic, causing delay in the development of laboratory animal embryos and reducing litter size. Pentachlorophenol appears in OSHA Subpart Z Table but not in the NTP Annual Report on Carcinogens. Pentachlorophenol may contain as contaminants other chlorinated phenols and chlorinated dibenzofurans and dibenzodioxins. Fuel oil has been shown to produce tumor formation in laboratory animals following long-term application. Epidemiological studies of workers in the woodtreating industry have shown no significant health effects due to occupational exposure to pentachlorophenol preservative.

May be absorbed through the skin including mucous membranes and eye either by airborne mist, or more particularly, by direct contact. Skin contact should be avoided. To the extent necessary, the use of gloves, coveralls, goggles or other

appropriate personal protective equipment, engineering controls or work practices should be utilized to prevent or reduce skin absorption.

No known ingredients which occur at greater than 0.1%, other than those listed above, are listed as a carcinogen in the IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, the NTP Annual Report on Carcinogens or OSHA 29 CFR 1910.1001-1047 subpart Z Toxic and Hazardous Substances (Specifically Regulated Substances).

**SKIN PROTECTION (protective material):**

Permeation/degradation values of chemical mixtures cannot be predicted from pure components or chemical classes. Thus, these materials are normally best estimates based on available pure component data. A significant difference in chemical breakthrough time has been reported for generically similar gloves from different manufacturers (AIHA J., 48, 941-947 1987).

Do not use until Consumer Information Sheet is read and understood. Wash exposed areas promptly and thoroughly after skin contact from working with this product and before eating, drinking, using tobacco products or rest rooms.

Do not wear contact lens without proper eye protection when using this product.

**MSDS DATA**  
**CHEMICAL: Wood Dust**  
**UP-03046**

**General Information**

**Chemical Name / Synonym / Trade Name:**

Wood Dust

**Manufacturer Name:**

Timber Products Company

**CAS Number:**

**Address:**

Post Office Box 269, Springfield, Oregon 97477-0055

**Phone:**

503/747-3321

**TRADE NAME:** Wood Dust

**SYNONYMS:** None

**CAS. NO.:** None

**DESCRIPTION:** Particles generated by any manual or mechanical cutting or abrasion process performed on wood.

**PHYSICAL DATA**

<b>Boiling Point:</b>	Not Applicable
<b>Specific Gravity:</b>	Variable (Dependent on wood species and moisture content).
<b>Vapor Density:</b>	Not Applicable
<b>% Volatiles of Volume:</b>	Not Applicable
<b>Melting Point:</b>	Not Applicable
<b>Vapor Pressure:</b>	Not Applicable
<b>Solubility in H(2)O (% by wt.):</b>	Insoluable
<b>Evaporation Rate (Butyl Acetate =1):</b>	Not Applicable
<b>pH:</b>	Not Applicable

**Appearance & Odor:**

Light to dark colored granular solid Color and odor are dependent on the wood species and time since dust was generated.

**FIRE & EXPLOSION DATA**

<b>Flash Point:</b>	Not Applicable
<b>Autoignition Temperature:</b>	Variable (typically 400-500 F)
<b>Explosive Limits in Air:</b>	40 grams M(3) (LEL)
<b>Extinguishing Media:</b>	Water, CO(2), Sand

**Special Fire Fighting Procedures:**

Wet down with water Wet down wood dust to reduce the likelihood of ignition or dispersion of dust into the air.

Remove burned or wet dust to open area after fire is extinguished.

**Unusual Fire & Explosion Hazard:**

Strong to severe explosion hazard (if wood dust "cloud" contacts an ignition source.)

**HEALTH EFFECTS DATA**

**Exposure Limit:**

ACGIH TLV (R): TWA-5.0 mg/m(3); STEL (15 min.)-10 mg/m(3)  
(softwood) TWP-1.0 mg/m(3) (certain hardwoods such as beech and oak)  
OSHA PEL -No current PEL

**Skin & Eye Contact:**

Eye Irritation & Allergic Contact Dermatitis (Wood  
Dust can cause eye irritation. Various species of wood dust can elicit  
allergic contact dermatitis in sensitized individuals)

**Ingestion:**

Not Applicable

**Skin Absorption:**

Not known to occur

**Inhalation:**

May cause:

nasal dryness, irritation & obstruction. Coughing, wheezing,  
& sneezing, sinusitis & prolonged colds have also been reported.

**Chronic Effects:**

May cause:

Wood dust, depending on species, may cause dermatitis on prolonged,  
repetitive contact; may cause respiratory sensitization and/or irritation.  
Prolonged exposure to wood dust has been reported by some observers to  
be associated with nasal cancer. Wood dust is not listed as a carcinogen by  
IARC, NTP, ACGIH or OSHA.

**REACTIVE DATA**

**Conditions Contributing to Instability:** Stable under normal conditions

**Incompatibility:**

Avoid contact with: oxidizing agents, drying oils & flame. Product may ignite at  
temperatures in excess of 400 F.

**Hazardous Decomposition Products:**

Thermal-oxidative degradation of wood produces: irritating & toxic fumes &  
gases, including CO, aldehydes and inorganic acids.

**Conditions contributing to Polymerization:**

Not Applicable

**PRECAUTIONS & SAFE HANDLING**

**Eye Contact:** Avoid:

**Skin Contact:**

Avoid:

repeated or prolonged contact with skin. Careful bathing & clean clothes are indicated  
after exposure

**Inhalation:**

Avoid:

repeated or prolonged breathing of wood dust in air. Oxidizing Agents & Drying Oils.

**Open Flame:**  
Avoid:

## **GENERALLY APPLICABLE CONTROL MEASURES**

**Ventilation:**

**Provide:**

adequate general & local exhaust ventilation to maintain healthful working conditions

**Safety Equipment:**

**Provide & Wear:** goggles or safety glasses. Other protective equipment such as gloves & approved dust respirators may be needed depending upon dust conditions.

## **EMERGENCY & FIRST AID PROCEDURES**

**Eyes:**

Flush with water to remove dust particles. If irritation persists, get medical attention.

**Skin:**

Get medical advice if a rash or persistent irritation or dermatitis occur, and before returning to work where wood dust is present.

**Inhalation:**

Remove to fresh air & get medical advice if persistent irritation, severe coughing, breathing difficulties occur, before returning to work where wood dust is present.

**Ingestion:** Not Applicable

## **SPILL/LEAK CLEAN-UP PROCEDURES**

**Recovery or disposal:**

**Clean-up:**

Sweep or vacuum spills for recovery or disposal; avoid creating dust conditions. Provide good ventilation where dust conditions may occur. Place recovered wood dust in a container for proper disposal.

**IMPORTANT:**

The information and data herein are believed to be accurate and have been compiled from sources believed to be reliable. It is offered for your consideration, investigation and verification. There is no warranty of any kind, express or implied, concerning the accuracy or completeness of the information and data herein.

**GENERAL INFORMATION**  
**ACZA Treated Wood**

Filename: UP-06032.msdx

(1) NOTE: all WHMIS required information is included. It is located in appropriate sections based on the ANSI Z400.1-1993 format.

PART I What is the material and what do I need to know in an emergency?

PART II What should I do if a hazardous situation occurs?

PART III How can I prevent hazardous situations from occurring?

PART IV Is there any other useful information about this material?

**ACZA TREATED WOOD**

Information contained in this MSDS refers only to the specific material designated and does not relate to any process or to use with any other materials. This information is furnished free of charge and is based on data believed to be reliable as of the date hereof. It is intended for use by persons possessing technical knowledge at their own discretion and risk. Since actual use is beyond our control, no guarantee, expressed or implied, and no liability is assumed by J.H. Baxter in conjunction with the use of this information. Nothing herein is to be construed as a recommendation to infringe any patents.

**1. PRODUCT IDENTIFICATION**

TRADE NAME (AS LABELED):

ACZA TREATED WOOD

Ammoniacal Copper Zinc Arsenate Treated Wood

CHEMICAL CLASS:

Treated Wood

MANUFACTURER'S NAME:

J.H. Baxter

ADDRESS:

1700 South El Camino Real

San Mateo, CA 94401-0902

EMERGENCY PHONE:

CHEMTREC: 1-800-424-9300

BUSINESS PHONE:

1-415-349-0201

DATE OF PREPARATION

October 26, 1995

**2. COMPOSITION and INFORMATION OF INGREDIENTS**

This product consists of lumber treated with a preservative containing the components listed in the table below. This product is treated with differing strengths of the preservative. The treated wood, based on the strength of preservative treatment, retains the following amounts of preservative per cubic foot of wood:

0.25 lbs preservative/cu ft

1.00 lbs preservative/cu ft

0.40 lbs preservative/cu ft

2.50 lbs preservative/cu ft

0.60 preservative lbs/cu ft

For the amount of preservative in a particular product, refer to product label. The information presented in this document is applicable for all preservative strengths.

CHEMICAL NAME	CAS #	% w/w (Based on total weight of the retained preservative)	EXPOSURE LIMITS IN AIR ACGIH	
			TLV mg/m3	STEL mg/m3
Arsenic Compounds	Not applicable	25	0.01 (as Arsenic)	NE

Copper Compounds	Not applicable	50	NE	NE
Zinc Compounds	Not applicable	25	NE	NE

**CHEMICAL EXPOSURE LIMITS IN AIR**

NAME	PEL	OSHA STEL	IDLH	OTHER
	mg/m3	mg/m3		
Arsenic Compounds	0.01 (Cancer Hazard)	NE	NE	NIOSH REL: C 2 micrograms/g Arsenic/m3/15M
Copper Compounds	NE	NE	NE	NE
Zinc Compounds	NE	NE	NE	NE

NE = Not Established  
C = Ceiling Level

The table below presents the exposure limits for the wood.

CHEMICAL NAME	CAS #	% w/w	EXPOSURE LIMITS IN AIR ACGIH	
			TLV mg/m3	STEL mg/m3
Wood	Not applicable	Entire Non-preservative Component	1 (hard wood) 5 (soft wood)	10 (soft wood)

**CHEMICAL EXPOSURE LIMITS IN AIR OSHA**

CHEMICAL NAME	PEL	STEL	IDLH	OTHER
	mg/m3	mg/m3		
Wood	2.5 (Western Red Cedar) 5 (All other)	10 (All woods except Western Red Cedar)	NE	NE

NE = Not Established  
C = Ceiling Level

**3. HAZARD IDENTIFICATION  
EMERGENCY OVERVIEW:**

This product consists of light green to brown lumber or wood poles. It presents limited hazards in an emergency situation. Dusts from this product can be irritating to exposed tissue. It is a combustible material, which will decompose to produce acrid smoke and toxic gases (i.e. arsenic oxides, carbon monoxide, and fumes containing copper and zinc).

**SYMPTOMS OF OVER EXPOSURE BY ROUTE OR EXPOSURE:**

**INHALATION:**

Inhalation of finely divided dusts of this product may cause irritation of the nose, throat, and other tissues of the respiratory system.

**CONTACT WITH SKIN or EYES:**

Dusts can cause eye irritation and scratching of eye tissue. Prolonged or repeated skin contact can cause mild irritation which disappears after exposure ends.

**SKIN ABSORPTION:**

Arsenical compounds may be absorbed through skin, causing numbness or irritation of affected area.

**INGESTION:**

Ingestion of large quantities this product can irritate the mouth, throat, stomach, and other tissues of the digestive system. Symptoms of ingestion may include nausea, vomiting, and irritation, and blood in vomit, stools, or urine.

**INJECTION:**

The only way injection of this material could occur is by wood splinters puncturing the skin. The main symptoms associated with such an exposure would be redness and irritation at the point of injection.

**HEALTH EFFECTS OR RISKS FROM EXPOSURE:**

An Explanation in Lay Terms.

**ACUTE:**

The main health hazard presented by this product would be irritation of contaminated tissues – especially the skin and eyes.

**CHRONIC:**

The symptoms of long-term exposure would be similar to those for acute exposure, described above. Additionally, some individuals can become sensitized to wood dusts and develop allergy-like symptoms upon repeated exposures. Studies have been conducted focusing on employees who routinely work with wood products. The International Agency for Research on Cancer reports that there is sufficient evidence exposure to wood dust from hardwood species may lead to an increased risk of nasal/paranasal sinus cancer. Arsenic Acid is a confirmed human carcinogen.

**HAZARDOUS MATERIAL INFORMATION SYSTEM**

HEALTH	(BLUE)	2
FLAMMABILITY	(RED)	1
REACTIVITY	(YELLOW)	0

**PROTECTIVE EQUIPMENT**

**EYES**

**RESPIRATORY**

SEE SECTION 8

**HANDS**

**BODY**

For routine industrial applications

**4. FIRST-AID MEASURES**

**SKIN EXPOSURE:**

Immediately begin cleansing the area with running water. Remove exposed or contaminated clothing, taking care to not to irritate the eyes.

**EYE EXPOSURE:**

Open victim's eyes while under gentle running water. Use sufficient force to open eye lids. Have victim "roll" eyes. Minimum flushing is for 15 minutes. Victims with wood splinters in the eye must receive medical attention.

**INHALATION:**

Remove victim to fresh air. If necessary, use artificial respiration to support vital functions. Remove or cover gross contamination to avoid exposure to rescuers.

**INGESTION:**

CALL PHYSICIAN OR POISON CONTROL CENTER FOR MOST CURRENT INFORMATION. If professional advice is not available, do not induce vomiting. Victims of chemical exposure must be taken for medical attention if signs of irritation or other symptoms develop. Rescuers should be taken for medical attention, if necessary. Take copy of label and MSDS to physician or health professional with victim.

**5. FIRE-FIGHTING MEASURES****FLASH POINT, Deg. (method):**

Not Applicable.

**AUTOIGNITION TEMPERATURE, Deg. C:**

200 - 270 Deg. C

**FLAMMABLE LIMITS (in air by volume, %):**

Lower: Not available.

Upper: Not available.

NFPA RANKING

FLAMMABILITY 2

HEALTH 1

REACTIVITY 0

OTHER

**FIRE EXTINGUISHING MATERIALS:**

Water Spray: YES

Dry Chemical: YES

Carbon Dioxide: YES

Halon: NO

Foam: YES

Other: Any "A" Class.

**UNUSUAL FIRE AND EXPLOSION HAZARDS:**

This product is combustible. When involved in a fire, this material may decompose and produce irritating fumes and toxic gases (copper and zinc fumes, carbon monoxide and carbon dioxide, arsenic compounds).

Explosion Sensitivity to Mechanical Impact: Not applicable.

Explosion Sensitivity to Static Discharge: Not applicable.

**SPECIAL FIRE FIGHTING PROCEDURES:**

Incipient fire responders should wear eye protection. Structural fire fighters must wear self-contained breathing apparatus and full protective equipment.

**6. ACCIDENTAL RELEASE MEASURES****SPILL AND LEAK RESPONSE:**

This product can not spill or leak because the chemicals are fixed in the wood. In the event of a release of dust or chips this product, safety goggles, mechanically-resistant gloves, and coveralls should be worn by clean-up personnel. In particularly dusty areas, use a MSHA/NIOSH approved dustmask. Sweep-up or vacuum dust and chips. If necessary, rinse the area with soap and water.

**7. HANDLING and STORAGE****WORK PRACTICES AND HYGIENE PRACTICES:**

Avoid getting dusts ON YOU or IN YOU. Wash hands after handling this product. Do not eat or drink in areas where there are dusts of this product.

**STORAGE AND HANDLING PRACTICES:**

Keep in cool, dry place away from open flame. Avoid contaminating food, feed, and water with dusts of this product. Always use product in areas where adequate ventilation is provided.

**PROTECTIVE PRACTICES DURING MAINTENANCE OF CONTAMINATED EQUIPMENT:**  
Follow practices indicated in Section 6 (Accidental Release Measures).

**8. EXPOSURE CONTROLS - PERSONAL PROTECTION**  
**VENTILATION AND ENGINEERING CONTROLS:**

Use with adequate ventilation. Use a mechanical fan or vent area to outside.

**RESPIRATORY PROTECTION:**

If it is anticipated that the exposure limits for dust may be exceeded during work with this product, wear a MSHA/NIOSH approved dustmask.

**EYE PROTECTION:**

Splash goggles or safety glasses.

**HAND PROTECTION:**

Mechanically resistant gloves.

**BODY PROTECTION:**

Use body protection appropriate for task (i.e. coveralls).

**9. PHYSICAL and CHEMICAL PROPERTIES**

**VAPOR DENSITY:**

Not applicable.

**SPECIFIC GRAVITY:**

Not available.

**SOLUBILITY IN WATER:**

Insoluble.

**VAPOR PRESSURE, mm Hg @ 20 Deg. C:**

Not applicable.

**EVAPORATION RATE (water=1):**

Not applicable.

**MELTING POINT or RANGE:**

Not applicable.

**BOILING POINT:**

Not applicable.

**pH:**

Not applicable.

**APPEARANCE AND COLOR:**

Light tan to brown lumber or wood poles.

**HOW TO DETECT THIS SUBSTANCE (warning properties):**

There are no unusual warning properties associated with this product.

**10. STABILITY and REACTIVITY**

**STABILITY:**

Stable.

**DECOMPOSITION PRODUCTS:**

Carbon monoxide, carbon dioxide, zinc oxide, ammonia, copper oxides, and arsenic compounds will be released upon combustion of this product.

**MATERIALS WITH WHICH SUBSTANCE IS INCOMPATIBLE:**

This product is incompatible with strong oxidizing agents.

**HAZARDOUS POLYMERIZATION:**

Will not occur.

**CONDITIONS TO AVOID:**

Avoid contact with open flame and other sources of extreme high temperatures. Avoid contact with incompatible materials.

**11. TOXICOLOGICAL INFORMATION**

**TOXICITY DATA:**

There is currently no toxicology information available on this product.

**SUSPECTED CANCER AGENT:**

This product's ingredients are found on the following lists:

COMPOUND	FEDERAL	OSHA Z LIST	IARC	NTP	CAL/OSHA
Arsenic/Arsenic Compounds	Yes		Yes	Yes	Yes
Wood Dust	No		Yes	No	No

Wood Dust listed as a "Human Carcinogen" (Group 1) by IARC. This classification is based primarily on IARC's evaluation of increased risk in the occurrence of adenocarcinomas of the nasal cavities and paranasal sinuses associated with exposure to wood dust. Neither wood, nor wood dust are considered carcinogenic by the Federal OSHA, NTP, or CAL/OSHA.

**IRRITANCY OF PRODUCT:**

This product is slightly irritating to contaminated tissue.

**REPRODUCTIVE TOXICITY INFORMATION:**

Listed below is information concerning the effects of this product and its components on the human reproductive system.

**Mutagenicity:**

While no data exist for the product, it is not expected to cause any fetal toxicity problems related to mutagenicity.

**Teratogenicity:**

While no data exist for the product, it is not expected to cause any fetal toxicity problems related to teratogenicity. Animal studies indicate some experimental teratogenic effects for arsenic acid and zinc oxide at relatively high doses.

**Reproductive Toxicity:**

While no data exist for the product, it is not expected to have an adverse effect on the male or female reproductive system or to cause any fetal toxicity problems. Animal studies indicate some experimental reproductive effects for zinc oxide and copper oxides at relatively high doses.

**MEDICAL CONDITIONS AGGRAVATED BY EXPOSURE:**

Disorders involving the skin, eyes, liver, or respiratory tracts may be aggravated by occupational exposures to dusts of this product.

**RECOMMENDATIONS TO PHYSICIANS:**

Treat symptoms. 12. ECOLOGICAL INFORMATION

**ENVIRONMENTAL STABILITY:**

This product is treated so it will not decompose. Arsenic, copper, and zinc compounds may slowly be released into the environment and will be transported or degraded based on pH, soil type, and salinity.

**EFFECT OF MATERIAL ON PLANTS or ANIMALS:**

Do not use treated wood under circumstances where the preservative may become a component of food or animal feed. Examples of such sites would be structures or containers for storing silage of food.

**EFFECT OF CHEMICAL ON AQUATIC LIFE:**

There is currently no information available on this product's effects on aquatic life; however, it is anticipated that if large enough quantities of product dusts contaminate a water system, exposed aquatic life may experience adverse health effects.

**13. DISPOSAL CONSIDERATIONS**

**PREPARING WASTES FOR DISPOSAL:**

Waste disposal must be in accordance with appropriate Federal, State, and local regulations.

**EPA WASTE NUMBER:**

Not applicable for wastes consisting only of this product.

**14. TRANSPORTATION INFORMATION**

**THIS MATERIAL IS NOT A HAZARDOUS MATERIAL (49 CFR 172.101 BY THE U.S. DEPT. OF TRANSPORTATION.**

**PROPER SHIPPING NAME:**

Not applicable.

**HAZARD CLASS NUMBER and DESCRIPTION:**

Not applicable.

**UN IDENTIFICATION NUMBER:**

Not applicable.

**PACKING GROUP:**

Not applicable.

**DOT LABEL(S) REQUIRED:**

Not applicable.

**EMERGENCY RESPONSE GUIDE NUMBER:**

Not applicable.

**MARINE POLLUTANT:**

The product is not defined as a marine pollutant, 49 CFR 172.101 Appendix B.

**CTC DANGEROUS GOODS SHIPPING REGULATIONS:**

**THIS MATERIAL IS NOT CONSIDERED AS DANGEROUS GOODS.**

**15. REGULATORY INFORMATION (+++)**

**NOTE:** The regulatory information is provided on this sheet is for the preservative solutions and is not applicable to preservative components contained in the treated wood. Chemical components of the treated wood are fixed into the wood and are not reportable under SARA or CERCLA.

**SARA REPORTING REQUIREMENTS:**

Arsenic compounds, Copper and its compounds, and Zinc compounds are subject to the reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act. This treated wood product is not subject to these requirements.

**TSCA INVENTORY STATUS:**

The chemicals in this product are listed on the TSCA Inventory.

**CERCLA REPORTABLE QUANTITY (RQ):**

Arsenic = 1 pound; Copper = 5000 pounds; Zinc = 1000 pounds.

The treated wood product is not subject to these requirements.

**STATE REGULATORY INFORMATION:**

Chemicals in this product are covered under specific State regulations, as denoted below:

Alaska - Designated Toxic and Hazardous Substance:

None

California - Permissible Exposure Limits for Chemical Contaminants:

Arsenic Compounds, Copper (Salts, Dusts, Miss)

Florida - Substance List:

Arsenic

Illinois - Toxic Substance List:

Arsenic Compounds, Copper Compounds

Kansas - Section 302/313 List:

Copper and Compounds

Massachusetts - Substance List:

Arsenic Compounds

Minnesota - List of Hazardous Substances:

Arsenic Compounds, Copper (Dusts and Mists)

Missouri - Employer Information/Toxic Substance List:

Arsenic Acid, Zinc Oxide

New Jersey - Right to Know Hazardous Substance List:

Arsenic Acid, Inorganic Copper Compounds, Zinc Oxide

North Dakota - List of Hazardous Chemicals, Reportable Quantities:

Arsenic, Copper and Compounds, Zinc and Compounds

Pennsylvania - Hazardous Substance List:

Arsenic Compounds, Copper, Zinc Oxide

Rhode Island - Hazardous Substance List:

Zinc Oxide

Texas - Hazardous Substance List:

None

West Virginia - Hazardous Substance List:

None

Wisconsin - Toxic and Hazardous Substances:

None

**CALIFORNIA PROPOSITION 65:**

Inorganic Arsenic Compounds (i.e. Arsenic Acid) is on the California Proposition 65 lists as being known to the State of California to cause cancer.

**LABELING (Precautionary Statements):**

**CAUTION!** Dusts of this product can irritate the skin, eyes, nose, throat, on other tissues of the respiratory system. Dusts can also scratch the eyes, and splinters of this product can puncture the skin. Avoid contact with skin and eyes. Avoid breathing dust.

**TARGET ORGANS:**

(For Dusts of Product) Skin, Eyes, Respiratory System.

**WHMIS SYMBOL:**

Not applicable.

**Heading: 16. OTHER INFORMATION**

**PREPARED BY: CHEMICAL SAFETY ASSOCIATES, Inc. 9163 Chesapeake Drive, San Diego, CA 9163**  
**Chesapeake Drive, San Diego, CA 92123-1002 619/565-0302**