

Parties.

This Agreement, made and executed this the first day of January, A. D. 1909, by and between the GRAYS HARBOR AND PUGET SOUND RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Washington, hereinafter called the *Grays Harbor Company*, Party of the First Part, and the CHICAGO, MILWAUKEE AND PUGET SOUND RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Washington (formerly named Chicago, Milwaukee and St. Paul Railway Company of Washington), hereinafter called the *Milwaukee Company*, Party of the Second Part.

WITNESSETH:

THAT, WHEREAS, the Grays Harbor Company is authorized to construct, maintain and operate a line of railroad from Hoquiam, in the County of Chehalis, in the State of Washington, to a point near Gate City, in the County of Thurston, in said State; and

WHEREAS, the said Milwaukee Company is authorized to acquire, construct, maintain and operate a line of railroad from the City of Tacoma, in the County of Pierce, State of Washington, to the City of Hoquiam, in the County of Chehalis, in the State of Washington; and

WHEREAS, the said Grays Harbor Company has heretofore acquired certain station and terminal grounds and portions of a right of way from a point at or near Gate City, in the County of Thurston, in said State, to and through the City of Hoquiam, in the County of Chehalis, in said State, and is now proceeding to acquire, by purchase or otherwise, the necessary land to complete said right of way, together with the necessary additional station and terminal grounds; and

WHEREAS, the parties hereto desire to construct a railroad upon said right of way and grounds, to be owned and maintained as a joint road.

Description of
Joint Line.

The said Joint Road will begin at a point in the said City of Hoquiam, in the Northeast Quarter of Northwest Quarter of Section Two (2), Township Seventeen (17) North, Range Ten (10) West of Willamette Meridian, which point is at Engineer's Station 899×70 of the Milwaukee Company's Survey, and distant South Sixty-four (64°) degrees Forty-eight (48') minutes East, twenty two hundred and twenty-five and sixteen hundredths (2225.16) feet, more or less, from the corner common to Sections Two (2) and Three (3), Township Seventeen (17) North, Range Ten (10) West, and Sections Thirty-four (34) and Thirty-five (35), Township Eighteen (18) North, Range Ten (10) West; and will extend to the point of junction with the Chicago, Milwaukee and Puget Sound Railway Company at or near said Gate City, on Lot Two (2), Section Twelve (12), Township Fifteen (15) North, Range Four (4) West,

W. M., such junction being more particularly described as follows:

Beginning at the point of intersection of the center line of the Railway of the Grays Harbor and Puget Sound Railway, as same is now surveyed, located and staked out on, over and across said Government Lot Two (2), Section Twelve (12), Township Fifteen (15) North, Range Four (4) West, W. M., with the East line of Section Twelve (12), which line is also the Range line between Range Four (4) West and Range Three (3) West; said point being Engineer's Station 584-99 and distant Southerly four hundred and forty-five feet (445'), more or less, measured along said Range line from the corner common to Sections One (1), Six (6), Seven (7) and Twelve (12); thence Northwesterly along a Five degree (5°) curve to the left a distance of nine hundred and ten and eight-tenths feet (910.8'), more or less, to the beginning of a tapered curve; thence along said tapered curve measured by 4-30 foot chords, a distance of one hundred and twenty feet (120') to a point of frog, being Engineer's Station 595+29.8-594+36, and being the point of junction of the Grays Harbor and Puget Sound Railway with the Chicago, Milwaukee and Puget Sound Railway.

The junction point near Gate City is shown upon the plat hereto attached marked "Exhibit A," and the terminal point in the City of Hoquiam is shown upon the plat hereto attached and marked "Exhibit B."

The said right of way, station and terminal grounds, together with the tracks, improvements and facilities hereafter to be constructed thereon, are hereinafter called the *Joint Line*.

NOW, THEREFORE, in consideration of the premises the parties hereto agree as follows, to-wit:

ARTICLE I.

SECTION 1. The Grays Harbor Company agrees to complete the acquisition of said right of way and of the necessary station and terminal grounds in its own name, as expeditiously as may be, and to thereupon convey to said Milwaukee Company an undivided one-half interest therein; and the Milwaukee Company agrees to pay to the said Grays Harbor Company one-half of the entire cost of said property, and a proportionate share of any other expenses of the Grays Harbor Company applicable thereto, as ascertained by agreement between the parties hereto.

SECTION 2. The Grays Harbor Company agrees to construct a first main track upon said Joint Line between the points hereinbefore described, and also to construct all necessary side tracks, passing tracks, spurs, connections and other tracks, turntables, engine houses and all buildings and structures, and provide telegraph and telephone lines, necessary or convenient for the maintenance and operation of said Joint

Acquisition of
Joint Line.

Each party to
pay one-half cost.

Completion of
Joint Line.

Division of costs.

Line. The cost and expense of the construction and completion of all such tracks, buildings, structures and lines shall, in the first instance, be paid by the Grays Harbor Company, and the Milwaukee Company agrees to pay to the Grays Harbor Company one-half of the entire cost and expense thereof.

Monthly statements.

SECTION 3. The Grays Harbor Company shall make and render to the Milwaukee Company monthly statements showing the entire cost and expense incurred as aforesaid, and the Milwaukee Company shall pay one-half thereof to the Grays Harbor Company within thirty (30) days after such statements shall have been rendered;—it being the intent of this Agreement that the Milwaukee Company shall have paid to the Grays Harbor Company, either at the date of execution and delivery of said conveyance, or prior thereto, one-half of the cost and expense paid to said date by the Grays Harbor Company for said Joint Lines, and a proportionate share of any other expenses of the Grays Harbor Company applicable thereto, as ascertained by agreement between the parties hereto; and that the Milwaukee Company shall thereafter pay one-half of all the additional cost and expense of the construction and completion of said Joint Line. All of the items in this Article I mentioned shall bear interest at the rate of four and one-half (4½) per cent per annum from the date of the expenditures until duly paid.

Payment.

Interest.

ARTICLE II.

Equal ownership.

SECTION 1. The parties hereto are to be the joint and equal owners of said Joint Line, and have the right equally to enter upon and to perpetually use and occupy the same and all improvements, betterments and additions thereto, for the operation, respectively, of their engines, cars and trains, and to do and transact thereon, and thereover, all such business as is usually carried on by railroad companies, including express, telegraph and telephone business, subject only to the terms and conditions hereinafter contained. Each of said Companies shall also have the right to connect the main track or tracks of the Joint Line with the main track or tracks of said Companies, respectively. The said Joint Line, and the points of connection, are substantially indicated upon the tracing annexed to this Agreement, identified by the signatures of the ranking officers who subscribe to this contract.

Connections.

Restrictions as to passenger traffic.

SECTION 2. Unless compelled by law to do so, neither Company will carry on its trains, engines or cars upon the Joint Line any passenger holding and presenting ticket for passage issued by the other Company. In case the Companies are required by law to carry passengers holding and presenting tickets for passage issued by the other Company, then and in that event the Company issuing such tickets shall pay to the other fifty (50) per cent of the revenue accruing from the sale of such tickets over the Joint Line.

ARTICLE III.

SECTION 1. The supervision, maintenance and operation of the Joint Line, the furnishing of water, and the movement of trains, engines and cars thereon, shall be under the direction and control of the Grays Harbor Company, but all rules, regulations or orders relating thereto shall be reasonable, just and fair, and without preference or discrimination against either party. All passenger trains shall be given preference over other trains, and the trains of both parties shall be given equal dispatch according to their class. Each Company shall have the right to run its engines and trains over the Joint Line with its own power, trainmen and enginemen; and each Company shall provide power, enginemen and trainmen and all supplies other than water necessary to the movements of its engines or trains over the Joint Line and the wages of said enginemen and trainmen and the cost of said fuel and supplies shall not be included in the cost of operation as used in this Agreement.

SECTION 2. All officers and employes necessary for the construction, maintenance and operation of said Joint Line shall be employed by the Grays Harbor Company, but the employment of station agents, express agents, ticket agents, telegraph operators and station baggagemen on the Joint Line shall be subject to the approval of the Milwaukee Company, and any such employe shall be removed by the Grays Harbor Company upon the demand of the Milwaukee Company, and the Grays Harbor Company shall upon the written request of the Milwaukee Company for cause shown, remove from service on the Joint Line any other employe who may not be satisfactory to the Milwaukee Company, and the Milwaukee Company on its part upon the written request of the Grays Harbor Company, for cause shown, will remove from service on its engines, trains or cars operated on or over the Joint Line, any employe who may not be satisfactory to the Grays Harbor Company.

SECTION 3. All employes engaged in joint service shall serve both companies impartially and without discrimination and shall keep such books, accounts and records and make such reports to each Company as to its business, and settle with and account to each Company as often and as fully as may be required by it, and shall furnish such surety bonds as each Company may demand, and in such amount as it may deem necessary for its protection; and shall also conform to the regulations of each Company as to its own business.

ARTICLE IV.

SECTION 1. Whenever the parties hereto shall deem it necessary to acquire additional real estate, or to construct an additional main track or tracks or other structures or facilities upon said Joint Line, or to change the permanent way, or to construct additional viaducts, bridges, subways, buildings,

Control of, maintenance and operation.

Rights of each party.

Officers and employees.

Removal.

Impartial service.

Additions to real estate and tracks.

structures, or other permanent additions or facilities, the plans, specifications and estimated cost thereof shall be submitted to and approved by the parties hereto, and such improvements shall thereupon be constructed by the Grays Harbor Company and one-half of the cost and expense thereof shall be paid by the said Milwaukee Company to the said Grays Harbor Company upon presentation of bills therefor as hereinabove provided.

Arbitration.

In the event the parties hereto are at any time unable to agree as to the advisability or necessity of acquiring such addition real estate, or of constructing additional joint improvements or facilities on said Joint Line, then said question shall be submitted to arbitration as hereinafter provided. If either party hereto shall at any time require the construction of additional main tracks or other tracks, betterments, improvements or facilities on the Joint Line, which in their nature are capable of separate use, and the other party is unwilling to agree to such construction, then the party desiring the same may require the Grays Harbor Company to do such work and maintain the same, and the cost thereof shall be chargeable to the party requiring the same to be done, and such party shall have the right to the exclusive use thereof, and shall pay all the expenses of maintenance and operation incurred by the Grays Harbor Company connected therewith. Provided, however, that such other party shall have the right at any time thereafter to acquire an equal interest in and equal right to use such betterment or improvement by paying the other Company one-half the cost thereof.

Facilities for one party.

Spur and industry tracks.

SECTION 2. Either party hereto may at any time construct any spur or industry track extending beyond the limits of such right of way and connect the same with said Joint Line, and the other party shall have the right to acquire equal ownership and the right to use such spur or industry track by paying to the other party within five (5) years after its construction one-half of the original cost thereof, including right of way, with interest from the time of the expenditure at the rate of four and one-half (4½) per cent per annum and upon such payment such track and such right of way shall be owned and maintained jointly by the parties hereto as a part of said Joint Line.

Branch line connections.

SECTION 3. Either party hereto shall have the right to connect with said Joint Line any branch road or roads owned or operated by it; such connections to be made at such place or places as may be proper and convenient, and in such manner as shall not materially interfere with the use of the Joint Line by either party hereto.

Telegraph and telephone wires.

SECTION 4. Each of the parties hereto shall have the right to string or authorize the stringing of separate telegraph or telephone wires upon any joint pole line or lines, and to

extend such wires into the station or other buildings on said Joint Line, and to connect them with its instruments therein.

ARTICLE V.

SECTION 1. The Milwaukee Company covenants and agrees to pay to the Grays Harbor Company the following sums:

(a) Such annual sums as shall from time to time constitute one-half of all taxes, assessments and governmental charges which may be lawfully levied upon said Joint Line, or any part thereof, and paid by the Grays Harbor Company. If any such taxes or assessments shall be so levied or assessed on any such property, or on the gross or net earnings thereof, that they cannot be readily and satisfactorily separated from those levied or assessed upon other portions of the railway or property of the Grays Harbor Company, they shall be apportioned as equitably as may be, and if the parties cannot agree upon such apportionment, it shall be determined by arbitration, as hereinafter provided. Taxes and assessments on tracks or other facilities owned and used solely by one company shall be apportioned in like manner and paid by such company.

(b) A proportion of the cost of maintaining, repairing and operating said Joint Line, which proportion shall bear the same ratio to the whole amount expended for such purposes as the number of miles run by the engines and cars of all classes operated by the Milwaukee Company over said Joint Lines shall bear to the whole number of miles run by all engines and cars of all classes thereon during the months in which such expenditures were incurred. For the purpose of this clause each engine shall be rated as two cars.

Operating expenses shall include premiums paid for insurance upon property of the Joint Line, and reasonable salaries and traveling expenses of general superintendent, chief engineer, and all other subordinate officers, agents and employes of the Grays Harbor Company engaged in the transaction of the business of both parties upon the Joint Line, and the proportion to be paid by the Milwaukee Company shall be ascertained in the manner hereinbefore provided. Such proportion shall, however, extend and apply to only such percentage of the total salary and traveling expenses of such officers or employes as the main track mileage of the Joint Line is of the entire main track mileage at the time under their respective jurisdictions. Such reasonable amount for accounting services shall also be included as may be mutually agreed upon.

SECTION 2. The Grays Harbor Company shall keep correct books of accounts showing in detail all the cost and expense in anywise pertaining to the Joint Line and the mileage of all engines and cars run or handled thereon by each of the parties hereto, and shall render to the Milwaukee Company monthly statements in detail of all the items aforesaid; and said books and accounts so far as they relate to said matters,

Milwaukee
Company to pay.

½ taxes,
assessments, etc.

Proportion of
maintenance,
repairing and
operating costs.

Operating
expenses defined.

Accounts,
mileage, etc.

and all vouchers relating thereto, shall be open during the usual business hours to the inspection of the duly authorized representative of the Milwaukee Company, and such representative shall have the privilege of taking copies thereof.

Payments.

SECTION 3. The Milwaukee Company shall make all payments in this agreement required to be made by it, to the Grays Harbor Company at its offices in Seattle, Washington, within thirty (30) days after the rendering of proper bills therefor, which bills shall be rendered as soon as may be after the first of each month, and all such sums, except as otherwise expressly provided in this agreement, shall bear interest at the rate of four and one-half (4½) per cent per annum from the date when the same became payable until the same shall be duly paid.

"Capital Account"

SECTION 4. In determining whether expenditures on the Joint Line, or any portion thereof, are for additions and betterments, or for maintaining, repairing or operating the Joint Line, such expenditures as according to the then prevailing railroad usage are chargeable to cost of property, or "Capital Account" shall be deemed expenditures for additions or betterments in respect of which the Milwaukee Company shall pay one-half of the cost thereof, and expenditures which according to such usage would be entered in "Operating Expense Accounts," shall be deemed expenses of maintaining, repairing and operating the Joint Line, in respect of which the parties hereto shall contribute to the cost thereof on the car mileage basis as hereinbefore provided.

"Operating Expense Account."

Default by Milwaukee Company.

SECTION 5. If the Milwaukee Company shall fail to make any payments as in Articles IV and V of this agreement required, when and as the same shall become payable by the terms hereof, and such default shall continue for a period of sixty (60) days after the Grays Harbor Company shall have given to the Milwaukee Company written notice thereof; the Grays Harbor Company may by notice in writing to the Milwaukee Company declare this agreement terminated and may thereupon exclude the Milwaukee Company from the use of said Joint Line during the continuance of such default. Provided, however, that the Milwaukee Company, upon the payment by it to the Grays Harbor Company at any time within two (2) years after such default of the full amount of such defaulted payment with interest thereon at the rate of four and one-half per cent per annum, together with one-half of all taxes, betterments and expenses of maintenance, repair and operation of the Joint Line paid by the Grays Harbor Company subsequent to such default, shall thereupon be restored and reinstated in all of its rights under this Agreement. And, provided, further, that failure to make any payment which is the subject of dispute or of arbitration or of litigation between the parties, shall not, pending such dispute, arbitration or litigation, be deemed cause for forfeiture hereunder. The

Termination of Agreement.

Reinstatement.

Grays Harbor Company may waive such default, but any such waiver shall not affect any subsequent default or impair its rights resulting therefrom.

Default of
Grays Harbor
Company.

If the Grays Harbor Company shall fail to pay any debts or liabilities created or incurred against said Joint Line, and such failure shall be deemed by the Milwaukee Company to be prejudicial to its interests in said Joint Line, the Milwaukee Company shall have the right to pay any such debts or liability, and in such event if said Grays Harbor Company shall fail to repay said Milwaukee Company the amount so paid by it, and such default shall continue for a period of sixty (60) days after the Milwaukee Company shall have given to the Grays Harbor Company a written notice thereof, the Milwaukee Company may by notice in writing to the Grays Harbor Company declare this Agreement terminated and may thereupon assume possession and exclude the Grays Harbor Company from the use of said Joint Line. Provided, however, that the Grays Harbor Company upon the payment by it to the Milwaukee Company at any time within two years after such default, of the amount of such defaulted payments with interest thereon at the rate of four and one-half (4½) per cent per annum, together with one-half of all taxes, betterments and expenses of maintenance and operation of the Joint Line paid by the Milwaukee Company subsequent to such default, shall thereupon be restored and reinstated in its full rights under this Agreement. And provided, further, that failure by the Grays Harbor Company to make any payment to any creditor which is the subject of dispute or of litigation or to make any payment to the Milwaukee Company which is the subject of dispute or of litigation, or of arbitration between the parties, shall not, pending such dispute, arbitration or litigation, be deemed cause for forfeiture hereunder. The Milwaukee Company may waive any default, but such waiver shall not affect any subsequent default or impair its rights resulting therefrom.

Termination
of agreement.

Reinstatement.

Liens.

It is expressly agreed by and between the parties hereto that in case of the default of either party as in this Article provided, the sums due and payable from the party so in default to the other party, at the time of such default, as well as all sums and amounts to be paid by the party so in default to the other party in order to regain the right of possession within such period of two (2) years, as hereinbefore provided, shall be and become and remain a lien in favor of the other party upon and against all the right, title and ownership in said Joint Line, of the party so in default, including its rights under this Agreement; and the party in whose favor such lien is hereby created shall have the right to enforce such lien by any appropriate remedy in law or in equity, by foreclosure or otherwise, notwithstanding any other provision in this Agreement.

ARTICLE VI.

Degree of Care.

SECTION 1. The Grays Harbor Company shall be bound to use only reasonable and customary care, skill and diligence in maintaining and repairing the Joint Line.

Defects and Repairs.

The Milwaukee Company shall not, by reason of any defect in any such roadway, track, structure or appliances, or by reason of the failure or neglect of the Grays Harbor Company to repair such defect, have or make against the Grays Harbor Company any claim for any loss, damage or injury whatsoever arising from such defect, neglect or failure; but in case the Grays Harbor Company shall fail to repair any defect as aforesaid within a reasonable time after the Milwaukee Company shall have given the Grays Harbor Company written notice specifying the defect and requesting that it be repaired, then the Milwaukee Company shall have the right to make the necessary repairs, and the Grays Harbor Company shall and will pay the cost thereof, which cost shall thereupon be apportioned and paid by the parties hereto as hereinbefore provided.

Notice of Defect.

Joint Employees Defined.

SECTION 2. Except enginemen and trainmen, all employes of the Grays Harbor Company in any wise engaged in maintaining, repairing or operating said Joint Line shall while so engaged as between the parties hereto, be deemed joint employes of both parties for all purposes affecting liability for loss or damage caused by such employes. Enginemen and trainmen of any work train engaged in maintaining or repairing said Joint Line shall likewise be deemed joint employes.

Losses, etc., how borne.

SECTION 3. Each of the parties hereto shall bear all loss, damage, expense and liability caused by any act or omission of any of its employes other than joint employes, and shall save harmless and indemnify the other party hereto from and against the same.

Responsibility of each party.

SECTION 4. If, by reason of any negligence or act or omission (whether or not such act or omission be wrongful) of any joint employe, or by reason of any other cause except the negligence or wrongful act or omission of an employe for which one of the parties hereto is to bear the whole responsibility under the foregoing Section 3, either (a) any engine, car or other property belonging to or operated by either of the parties hereto, or any property in the custody of either of the parties hereto as a carrier, or otherwise, shall be damaged or destroyed while upon the Joint Line or adjacent thereto, or upon any engine, train or car thereon, or (b) any employe, of either party, joint employe, passenger or other person shall be injured or killed upon any engine, train or car upon the Joint Line—then in any such case the party hereto owning or operating such engine, car or other property, or having the custody of the property so damaged or destroyed, or the party operating the engine, train or car upon which said injury or death shall occur, or by which such damage shall occur, shall bear all

loss, damages, expenses and liability, resulting therefrom and save harmless and indemnify the the other party from and against the same.

Collisions.

SECTION 5. The parties hereby expressly covenant and agree that in case of a collision between their respective engines, cars or trains, while on the Joint Line, the party whose employes are alone in fault shall be solely responsible for and shall settle and pay for the entire loss and damage caused thereby, and shall save the other party harmless therefrom; and in case any such collision is caused by the fault of the employes of both parties, or by the fault of any joint employe or employes, or in case the cause of the collision is so concealed that it cannot be determined whose employe or employes are at fault, each party shall bear and pay all the loss, damage and injury which its own property or property in its custody, or which its employes or passengers may have suffered in consequence thereof.

Other damage to persons and property.

SECTION 6. All liability for damage to persons or property occurring in connection with the maintenance or operation of the Joint Line from any cause except as in this Article otherwise provided, shall be borne as cost and expense of maintaining and operating the Joint Line for the month in which such accident occurred.

Wrecks.

SECTION 7. In case any of the Milwaukee Company's trains shall be wrecked while running on the Joint Line, if the same is not promptly removed by the Milwaukee Company, such wreck may be picked up and removed by the Grays Harbor Company, and the cost of such service shall, except as herein otherwise expressly provided, be borne and paid by the Milwaukee Company.

Indemnity agreement.

SECTION 8. Each of the parties hereto, who, under the terms and provisions of this agreement, is to be liable for any loss or damage, cost, charge, or expense, shall and will indemnify and save harmless the other party from and against such loss, damage, cost, charge or expense, and from all liability therefrom. If a judgment shall be recovered against either of the parties hereto on account of any liability which the other party under the provisions of this agreement should bear, and shall satisfy in whole or in part such judgment so recovered, then such last mentioned party shall, on demand, promptly repay any money which the other party may have paid on account of such liability, together with the costs, fees, and other expenses incurred in defending such suit, or a proportionate share of such judgment, costs, fees and expenses, if such liability is to be divided between them.

Judgments, costs of suits, etc.

Notice of suits.

Neither party hereto shall be concluded by any judgment or decree at law or in equity against the other party hereto unless it had reasonable notice from such party requiring it to appear in the suit in which such judgment or decree was rendered, and make defense thereto for its own account, or jointly

Death and
injury claims.

with the party against which said judgment or decree was rendered. If such notice shall have been given, and the party receiving the same shall have failed to appear and make defense, it shall be concluded by the judgment in such suit.

SECTION 9. The Grays Harbor Company may make settlement of claims for death or injuries to persons, and for loss of or damage to property for which the parties hereto are jointly liable hereunder, except that in case the Milwaukee Company shall give notice in writing to the Grays Harbor Company of objection to such settlement by such Grays Harbor Company of any claim or class of claims, then said Grays Harbor Company shall not voluntarily pay or settle any such claims so objected to at a cost in excess of five hundred (\$500) dollars for each claim paid or settled without first obtaining the written consent of the Milwaukee Company. Upon making a voluntary settlement as aforesaid, the Grays Harbor Company shall procure from the claimant a release to the Milwaukee Company from liability on account of such claims.

ARTICLE VII.

Arbitration.

Any and all questions which shall or may arise touching this Agreement or the construction or performance of any provision thereof, or concerning the reasonableness or fairness of the rules, and regulations promulgated by the Grays Harbor Company regulating the movement of engines, trains and cars on said Joint Line or concerning the business to be carried on under the provisions hereof in any respect, upon which the parties cannot agree, shall be submitted to the decision of three disinterested persons to be chosen as follows:

Arbitrators,
how chosen.

The Grays Harbor Company shall select one and the Milwaukee Company shall select one and the two thus chosen shall select the third, and the persons thus chosen, after a full hearing given to both parties and full examination of the matter in dispute shall determine the same in writing, and the decision of the majority of the three persons thus chosen shall be final. If either party shall neglect or refuse to appoint an arbitrator on its own part, then ten days after receiving written notice from the other of its appointment of an arbitrator on its part, the arbitrator so appointed by the party giving such notice may select a disinterested person to act as an arbitrator for and on account of the party so notified and refusing or neglecting to appoint an arbitrator on its part, and the two thus chosen shall select a third. If the two chosen in either of the methods above provided shall be unable to agree upon a third arbitrator, or shall fail to agree upon a third arbitrator, and such inability shall continue for a period of fifteen days then and in that event the parties hereto shall and may notify the then presiding Judge of the United States District Court sitting at Seattle, Washington, of such fact, and he shall and may appoint said third arbitrator. The decision and award of the arbitrators as herein provided, or any two of them,

Decision of
arbitrators.

Failure of
arbitrator to act.

shall be binding and conclusive upon the parties hereto with respect to the matters so submitted to and decided by said arbitrators.

+ If any arbitrator appointed by either of the parties hereto shall neglect or fail to act, notice of such failure shall be served upon the party appointing such arbitrator by the other party, and in case such party shall fail to appoint another arbitrator, or shall fail to cause the arbitrator first appointed to act, and such failure shall continue for a period of ten (10) days, then the arbitrator appointed by the other party may select a disinterested person to act as an arbitrator for and on account of the other party, and the two thus chosen shall select a third, and the decision and award of such arbitrators, or any two of them shall be binding and conclusive upon said parties with respect to the matter so submitted and decided by said arbitrators.

The award and decision of the arbitrators under the provision hereof shall be served by them, or someone for them upon the parties within fifteen days after the time when such arbitrators shall make their award. X

(It is further mutually agreed that any difference which may arise as to the construction of or the transaction of any business under this agreement by the parties hereto, or as to the reasonableness or fairness of any of the rules and regulations promulgated by the Grays Harbor Company regulating the movement of trains upon the Joint Line or the joint use of the facilities thereon shall not interrupt the transaction of such business nor the operation of trains, but all such business and operation of trains shall continue to be transacted in the manner in which the same shall have been transacted prior to the arising of such difference until the matter of difference shall have been fully determined by the arbitrators as aforesaid, and thereupon such payments or restoration shall be made by the respective parties to the other as may be required by the decision of said arbitrators.)

In case any item or items of expense embraced in any statement rendered by either party to the other shall be contested and submitted to arbitration under the terms hereof and an award shall be made by said arbitrators requiring payment thereof or any part thereof, or in case any failure to comply with any other covenant or agreement in this contract is alleged by either party against the other, and the same is submitted to arbitration as herein provided and decided by said board of arbitration then the losing party shall pay the amount of such award or comply with the terms and requirements thereof, and if it fails so to do and such failure shall continue for a period of thirty (30) days after the service of the award, then and in that event the prevailing party shall have the right to terminate this agreement according to the terms and provisions thereof for and on account of such failure and default.

ARTICLE VIII.

Notices.

All notices which are herein provided to be given by either party to the other may be signed by the president, vice-president, general manager or general superintendent of the party giving the notice and delivered to any such officer of the other party.

ARTICLE IX.

Rights of each party.

All engines, trains and cars operated by either party hereto shall be regarded for all purposes of this agreement as its engines, trains and cars. Any other Company or Companies owned or controlled by either of the parties hereto, whether such ownership or control is by title, lease or stock ownership may operate its engines, trains and cars over and use said Joint Line and such engines, trains and cars shall be regarded for the purposes of this agreement as the engines, trains and cars of the party hereto so owning or controlling such other company.

Admission of other lines.

Either party hereto shall also have the right at any time to grant to one or more railroad companies, not so owned or controlled, the use of said Joint Line, or any part thereof, for railroad purposes, in common with the parties hereto, Provided such admission of any such railroad company or companies to said Joint Line, or any part thereof, shall not materially hinder or obstruct the parties hereto in the fair and reasonable use of the said Joint Line as herein contemplated, and provided, further, that each new company so admitted to the use of the Joint Line, shall pay, as fixed annual rental for the use of the Joint Line, a sum not less than one and one-half (1½%) per cent upon the entire cost of acquiring, constructing and building said Joint Line, and any interest included in such cost as ascertained between the parties hereto, and that the share of the expense of taxes, maintenance, repairs and operation of the said Joint Line to be paid by each railroad company so admitted to the use of said Joint Line shall not be less than its proportionate part thereof, based upon car mileage. The payment of such annual rental, and of the share of such expenses, shall be made monthly to the Grays Harbor Company. One-half of such annual rental shall be repaid monthly by the Grays Harbor Company to the Milwaukee Company, and the share of expenses so paid by such other railroad company shall be applied toward the expense of operating, maintaining and repairing said Joint Line.

Rental, etc.

Additional tracks, etc.

In the event that additional tracks, improvements or facilities are added to the Joint Line after the admission of such other railroad company, the cost thereof shall be added to the value of the said Joint Line, and thereafter the fixed annual rental to be paid by such other railroad company shall be based upon such increased cost.

Covenants binding
on successors, etc.

Execution.

ARTICLE X.

The covenants and agreements herein contained shall inure to and bind the parties hereto, their successors, assigns and lessees for the time being in possession of and operating said Joint Line, and the rights of each of the parties herein secured shall be deemed rights appurtenant to and running with its railroad.

IN WITNESS WHEREOF, each party hereto has caused this instrument to be executed in duplicate originals by its proper officers, and its corporate seal to be hereunto affixed by its Secretary or Assistant Secretary, the day and year first above written.

GRAYS HARBOR AND PUGET SOUND RAILWAY
COMPANY,

By J. B. Bridges, Vice President.

Attest:

GEORGE C. TEAL, Secretary.

(SEAL)

CHICAGO, MILWAUKEE & PUGET SOUND
RAILWAY COMPANY,

By H. R. Williams, President.

Attest:

E. W. COOK, Secretary.

(SEAL)

Form Approved: W. H. Bogle, H. H. Field.

Description Correct: H. F. Baldwin, E. J. Pearson.

STATE OF WASHINGTON, }
COUNTY OF CHEHALIS. } ss.

Acknowledgment.

On this 1st day of February, A. D. 1909, before me personally appeared J. B. Bridges and George C. Teal, to me known to be the Vice President and Secretary, respectively, of the Grays Harbor and Puget Sound Railway Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

L. H. FAULKNER,
*Notary Public in and for the State of Washington,
County of Chehalis, residing at Aberdeen therein.*

(Seal)

STATE OF WASHINGTON, }
COUNTY OF KING. } ss.

Acknowledgment.

On this 5th day of February, A. D. 1909, before me personally appeared H. R. Williams and E. W. Cook, to me known to be the President and Secretary, respectively, of the Chicago, Milwaukee and Puget Sound Railway Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

F. M. BARKWILL,
(SEAL) *Notary Public in and for the State of Washington,
County of King, residing at Seattle therein.*