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April 7, 2015

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April 7, 2015
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Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20323

Re: Docket No. FD 35902
Elizabethtown Industrial Railroad LLC
Operation Exemption
Our File No. 01468-34514

Dear Ms. Brown:

Attached hereto is the Lease and Operating Agreement between Rail Holdings, Inc. and the Elizabethtown Industrial Railroad LLC. This agreement was entered into on March 20, 2015 and was not available when the Operation Exemption above was filed.

Sincerely,

CAPEHART & SCATCHARD, P.A.

John K. Fiorilla

JKF:vw
3634831

LEASE AND OPERATING AGREEMENT
RAIL HOLDINGS, INC,
AND
ELIZABETHTOWN INDUSTRIAL RAILWAY, LLC
CONCERNING
CONEWAGO INDUSTRIAL PARK RAIL SPUR
FOR THE PERIOD
MARCH 20, 2015 to MARCH 20, 2025

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This LEASE AND OPERATING AGREEMENT (this "Agreement") is made as of the 20th day of MARCH 2015, by and between RAIL HOLDINGS, INC (RHI), a Pennsylvania corporation with its principal place of business in New Freedom, Pennsylvania and ELIZABETHTOWN INDUSTRIAL RAILROAD, LLC.,(EZR) a Pennsylvania corporation with its principal place of business in Elizabethtown, Pennsylvania.

WHEREAS, Rail Holdings, Inc. is a non-carrier which owns the railroad property known as the Conewago Industrial Park Rail Spur, referred to herein as the "Rail Line");

WHEREAS, EZR is a short line railroad whose principals have experience operating freight rail services;

WHEREAS, the RHI and EZR share the following goals:

- To develop and maintain a long-term relationship,
- To maintain good relations with all operators of freight and passenger rail service in the Commonwealth of Pennsylvania
- To work together to improve freight rail service over the Rail Line and to improve throughput at the interchange with the connecting freight rail carrier, Norfolk Southern.

WHEREAS, the current operator of the Rail Line, Norfolk Southern, has expressed no formal objections to EZR assuming common carrier rail service over the Rail Line;

WHEREAS, EZR wishes to lease the Rail Line from RHI and to conduct common carrier operations over the Rail Line;

WHEREAS, RHI wishes to lease the Rail Line to EZR, to provide for uninterrupted common carrier operations by EZR over the Rail Lines; and

WHEREAS, RHI and EZR have agreed on the terms and conditions pursuant to which EZR will lease, use, manage, maintain and operate over the Rail Lines.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound, RHI and EZR agree as follows:

SECTION 1

DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

FCC means the Federal Communications Commission.

FRA means the Federal Railroad Administration.

Leased Premises means the Rail Line and includes all railbed, structures, fixtures, trackage, and all other appurtenances whatsoever situated upon the Rail Lines.

Non-track Structure means any structure whose function does not support track, track bed or train movements thereon.

NS means Norfolk Southern Railway Company, a Virginia Corporation

OTM means other track materials.

Rail Line means the Conewago Industrial Park Rail Spur

STB means the United States Surface Transportation Board.

Track Structure means ties, ballast, rail and associated OTM.

SECTION 2

LEASED PREMISES

2.1 Leased Premises. Subject to the terms and conditions contained in this Agreement, RHI hereby leases the Leased Premises to EZR, and EZR hereby leases the Leased Premises from RHI, for the term of this Agreement.

2.2 Existing Encumbrances. The Leased Premises are subject to all public and private crossings, leases, licenses, easements, encroachments, and other encumbrances that exist as of the date of this Agreement.

2.3 Condition of Leased Premises. RHI makes no representations or warranties about the condition, quality, or quantity of the Leased Premises or their fitness for a particular use, and, by its execution of this Agreement, the EZR represents that it has made its own independent investigation thereof and that EZR is not relying upon any statement made or other information presented by RHI or any material provided by RHI.

2.4 Line Records. To the extent that it is able, RHI shall make available for inspection by EZR such records as it may have in its possession that pertain to the Rail Line, including (to the extent they are in RHI's possession) valuation plans and other property maps, track and signal maps, and structural, bridge and other drawings and plans. EZR hereby acknowledges that such materials may be outdated and may contain errors and inconsistencies and that RHI makes no representation or warranty regarding the accuracy or usefulness of any such materials.

2.5 Existing Agreements. So long as this Agreement is in effect, EZR shall manage all crossing agreements, leases, licenses and easements that are in effect as of the date of this Agreement and that affect or otherwise pertain to the Leased Premises. EZR shall be entitled to retain all rent and fee payments made by the holders of these crossing agreements, leases, licenses and easements while this Agreement is in effect.

2.6 New Agreements. So long as this Agreement is in effect, RHI shall not enter into any new crossing agreement, lease, license or easement that affects or otherwise pertains to the Leased Premises without the prior written consent of EZR, which consent shall not be unreasonably withheld. EZR shall manage all such new crossing agreements, leases, licenses and easements so long as this Agreement is in effect, and EZR shall be entitled to retain all rent and fee payments made by the holders of these crossing agreements, leases, licenses and easements while this Agreement is in effect.

SECTION 3

RENT

No rent shall be due for the first five years of this Agreement. The parties shall agree on the rent due during the remainder of the term of this Agreement pursuant to the mechanism set forth in section 8 of this Agreement.

SECTION 4

OPERATION OF FREIGHT RAIL SERVICE

4.1 Common Carrier Freight Rail Service. Subject to the terms and conditions contained in this Agreement, EZR shall provide common carrier freight rail service over the Rail Lines.

4.2 Exclusivity of Freight Operating Rights. So long as this Agreement is in effect,

- all common carrier freight rail service on the Rail Line shall be under the exclusive control and operating jurisdiction of EZR,
- EZR shall have the exclusive right to operate freight rail service over the Rail Line, and
- RHI shall not grant freight operating rights over the Rail Line (or segments thereof) to any other party.

Except as otherwise provided in this Agreement, all locomotives, trains, cars and other equipment, and all persons entering upon the Rail Line, shall be subject to the reasonable rules, timetables, regulations, and orders of the Railroad in effect from time to time.

4.3 Conduct of Freight Rail Service.

(a) EZR shall provide, at the Railroad's expense, through ownership, lease, contract, or otherwise, all of the necessary locomotives, other equipment and personnel to provide freight rail service over the Rail Line. The risk of loss regarding all such locomotives and equipment shall be borne by EZR.

(b) EZR shall operate the freight rail service in a manner consistent with customers' reasonable needs, prudent management practices of the industry, and the obligations of a common carrier freight rail operator.

(c) EZR shall be responsible for negotiating charges and setting rates for its freight rail service.

(d) The Railroad's freight rail operations shall be conducted using NORAC operating rules.

(e) The Railroad shall ensure that all operations on the Rail Lines are adequately crewed in compliance with FRA regulations.

(f) As a part of its common carrier freight rail operations EZR shall transport and place rail cars consistent with the obligations of a common carrier freight rail operator and shall collect from the appropriate parties all operating revenues due.

4.4 Embargoes. EZR shall promptly notify RHI in writing of any embargo imposed upon traffic to, from, or via any point or station or stations on the Rail Line. Such notification shall specify the effective date of the embargo and the reason for the embargo. EZR shall not impose any embargo which is inconsistent with its obligations under this Agreement or with its obligations as a common carrier.

SECTION 5

REVENUE REPORTING AND REVENUE SHARING

5.1 Revenue Reporting. So long as this Agreement is in effect, no later than thirty (30) days after the end of each calendar quarter EZR shall report to RHI its gross revenues for its freight rail service operations over the Rail Line for each month of that calendar quarter.

5.2 Revenue Sharing. All revenues from the EZR's freight rail service operations over the Rail Line shall accrue to EZR. During the first five years of this Agreement, RHI shall not be entitled to any share of these revenues. The parties shall agree on revenue sharing for the remainder of the term of this Agreement pursuant to the mechanism set forth in section 8 of this Agreement.

SECTION 6

GENERAL MAINTENANCE AND CAPITAL PROJECTS

6.1 General Maintenance Responsibility.

(a) Except as provided in subsection 6.1(b) of this Agreement, EZR shall provide, at EZR's expense (but subject to reimbursement by RHI to the extent provided in section 7 of this Agreement, all labor, materials and equipment needed to maintain the Rail Line in accordance with the performance standards set forth in section 6.3 of this Agreement.

6.2 Risk of Loss.

(a) The risk of loss regarding all equipment provided by EZR to maintain the Rail Line shall be borne by EZR.

(b) The risk of loss regarding all materials provided by EZR to maintain the Rail Line shall be borne by EZR; provided, however, that when such materials are installed upon the Rail Line they shall, upon installation, become the property of RHI, and, except as otherwise provided in sections 6.8 and 13.1 of this Agreement, the risk of loss regarding such installed materials thereafter shall be borne by RHI.

6.3 Maintenance Performance Standards.

(a) The parties agree the Rail Line will be maintained to a minimum of FRA Class I track standards. This appended table shall be amended by the parties at the conclusion of a capital or maintenance project to reflect any changes resulting from that project.

(b) EZR shall maintain the track segments so identified to the FRA track standards so identified and shall further maintain the Rail Line so that the Rail Line is in a condition at all times to permit the safe operation of freight rail service in compliance with all applicable federal, state, and local laws and administrative regulations.

(c) The Railroad's maintenance responsibilities further shall include:

- Rail repair and replacement
- Tie replacement
- Surfacing
- Ditching and drainage structures
- Brush cutting
- Herbicide spraying and weed control
- Grade crossing maintenance
- Crossing signal/warning device maintenance
- Clearing wrecks/derailments (including prompt and complete removal of all damaged rolling stock and restoration of rail line to its previous condition)
- Track inspections
- Snow, ice and debris removal
- Compliance with all maintenance and repair obligations contained in crossing and other agreements that affect or otherwise pertain to the Rail Line, including (without limitation) plowing, salting and sanding
- Maintenance of the Leased Premises in a generally neat condition

(d) EZR shall comply with all federal, state and local statutes, regulations and ordinances while performing maintenance activities, and shall be responsible for securing and maintaining, at EZR's expense, all necessary permits for these activities.

6.4 Inspections.

(a) The Railroad shall inspect the Rail Lines as required by FRA regulations.

(b) Inspections shall include the inspection of the track structure, roadbed, and equipment within the Rail Line (including all public, private and temporary crossings.

(c) Upon written request from RHI, EZR shall inform RHI of the time and place of any such inspection and shall permit qualified representatives of RHI to accompany the EZR's inspectors.

(d) EZR shall prepare written reports of each inspection. Each inspection report shall specify the date of the inspection, the name of the inspector, the milepost limits of the inspection, the nature and location of all FRA track safety standards defects, any corrective action taken by EZR and the date such corrective action was completed.

(e) EZR shall maintain all original completed and signed inspection reports at EZR's office and shall make these inspection reports available to RHI for review within twenty-four (24) hours after a request by RHI to review these reports.

(f) All defects noted in the Railroad's inspection reports shall be repaired within the time required by FRA track safety standards.

6.5 Crossings. EZR's maintenance responsibilities at public highway grade crossings includes all protective devices and extends to eighteen inches (18") outside of the outermost rail on each side of the Rail Line. Nothing in this Agreement shall relieve EZR of any of its responsibilities under applicable federal and state laws and regulations relating to the operation of trains over and through highway grade crossings.

6.6 Non-Track Structures. All non-track structures within the Leased Premises are leased to EZR as is, where is. EZR shall be responsible for all maintenance to all such non-track structures used and/or occupied by EZR.

6.7 Derailments.

- (a) In the event of a derailment, EZR shall clear the tracks as soon as possible.
- (b) The cost of repairing damage to the Leased Premises caused by a derailment shall be borne by EZR when the cause of the derailment is determined by an FRA-certified inspector to EZR's negligence.
- (c) The cost of repairing damage to the Leased Premises caused by a derailment shall be borne by RHI when the cause of the derailment is determined by an FRA-certified inspector to be the RHI's negligence.
- (d) When the cause of the derailment is determined by an FRA-certified inspector to be the negligence of both parties, and in instances when neither party's negligence caused the derailment, the cost of materials needed to repair damage to the Leased Premises shall be borne by RHI, and the cost of labor and equipment needed to repair damage to the Leased Premises shall be borne by EZR; provided, however, that RHI and EZR each may seek to recover these costs (as well as any additional damages that they may be entitled to recover) from any third party whose negligence caused the derailment.

6.8 Damage By Third Parties. In the event the Leased Premises are damaged as the result of the actions of one or more third parties (including, without limitation, the unauthorized operation of all-terrain vehicles on the Leased Premises), the parties shall confer on the restoration of the Leased Premises and the appropriate division of the costs of such restoration to the extent such costs are not covered by the insurance specified in section 13.2 of this Agreement.

6.9 Capital Projects Conducted By Third Parties.

(a) The parties acknowledge that RHI from time to time may wish to contract with one or more third parties to conduct capital projects on the Rail Line. Any such capital project shall be subject to EZR's prior approval and shall be subject to EZR's inspection during construction and approval upon completion, neither of which approvals shall be unreasonably withheld.

(b) RHI shall reimburse EZR for any costs incurred by EZR (for flaggers, etc.) in connection with any such capital project.

(c) EZR shall have absolute control over the time periods during which segments of the Rail Line are taken out of service in connection with any such capital project.

SECTION 7

RE-NEGOTIATION OF CERTAIN TERMS

Prior to the expiration of the first five years of this Agreement, the parties shall negotiate new, mutually acceptable terms for the remainder of the term of this Agreement pertaining to rent and revenue sharing and shall amend sections 3 and 5.2 of this Agreement accordingly. The parties agree to a framework in which EZR shall pay a nominal rent for the Leased Premises in the form of ten percent (10%) of EZR net revenues if and when EZR's net annual revenues exceed \$ 500,000.00.

SECTION 8

FORCE MAJEURE

In the event EZR shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of an act of God, war, terrorism, or any other reason beyond the EZR's control, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. In any such event, EZR shall immediately notify RHI and confer with RHI to arrange for an assessment of any damage to the Rail Line and of any impact on service and future operations.

SECTION 9

ADDITIONAL OBLIGATIONS OF EZR

9.1 Compliance with Laws.

(a) The EZR is fully cognizant, and shall remain fully cognizant, of all federal, state and local statutes, regulations and ordinances that apply to this Agreement and to the services provided and activities undertaken pursuant to this Agreement, and EZR shall at all times fully comply with these statutes, regulations and ordinances.

(b) The EZR shall promptly notify RHI of the receipt of any communication indicating that the EZR has not complied with any such statute, regulation or ordinance and shall promptly provide RHI with a copy of any such communication.

9.2 Financial Condition.

- (a) EZR shall immediately notify RHI of any default by EZR under any financing arrangement to which the EZR is a party.
- (b) EZR shall immediately notify RHI of any substantial claim asserted by a third party against EZR. For purposes of this subsection, a “substantial claim” is a claim asserted against EZR that, if taken to judgment, could adversely affect EZR’s ability to carry out its obligations under this Agreement.
- (c) In the event EZR is served with legal process naming EZR as a defendant or third-party defendant in an action arising out of or related to EZR’s activities in the Commonwealth of Pennsylvania, EZR shall immediately notify RHI and shall provide a copy of such legal process to RHI.
- (d) EZR shall immediately notify RHI of any injunctions entered against EZR and shall provide a copy of any such injunction to RHI.
- (e) EZR shall immediately notify RHI in the event a third party is granted an attachment, judgment (whether interlocutory or final) or execution against EZR and shall provide a copy of any such attachment, judgment or execution to RHI.
- (f) EZR shall immediately notify RHI in the event EZR is named as a party in any federal, state or local administrative or regulatory investigation or proceeding.
- (g) EZR shall immediately notify the RHI of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against EZR.
- (h) EZR under all circumstances shall take any and all steps necessary to protect the Leased Premises and any other property from EZR’s creditors.

9.3 Alteration of Business Organization. So long as this Agreement is in effect, EZR shall not liquidate, dissolve, merge, consolidate or change the form of its business organization without the prior written consent of RHI, which consent shall not be unreasonably withheld.

9.4 Utilities. EZR shall be responsible for securing all utility services necessary for the operation of the Rail Line, and EZR shall pay for these utility services..

9.5 Taxes.

(a) EZR shall pay when due all taxes, assessments, fees and other charges, if any, arising out of or relating to its operations over the Rail Line.

(b) In the event that taxes are validly assessed by any taxing jurisdiction authorized to assess and/or collect ad valorem taxes against the Leased Premises or any portion of the Leased Premises, RHI shall pay such taxes when due.

(c) Any such payment shall not constitute a waiver of any right of EZR to contest, in good faith, any such tax, assessment, fee, or other charge.

9.6 EZR's Obligations and Liabilities. EZR shall pay and discharge when due all of its obligations and liabilities, except when an obligation or liability is being contested in good faith.

9.7 Liens. EZR shall keep the Leased Premises and any other property of RHI free and clear of all mechanic's, material men's and other liens and encumbrances arising out of or relating to the EZR's use and occupation of the Leased Premises and the services provided and activities undertaken pursuant to this Agreement.

9.8 Good Standing. So long as this Agreement is in effect, EZR shall remain in good standing in its state of incorporation and shall remain qualified to do business in the Commonwealth of Pennsylvania.

9.9 Subcontractors.

(a) EZR shall not use a subcontractor to perform any aspect of the services and activities that are the subject of this Agreement without RHI's prior written approval.

(b) The Railroad shall require each subcontractor to agree to the indemnification obligations set forth in section 12.1 of this Agreement (with the subcontractor substituted for the Railroad); provided, however, that this shall supplement and shall not reduce or replace the Railroad's indemnification obligations under section 12.1 of this Agreement.

(c) In addition to the insurance requirements stated in section 12.2 of this Agreement that pertain to subcontractors, the Railroad shall require each subcontractor to procure and maintain railroad protective liability insurance, with limits of liability as agreed to in writing by the Department. Indemnitees (as that term is defined in section 12.1 of this Agreement) shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees.

9.10 Other Third Parties.

(a) EZR shall require every other person entering upon or performing work on the Leased Premises under any agreement or license from EZR, including all persons using portions of the Rail Line, to agree to the indemnification obligations set forth in section 12.1 of this Agreement (with that person substituted for the Railroad); provided,

however, that this shall supplement and shall not reduce or replace the Railroad's indemnification obligations under section 12.1 of this Agreement.

(b) EZR also shall require every such person to procure and maintain such insurance as may be appropriate under the circumstances, including railroad protective liability insurance and contractual liability insurance covering such person's indemnification obligations.

9.11 Notice of Encroachments. EZR shall promptly notify RHI of any encroachments it observes on the Leased Premises and shall consult with RHI regarding any responsive measures to be taken.

9.12 Equal Employment Opportunity. So long as this Agreement is in effect:

(a) EZR shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, or physical or mental disability, unless related to a bona fide occupational qualification. EZR shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or physical or mental disability. Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. EZR agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

(b) EZR shall, in all solicitations or advertising for employees placed by or on behalf of EZR relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, or physical or mental disability.

(c) The Railroad shall comply with all aspects of the Americans With Disabilities Act in employment and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.

Section 10

ADDITIONAL OBLIGATIONS OF RHI

10.1 Compliance with Laws.

(a) RHI is fully cognizant, and shall remain fully cognizant, of all federal, state and local statutes, regulations and ordinances that apply to this Agreement and to the services provided and activities undertaken pursuant to this Agreement, and RHI shall at all times fully comply with these statutes, regulations and ordinances.

(b) RHI shall promptly notify EZR of the receipt of any communication indicating that the RHI has not complied with any such statute, regulation or ordinance and shall promptly provide EZR with a copy of any such communication.

10.2 Financial Condition.

(a) RHI shall immediately notify EZR of any default by RHI under any financing arrangement to which the RHI is a party.

(b) RHI shall immediately notify EZR of any substantial claim asserted by a third party against RHI. For purposes of this subsection, a "substantial claim" is a claim asserted against RHI that, if taken to judgment, could adversely affect RHI's ability to carry out its obligations under this Agreement.

(c) In the event RHI is served with legal process naming RHI as a defendant or third-party defendant in an action arising out of or related to RHI's activities in the Commonwealth of Pennsylvania, RHI shall immediately notify EZR and shall provide a copy of such legal process to EZR.

(d) RHI shall immediately notify EZR of any injunctions entered against RHI and shall provide a copy of any such injunction to EZR.

(e) RHI shall immediately notify EZR in the event a third party is granted an attachment, judgment (whether interlocutory or final) or execution against RHI and shall provide a copy of any such attachment, judgment or execution to EZR.

(f) RHI shall immediately notify EZR in the event RHI is named as a party in any federal, state or local administrative or regulatory investigation or proceeding.

(g) RHI shall immediately notify the EZR of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against RHI.

10.3 Alteration of Business Organization. So long as this Agreement is in effect, RHI shall not liquidate, dissolve, merge, consolidate or change the form of its business organization without the prior written consent of EZR, which consent shall not be unreasonably withheld.

10.4 Taxes.

(a) In the event that taxes are validly assessed by any taxing jurisdiction authorized to assess and/or collect ad valorem taxes against the Leased Premises or any portion of the Leased Premises, RHI shall pay such taxes when due.

(b) Any such payment shall not constitute a waiver of any right of RHI to contest, in good faith, any such tax, assessment, fee, or other charge.

10.5 RHI's Obligations and Liabilities. RHI shall pay and discharge when due all of its obligations and liabilities, except when an obligation or liability is being contested in good faith.

10.6 Liens. RHI shall keep the Leased Premises and any other property of RHI free and clear of all mechanic's, material men's and other liens and encumbrances arising out of or relating to RHI' ownership of the Leased Premises and the services provided and activities undertaken pursuant to this Agreement.

10.7 Good Standing. So long as this Agreement is in effect, RHI shall remain in good standing in its state of incorporation and shall remain qualified to do business in the Commonwealth of Pennsylvania.

SECTION 11

ACCOUNTING, RECORDS AND REPORTS

11.1 Accounting System.

(a) EZR shall maintain an accounting system in accordance with STB regulations and generally accepted accounting principles consistently applied.

(b) This accounting system will, at a minimum, account for capital investment, revenues, expenditures, gross profit, net profit, net railway operating income, and

retained earnings in accordance with generally accepted accounting principles. It also will include records of all traffic and revenue for the Railroad's operations over the Rail Lines and for the sources and uses of cash.

(c) Within ninety (90) days after the end of each calendar year, EZR shall provide to RHI copies of audited financial statements for that year for the Railroad as a whole.

11.2 Access to Records; Preservation of Records.

(a) EZR shall preserve all data, records and accounts relating to this Agreement and the services provided and activities undertaken pursuant to this Agreement until three years after the termination of this Agreement.

(b) EZR shall permit RHI's authorized representatives to inspect and audit all data, records and accounts relating to this Agreement and the services provided and activities undertaken pursuant to this Agreement until three years after the termination of this Agreement.

(c) For records that relate to (i) disputes or appeals of disputes, and (ii) litigation or the settlement of claims arising out of this Agreement or the services provided or activities undertaken pursuant to this Agreement, the periods of retention, access and examination described above shall continue until such disputes, appeals or litigation have been finally resolved.

11.3 Other Reports.

(a) EZR shall provide contemporaneous copies to RHI of all reports filed by EZR with any federal or state agency (including, without limitation, the FRA and the STB) pertaining to the Leased Premises or arising out of or relating to the services provided or activities undertaken pursuant to this Agreement.

SECTION 12

INDEMNIFICATION AND INSURANCE

12.1 Indemnification.

(a) For purposes of this section 12.1 and section 12.2 of this Agreement, "Indemnitees" means RHI, its employees and assigns.

(b) For purposes of this section 12.1, "Claims" means any and all claims, actions, proceedings, costs or expenses (including, without limitation, court costs, attorneys' fees and expenses, settlements, judgments, fines, penalties or otherwise) arising directly or indirectly out of or in connection with:

(i) the maintenance of the Rail Line (including, without limitation, materials, products or equipment supplied and/or activities performed) by EZR or by EZR's agents, employees, subcontractors or any other person acting for or with the permission of the EZR (including any failure to maintain the Rail Line in accordance with this Agreement);

(ii) the operation of freight rail service on the Rail Line (including, without limitation, materials, products or equipment supplied and/or activities performed) by EZR or by EZR's agents, employees, subcontractors or any other person acting for or with the permission of EZR (including any failure to operate freight rail service on the Rail Line in accordance with this Agreement);

(iii) EZR's use or occupation of the Leased Premises; or

(iv) any other service provided or activity undertaken pursuant to this Agreement.

(c) EZR shall defend, indemnify and hold Indemnitees harmless, from and against any and all Claims (except for Claims resulting from the negligent or intentional acts of an Indemnitee), including (without limitation) Claims for:

- (i) injury or death to any person whatsoever without limitation.
- (ii) damage to or loss (including loss of use) of any property whatsoever and goods being transported by rail);
- (iii) pollution or impairment to the environment (including investigation and clean-up costs); and
- (iv) breach of, or errors, acts or omissions relating to, the EZR's obligations under this Agreement.

(d) EZR specifically assumes all liability for all Claims asserted against Indemnitees by the EZR's employees (except for Claims resulting from the negligent or intentional acts of an Indemnitee), and EZR specifically waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by Pennsylvania workers' compensation law, by the Federal Employers' Liability Act, or by any other state or federal law.

(e) The obligations imposed by this section 12.1 shall not be limited by the existence of, or by any limitations or exclusions contained in, any insurance policy.

(f) In case suit shall at any time be brought against an Indemnitee asserting a liability from and against which EZR is obligated to defend, indemnify and hold that Indemnitee harmless, the EZR shall, at its own cost and expense and without any cost or expense whatever to that Indemnitee, defend such suit using counsel acceptable to that Indemnitee and indemnify and save that Indemnitee harmless against all costs and

expenses thereof and promptly pay or cause to be paid any final judgment recovered against that Indemnitee; provided, however, that each Indemnitee shall promptly upon the bringing of any such suit against that Indemnitee give notice thereof to the EZR.

(g) The obligations imposed by this section 12.1 shall survive the termination of this Agreement.

(h) EZR shall not be liable under this section 12.1 for any environmental condition on the Leased Premises that existed prior to the date of this Agreement.

12.2 Insurance.

(a) EZR shall procure and maintain at all times during the term of this Agreement, at the EZR's expense, the insurance specified in subsection (c) of this section 12.2. EZR shall provide RHI with a certificate of insurance giving evidence of the required coverage prior to commencing any service or activity hereunder and annually thereafter while this Agreement is in effect. EZR shall require all subcontractors to carry the insurance specified in subsection (c) of this section 12.2 and to provide RHI with a certificate of insurance giving evidence of the required coverage prior to commencing any service or activity hereunder and annually thereafter while this Agreement is in effect. All insurance shall provide for no less than ten days' prior written notice by certified mail (return receipt requested) to be given to RHI in the event coverage is substantially changed, cancelled or non-renewed. EZR shall, on request, permit RHI to examine original insurance policies.

(b) EZR shall procure and maintain:

(i) FELA Insurance, covering EZR's FELA liability.

(ii) Commercial General Liability Insurance, covering liability imposed on the Railroad with respect to all EZR's services and activities and all obligations assumed by EZR under this Agreement (including, without limitation, the indemnification obligations set forth in section 12.1 of this Agreement). Independent Contractors Liability, Personal Injury/Advertising Liability, Contractual Liability and Products/Completed Operations Liability coverages are to be included, and all Railroad and Explosion/Collapse/Underground (X-C-U) exclusions are to be deleted. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees. Coverage under this policy shall have limits of liability not less than five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) per annum for bodily injury (including disease or death), personal injury, and property damage (including loss of use) liability.

(iii) Pollution Liability Insurance, covering liability imposed on EZR arising out of the pollution or impairment of the environment, including investigation and clean-up costs, caused by EZR's services or activities under this Agreement. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees. Coverage under this policy shall have limits of liability not less than the commercial general liability insurance required above. EZR may, at its option, cover this pollution liability exposure in the commercial general liability insurance required above, and if this is done, the certificate of insurance submitted must clearly indicate that these coverages are combined.

(iv) Property Insurance, covering all property owned or used by EZR in connection with this Agreement (including, without limitation, the Leased Premises and covering all property owned by third parties in the custody or control of the EZR, with limits adequate to protect the full replacement value of such property. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees.

(v) Automobile Liability Insurance, issued to and covering the EZR's liability arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates in the jurisdiction in which they are to be operated. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees. Coverage under this policy shall have limits of liability not less than one million dollars (\$1,000,000) combined single limit for bodily injury (including disease or death), personal injury, and property damage (including loss of use) liability.

(vii) Additional insurance, as may be usual and customary with respect to the services provided and activities undertaken pursuant to this Agreement, and as may be required under any applicable federal or state statute or regulation, any applicable local ordinance, or any applicable federal or state administrative or judicial order.

(c) The term "Indemnitees" when used in this section 12.2 has the meaning stated in subsection 12.1(a) of this Agreement.

(d) RHI shall procure and maintain:

(i) Workers' Compensation Insurance, to the extent (if any) required by Pennsylvania law.

SECTION 13

REPRESENTATIONS AND WARRANTIES

13.1 RHI. RHI represents and warrants that;

(a) it is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania and is qualified to do business in the Commonwealth of Pennsylvania.

(b) It has full power and authority to enter into this Agreement and, subject to necessary governmental authority, to carry out its obligations hereunder.

(c) Its execution and performance of this Agreement do not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body.

(d) It is solvent and is financially capable of carrying out its obligations hereunder.

13.2 EZR. EZR represents and warrants that:

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania and is qualified to do business in the Commonwealth of Pennsylvania.

- (b) It has full power and authority to enter into this Agreement and, subject to necessary governmental authority, to carry out its obligations hereunder.
- (c) Its execution and performance of this Agreement do not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body.
- (d) It is solvent and is financially capable of carrying out its obligations hereunder.

SECTION 14

DEFAULT

14.1 Events of Default by EZR. EZR shall be in default under this Agreement:

- (a) If, subject to Section 9 of this Agreement, EZR fails to provide service consistent with the obligations of a common carrier of rail freight for any consecutive ten-day period..
- (b) If EZR fails to obtain RHI's written consent when such written consent is required by this Agreement.
- (c) If EZR fails to give any notice required under this Agreement.
- (d) If the STB or the FRA terminate the Railroad's right to operate over the Rail Line or any segment of the Rail Line.
- (e) If EZR fails to discharge within ninety (90) days of filing any liens arising out of or related to the EZR's use, occupation, or maintenance of the Leased Premises, when any such lien is uncontested by EZR.
- (f) If EZR fails to discharge within ninety (90) days of filing any judgments arising out of or related to the EZR's use, occupation, or maintenance of the Leased Premises.

- (g) If EZR becomes insolvent.
- (h) If any assignment is made of the EZR's property for the benefit of creditors.
- (i) If EZR is the subject of a voluntary or involuntary bankruptcy or insolvency proceeding.
- (j) If EZR transfers any interest in this Agreement in violation of the terms of this Agreement.
- (k) If any interest in EZR is transferred in violation of the terms of this Agreement.
- (l) If any event occurs that is identified elsewhere in this Agreement as an event of default.
- (m) If any representation or warranty made by EZR in this Agreement is determined by RHI to have been false when made.
- (n) If, subject to Section 9 of this Agreement, EZR neglects or fails to perform or observe any covenant, term, provision, or condition on its part to be performed or observed hereunder, and such neglect or failure continues for a period of forty-five (45) days after written notice thereof by RHI.

14.2 Events of Default by RHI. RHI shall be in default under this Agreement:

- (a) If RHI fails to give any notice required under this Agreement.
- (b) If RHI fails to discharge within ninety (90) days of filing any liens arising out of or related to the RHI's ownership of the Leased Premises, when any such lien is uncontested by RHI.
- (c) If RHI fails to discharge within ninety (90) days of filing any judgments arising out of or related to the RHI's ownership of the Leased Premises.
- (d) If RHI becomes insolvent.

- (e) If any assignment is made of the RHI's property for the benefit of creditors.
- (f) If RHI is the subject of a voluntary or involuntary bankruptcy or insolvency proceeding.
- (g) If RHI transfers any interest in this Agreement in violation of the terms of this Agreement.
- (h) If any interest in RHI is transferred in violation of the terms of this Agreement.
- (i) If any event occurs that is identified elsewhere in this Agreement as an event of default.
- (j) If any representation or warranty made by RHI in this Agreement is determined by EZR to have been false when made.

14.3 Remedies.

(a) In the event of a default by EZR under this Agreement, RHI may terminate this Agreement and (whether or not this Agreement is terminated) shall be entitled to any and all legal and equitable remedies that may be available. RHI may, at its option, contract with another qualified party to assume common carrier freight operations over the Rail Line.

(b) In the event of a default by RHI under this Agreement, EZR may, at its option, terminate this Agreement and (whether or not this Agreement is terminated) shall be entitled to any and all legal and equitable remedies that may be available.

14.4 Injunctive Relief; Specific Performance.

(a) If EZR breaches its duty to operate common carrier freight rail service pursuant to this Agreement, the parties agree that RHI, in addition to any damages or other monetary relief to which the RHI may be entitled, shall be entitled to injunctive relief and

an order of specific performance requiring EZR to operate common carrier freight rail service pursuant to this Agreement.

(b) If RHI breaches its duties pursuant to this Agreement, the parties agree that EZR, in addition to any damages or other monetary relief to which EZR may be entitled, shall be entitled to injunctive relief and an order of specific performance allowing EZR to operate common carrier freight rail service.

SECTION 15

TERMINATION

15.1 Events of Termination. This Agreement shall terminate upon the occurrence of any of the following events:

(a) The expiration of this Agreement.

(b) Notice of termination from RHI to EZR based upon the occurrence, in the judgment of the Department, of an event of default as defined in Section 14.1 or 14.2 of this Agreement.

(c) Either party is prevented from honoring its respective commitments under this Agreement as a result of legislative, judicial, or other governmental or non-governmental action, including the denial (but not the revocation or non-renewal) of approvals for the EZRs operations as contemplated hereunder, where such action is the result of circumstances not within the control of the terminating party and the terminating party provides thirty (30) days' notice of such termination to the other party.

15.2 Effect of Termination. Upon the termination of this Agreement:

(a) RHI shall be entitled to possession of the Leased Premises and to ask the STB to end the right and duty of EZR to provide common carrier freight rail service hereunder.

(b) RHI shall have the right to terminate EZR's operations on the Rail Lines upon thirty (30) days' notice to EZR.

SECTION 16

TERM

16.1 Initial Term. The initial term of this Agreement shall begin at 12:01 A.M., Eastern Time, on March 01, 2015, and shall expire, unless previously terminated pursuant to section 16 of this Agreement, at 11:59 P.M., Eastern Time, on March 01, 2025.

16.2 First Extension. Either party may elect not to extend this Agreement upon the expiration of the initial term; provided, however, that any party electing not to extend this Agreement shall notify the other party in writing of its election not to extend this Agreement no later than December 01, 2024. In the absence of any such notice by either party, the term of this Agreement shall automatically be extended and shall expire, unless previously terminated pursuant to section 16 of this Agreement, at 11:59 P.M., Eastern Time, on March 01, 2030.

16.3 Second Extension. In the event the term of this Agreement is so extended, either party may elect not to further extend this Agreement upon the expiration of the first extension; provided, however, that any party electing not to further extend this Agreement shall notify the other party in writing of its election not to further extend this Agreement no later than December 01, 2029. In the absence of any such notice by

either party, this Agreement shall automatically be further extended and shall expire, unless previously terminated pursuant to section 16 of this Agreement, at 11:59 P.M., Eastern Time, on March 01, 2035..

SECTION 17

DISPUTE RESOLUTION

17.1 Dispute Resolution.

(a) For purposes of this section 17.1, "Dispute" means:

- (i) a dispute between RHI and EZR arising out of or relating to this Agreement;
- (ii) a dispute between the RHI and EZR arising out of or relating to any service provided or activity undertaken pursuant to this Agreement;
- (iii) a claim by the RHI against EZR or a claim by EZR against RHI arising out of or relating to this Agreement; or
- (iv) a claim by the RHI against EZR or a claim by EZR against RHI arising out of or relating to any service provided or activity undertaken pursuant to this Agreement.

(b) In the event of a Dispute, representatives of the parties shall meet to discuss and attempt to resolve the Dispute.

(c) In the event the Dispute remains unresolved, the parties agree and without thereby waiving any rights or defenses available to either party under Pennsylvania law, elect to submit the Dispute to binding arbitration in accordance with the following provisions:

- (i) Forum. The arbitration shall take place in Lancaster County, Pennsylvania.
- (ii) Law. The governing law for the arbitration shall be the law of the Commonwealth of Pennsylvania (without regard to conflicts-of-laws principles that would require the application of any other law).
- (iii) Selection. The parties agree to select a single arbitrator from a list of proposed candidates provided by each party. In the absence of such an agreement, within ten days after the initiation of an arbitration proceeding RHI shall select one arbitrator and EZR shall select one arbitrator, and those two arbitrators shall then select, within ten days, a third arbitrator.
- (iv) Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time.
- (v) Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work-product doctrine applies.
- (vi) Decision. The decision in writing of at least two of the three arbitrators shall be final and binding upon the parties. The arbitrators' decision shall provide a reasoned basis for the resolution of each Dispute and for any award.

(vii) Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto. The Department shall pay one-half of the fees and expenses of the American Arbitration Association and of the arbitrators, and the Railroad shall pay the other half of these fees and expenses.

(viii) Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in Pennsylvania; provided, however, that the arbitrators shall not have power to award damages in excess of actual compensatory damages. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction.

(d) In the event both parties do not agree to submit the Dispute to binding arbitration, the Dispute shall be brought in Court of Common Pleas, County of Lancaster, Pennsylvania. EZR irrevocably submits to the exclusive jurisdiction of such court, waives any objection it may now or hereafter have to venue or to convenience of forum, and agrees not to bring any Dispute in any other court. Either party may appeal from the decision in the Superior Court of Pennsylvania to the Supreme Court of Pennsylvania.

SECTION 18

ASSIGNMENT

18.1 RHI. RHI may not assign this Agreement and/or any of the RHI's rights or obligations under this Agreement at any time without the prior written consent of EZR

which shall not be unreasonably withheld. Any assignment without such prior written consent shall constitute an event of default under this Agreement and shall be of no legal force or effect.

18.2 EZR.

(a) EZR shall not assign this Agreement or any of the EZR's rights or obligations under this Agreement without the prior written consent of the RHI, which shall not be unreasonably withheld. Any assignment without such prior written consent shall constitute an event of default under this Agreement and shall be of no legal force or effect.

(b) For purposes of this Agreement, an assignment shall include:

- (i) the transfer and/or issuance of securities representing a controlling ownership interest in the EZR to persons not holding a controlling ownership interest in the EZR on the date of this Agreement;
- (ii) the merger, consolidation, or change of form of business organization of the EZR; and
- (iii) the transfer of this Agreement or of an interest in this Agreement in a liquidation, dissolution or insolvency proceeding or otherwise by operation of law.

SECTION 19

MISCELLANEOUS

19.1 Surface Transportation Board Approval; Other Licenses/Permits/Approvals.

(a) EZR shall, at the Railroad's expense, secure and maintain in full force and effect throughout the term of this Agreement all federal, state and local certificates, permits

and approvals necessary to allow it to operate common carrier freight rail service as contemplated under this Agreement, including (to the extent applicable and without limitation) STB, FCC and FRA approvals. EZR shall provide copies to RHI of all such certificates, permits and approvals and of all submissions made by EZR in connection therewith.

(b) EZR shall, at EZR's expense, procure and maintain all other federal, state and local licenses, permits and approvals needed to provide the services and undertake the activities that are the subject of this Agreement. EZR shall provide copies to RHI of all such licenses, permits and approvals and of all submissions made by EZR in connection therewith.

19.2 Inspections By RHI RHI shall have the right during the term of this Agreement to inspect the Leased Premises (or any part thereof) and the equipment (including rolling stock) and materials used by EZR in providing services and undertaking activities pursuant to this Agreement and to observe such services and activities as they are being conducted.

19.3 Relationship of Parties.

(a) In providing services and undertaking activities pursuant to this Agreement, EZR is acting as an independent contractor.

(b) EZR shall be responsible for (i) complying with all applicable state and federal labor and employment laws, including (without limitation) laws pertaining to workplace safety, and (ii) paying all wages, payroll taxes, workers compensation insurance premiums, Railroad Retirement contributions, and any other obligations with respect to EZR's employees.

19.4 Entire Agreement. This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.

19.5 Amendment. This Agreement may not be amended, supplemented or otherwise modified except by a written instrument executed by the parties.

19.6 Contact Personnel. EZR and RHI each shall designate appropriate individuals to be the single point of contact with respect to this Agreement and any issues raised or notices given under this Agreement.

19.7 Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be sent by a nationally-recognized overnight courier service (costs prepaid) or by certified mail, return receipt requested (postage prepaid) to the appropriate address designated below (or to such other address as a party may subsequently designate) and shall be deemed given upon either receipt or rejection by the addressee:

If to EZR:

Eric J. Bickleman
Director of Operations
45 S. Franklin St.
Dallastown, PA 17313

If to RHI

Robert Lowe
President
113 Penny Lane
New Freedom, PA 17349

19.8 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of RHI and RHI's successors and assigns and, subject to section 19 of this Agreement, shall be binding upon and inure to the benefit of EZR and EZR's successors and assigns.

19.9 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

19.10 Non-Waiver.

(a) No waiver of any term or condition contained in this Agreement shall be valid unless in writing and signed by the party to be charged with the waiver.

(b) No failure or delay to enforce any right or obligation hereunder shall be deemed a waiver of such right or obligation or of any other right or obligation hereunder.

(c) No waiver of any breach of any term or condition contained in this Agreement shall be valid unless in writing and signed by the party to be charged with the waiver, and no such waiver shall be deemed a waiver of any preceding or subsequent breach of the same or any other term or condition contained in this Agreement.

19.11 Governing Law; Interpretation; No Third-Party Beneficiaries.

(a) This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania (without regard to conflicts-of-laws principles that would require the application of any other law).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their duly authorized representatives as of the date and year first above written.

ELIZABETHTOWN INDUSTRIAL RAILROAD, LLC.

By: [Signature] FRANK LOWE
Attest Susan Lee Its President

RAIL HOLDINGS, INC.

By: [Signature] Kate Bickelmeier
Attest [Signature]

Director of Operations
Elizabethtown Industrial RR