

**ACT OF ASSIGNMENT AND DEDICATION
FOR
SUGARLAND PARKWAY**

BY: ESPERANZA LAND COMPANY, LLC

STATE OF LOUISIANA

TO: ST. CHARLES PARISH

PARISH OF ST. CHARLES

BE IT KNOWN, that on this 28th day of January, in the year of Our Lord Two Thousand Three (2003),

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in and for the Parish and State noted below, therein residing, and in the presence of the two competent witnesses hereinafter named and undersigned,

PERSONALLY CAME AND APPEARED;

ESPERANZA LAND COMPANY, LLC, a Louisiana limited liability company, being the successor by merger with Esperanza Land Company, and having an address of 143 Esperanza Plantation Road, Luling, Louisiana 70070, represented herein by Edward A. Dufresne, Jr., its President, duly authorized by resolution of its Board of Directors attached hereto and made a part hereof;

(Hereinafter sometimes referred to as "Esperanza");

Esperanza declared unto me, Notary, that it is the owner of a certain tract of real property situated on the West Bank of St. Charles Parish designated as Sugarland Subdivision being a portion of Ashton Plantation as shown on a Plan of Resubdivision prepared by Michael D. Bernard, PLS, dated January 7, 2003, which Plan is entitled "Resubdivision of a Portion of Ashton Plantation, Located in Sections 1, 97-102 & 121 T13S, R20E and Sections 6, 7 & 8, T13S, R21E into Parcels 10A, 10B, 10C, 10D, 4A, 4B, 4C and 4D in Luling, St. Charles Parish, Louisiana", a copy of which is attached to and made part of this ordinance; and

Esperanza further declared unto me that it has caused the above property designated as Sugarland Subdivision on the Plan of Resubdivision referred to above to be laid out in parcels designated as Parcels 10A, 10B, 10C, 10D, 4A, 4B, 4C and 4D and one street designated as Sugarland Parkway. By this Act, Esperanza does hereby create Sugarland Parkway, more fully described below, as being a part of Sugarland Subdivision, to wit:

**SUGARLAND PARKWAY, SUGARLAND SUBDIVISION, ST. CHARLES
PARISH, LOUISIANA**

Commencing at the common point of the southern edge of the right of way of La. Hwy 18 (River Road), the beginning westerly boundary line of Sugarland Parkway (former Kelley Rd.), and the Northeastern most corner of the St. Charles Parish School Board Property, and thus the Point of Beginning, thence South 64 degrees 44 minutes 04 seconds East along the southernmost edge of La. Hwy. 18 a distance of 102.69 feet to a point being the easternmost beginning corner of Sugarland Parkway, thence South 38 degrees 25 minutes 00 seconds West a distance of 930.14 feet to a point on the northern edge of the Union Pacific railroad right of way, thence westerly along a line of curvature, with radius 17,138.89, along the northern edge of the Union Pacific right of way a distance of 4.07 feet to a point, thence across the Union Pacific Railroad right of way South 38 degrees 25 minutes 00 seconds West a distance of 2884.30 feet to a point of curvature, and the beginning of a temporary cul-de-sac, thence left along that line of curvature with radius 12.00 feet a distance of 17.41 feet to a point of reverse curve, thence right along a line of curvature with radius 63.00 feet a distance of 290.19 feet to a point of tangency and the end of the temporary cul-de-sac, thence North 38 degrees 25 minutes 00 seconds East a distance of 214.99 feet to a point, thence North 57 degrees 12 minutes 10 seconds West a distance of 40.20 feet to a point, thence North 38 degrees 25 minutes 00 seconds East a distance of 2,728.37 feet to a point on the northern edge of the Union Pacific right of way line, thence along a line of curvature, and the northern edge of the Union Pacific right of way line, with radius of 17,138.89 a distance of 4.07 feet to a point, thence North 38 degrees 25 minutes 00 seconds East a distance of 924.84 feet to a point and thus the Point of Beginning, all containing 8.92 acres, more or less, and as shown on the attached Final Plat of Sugarland Subdivision dated 01/07/2003 by Michael D. Bernard, Professional Land Surveyor.

On all matters of the description of the property on which Sugarland Parkway is located, the attached Plan of Resubdivision shall be controlling.

Esperanza further declared unto me, Notary, that in connection with the development of Sugarland Parkway it has caused to be constructed a railroad crossing over and across the Union Pacific Railroad's right of way on the Livonia Subdivision trackage at Mile Post 22.900, together with all required traffic signals, traffic devices, stop signs, guard rails, identification signs and drainage facilities (collectively referred to as the "Railroad Crossing").

Esperanza further declared unto me, Notary, that by this Act it does hereby assign to the Parish of St. Charles all of the rights and obligations of the "Licensee" (as distinguished from the rights and obligations exclusive to "Esperanza") under that certain Railroad Crossing Agreement by and between Esperanza and Union Pacific Railroad Company, a copy of which is attached hereto and made a part hereof.

Esperanza further declared unto me, Notary, that under the covenants, conditions and stipulations hereinafter recited it does, by these presents, dedicate Sugarland Parkway and the

4. St. Charles Parish must bind and obligate itself not to use the property dedicated herein for street purposes in any manner which would be inconsistent with or detrimental to such use as a public street.
5. This dedication and grant are conditioned upon St. Charles Parish maintaining and policing the street and Railroad Crossing dedicated herein
6. Esperanza warrants that the herein dedication of Sugarland Parkway and the Railroad Crossing are free of any liens and/or encumbrances.
7. The dedications and grant made herein are made subject to any existing servitudes affecting the Sugarland Subdivision.
8. The herein dedications and grant shall inure to the benefit of St. Charles Parish or any successor governmental body of St. Charles Parish, which shall be bound by all of the terms and conditions hereof.

AND NOW, to these presents, personally came and intervened:

ST. CHARLES PARISH, herein appearing by and through Albert D. Laque, Parish President, duly authorized by virtue of an Ordinance of the St. Charles Parish Council adopted on 1-21-03, a certified copy of which is annexed hereto and made part hereof, and said St. Charles Parish does hereby accept, approve and ratify the herein dedications and grant under all of the terms and conditions as contained hereinabove, and does also hereby acknowledge that the construction of all of Sugarland Parkway and the Railroad Crossing dedicated herein has been satisfactorily completed in accordance with all requirements and all railroad crossing facilities have been likewise satisfactorily completed in accordance with all requirements, and St. Charles Parish does hereby accept Sugarland Parkway and the Railroad Crossing and assumes the maintenance thereof. St. Charles Parish does hereby further accept the assignment all of the rights and assumption of all the obligations of the "Licensee" (as distinguished

Railroad Crossing as hereinabove described, to public use, unto and in favor of the Parish of St. Charles, the inhabitants of the Parish of St. Charles, and to the public in general; and

AND NOW, to these presents, personally came and appeared:

ST. CHARLES PARISH, herein appearing by and through Albert D. Laque, Parish President, duly authorized by virtue of an Ordinance of the St. Charles Parish Council adopted on 1-21-03, a certified copy of which is annexed hereto and made part hereof.

Esperanza further declared unto me, Notary, that this Act is subject to all of the following terms and conditions, to wit:

1. The dedication of the fee ownership of the property and all appurtenances covered by Sugarland Parkway and the Railroad Crossing, only as far as the same are located in Sugarland Subdivision.
2. Esperanza does hereby reserve all rights of ownership to all of the oil, gas and other minerals in, on and under the property covered and affected by Sugarland Parkway and the Railroad Crossing. In that connection, Esperanza does, however, agree to prohibit the use of any part of the surface of any of the property covered by said street and Railroad Crossing with respect to the exploration, development or production of minerals pursuant to this reservation. This reservation is made in accordance with Esperanza's plan and intention to reserve all of the mineral rights in, on and under all of the parcels in Sugarland Subdivision, whereby, however, Esperanza will likewise impose a restriction on the entire subdivision against any use of the surface of any lot for the exploration, development or production of minerals, or by any other binding means of strict surface operations in regard to mineral exploration in this subdivision.
3. The herein dedication of Sugarland Parkway and the Railroad Crossing are made by Esperanza without any warranty whatsoever except as provided for herein.

from the rights and obligations exclusive to "Esperanza") under that certain
Railroad Crossing Agreement by and between Esperanza and Union Pacific
Railroad Company, a copy of which is attached hereto and made a part hereof.

This Act was approved and accepted by the St. Charles Parish Council by Ordinance
03-1-5 on the 21st day of January, 2003, a photo copy of which is attached and made
part hereof.

THUS DONE AND PASSED, in triplicate originals, in my office, the undersigned
Notary Public in and for the State of Louisiana, Parish of St. Charles, on the day, month and year
herein first above written, in the presence of the undersigned competent witnesses, who hereunto
sign their names with the said appearers and me, Notary, after reading the whole.

WITNESSES;

ESPERANZA LAND COMPANY, LLC

Dale Scheyrader
Mississippi

BY:

Edward A. Dufresne, Jr.
President

Louis B. Arthur
NOTARY PUBLIC

[SEAL]

THUS DONE AND PASSED, in triplicate originals, in my office, the undersigned Notary Public in and for the State of Louisiana, Parish of St. Charles on the day, month and year herein first above written, in the presence of the undersigned competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

WITNESSES:

ST. CHARLES PARISH

Barbara J. Jones

BY: Albert D. Laque
Albert D. Laque,
Parish President

Valerie Berthelot

Bianca M. Foke
Notary Public
My Commission is issued for life

[SEAL]

**CERTIFICATE OF AUTHORIZATION
FOR ESPERANZA LAND COMPANY, L.L.C.**

The undersigned, being the certifying official of ESPERANZA LAND COMPANY, L.L.C. (the "Company") and acting in such capacity, hereby certifies:

That at a joint meeting of the Board of Managers and Members of the Company held on the 15th day of January, 2003, the following resolutions were unanimously adopted:

Approval of Dedication of Sugarland Parkway

RESOLVED, that Edward A. Dufresne, Jr. is hereby authorized for and on behalf of this Company to execute an Act of Dedication in favor of St. Charles Parish for the purpose of dedicating to St. Charles Parish Sugarland Parkway as more fully shown on that certain Plan of Resubdivision prepared by Michael D. Bernard, PLS, dated January 7, 2003, which Plan is entitled "Resubdivision of a Portion of Ashton Plantation, Located in Sections 1, 97-102 & 121 T13S, R20E and Sections 6, 7 & 8, T13S, R21E into Parcels 10A, 10B, 10C, 10D, 4A, 4B, 4C and 4D in Luling, St. Charles Parish, Louisiana".

Assignment of Railroad Crossing Agreement

RESOLVED, that in connection with the above referenced dedication of Sugarland Parkway, Edward A. Dufresne, Jr. is hereby authorized for and on behalf of this Company to assign to St. Charles Parish that certain Railroad Crossing Agreement, dated June 17, 2002, by and between the Company and Union Pacific Railroad Company providing a public railroad crossing over and across the Union Pacific Railroad's right of way on the Livonia Subdivision trackage at Mile Post 22.900

FURTHER RESOLVED, that the Edward A. Dufresne, Jr. is hereby authorized in the name of and on behalf of this Company to take such further action and to do all things that may appear in his discretion to be necessary in connection with the foregoing matters.

Dated this 15th day of January, 2003.



SECRETARY AND
CERTIFYING OFFICIAL

AUDIT 225091

RAILROAD CROSSING AGREEMENT

Mile Post 22.900, Livonia Subdivision/Branch
Location: Luling, St. Charles Parish, Louisiana

FILE COPY

THIS AGREEMENT (including all Exhibits hereto, hereinafter and in such Exhibits being referred to as this "Agreement") is made this 17th day of June, 2002 (hereinafter the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, to be addressed at 1800 Farnam Street, Omaha, Nebraska 68102 (hereinafter the "Railroad") and ESPERANZA LAND COMPANY, a Louisiana corporation, to be addressed at 14035 River Road, Luling, Louisiana 70070 (hereinafter "Esperanza"). As used herein, the term "Esperanza" shall include Esperanza and all successors and assigns of Esperanza (other than the Parish of St. Charles (the "Parish") following dedication to the Parish of the Road Crossing, as hereinafter defined). Prior to any such dedication, the term "Licensee", as used herein, shall include Esperanza but not the Parish. Following any such dedication to the Parish, the term "Licensee" shall include the Parish but not Esperanza (as to rights and obligations accruing under this Agreement subsequent to such dedication), the Parish being thereafter bound on an on-going basis by the terms of this Agreement applying to the "Licensee", to the extent and only to the extent such terms apply to rights, obligations or events accruing or occurring after such dedication.

RECITALS:

Esperanza desires the renewal, upgrade and use of an existing private road crossing (hereinafter the "Road Crossing"), consisting of a 50-foot wide concrete road crossing and all appurtenances thereto, including but not limited to any signals, gates, cattle guards, stop signs or identification signs, or drainage facilities, on, over and across the Railroad's right-of-way on the Livonia Subdivision trackage at Mile Post 22.900, at or near Luling, St. Charles Parish, Louisiana, in the location shown on the attached print marked Exhibit "A".

Upon completion of the Road Crossing and the installation of the Signals (as defined below), it is contemplated that the Road Crossing will be formally dedicated to the Parish, at which time the Road Crossing will become part of a public street with access to the public.

The Railroad is willing to grant to the Licensee the right to cross its right-of-way and tracks at the location shown on Exhibit "A" subject to the terms set forth below.

NOW, THEREFORE, the parties agree as follows:

Article 1. RAILROAD GRANTS RIGHT.

The Railroad grants to the Licensee the right to renew, upgrade and use a road at grade over and to cross its right-of-way and tracks at the location shown on Exhibit "A" subject to the terms set forth herein and in the attached Exhibits "B" and "B-1", together with the right of entry to control and remove from the Railroad's right-of-way, on each side of the Road Crossing, weeds and vegetation which may impair the view of motorists approaching the crossing area to any trains that may also be approaching the crossing area.

Article 2. CONSIDERATION.

In consideration of the license and permission granted herein, Esperanza agrees to close and remove, or cause to be closed and removed, two (2) currently-existing private railroad crossings in St. Charles Parish, Louisiana, more particularly described as follows:

- (a) That certain private road crossing licensed to Esperanza known as the "Hotel Dieu" crossing, located in St. Charles Parish, Louisiana, at Milepost 23.85 of the Railroad's Livonia Subdivision trackage; and
- (b) That certain private road crossing licensed to Killona Investments, Inc., an affiliate of Esperanza, located in St. Charles Parish, Louisiana, at Milepost 32.20 of the Railroad's Livonia Subdivision trackage.

The closure of the above-described private railroad crossings shall occur contemporaneously with the execution of this Agreement. The Railroad and Esperanza hereby acknowledge the receipt and sufficiency of this consideration.

Article 3. CONSTRUCTION AND MAINTENANCE OF ROAD CROSSING.

a. The Railroad will furnish the materials for and install the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail and will furnish and install the stop signs and identification signs on each side of the Road Crossing and raise, or cause to be raised, any interfering wireline of the Railroad, all at an estimated cost to Esperanza of **FIFTY-SIX THOUSAND SEVEN HUNDRED SIXTY-EIGHT AND NO/100 DOLLARS (\$56,768.00)** due upon execution of this Agreement. Any actual costs in excess of the estimated cost stated in this Article 3(a) shall be due and payable by Esperanza to the Railroad upon receipt of an invoice from the Railroad for said excess costs. The Railroad shall bill such excess costs within one-hundred twenty (120) days of the completion of the Railroad's construction under this Article 3(a). Esperanza's obligation to pay said excess costs shall survive any dedication of the Road Crossing to public use.

b. Esperanza, at its own expense, shall construct and perform grading and surfacing work for the remaining portion of the Road Crossing and install any and all appurtenant gates,

cattle guards, drainage facilities, traffic signs, or traffic devices (any such gates and traffic devices shall not include the Signals, as defined in Article 5 hereof) shown on Exhibit "A". The construction work shall be done to the satisfaction of the Railroad.

c. The Railroad, at the sole expense of Licensee, may make any and all changes, alterations or relocations, whether temporary or permanent, and may provide flagging and other protective services and devices, which in the Railroad's judgment may be or become necessary or expedient within the Railroad's right-of-way because of any work performed on or about the Road Crossing.

d. The Railroad shall maintain the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks. The Licensee shall, at its expense, maintain, repair and renew the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions.

e. The Licensee agrees to notify the Railroad's representative at least 48 hours in advance of commencing any work in which any person or equipment will be within twenty-five (25) feet of any track.

Article 4. ADMINISTRATIVE HANDLING CHARGE.

Esperanza agrees to pay to the Railroad, upon execution of this Agreement, an administrative handling charge in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)** for clerical, administrative and handling expense in connection with processing this Agreement.

Article 5. INSTALLATION AND MAINTENANCE OF AUTOMATED CROSSING PROTECTION.

a. The Railroad will furnish all labor, material, equipment, and supervision for, and shall install, automatic flashing light signals with automatic gates at the Road Crossing (hereinafter the "Signals").

b. Upon execution of this Agreement, Esperanza shall pay the Railroad the sum of **ONE HUNDRED THIRTY-EIGHT THOUSAND THREE HUNDRED SEVENTY-THREE AND NO/100 DOLLARS (\$138,373.00)** as Esperanza's estimated fixed portion of the costs of the work performed and materials supplied by the Railroad pursuant to Article 5(a) of this Agreement. Any actual costs in excess of the estimated cost stated in this Article 5(a) shall be due and payable by Esperanza upon receipt of an invoice from the Railroad for said excess costs. The Railroad shall bill such excess costs within one-hundred twenty (120) days of the completion of the Railroad's installation under Article 5(a). Esperanza's obligation to pay said excess costs shall survive any dedication of the Road Crossing to public use.

c. The Railroad shall be responsible for the inspection, maintenance, repair and adjustment of the Signals. The cost of repair or replacement resulting from damage caused by non-parties that is not recoverable by the Railroad or the Licensee from the non-parties shall be borne by the Licensee.

d. In the event of loss, damage to or destruction of the Signals involving replacement of major items or components of the Signals (which shall be classified as extraordinary maintenance) beyond the purview of Article 5(c) above, the Railroad, upon request by, and at the sole expense of, the Licensee, shall repair or rebuild the Signals so as to restore the Signals to substantially as good a condition as existed prior to such loss, damage or destruction; and, if the Signals are restored by the Railroad, the Licensee shall and hereby agrees to reimburse the Railroad for all costs incurred by the Railroad from time to time in connection with any work performed by the Railroad hereunder within thirty (30) days after receipt of the Railroad's bill therefor.

Article 6. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Road Crossing (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's form of Contractor's Right of Entry Agreement. The Licensee acknowledges receipt of a copy of Contractor's Right of Entry Agreement and understand its terms, provisions and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will the Licensee's contractor be allowed onto the Railroad's Property (as defined in Exhibit "B" hereto) without first executing the Contractor's Right of Entry Agreement.

Article 7. INSURANCE.

a. Esperanza shall provide the Railroad, at the time of execution of this Agreement, (i) with a certificate, identifying Folder No. 01840-870, issued by an approved insurance carrier, providing the Railroad Protective Liability coverage required pursuant to Exhibit "B-1" of this Agreement in a policy or policies which names the Union Pacific Railroad Company as the insured and (ii) with a certificate, identifying Folder No. 01840-870, issued by an approved insurance carrier, providing the balance of the insurance specified in Exhibit "B-1" of this Agreement in a policy or policies which names the Union Pacific Railroad Company as an additional insured.

b. The Railroad specifically acknowledges and agrees that Esperanza shall not be required to renew the insurance specified in subparagraph (a)(ii) of this Article 7 beyond its October 2002 expiration date, regardless of the status of the installation of the Road Crossing and Signals at that time. Esperanza acknowledges and agrees that the Railroad Protective Liability Insurance referenced in subparagraph (a)(i) of this Article 7 must remain in place for the duration of the installation of the Road Crossing and Signals.

c. All insurance correspondence shall be directed to: Union Pacific Railroad Company, Real Estate Department, 1800 Farnam Street, Omaha, NE 68102, with reference to Folder No. 01840-870, with copies to Director of Insurance, Union Pacific Railroad Company, 1416 Dodge Street, Room 820, Omaha, NE 68179 and to General Solicitor, Union Pacific Railroad Company, 808 Travis Street, Suite 620, Houston, TX 77002.

Article 8. TIMING OF THE RAILROAD'S PERFORMANCE.

The Railroad will perform the installation, as contemplated by Article 3(a) and Article 5(a) of this Agreement, in the ordinary course of its business, but subject to events of force majeure and other contingencies, certain of which are outside of the Railroad's control, including, for illustrative purposes and not limited to, the availability of materials, delays in receipt of materials from manufacturers, and priority scheduling of emergency and government/public projects.

Article 9. USE OF CROSSING IN ADVANCE OF INSTALLATION OF SIGNALS.

In the event the Road Crossing shall be completed in advance of the installation of the Signals by the Railroad, Esperanza hereby agrees and acknowledge that the Road Crossing shall not be dedicated to the Parish until the Signals are installed. Esperanza shall, at its sole expense, install at the Road Crossing appropriate temporary warning devices and signs and impose appropriate vehicular control measures to protect the motoring public until the Signals are properly installed.

Article 10. TERM.

This Agreement shall be effective as of the Effective Date and shall continue in full force and effect until terminated as provided in Exhibit "B".

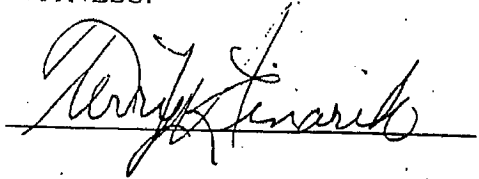
Article 11. LEGAL FEES

In the event of any dispute among the parties hereto with respect to the performance of their respective obligations under this Agreement, the prevailing party in any litigation to resolve such a dispute shall be entitled to recover its reasonable attorney's fees from the other party or parties, as the case may be.


[SIGNATURES ON FOLLOWING PAGE]

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

WITNESS:



UNION PACIFIC RAILROAD COMPANY


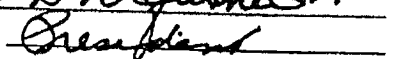
By: 

Assistant Vice President

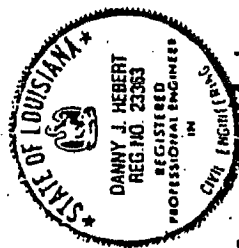
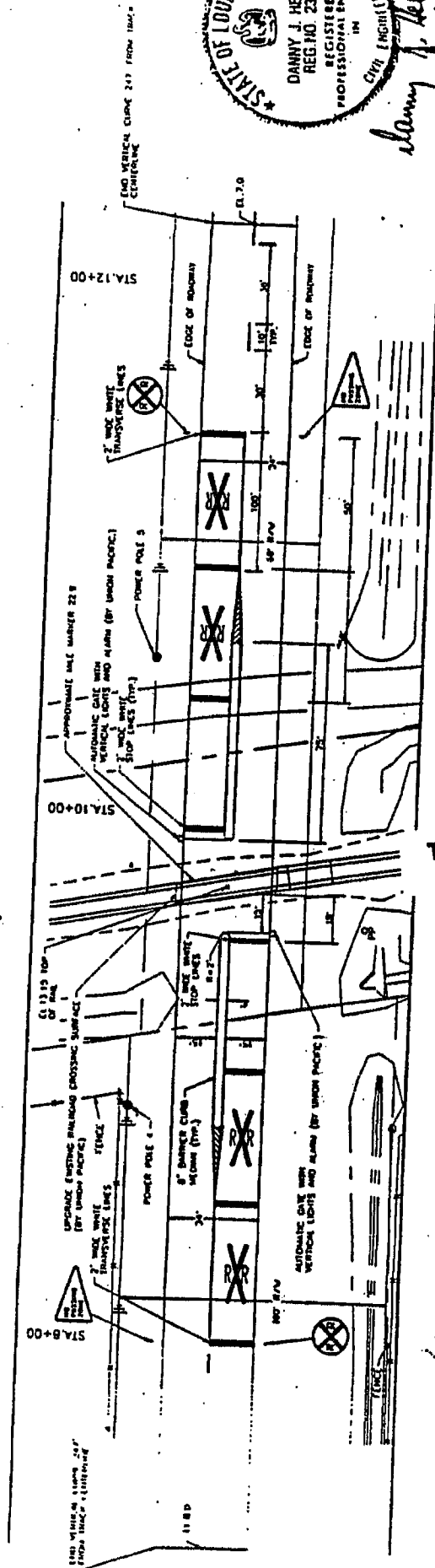
WITNESS:



ESPERANZA LAND COMPANY

By: 
Title: 

FIBER OPTIC CABLE - Call before you dig.
All plans should include comments referring sub-contractor's or general contractor's to UPRR's
Toll free number @ 800 336-9193



10/15/14
Army F. Hobart
CIVIL ENGINEERING

UNION PACIFIC RAILROAD
Proposed Road Crossing By
Esperanza Land Company

**Nr. Luling, La.
MP 22.90 - Livonia Sub
DOT 448 319 W**

- | Notes |
|--|
| 1) Applicant to perform all grading, drainage, paving, & utility adjustments at its expense. |
| 2) Construction of Electronic Signalization and Standard Rail Crossing Surface to be completed by the railroad at the applicant's expense. |

EXHIBIT B

Road Crossing

SECTION 1. CONDITIONS AND COVENANTS

- (a) The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Licensee shall not use or permit use of the Road Crossing for any purposes other than those described in this Agreement. Without limiting the foregoing, the Licensee shall not use or permit use of the Road Crossing for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the "Railroad's Property" (which shall include the tracks and all appurtenant devices and equipment and the entirety of the Railroad's right of way) by or under authority of the Licensee for the purpose of conveying electric power or communications incidental to their use of the Railroad's Property for crossing purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. Except for the use by the public of the Road Crossing following the dedication of the Road Crossing to public use, no non-party shall be admitted by the Licensee to use or occupy any part of the Railroad's Property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- (b) The Railroad reserves the right to cross the Road Crossing with such railroad tracks as may be required for its convenience or purposes in such manner as not unreasonably to interfere with the Licensee's use of the Road Crossing. In the event the Railroad shall subsequently place additional track(s) upon the Road Crossing, the Licensee shall, at its expense, modify the Road Crossing to conform with the rail line.
- (c) The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or not, and also to any renewals thereof. The Licensee shall not damage, destroy or interfere with the property or rights of non-parties in, upon or relating to the Railroad's Property unless the Licensee shall, at its expense, settle with and obtain releases from such non-parties.
- (d) The Railroad reserves the right to use and to grant to others the right to use the Road Crossing for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; also the right to cross the Road Crossing with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to any Road Crossing facilities located upon the Railroad's Property, provided that such attachments shall comply with the Licensee's specifications and shall not interfere with the Licensee's use of the Road Crossing.

- (e) So far as it lawfully may do so, the Licensee shall assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Road Crossing, excepting taxes levied upon and against the Railroad's Property as a component part of the Railroad's operating property.
- (f) If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Road Crossing and its appurtenances, or for the performance of any work in connection with the Road Crossing, the Licensee shall acquire all such other property and rights at its own expense and without expense to the Railroad.
- (g) During construction of the Road Crossing, it is expressly stipulated that the Road Crossing is to be a private one. Upon the completion and the dedication of the Road Crossing to the Parish, it is contemplated that the Road Crossing shall become part of a public street with access to the public.

SECTION 2. CONSTRUCTION OF THE ROAD CROSSING

- (a) Esperanza, at its own expense, shall apply for and obtain all public authority required by law, ordinance, rule or regulation for the construction of the Road Crossing, and shall furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- (b) Except as may be otherwise specifically provided herein, Esperanza, at its own expense, shall furnish all necessary labor, material and equipment, and shall construct and complete the Road Crossing and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper crossing warning devices (except the Signals installed by the Railroad within its right-of-way), and all necessary and proper drainage facilities, guard rails or barriers, medians and right of way fences between the highway and the Railroad tracks. Upon completion of the Road Crossing, Esperanza shall remove from the Railroad's Property all temporary structures and false work, and shall leave the Road Crossing in a condition satisfactory to the Railroad.
- (c) The Railroad will receive no ascertainable benefit from the renewal, upgrade or construction of the Road Crossing, and, except as may be specifically provided herein, shall not be required to pay or contribute any part of the cost thereof. If the Road Crossing is to be financed in whole or in part by Federal funds, all present or future construction work by the Licensee shall be performed and any reimbursement to the Railroad for work it performs shall be made, in accordance with the applicable Federal acts, regulations, and this Agreement.
- (d) All construction work by the Licensee upon the Railroad's Property (including, but not limited to, construction of the Road Crossing and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Vice President-Engineering Services of the Railroad or his authorized representative and in accordance with

detailed plans and specifications prepared by and at the expense of the Licensee, and approved in writing by the Railroad's Vice President-Engineering Services.

(e) All construction work by the Licensee shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Vice President-Engineering Services. No part of the Road Crossing shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Licensee. The Licensee hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.

(f) If the Road Crossing includes construction of a structure over which trains are to be operated, or for which the Railroad has any responsibility for maintenance, the Licensee shall furnish the Railroad permanent reproducible prints of all design and shop drawings as soon as possible after approval by the Vice President-Engineering Services of the Railroad or his authorized representative. Upon completion of construction, the Licensee shall furnish the Railroad two sets of "as constructed" prints and, in addition, upon request of the Vice President-Engineering Services of the Railroad, "as constructed" permanent reproducible prints of all or any portion of the structure.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Licensee, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Licensee is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the Railroad's Property, such property shall be replaced or repaired by the Licensee, at its expense, or by the Railroad at the expense of the Licensee, and to the satisfaction of the Railroad's Vice President-Engineering Services.

SECTION 4. PAYMENT FOR WORK BY THE RAILROAD COMPANY

The Railroad will submit to Esperanza bills for flagging and other protective services and devices provided by the Railroad during the construction of the Road Crossing. Bills for work and materials shall be paid by Esperanza promptly upon receipt thereof. The Railroad will submit its final billing for flagging and other protective services within one hundred and twenty (120) days after the Railroad completes the installation of the Signals.

SECTION 5. MAINTENANCE AND USE

- (a) The Railroad shall maintain the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks. The Licensee shall, at its expense, maintain, repair and renew the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions. To the extent any such work by the Licensee shall be required to be made upon the Railroad's Property, the Licensee shall notify the Railroad in advance, shall execute a Contractor's Right of Entry Agreement in accordance with Article 6 of the Agreement and shall obtain the requisite Railroad Protective Insurance, as required by Exhibit "B-1".
- (b) The Licensee shall, at its expense, maintain, repair, renew and replace any gates, cattle guards, drainage facilities, traffic signs or devices, identification signs approved by the Railroad or other appurtenances shown on Exhibit "A", except the Signals, which shall be maintained and repaired by the Railroad in accordance with Article 5(c) of the Agreement. The Licensee shall, at its expense, install and thereafter maintain any such appurtenances that may subsequently be required by law or by any public authority having jurisdiction.
- (c) The Licensee shall, at its expense, require all vehicles approaching the crossing to stop a safe distance from the tracks before crossing the tracks. The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Railroad's tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Railroad's Property.
- (d) If, in the future, the Licensee elects to have the surfacing material between the track tie ends, or between the tracks if there is more than one railroad track across the Road Crossing, replaced with paving or some surfacing material other than timber planking, the Railroad, at the sole expense of the Licensee, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Road Crossing, the Licensee shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE.

If at any time the Railroad shall elect, or be required by competent authority, to raise or lower the grade of all or any portion of the track or tracks located in the Road Crossing, the Licensee shall, at its expense, conform the road in the Road Crossing to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, the Road Crossing or both, the Railroad and the Licensee will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of the aforesaid work of Esperanza and any future work of the Licensee, that such work shall be performed in a safe manner and in conformity with the following standards:

- (a) Definitions. All references in this Section 8 of this Exhibit "B" to the Licensee shall include Esperanza and any future Licensee and each of their contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Licensee shall include work both within and outside of the Railroad's Property.
- (b) Compliance With Laws. The Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's Property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- (c) No Interference or Delays. The Licensee shall not do, suffer or permit anything which or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or

any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's Property or facilities.

(d) Supervision. The Licensee, at its own expense, shall adequately police and supervise all work to be performed by the Licensee, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Licensee for safe conduct and adequate policing and supervision of the Road Crossing shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Licensee with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Road Crossing, the Licensee shall give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's Property and operations.

(e) Suspension of Work. If at any time the Licensee's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Licensee is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Licensee shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

(f) Removal of Debris. The Licensee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any of the Railroad's Property or facilities, and any such material and debris shall be promptly removed from the Railroad's Property by the Licensee at the Licensee's own expense or by the Railroad at the expense of the Licensee. The Licensee shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's Property during snow removal from the Road Crossing.

(g) Explosives. The Licensee shall not discharge any explosives on or in the vicinity of the Railroad's Property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's Property or facilities. For the purposes hereof, the "vicinity" of the Railroad's Property" shall be deemed to be any place on the Railroad's Property or in such close proximity to the Railroad's Property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's Property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the

Railroad's sole discretion, may deem to be necessary, desirable or appropriate. In addition to any conditions, restrictions or limitations as may be specifically imposed:

- (1) Unless the Railroad's Vice President-Engineering Services agrees otherwise, the Licensee shall provide no less than 48 hours' notice, excluding weekends and holidays, before discharging any explosives.
 - (2) Any explosives loaded in holes or placed or otherwise readied for discharge on a day shall be discharged on the same day during daylight hours, and at mutually acceptable times.
 - (3) The Licensee, at its own expense, shall take all precautionary measures and construct all temporary shelters necessary to guard against danger of damage, destruction or interference arising out of or connected with any blasting or any transportation, handling, storage, security or use of explosives.
 - (4) The Licensee shall require explosives to be transported, handled, stored or otherwise secured and used in a manner satisfactory to the Railroad and in accordance with local, state and Federal laws, rules and regulations, including without limitation, United States Department of Labor, Bureau of Labor Standards, Safety and Health Regulations for Construction, 29 CFR Part 1518, Subpart U - "Blasting and the Use of Explosives"; and Occupational Safety and Health Administration Occupational Safety and Health Standards, 29 CFR Part 1910, Subpart H - "Hazardous Materials".
- (h) Obstructions to View. Except as otherwise specifically provided herein, the Licensee shall not cause or permit the view along the tracks of the Railroad to be obstructed, nor place any combustible material on the premises, nor erect any structures thereon. Insofar as it may lawfully do so, the Licensee will prevent nonparties from constructing sight-obstructing buildings or other permanent structures on property adjacent to the Railroad's Property.
- (i) Excavation. The Licensee shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Licensee shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's Property, tracks or facilities. The Licensee, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation, and/or trenching performed by the Licensee in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Vice President-Engineering Services to withstand all stresses likely to be encountered

including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

(j) Drainage. The Licensee, at the Licensee's own expense, shall provide and maintain suitable facilities for draining the Road Crossing and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon the Railroad's Property. The Licensee, at the Licensee's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Licensee, be impeded, obstructed, diverted or caused to back up, overflow or damage the Railroad's Property or any part thereof, or property of others. The Licensee shall not obstruct or interfere with existing ditches or drainage facilities.

(k) Notice. Before commencing any work, the Licensee shall provide 48 hours prior notice (excluding weekends and holidays) to the Railroad's Manager-Track Maintenance.

(l) Fiber Optic Cables. Fiber optic cable systems may be buried on the Railroad's Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's Property to be used by the Licensee. If it is, the Licensee shall telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's Property. The Licensee shall, in addition to all other obligations and indemnities set forth elsewhere in this Agreement, indemnify and hold the Railroad harmless against and from all cost, liability and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Licensee, as the case may be, or any subcontractor, agent and/or employees of the Licensee, that causes or contributes to (i) any damage to or destruction of any telecommunications system on the Railroad's Property, and (ii) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's Property. The Licensee shall not have or seek recourse against the Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or any consequential damage to a telecommunications company using Railroad's Property or a customer or user of services of any fiber optic cable on Railroad's Property.

SECTION 9. INTERIM WARNING DEVICES

If at any time it is determined by a competent authority, by the Licensee, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Road Crossing, the Licensee shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed by the Railroad, at the expense of the Licensee.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's Property or facilities.

SECTION 11. REMEDIES FOR BREACH OR NON-USE

- (a) If the Licensee fails, refuses or neglects to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Road Crossing and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's Property, facilities or operations or jeopardize the Railroad's employees; and the Licensee shall reimburse the Railroad for the expenses thereof.
- (b) Non-use by the Licensee for roadway purposes continuing at any time for a period of eighteen (18) months, at the option of the Railroad, shall work a termination of this Agreement and of all the rights of the Licensee hereunder.
- (c) The Licensee shall surrender peaceable possession of the Road Crossing upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 12. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Licensee and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Licensee shall not affect or impair any right arising from any subsequent default. This Agreement including Exhibits attached thereto and made a part thereof constitute the entire understanding between the Licensee and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

SECTION 13. INDEMNIFICATION BY ESPERANZA, AND ITS SUCCESSORS OR ASSIGNS, PRIOR TO THE DEDICATION.

Prior to the dedication of the Road Crossing to the public use, Esperanza assumes the risk of and shall indemnify and hold harmless the Railroad and other railroad companies which use the Railroad's Property, their current, former and future officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever, (including officers, agents and employees of the Railroad and of Esperanza, or its successors or assigns, as well as other persons); (2) loss of or damage to any property whatsoever (including damage to property of or in the custody of Esperanza, or its successors or assigns, and damage to the roadbed, tracks, equipment or other property of or in the custody of the Railroad and such other railroad companies, as well as other property); or (3) the failure of Esperanza, or its successors or assigns, to comply with any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

- a. the construction of the Road Crossing;
- b. any work done by Esperanza on or in connection with the Road Crossing;
- c. the use of said Road Crossing by Esperanza, or the officers, agents, employees, patrons or invitees of Esperanza, or by any other person;
- d. the use of said Road Crossing by Esperanza's successors or assigns or the officers, agents, employees, patrons or invitees of Esperanza's successors or assigns; or
- e. the breach of any covenant or obligation assumed by or imposed on Esperanza pursuant to this Agreement, or the failure of Esperanza to promptly and fully do any act or work for which Esperanza (including but not limited to Esperanza as "Licensee") is responsible pursuant to this Agreement,

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

To the extent the work performed by the Railroad pursuant to Article 3(a) and Article 5(a) of the Agreement requires subsequent repair or replacement (other than that regular maintenance provided for in Article 3(d) and Article 5(c) of the Agreement and in Section 5 of this Exhibit "B" to the Agreement), for reasons not resulting from the acts or omissions of Esperanza, and notwithstanding anything in this Section 13 to the contrary, Esperanza shall not be responsible for the cost of materials or labor required for such repair and replacements; provided, however, that if such repair or replacement is necessitated by damage caused by flood, hurricane,

earthquake or other natural or man-made disaster, Esperanza shall bear sole responsibility for all costs associated with such repair or replacement.

After dedication of the Road Crossing to the public use, this Section 13 shall be null and void except with respect to any Loss which results from an occurrence prior to the dedication of the Road Crossing to public use.

SECTION 14. ASSIGNMENT: SUCCESSORS AND ASSIGNS.

This Agreement shall not be assigned by Esperanza without the written consent of the Railroad. Notwithstanding the foregoing, the Railroad's consent shall not be required for an assignment by Esperanza to the Parish of the rights and obligations of the "Licensee" (as distinguished from the rights and obligations exclusive to "Esperanza") under this Agreement in connection with the formal dedication by Esperanza to the Parish of the Road Crossing and the land underlying the Road Crossing (which land will continue to be subject to the Railroad's rights therein); provided that Esperanza provides the Railroad with satisfactory evidence of (i) the acceptance by the Parish of said formal dedication, (ii) the acceptance by the Parish of the assignment to it of the rights granted to the "Licensee" (as distinguished from the rights granted exclusively to "Esperanza") hereunder, and (iii) express assumption (duly authorized by the appropriate authorities) by the Parish of all of the obligations and liabilities of the "Licensee" (as distinguished from the obligations and liabilities of "Esperanza" exclusively) hereunder. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors or assigns.

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EXHIBIT B-1

UNION PACIFIC RAILROAD CONTRACT INSURANCE REQUIREMENTS OF ESPERANZA

Esperanza and/or its contractor(s)/subcontractor(s) shall, at its own and/or its Contractor's/Subcontractor's own expense, procure the following kinds of insurance and promptly pay when due all premiums for that insurance. The Railroad Protective Insurance described in Paragraph E below only needs to be obtained and kept in force during the duration of construction or major reconstruction or repair, on a project-by-project basis, of the Road Crossing located on the Railroad's Property. The other insurance coverage described in Paragraph A, B, C and D below shall be kept in force by the Esperanza until its current policy expires in October 2002.

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Separate general aggregate for the project
- Coverage for Railroad's employees shall not be excluded
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned.

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- “For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.”

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Licensee’s and/or its contractor’s statutory liability under the workers’ compensation laws of the state(s) affected by this Agreement
- Employers’ Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee and/or its contractor in states that require participation in state workers’ compensation fund, Licensee and/or its contractors shall comply with the laws of such states. Coverage shall include liability arising out of the U.S. Longshoremen’s and Harbor Workers’ Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

D. Umbrella or Excess Policies in the event Licensee and/or its contractors utilize Umbrella or excess policies, these policies shall “follow form” and afford no less coverage than the primary policy.

E. Railroad Protective Liability insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for “Physical Damage to Property” (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

Other Requirements

1. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.

2. Esperanza and/or its contractor(s)/subcontractor(s) agree to waive their respective rights of recovery, and their respective insurers, through policy endorsement, agree to waive their right of subrogation, against Railroad. Esperanza and/or its contractors(s)/subcontractor(s) further waive their respective right of recovery, and their respective insurers also waive their right of subrogation, against Railroad for loss of their respective owned or leased property or property under their respective care, custody and control. Esperanza and/or its contractor(s)/subcontractor(s)' insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation shall be indicated on the certificate of insurance.
3. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.
4. Prior to commencing any work, Esperanza shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments, and reference the contract audit/folder number if available, as provided in Article 7(b) of the Agreement. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing in advance of any cancellation. Esperanza shall notify the Railroad in advance of any material alteration. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.
5. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
6. Esperanza WARRANTS that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s), who have been instructed by Esperanza to procure the insurance coverage required by this Agreement and acknowledge that Esperanza's insurance coverage will be primary.
7. The fact that insurance is obtained by Esperanza, or Railroad on behalf of Esperanza, as the case may be, shall not be deemed to release or diminish the liability of Esperanza, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage. However, nothing in this Paragraph 7 shall be construed to enable the Railroad to recover more than its actual damages (as used herein) or Loss (as defined in Section 13 of Exhibit "B" of this Agreement), it being understood that this Paragraph 7 is not intended to enable the Railroad to receive a double recovery.