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Passenger Terminal Agreement

Between

Oregon-Washington Railroad & Navigation Company

and

Chicago, Milwaukee & Puget Sound Railway Company.

*Advised by Mr Adams
May 6-16 that
this agreement had
been extended
to May 15, 1921
by giving notice as
required by article
9.*

Date _____

Parties

THIS INDENTURE, Made the 12th day of May, 1911, by and between the OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a corporation organized and existing under the laws of the State of Oregon, hereinafter called the "OREGON COMPANY," party of the first part, and the CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Washington, hereinafter called the "MILWAUKEE COMPANY," party of the second part.
WITNESSETH:

ARTICLE I.

Consideration

Term

Rights Granted
Common Use

Properties
Covered

Office Space
Not Included

Connection

Use Limited to
Passenger, Mail
Express Business

Fixed Rental for
Real Estate

Rental on Buildings
and Improvements

In consideration of the rentals and other sums to be paid by the MILWAUKEE COMPANY to the OREGON COMPANY, as hereinafter provided, and of the covenants and agreements of the MILWAUKEE COMPANY hereinafter set forth, and upon the condition of due payment of such rents and other sums, and of the faithful performance of said covenants and agreements, the OREGON COMPANY hereby grants and leases to the MILWAUKEE COMPANY for the term of five (5) years from the date when this contract becomes effective, as hereafter provided, the right, upon the terms and conditions and subject to the limitations hereinafter set forth, to use in common with said OREGON COMPANY, and with any other Railroad Company or Companies which may hereafter be let into the use thereof by said OREGON COMPANY, the passenger station and yards of the OREGON COMPANY in the City of Seattle, now being constructed, and the two main tracks of said OREGON COMPANY from Argo to a connection with said passenger station yards, and the coach yards alongside said tracks and connected or to be connected therewith, together with the telephone and telegraph facilities, side tracks, turnouts, and all other improvements, betterments and facilities appertaining thereto, whether now existing or hereafter constructed, but not including use of office space in said station building for general offices, and also the right to the MILWAUKEE COMPANY to connect its main track or tracks with the said two main tracks of the OREGON COMPANY at a point at or near Argo, the location and construction of such connection to be subject to the supervision and approval of the Chief Engineer of the OREGON COMPANY. Said station, yards, tracks and facilities are hereinafter called "TERMINAL FACILITIES" and are to be used by said MILWAUKEE COMPANY for the operation of its passenger trains, cars, and engines thereon, and the transaction of its passenger, mail and express business therein, and for no other purpose. Said yards and tracks are shown upon a plat hereto attached, marked Exhibit "A."

ARTICLE II.

SECTION 1. In consideration of the foregoing grants the MILWAUKEE COMPANY agrees to pay to the OREGON COMPANY at the times and in the manner hereinafter provided during the term of this grant as fixed rental for the use of such Terminal Facilities, as follows:

(a) For each consecutive year of said term, (1) The sum of ninety-three thousand five hundred forty-six and 60-100 Dollars (\$93,546.60) as fixed rental for the real estate included in said Terminal Facilities and shown upon said Exhibit "A" hereto, and, (2) a further sum equal to two and one-half per cent per annum upon the cost of the buildings, tracks, sheds, station, equipment, yard equipment, telegraph and telephone lines and all other improvements and facilities.

Credit of
Rental from
Other Companies

Salaries, Wages
Part of Construction
Cost

Rentals Payable

Examination of
Books of Account
Etc.

Taxes and
Assessments

Apportionment
See Subsequent
Paragraph

When Payable

Operating
Expenses

Insurance Premiums
And Salaries
Included

Wheelage Basis

Apportionment

ties that may be constructed and provided by said OREGON COMPANY to complete said Terminal Facilities, including the cost of the retaining walls and of the bridges on Seattle Boulevard, Fourth Avenue and Jackson Street, and other expenditures upon streets and public ways imposed upon said OREGON COMPANY by the terms of its Franchise Ordinance covering the use of the property embraced herein, or necessary to the proper development and use thereof; and also of all additions and betterments that may be added thereto as hereinafter provided. In the event the OREGON COMPANY admits any other railroad Company or Companies to the use of said "TERMINAL FACILITIES" during the term hereby created, then and thereafter a just portion of rental accruing from admitting another tenant shall be credited upon the sum payable by said MILWAUKEE COMPANY under this clause (A).

The salaries and wages of officers and employes of the OREGON COMPANY engaged in constructing and providing such improvements, facilities and betterments, and also engaged upon other work, shall be apportioned upon a fair and equitable basis.

Such payments by the MILWAUKEE COMPANY under this clause (A) shall be made as follows:

Within thirty (30) days after the rendition of the bills therefor, upon the expiration of such calendar month during said term, the MILWAUKEE COMPANY shall pay the OREGON COMPANY a sum equal to one-twelfth (1-12) of the annual rentals above named.

The books of account, pay rolls, invoices, contracts, vouchers and other documents relating to or evidencing expenditures by said OREGON COMPANY in the construction of said Terminal Facilities shall at all reasonable times be accessible to said MILWAUKEE COMPANY for examination.

(b) The MILWAUKEE COMPANY shall also pay to the OREGON COMPANY from time to time a proportion of all taxes, assessments and governmental charges which during such term shall accrue upon or in respect to said Terminal Facilities. The proportion of all such taxes, assessments and governmental charges to be paid by said MILWAUKEE COMPANY shall be determined by the number of engines and cars of the MILWAUKEE COMPANY which shall run into and out of the said Terminal Facilities, as hereinafter provided.

So long as said Terminal Facilities shall not be taxed or assessed separately, or shall be taxed or assessed together with or as part of the entire railroad of the OREGON COMPANY, or in connection with any other property of the OREGON COMPANY, it is understood and agreed that the apportionment of such taxes, assessments and other governmental charges upon the Terminal Facilities shall be determined between the said OREGON COMPANY and the said MILWAUKEE COMPANY upon an equitable and just basis, all conditions then existing being given due consideration, and in the event they are unable to agree upon the share of such taxes and assessments to be apportioned upon and paid by said Terminal Facilities, then that question shall be submitted to arbitration, as hereinafter provided.

Each sum payable under this subdivision (b) for taxes, assessments, or governmental charges, shall be payable by the MILWAUKEE COMPANY within thirty days after such taxes, assessments or governmental charges have been paid, and the OREGON COMPANY, paying the same shall have caused a written statement thereof to be furnished to the MILWAUKEE COMPANY.

(c) The MILWAUKEE COMPANY shall also pay to the OREGON COMPANY each calendar month of said term a proportion of the costs and expenses of maintaining, repairing and operating the said Terminal Facilities, during such month, including insurance premiums and expenses paid during such term for insurance on said buildings and structures, if any. Such costs and expenses shall include the salaries and wages paid all officers and employes engaged in the operation, maintenance and repair of said Terminal Facilities, including accountants. The proportion of such expenses for maintaining, repairing and operating said Terminal Facilities to be paid by said MILWAUKEE COMPANY shall be determined by the number of engines and cars of the MILWAUKEE COMPANY which shall run into and out of said Terminal Facilities as hereinafter provided.

All such operating expenses incurred on said Terminal Facilities in connection with some other portion of the railroad of said OREGON COMPANY shall be apportioned between said Terminal Facilities and the other portion of such road upon a fair and equitable basis. In the event of the inability of the parties to agree with respect to any one

or more of the items of such expenditures, such difference shall be referred to arbitration as hereinafter provided.

The sums payable by the MILWAUKEE COMPANY under this subdivision (c) shall be payable monthly within thirty days after a bill therefor shall have been rendered to the MILWAUKEE COMPANY by the OREGON COMPANY, and every such bill and every such payment shall be subject to correction for errors and omissions; and for the purpose of enabling the MILWAUKEE COMPANY to verify such bills, the OREGON COMPANY shall give, upon its request, reasonable information as to the charges and expenses embraced in any such bill, and shall permit the MILWAUKEE COMPANY to examine the books, accounts and vouchers relating thereto and to take copies thereof.

The proportion of the expenses for taxes, assessments and governmental charges, and for maintenance, repair and operation, to be paid by the MILWAUKEE COMPANY under clauses (b) and (c) of this ARTICLE II, shall be determined by the number of engines and cars of the MILWAUKEE COMPANY which shall run into and out of said Terminal Facilities,—that is to say, the sum of money to be paid by the MILWAUKEE COMPANY for each calendar month under said clauses (b) and (c) shall bear the same ratio to the total amounts disbursed by the OREGON COMPANY during such calendar month for and on account of such taxes, assessments and governmental charges, and for maintenance, repair and operation of the Terminal Facilities as the number of the MILWAUKEE COMPANY'S engines and cars run into and out of said Terminal Facilities shall bear to the total number of engines and cars run into and out of the said Terminal Facilities during such month.

In making the computations of engines and cars under clauses (b) and (c) of this Article II, engines and cars shall be counted on entering said Terminal Facilities, and shall again be counted on departing therefrom. Engines and cars shall not be counted on leaving the station grounds for the purpose of going to yards, storage tracks, or engine house, or on entering the station grounds from such yards, storage tracks or engine houses for the purpose of starting from the Terminal Facilities on an outbound trip; nor shall switch engines engaged in switching cars, nor engines, or cars in work trains engaged in repair work upon such Terminal Facilities be counted.

An engine shall be rated as two cars.

The OREGON COMPANY for all internal movements of cars on said Terminal Facilities, shall furnish switching engines and move and handle all cars without preference or discrimination. The cost and expense of such switching, including a fair rental for the switching engine, shall be apportioned on the basis of cars handled by the switching engines.

The OREGON COMPANY will upon request of the MILWAUKEE COMPANY, and upon fair and reasonable terms, provide for and take charge of the cleaning and icing of the cars and dining cars of the MILWAUKEE COMPANY, and of the minor repairs necessary thereon, so far as it reasonably can do so with the facilities on hand; but it shall not be required to provide any extra or special facilities therefor.

The connections and cross-overs incident thereto, which the MILWAUKEE COMPANY is authorized to make between its main track or tracks and the two main tracks of the OREGON COMPANY at or near Argo shall be provided by the MILWAUKEE COMPANY at its own cost and expense of construction, maintenance and operation, and used by it exclusively. In the event the OREGON COMPANY makes changes or re-adjustments of its tracks at Argo during the term hereof which require the removal of the connections and cross-overs previously installed by the MILWAUKEE COMPANY and the construction of new connections with the tracks of the OREGON COMPANY as changed or re-adjusted, the entire cost and expense of such removals and of the re-construction of such connections and of the cross-overs incident thereto shall be borne by the MILWAUKEE COMPANY. The expense of watchmen or other protection for said connections shall also be borne by the MILWAUKEE COMPANY. In the event an interlocking or other safety device is installed at Argo during the term hereby created, the MILWAUKEE COMPANY shall, at its own expense, extend such device to said connections and cross-overs, and shall bear such proportion of the expense of maintenance and operation of such device as the said connections and cross-overs bear to the whole number of connections and cross-overs protected thereby. Upon the ex-

When Payable

Verification and
Correction of Bills

Apportionment of
Taxes, Etc.

Engines and Cars—
How Counted

Switch Engines
Not Counted

Engine Equals
Two Cars

Switching Done by
Oregon Company

Switching Charges
Apportioned

Cleaning, Icing and
Repairing Cars

Expense of
Connections, Etc.,
To Be Borne by
Milwaukee Company

Expense of
Watchmen or
Interlocking Plant

Extension of
Tracks

piration of the term hereby created, the MILWAUKEE COMPANY shall remove said connections and cross-overs, and disconnect said safety device, leaving the tracks and property of the OREGON COMPANY unimpaired thereby.

In case the OREGON COMPANY shall at any time extend its railroad to any point north of said Terminal Facilities, and through freight trains are operated over said Terminal Facilities a fair and equitable proportion of maintenance and operation expenses will be charged therefor.

ARTICLE III.

Valuation of
Terminal Buildings
And Improvements

It is mutually covenanted and agreed by and between the parties hereto as follows:

SECTION 1. That on or before May 15, 1911, or as soon thereafter as may be practicable, the value of the Terminal Facilities exclusive of the real estate, shall be computed upon the basis of cost to the OREGON COMPANY plus interest at the rate of five per cent per annum from the date of each expenditure to May 15, 1911, and the value so ascertained shall be certified by the Auditors of said OREGON COMPANY and of said MILWAUKEE COMPANY, and the amount so certified by them shall be deemed and taken to be the value of the Terminal Facilities exclusive of the real estate at that time, for the purpose of fixing the rental thereon as provided in subdivision (2) of clause (a) of Section 1 of Article II hereof.

Value of Additional
Facilities to be
Added

SECTION 2. That when and as often as additional facilities become necessary (which shall be determined solely by the OREGON COMPANY), and are provided by said OREGON COMPANY, the value thereof shall be computed in the same manner, and the value thereof shall be added to the value of the improvements included in the Terminal Facilities, previously ascertained under Section One (1) of this Article, and the sum of the valuations shall thereafter be taken for all purposes of this agreement to be the value of such improvements upon the Terminal Facilities. Provided, however, that any such additional facilities provided by the OREGON COMPANY for its sole and exclusive use, and which are not used by said MILWAUKEE COMPANY, nor made necessary by the MILWAUKEE COMPANY'S use of the Terminal Facilities, shall not be considered as a part of said Terminal Facilities nor the cost thereof computed in ascertaining the value of the improvements upon which rentals are based. In the event the MILWAUKEE COMPANY desires to provide any facilities on said Terminal Facilities for its exclusive use, and the same can be provided without interference with the proper use of the Terminal Facilities by the OREGON COMPANY or the future development thereof by it, the MILWAUKEE COMPANY may provide such facilities at its own cost and expense of construction, maintenance and operation and enjoy the exclusive use thereof during said term; but said OREGON COMPANY shall direct the location of such facilities, and at the expiration of said term the MILWAUKEE COMPANY shall at its own expense remove such exclusive facilities, and restore the property to its original conditions, subject to the option of the OREGON COMPANY to purchase such exclusive facilities at the expiration of said term at a fair and reasonable price. Any expenditures required to be made by said OREGON COMPANY by municipal Ordinances or other legal authority, for or on account of its ownership or use of the property herein embraced, whether for viaducts, bridges, retaining walls, paving, or other improvements of public streets or ways, shall be considered betterments of said Terminal Facilities within the meaning of this agreement.

Exclusive Facilities
Of Either Company

Purchase of
Exclusive Facilities

Cost of Viaducts, Etc.
Considered
Betterments

Oregon Company
To Manage Terminals

Milwaukee Company
To Operate Own
Trains

SECTION 3. That the said Terminal Facilities shall be under the exclusive management, control and direction of the OREGON COMPANY, and all employes engaged in joint service thereon shall be employed by it, and the movement of all engines, trains, and cars over and upon said Terminal Facilities, and the conduct of ticket offices, express offices, telegraph and telephone offices, yardmasters, switchmen, signalmen, towermen, and all other employes engaged in maintaining and operating the Terminal Facilities shall be under its direction and control, and all police regulations therefor shall be prescribed by it.

SECTION 4. The passenger trains of the MILWAUKEE COMPANY while moving in service upon said Terminal Facilities, shall be drawn by their own motive power, and manned by their own enginemen and trainmen, but under the general direction and supervision of the proper employes in charge of the Terminal Facilities; but the switching of all trains and cars thereon shall be by said ORE-

Regulations Without
Discrimination

GON COMPANY. All time cards, rules, regulations or orders issued by the OREGON COMPANY in relation to the operation of the Terminal Facilities shall be without discrimination in favor of or against either party.

Rules Must Be
Obeyed

The MILWAUKEE COMPANY agrees to comply and to cause its employes to comply with such rules and regulations so issued by the OREGON COMPANY.

Discharge of
Unsatisfactory
Employees

SECTION 5. That the OREGON COMPANY will, during the term hereof, upon the written request of the MILWAUKEE COMPANY, upon reasonable cause stated, remove from service on said Terminal Facilities, any employe who may not be satisfactory to said MILWAUKEE COMPANY, and the MILWAUKEE COMPANY, upon the written request of the OREGON COMPANY for reasonable cause stated, will remove from service on its engines, trains and cars operated on or within said Terminal Facilities any employe who may not be satisfactory to the said OREGON COMPANY.

Participation in
Station Revenues

SECTION 6. All revenues derived by the OREGON COMPANY from the rental of space in said station buildings (including a fair rental for any space occupied by it for purposes not connected with the maintenance, repair or operation of the Terminal Facilities) shall inure to the benefit of both parties hereto, and be applied and credited upon the expenses of operating the Terminal Facilities.

Bonded Employees

SECTION 7. All employes in service upon the Terminal Facilities who handle moneys of the parties hereto shall be required to keep such books and accounts, make such reports and settlements, and give such surety bonds, as each company shall required respecting its business, and to conform to the regulations of each company as to its business.

Manner and Place of
Payments

SECTION 8. All moneys payable by the MILWAUKEE COMPANY to the OREGON COMPANY under this agreement shall be paid at the office of the OREGON COMPANY in the City of Seattle, State of Washington, in lawful money of the United States.

Termination of
Rights by Breach

SECTION 9. If the MILWAUKEE COMPANY shall fail to comply with any of the covenants or conditions to be performed or complied with by it under this agreement, and such failure shall continue for a period of sixty days after written demand for performance or compliance shall have been made upon the MILWAUKEE COMPANY by the OREGON COMPANY, such demand being coupled with notice in writing that the OREGON COMPANY will terminate the term hereby granted on account of such continued failure of the MILWAUKEE COMPANY to perform or comply with such covenant or condition, then the term hereby created, and all rights of the MILWAUKEE COMPANY thereunder shall, at the option of the said OREGON COMPANY, immediately cease and terminate at the expiration of the sixty days, anything herein contained to the contrary notwithstanding; but any such termination shall not deprive either of the parties hereto of the right to enforce any liability of the other of the parties hereto that shall have accrued prior to such termination of the term.

Contested Statements

PROVIDED, however, that if the MILWAUKEE COMPANY, within thirty days, after the receipt of any statement rendered to it hereunder by said OREGON COMPANY, shall give notice in writing to said OREGON COMPANY that it contests the correctness of any specified item or items in such statement, and shall pay to the OREGON COMPANY all sums due to it other than the item or items so specified, and also shall pay on account of such specified item or items such part thereof as shall not be contested, then as long as the MILWAUKEE COMPANY in good faith shall contest the correctness of such item or items, or parts of items specified in such notice, the term hereunder and the rights of the MILWAUKEE COMPANY shall not be terminated by reason of its failure to pay or allow in full such item or items so contested.

Contested
Obligations

And provided, further, that if the MILWAUKEE COMPANY shall contest or deny the claim of failure of compliance or performance on its part, in respect to any covenant or agreement upon its part to be performed or complied with, except its covenant to pay, and shall within thirty days after receiving notice from the OREGON COMPANY of any demand for compliance or performance with any such covenant or agreement, give notice in writing to said OREGON COMPANY that it contests or denies the failure or default alleged against it, or contests or denies the construction made by the OREGON COMPANY of any such covenant or agreement, then so long as the MILWAUKEE COMPANY in good faith shall contest or deny

any such failure or default alleged, the term hereunder and the rights of the MILWAUKEE COMPANY shall not be terminated by reason of any such contested failure or default or dispute or controversy over the proper construction of such covenant or agreement.

All questions arising under this section as to the correctness of such contested items or failures or constructions shall be submitted to arbitration as hereinafter provided.

SECTION 10. That the OREGON COMPANY shall keep an accurate account of all receipts and disbursements pertaining to the Terminal Facilities, and of all engines and cars passing into or out of the same, and shall monthly render to the MILWAUKEE COMPANY an accurate statement thereof. The books and accounts of the OREGON COMPANY relating to such Terminal Facilities shall at all reasonable times be open to inspection of the proper officers and agents of the MILWAUKEE COMPANY and such agents shall, if they desire, be privileged to make copies thereof.

SECTION 11. That if the OREGON COMPANY shall determine that any interlocking plant or plants, block signal system, or other safety devices are necessary for the expeditious and safe operation of engines, trains and cars upon or over the Terminal Facilities, or whenever the construction of any such safety devices shall be ordered by any lawful authority, the same shall be constructed and installed by the OREGON COMPANY, and the cost thereof shall be added to the value of said Terminal Facilities as additions and betterments thereto. The expense of renewing, repairing, maintaining and operating such devices thereafter shall be charged to the Operating Account of the Terminal Facilities, and paid by the parties hereto as hereinabove provided for other operating expenses.

ARTICLE IV.

SECTION 1. The OREGON COMPANY shall be bound to use only reasonable and customary skill and diligence in maintaining and repairing the said Terminal Facilities. The MILWAUKEE COMPANY shall not by reason of the inadequacy of or any defect in the Terminal Facilities or any part thereof, or by reason of the failure or neglect of the OREGON COMPANY to repair any such defect, have or make against the OREGON COMPANY any claim or demand for any loss, damage or injury whatsoever arising from such defect, neglect or failure; but in case the OREGON COMPANY shall fail, to repair any such defects as aforesaid within a reasonable time after the MILWAUKEE COMPANY shall have given to the OREGON 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 OREGON COMPANY shall and will pay the cost thereof, which cost shall thereupon be apportioned and paid by the parties hereto, as hereinbefore provided.

SECTION 2. Except enginemen and trainmen, all employes of the OREGON COMPANY in any wise engaged in maintaining, repairing or operating said Terminal Facilities, 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 negligence of employes. Switching crews engaged in switching on said Terminal Facilities, and enginemen and trainmen of any work train engaged in maintaining or repairing said Terminal Facilities shall likewise be deemed joint employes.

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.

SECTION 4. If, by any 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 of this Article IV, 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 said Terminal Facilities 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 said Terminal Facilities, 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

Adjustment by
Arbitration

Open Books of
Account

Interlocking Plants

Reasonable Diligence
Only in Management
Of Terminal's

Joint Employees

Each Liable
For Acts of Sole
Employees

Each Liable for
Accidents Upon
Own Cars

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, damage, expense and liability resulting therefrom, and save harmless and indemnify the other party from and against the same.

Liability Account
Acts of Sole
Employees

SECTION 5. The parties hereto hereby expressly covenant and agree that in case of a collision between their respective engines, cars or trains, while on the said Terminal Facilities, the party whose employes are alone at fault shall be solely responsible for and shall pay and settle 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.

Liability Where
Cause of Accident
Uncertain

Certain Damages
Part of Cost of
Maintenance

SECTION 6. All liability for damage to persons or property occurring in connection with the maintenance or operation of the said Terminal Facilities from any cause, except as in this Article otherwise provided, and all damage to the Terminal Facilities and to switch engines engaged in switching thereon, and their crews while so engaged, from any act of a joint employe, shall be borne as cost and expense of maintaining and operating the Terminal Facilities for the month in which such accident occurred.

Removal of Wrecks

SECTION 7. In case any of the MILWAUKEE COMPANY'S trains shall be wrecked while running on the said Terminal Facilities, if the same is not promptly removed by the MILWAUKEE COMPANY, such wreck may be picked up and removed by the OREGON COMPANY, and the cost of such service shall, except as herein otherwise expressly provided, be borne and paid by the MILWAUKEE COMPANY.

Indemnity

SECTION 8. Each of the parties hereto, who under the terms or 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 to the other party any money which it may have paid on account of such liability, together with the cost, 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.

Notice to Defend
Litigation

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 other 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 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.

Settlement of
Damage Claims

SECTION 9. The OREGON 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 OREGON COMPANY of objection to such settlement by such OREGON COMPANY of any claim or class of claims, then said OREGON COMPANY shall not voluntarily pay or settle any such claims so objected to at a cost in excess of Five Hundred Dollars (\$500.00) for each claim paid or settled without first obtaining the written consent of the MILWAUKEE COMPANY.

Releases

Upon making a voluntary settlement as aforesaid, the OREGON COMPANY shall procure from the claimant a release to the MILWAUKEE COMPANY from liability on account of such claim.

ARTICLE V.

Use of Terminals by
Other Companies

SECTION 1. The OREGON COMPANY shall at all times have the right to grant to any other railroad company or companies the use of said Terminal Facilities, or any part thereof, in common with itself and the MILWAUKEE COMPANY, provided, such admission of any other road, company or companies to said Terminal Facilities, or any part thereof, shall not materially hinder or obstruct the MILWAU-

KEE COMPANY in a fair and reasonable use of the rights granted hereunder.

Insurance

SECTION 2. The OREGON COMPANY shall have absolute discretion as to the effecting of insurance on such Terminal Facilities, or any part thereof, and as to the amount of such insurance, and the entire cost and expense thereof shall be regarded as a part of the maintenance expense of said Terminal Facilities, and borne and paid by the parties hereto as hereinbefore prescribed, provided, it is understood and agreed that any money received on account of such insurance shall be applied to the repair, restoration or rebuilding of said Terminal Facilities.

Rebuilding or Repairing Station

ARTICLE VI.

SECTION 1. If at any time during the continuance of said term the station building on said Terminal Facilities herein described shall be damaged or destroyed, said OREGON COMPANY agrees to immediately repair and restore or rebuild the same of adequate size and capacity, and such built or reconstructed building and facilities shall immediately thereupon come under and be subject to all of the terms and conditions of this agreement, and be subject to the rights and uses of the MILWAUKEE COMPANY for the remainder of said term as fully to all intents and purposes as the said Terminal Facilities are subject under this agreement. Such work of repairing and restoring or rebuilding shall be begun as soon as it reasonably may after such damage or destruction and shall be prosecuted continuously until completion. Pending such restoration or rebuilding, such temporary arrangements as may be practicable shall be made by the OREGON COMPANY for the accommodation of both Companies, and there shall be no deduction in the rentals to be paid by the MILWAUKEE COMPANY by reason of such damage or destruction of said station building. The cost to the OREGON COMPANY of providing such temporary arrangements shall be treated and paid as an operating expense under clause (c) of Section One (1) of Article II of this agreement.

Temporary Quarters

Insurance Money to Be Used for Repairs

SECTION 2. The OREGON COMPANY shall apply to the cost and expenses of such repairing, restoration or rebuilding, any insurance money received from the buildings destroyed or damaged, and the excess of such cost and expenses of repairing, restoring or rebuilding over the insurance money applicable thereto shall be added to the value of the improvements upon the Terminal Facilities, with respect to which said MILWAUKEE COMPANY shall thereafter pay rental equivalent to interest at the rate of two and one-half per cent per annum, as provided in subdivision Two (2) of clause (a) of Section 1 of Article II hereof.

Submission of Questions to Arbitration

ARTICLE VII.

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, regulations or orders promulgated by the OREGON COMPANY regulating the movements of engines, trains and cars thereon, 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 decisions of three disinterested persons to be chosen as follows:

Selection of Arbitrators

The OREGON COMPANY shall select one and the MILWAUKEE COMPANY shall select one, and the two thus chosen shall select the third, and the three 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 or 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 so chosen in either of the methods above provided shall be unable to agree upon a third arbitrator, and such inability or failure to agree shall continue for a period of fifteen days, then and in that event either or both of the parties hereto shall and may notify the United States District Judge for the Northern Division of the Western District of Washington, of such fact, and he shall and may appoint a third arbitrator. The decision and award of the arbitrators appointed as herein provided, or any two of them, shall be binding and con-

Arbitrators' Award Final

clusive upon the parties thereto with respect to the matters so submitted to and decided by said arbitrators.

Failure of
Arbitrator to Act

If any arbitrators 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 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 matters so submitted and decided by said arbitrators.

Copy of Award

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

Regulation of
Parties Pending
Dispute

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, regulations and orders promulgated by the OREGON COMPANY regulating the movement of trains and conduct of business upon the Terminal Facilities, shall not interrupt the transaction of such business, nor the operation of said trains, but all such business and operation of trains shall continue to be transacted in the same 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 so appointed 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 or award of said arbitrators.

Termination of
Agreement if
Award Not Complied
With

In case any item or items of expense embraced in any statement rendered by the OREGON COMPANY to the MILWAUKEE COMPANY shall be contested and submitted to arbitration under the terms hereof, and an award shall be made by said arbitrators requiring the MILWAUKEE COMPANY to pay such item or items, or any part thereof, or in case any failure to comply with any other covenant or agreement in this contract is alleged by the OREGON COMPANY against the MILWAUKEE COMPANY, and the same is submitted to arbitration as herein provided and decided by said BOARD OF ARBITRATION against the said MILWAUKEE COMPANY, then the said MILWAUKEE COMPANY shall pay the amount of such award, or comply with the provisions thereof, and if it fails to make such payment or comply with the provisions of such award and such failure shall continue for a period of twenty days after the service of the award upon said MILWAUKEE COMPANY, then and in that event the OREGON COMPANY shall have the right to terminate this agreement, according to the terms and provisions thereof, for and on account of such failure and default on the part of said MILWAUKEE COMPANY.

ARTICLE VIII.

Agreement Binds
Successors and
Ass'gns

The covenants and agreements herein contained shall bind the parties hereto, and shall inure in favor of and be binding upon the successors, assigns and lessees of the OREGON COMPANY for the time being in possession of and operating said Terminal Facilities, and of the MILWAUKEE COMPANY for the time being in possession of any enjoying the rights hereunder granted. The rights acquired by the MILWAUKEE COMPANY under this agreement shall be deemed rights appurtenant to and running with its railroad, and it may transfer or mortgage such rights, as a whole, in connection with and as a part of its said railroad, but not otherwise.

ARTICLE IX.

Renewal of
Agreement

One Year's
Notice

If the said MILWAUKEE COMPANY shall be desirous of taking a renewal lease of the said Terminal Facilities for the further term of five (5) years from the expiration of the term hereby granted, and shall give twelve (12) months' previous notice in writing to the OREGON COMPANY prior to the expiration of the term herein granted, of such desire, and shall pay all sums herein required by it to be paid and shall observe and perform all the agreements and covenants herein contained, by it to be observed and performed up to the expiration of the term hereby granted; and if the Terminal Facilities at the time of the expiration of the term herein granted shall be sufficient,

in the judgment of the OREGON COMPANY, to accommodate the business of the MILWAUKEE COMPANY, as well as the business of the OREGON COMPANY and of such other companies as it may have let into the use of said Terminal Facilities, then the OREGON COMPANY, its successors and assigns, at the request of said MILWAUKEE COMPANY, will renew this agreement for the further term of five (5) years, at the same rentals and under and subject to the same covenants, provisions and agreements, as are herein contained, other than this present covenant for renewal: *PROVIDED*, however, that said OREGON COMPANY shall in no event be required to enlarge said Terminal Facilities, or add other and additional facilities in order to accommodate the business of all users of said property during such renewed term.

ARTICLE X.

This contract shall become effective May 15, 1911.

IN WITNESS WHEREOF, The parties hereto have caused this instrument to be executed in duplicate by their respective officers thereunto duly authorized, and their respective corporate seals to be hereto affixed the day and year first above written.

OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY,

By.....
President.

Attest:

.....
Assistant Secretary.

CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY
COMPANY,

By.....
President.

Attest:

.....
Secretary.

Description Correct

Form Approved