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May 19, 2014
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May 19, 2014

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Ms. Cynthia T. Brown
Chief of Administration,
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423



RE: FD 35811, East Broad Top Connecting Railroad, LLC – Operation Exemption – East Broad Top Railroad Preservation Association

RE: FD 35823, East Broad Top Railroad Preservation Association – Acquisition and Operation Exemption – Kovalchick Salvage Corporation

Dear Ms. Brown:

On behalf of the East Broad Top Connecting Railroad, LLC, and the East Broad Top Railroad Preservation Association, applicants, I am writing in connection with the above-captioned proceedings.

On March 20, 2014, pursuant to 49 CFR§1150.31 I filed a copy of a verified notice of exemption in FD 35811, for East Broad Top Connecting Railroad, LLC (“EBTCR”) to operate over certain railroad trackage currently owned by the East Broad Top Railroad Preservation Association (“EBTRPA”). Subsequently, the Board’s staff requested that EBTCR submit a copy of the Operating Agreement entered into between EBTCR and EBTRPA. On March 27, 2014, the Board served a decision holding this proceeding in abeyance until the applicants furnished a copy of that agreement. I am attaching to this letter a copy of that Agreement and am also e-filing that agreement. I will e-file copies of signature

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Strasburger & Price, LLP

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pages of that Agreement as soon as they are executed. Please return this notice to the active docket for consideration.

In FD 35823, pursuant to 49 CFR§1150.31 I am filing an original and 10 copies of a notice of exemption for EBTRPA to acquire from Kovalchick Salvage Corporation (“KOV”) the rail properties that are the subject of the operation filing in FD 35811. As the enclosed notice explains in more detail, EBTRPA acquired those properties from KOV without realizing that Board approval was required for that transaction. Accordingly, the applicants are submitting the filing in FD 35823 to correct that deficiency. Once that exemption is effective, EBTRPA desires to consummate the transaction that is the subject of FD 35823: to commence operations over the subject trackage.

I am also tendering a copy of the filing in FD 35823 on a computer disk as well as a filing fee check in the amount of \$1900.

Please contact me if you have any questions about these matters.

Sincerely yours,



John D. Heffner

cc: Mr. Larry Salone

**OPERATING AGREEMENT
BETWEEN
EAST BROAD TOP CONNECTING RAILROAD AND
EAST BROAD TOP RAILROAD PRESERVATION ASSOCIATION**

THIS AGREEMENT, made this _____ day of _____, in the year 2014, between East Broad Top Connecting Railroad (hereafter “the Railroad”), a Pennsylvania limited liability company, having its principal offices at 1562 Treasure Lake, P.O. Box 585, Dubois, PA 15801, and East Broad Top Railroad Preservation Association (hereafter “the Association”), a Pennsylvania-based sec. 501(c)(3) entity also having its principal offices at 1562 Treasure Lake, P.O. Box 585, Dubois, PA 15801.

WHEREAS, The Association owns a line of railroad consisting of approximately 4.4 miles of track including the Mount Union Industrial Track (MUIT) between approximately Railroad Mile Post 0.2, being immediately west of the point of switch at Railroad Station 4085+96 at the junction with Norfolk Southern Railway Company at Mt. Union, PA and the end of track at Mile Post 1.4 at Railroad Station 4025+00 and the original East Broad Top Main Line from its connection with the MUIT at its Mile Post 1.1, MUIT Railroad Station 4038+39, being EBT Mile Post 1.5, EBT Railroad Station 77+57; and extending to EBT Mile Post 4.4 (all identified as “the Line”).

WHEREAS, the Railroad and the Association both desire for the Railroad to operate common carrier freight and excursion passenger rail service on the Line the Railroad and the Association desire to enter into an Operating Agreement for the provision of such service;

WHEREAS, the Association is willing to grant the Railroad an exclusive and unlimited right to access and operate as a common carrier over the Line in accordance with and subject to such terms and conditions as set forth in this Agreement;

WHEREAS, the Railroad has obtained an exemption from the formal operating authority requirements of 49 U.S.C. §10901 from the federal Surface Transportation Board (“STB”) to permit it to occupy and provide common carrier freight rail service over the Line as part of the general railroad system of transportation of the United States including service to the facilities of the Association and such other customers that may locate on the Line and also to provide excursion passenger service over the Line;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein the parties agree as follows:

1. USE OF THE PREMISES

The Association grants the Railroad the exclusive and unlimited right to access and operate over the Line as a common carrier to provide rail freight service and to provide excursion passenger service.

2. TERM

The term of this Agreement shall run for ten (10) years commencing on May 1, 2014, and terminating on April 30, 2024, unless terminated prior thereto or extended to a later date in accordance with the terms of this Agreement

3. COMPENSATION

The Railroad shall pay the Association an annual fee for access to and use of the Line including all structures and facilities thereon the sum of \$1.00. The Railroad shall pay this fee by sending payment to the address identified in the Section 22, Notice.

4. OPERATION OF RAILROAD

A. Rail Service

For the term of this Agreement the Association grants the Railroad the exclusive right to use the Line to provide local common carrier rail freight service and excursion passenger service as well as to use the subject property for storage and servicing of out of service rail cars or locomotives. The Association also grants the Railroad the exclusive right to store, move, and switch rail cars for the account of the Association. The Railroad shall provide locomotives, train crews,

and car supply (to the extent that Railroad's connecting class I railroad(s) do not provide equipment) as well as track and maintenance equipment. The Railroad may provide track and maintenance equipment directly or, subject to prior approval by the Association, through a contractor of its own choosing. The Railroad shall also maintain an office on or near the Premises with a resident general manager with authority to make day-to-day operating, maintenance, and marketing decisions. The Railroad will meet at periodic intervals with the Association's staff to discuss rail service issues.

The relationship of the Railroad to the Association will be that of an independent contractor. Nothing in this Agreement shall be construed as creating an agency relationship between the parties. No Railroad agent, employee, or salesman shall have the authority to obligate the Association by any verbal or written representation, terms, stipulations, or conditions and no agent, employee, or salesman of the Association shall have the authority to obligate the Railroad by any verbal or written representation, terms, stipulations, or conditions.

B. Railroad Rates and Charges

The Railroad will be entitled to receive a switching allowance or division from its connecting class I railroad(s) for any interline traffic. The Railroad will publish a schedule of charges for switching cars for the account of the Association or for any local revenue moves for customers on the Line that are not interchanged

with another carrier. The Railroad shall publish a tariff in the “Open and Prepay” reflecting all applicable common carrier rates and charges and shall distribute said tariff along with any rate circulars on “exempt commodities” to all on-line shippers and the Association and shall also publish a rate circular covering its charging for switching cars belonging to the Association. The Railroad may impose rate surcharges on common carrier or exempt traffic as permitted under STB regulations and case law.

C. Rehabilitation Funding

The Railroad shall, when and where applicable, provide assistance to the Association in identifying state and federal funding and grants for the rehabilitation and upgrading of railroad - highway grade crossing surfaces and crossing warning devices on the rail line; and for the rehabilitation of existing track and the construction of new track on the rail line. The Railroad shall also provide assistance to the Association in preparing and submitting the required documents to the appropriate agencies in an effort to secure such funding and grants. The Railroad shall copy the Association on all correspondence and applications regarding such funding and grants and shall provide the Association with detailed schedules of expenditures made from such funding and grants, not less than thirty (30) days following any such expenditure.

The Railroad and the Association shall cooperate to obtain state or federal money for track, right of way, and facility rehabilitation and shall also cooperate on the maintenance of eligibility standards and the observance of any required federal, state, or local governmental procedures for disbursement supervision, accountability, and reporting of such funds. Any money or material invested in the track, right of way, or facilities by the Association or obtained by the Association through a state or federal loan program shall remain the property of the Association.

D. Railroad's Compensation

As compensation for all services rendered for operating and maintaining the Line, the Railroad shall, in addition to the compensation payable to the Railroad as provided in Section 3B, be entitled to collect for its use and benefit, all revenues generated by any permissible use of the Line including, but not limited to:

Operating revenue derived from handling revenue freight and nonrevenue freight car switching for the Association;

Operating revenue derived from handling special non-freight rail movements;

Operating revenue derived from operating excursion passenger service;

Miscellaneous income from demurrage, car hire, equipment leases, freight car repairs; car storage; and

Non-operating revenues from granting easements, licenses, and crossing rights to the extent not reserved to the Association and otherwise consistent with this Agreement. Such rights shall be subject to the condition that any buildings or structures placed on the Line will be non-permanent in nature.

The Association reserves the right to grant a long-term interest in property not required for railroad purposes, as delineated in this Operating Agreement, and to collect and retain any revenue therefrom (e.g., outdoor advertising). The Association reserves the exclusive right to run or sell the right to run fiber optic cables above, on, or below the surface of the right of way or adjoining real estate. At no time, however, will any property rights granted or uses permitted by the Association or any other party granted rights by it interfere in any way with Railroad's use or operation of the Line or its common carrier obligation to serve customers. The Association will not enter into any other agreements involving the operation of the Line absent approval of the Railroad.

E. Future Expansion of the Rail Lines

Industrial Rail Spurs, Team Tracks, Sidetracks, Additions, and/or Expansions of the Line will each be subject to a future policy regarding their implementation. This future policy will be developed jointly by the Railroad, the Association, and any other affected agencies. Such policy will be reduced to

writing as an amended to this Agreement and shall be effective upon execution by the parties hereto.

5. OPERATING AUTHORITY

Prior to commencing regular common carrier service on the Line, Railroad shall at its sole expense seek STB operating authority by means of a “class exemption” under the provisions of 49 CFR 1150.31. It shall also comply with the applicable regulations of the Federal Railroad Administration (“FRA”) at 49 CFR Part 213.5(c) regarding its assumption of track maintenance obligations from the Association. The Railroad further agrees to furnish the Association with a draft of its Verified Notice of Exemption under 49 CFR 1150.31 and any other required STB and FRA filings and to obtain the Association's concurrence before filing with the STB.

Should the Railroad seek to terminate any or all part of its service on the Line before the end of the Term or should the Association request that the Railroad cease operations over the Line as a result of a Notice of Termination under section 11 or should the Railroad seek to terminate service upon completion of the term of this Agreement and failure to renew the Agreement, it will at its sole expense seek appropriate authority for discontinuance under the provisions of 49 U.S.C. §§10903-4 and 49 CFR 1152 *et al.*

6. CONDITION OF THE LINE

A. The Railroad has inspected and examined the Line and has entered into this Agreement without any representation on the part of the Association as to the present condition of the Line. The Association shall, in accordance with this provision and other provisions of this Agreement, neither encumber nor obstruct the Line in any way not otherwise permitted or contemplated in this Agreement.

B. During the term of this Agreement and any extensions and/or renewals hereof, the Railroad shall be solely responsible to supervise and manage, at no out of pocket expense to the Association, the placement and maintenance of sufficient and proper safety measures, including but not limited to, warning, signaling and safety signs and/or devices, for all crossings on the Line, whether public or private. In all matters concerning crossing safety, the Railroad shall be solely responsible to implement all recommendations and comply with all regulations and requirements of the STB and the Pennsylvania Department of transportation, and any other governmental or private authority or agency having jurisdiction or authority over crossing safety. The Railroad shall bill the Association separately for all costs and expenses attributable to work that goes beyond Normal Maintenance (as hereafter defined in Section 7) and incurred pursuant to this section, and shall be reimbursed by Association for all such costs and expenses; provided, however, that no such reimbursable costs will be incurred

without the prior written consent of the Association. It is understood and agreed by the parties hereto that the Railroad shall be solely responsible to implement, provide for, and maintain in good working order, all necessary and advisable crossing safety measures, including but not limited to warning signs and signaling devices, and that the Association shall have no responsibility in connection with providing for such safety measures other than the reimbursement of the Railroad for certain costs and expenses.

7. INSPECTIONS AND MAINTENANCE

Pursuant to 49 CFR Parts 200 to 299, Section 213.233, Track Inspections, the Railroad shall, at its sole cost and expense, inspect the Line including the main track and sidings weekly, with at least three 3 calendar days interval between inspections, or before use, if the track is used less than once a week; or twice weekly with at least 1 calendar day interval between inspections, if the track carries passenger trains during the preceding calendar year. The Railroad shall provide the Association with a Track Inspection Report after each inspection, noting the track defects found during the inspection, and the recommended course of action to correct or repair the track defects.

Pursuant to 49 CFR Part 234, Section 234.1 et al, Grade Crossing Signal System Safety, the Railroad shall at the Association's expense, arrange for and supervise the inspection of all active warning devices located at rail-highway grade

crossings on the Line at least once per month. The Railroad shall provide the Association with a Signal Inspection Report after each inspection, noting the defects found during the inspection, and the recommended course of action to correct or repair the defects. The Railroad may at its option use its own forces or those of a contractor of its choosing to conduct such inspections.

Normal Maintenance of the Line shall be performed by the Railroad with any out of pocket expenses billed to the Association. The Railroad shall at the Association's sole cost maintain the Line including track, right of way, structures, and signals in the same condition as they were in at the commencement of the Agreement term, normal wear and tear excepted. Should the Association fund a higher level of maintenance, the Railroad will maintain the Line at the Association's sole cost to that higher level, normal wear and tear excepted. The Association shall coordinate with the Railroad on the appropriate level of maintenance required for its operations. This level of maintenance shall be known as "Normal Maintenance." The Association and the Railroad shall jointly inspect the Line immediately upon the commencement of the Agreement and at such additional times as required thereafter on a regular basis.

In the course of conducting any normal maintenance or emergency repairs, the Railroad shall have the responsibility for contacting all public utilities and any other applicable entities, which may be affected by any excavation, or digging on

the Line to ensure that there will be no danger or hazard in conducting such activity.

Normal Maintenance shall not include: (a) replacements, repairs or reconstruction necessitated by such natural disasters or acts of God against which insurance is not normally available; (b) maintenance of the structural integrity of railroad bridges and structures; and (c) other items in the nature of major capital improvements of the Line. To the extent that maintenance, replacements, repairs, and improvements other than Normal Maintenance are necessary for safe and efficient operation by the Railroad on the Line, the Railroad shall at the Association's expense and upon approval of the Association, undertake to perform such maintenance and make such replacements, repairs, and improvements within a reasonable time after the necessity to do so arise.

8. REPAIRS

If such maintenance, repairs or alterations are the Railroad's obligations pursuant to the provisions contained herein and the Railroad fails to make such repairs and alterations, the Association may at the Railroad's expense, after reasonable notice and an opportunity to remedy such problem, make such repairs or alterations that may be necessary for the proper use, safety and preservation of the Line. The Association may bill the Railroad for any such costs, with interest at

ten percent (10%) per annum, or may offset the amount against any payments due to the Railroad pursuant to this Agreement.

9. INSURANCE

During the term of this Agreement both the Association and the Railroad shall each obtain and maintain in force at all times railroad liability insurance. The Railroad's insurance shall cover its operations, maintenance, and use of the Line including, but not limited to, all tracks, side tracks, and spurs, bridges and structures, signals, and right of way located upon or comprising said Line. The Railroad's insurance shall cover death and injury to the Railroad's officers, employees, agents and all invitees as well as for damage or destruction to and replacement of property including any claims involving environmental damage and the release or discharge of hazardous materials. The Railroad shall obtain insurance from a carrier acceptable to the Association naming the Association as an additional insured. Coverage for the Association shall include its officers, agents, employees, servants and assigns. The minimum insurance coverage required here for freight service shall be for no less than five million dollars (\$5,000,000) per occurrence with a \$25,000 deductible. Each insurance policy maintained pursuant to this Agreement shall contain a provision that such policy shall not be cancelled or modified unless the Association is notified at least thirty (30) days prior to such cancellation or modification.

The Association's insurance policy shall cover any liabilities resulting from the past maintenance of the property by it or any previous users as well as any liabilities resulting from the grant by the Association of property rights to third parties. The Association's insurance shall cover death and injury to its employees and all as well as for damage or destruction to and replacement of property including any claims involving environmental damage and the release or discharge of hazardous materials.

10. UTILITIES

It shall be the Railroad's responsibility to pay, when due, all charges for utilities arising out of its use and operation of the Line including utility bills relating to the operation of active warning devices at grade crossings.

11. MATERIAL BREACH; CURE; TERMINATION

A. The existence of a default or an uncured material breach shall be a basis for termination of the Agreement. Upon discovery of a default or a material breach, the party who has committed the breach shall have thirty (30) calendar days in which to make a good faith effort to contest or cure the default or breach from the time notice of the default or breach is transmitted to that party in accordance with the notice provisions of section 22 of this Agreement. If the breaching party has not cured the alleged breach at the end of the notice period, the

other party may terminate this Agreement by giving the other party at least thirty (30) days written notice of termination in accordance with section 22.

B. The following shall be grounds entitling the Association to terminate the Agreement:

(1) Failure to maintain the track, right-of-way, bridges and structures, and signals at Railroad's expense as required in section 7;

(2) Failure to secure required federal operating authority;

(3) Conducting train operations in a manner deemed unsafe or hazardous by a state or federal agency having jurisdiction or deemed unsafe or hazardous under customary industry practices;

(4) Failure to keep records or provide the Association with access to the Line or records as provided in Section 13;

(5) Failure to provide service upon reasonable demand;

(6) Committing acts or allowing others to commit acts on the right of way which would be deemed a violation of state or federal environmental laws, failure to remove promptly hazardous substances from the right of way, or failure to eliminate promptly an environmental hazard or emission that would be deemed a violation of state or federal environmental laws;

(7) Failure to report and pay promptly all compensation due the Association;

(8) Failure to maintain insurance as required by Section 9;

(9) Any assignment, mortgage, hypothecation, or transfer of this Agreement or the rights created by it in violation of Section 18;

(10) Exercising as its own any property rights reserved by the Association;
and

(11) Using or permitting others to use the property for an illegal purpose.

C. The following shall be grounds entitling the Railroad to terminate the Agreement:

(1) Using or permitting others to use the right of way in an unsafe or unlawful manner;

(2) Preventing the Railroad from using or having access to the Line and related facilities;

(3) Committing acts or allowing others to commit acts on the right of way which would be deemed a violation of state or federal environmental laws, failure to remove promptly hazardous substances from the right of way, or failure to eliminate promptly an environmental hazard or emission that would be deemed a violation of state or federal environmental laws;

(4) Failure to report and pay promptly all compensation due the Railroad;
and

(5) Exercising as its own any property rights reserved to the Railroad.

D. The Railroad may not terminate operations upon receiving or giving notice of termination until the STB grants authority to discontinue service as provided in section 5 of this Agreement. Once the STB authorizes the Railroad to discontinue service, it shall peacefully surrender possession of the Line, promptly removing all of its property and leaving the Line in the same physical condition as it was at the inception of this Agreement and any rehabilitation or improvement projects financed by the Association or public agencies, normal wear and tear excepted.

E. Upon receiving notice of termination by the Railroad for a material breach by the Association, the Railroad shall at the Association's expense seek STB authority to discontinue service over the Line as required under 49 U.S.C. §§10903-4 and 49 CFR 1152 et seq. The Association shall not oppose the Railroad's petition or application for discontinuance authority. Upon receiving approval from the STB, the Railroad shall terminate its operations over the Line and remove all of its property including any improvements to the right of way in accordance with Section 15, Improvements to the Line. The Parties shall prepare and exchange final reports and shall conduct a final property inspection in accordance with Section 13, Required Recordkeeping. The Association shall reimburse the Railroad for any verifiable termination expenses including the costs of moving locomotives, rail cars, and other equipment. Any payments due either

the Railroad or the Association shall be paid within 30 days of receipt of an invoice.

12. COMPLIANCE WITH GOVERNING LAW

The Railroad shall comply with all laws, statutes, ordinances, rules, orders, regulations and requirements of the pertinent federal, state and local agencies and courts that are applicable to the Line and railroad lines generally. The Railroad shall not use or permit the Line to be used for any illegal purposes, conduct its operations for any illegal purposes, conduct operations in an unsafe or hazardous manner, or intentionally cause or allow another to place hazardous substances on the Line or discharge hazardous substances into the air. Notwithstanding this provision, the Railroad may transport hazardous commodities or freight pursuant to and in compliance with all local, state and federal regulation and law.

13. REQUIRED RECORDKEEPING; ACCESS TO RECORDS; PROPERTY INSPECTION

The Railroad shall prepare and file all reports, returns, and information required in connection with its operation of the Line by any and all federal, state and local governmental regulatory and taxing authorities with jurisdiction over the Line. The Railroad shall submit to the Association: (1) its annual financial report prepared and signed by its accountant for operations conducted over the Line, (2) a detailed written quarterly report on all rail traffic handled on the Line; and (3) an annual written report on its efforts to increase freight traffic handled on the Line.

The Railroad shall furnish the Association any and all reports generated or issued which pertain to the Line within 48 hours of the Railroad's receipt of such materials. The Railroad shall within 48 hours of its receipt provide the Association any and all reports pertaining to the physical condition of the Line issued by those federal and state agencies having regulatory jurisdiction over the track, right of way, bridges and structures, and signals including, but not limited to, the STB, the Pennsylvania Department of Transportation, the Pennsylvania Public Utility Commission, the FRA, and the United States Environmental Protection Agency. Railroad agrees to provide the Association with written quarterly and annual reports detailing the accounting of revenues and expenses generated in the operation of the Line, as well as the number and type of car loads handled for each customer. The Railroad shall utilize generally accepted accounting procedures for recording said revenues and expenses. The Railroad shall also be responsible to provide to the Association a quarterly Maintenance Report that outlines all maintenance and inspections completed during the previous quarter year. The Association reserves the right to audit the Railroad's statements, and the Railroad agrees to disclose its records for auditing purposes. The Association, its agents, or representatives shall have the right to enter upon and inspect the Line and the Railroad's business records applicable to the Line at any time during normal business hours subject to the Association providing three

business days' advance notice and subject to a representative of the Railroad being present for such inspection. The Association shall also have the right to conduct an inspection of any train or rail car at no cost to the Railroad. The Railroad shall indemnify and hold the Association harmless against any penalty and/or damages resulting from its failure to file any such reports, returns, or information.

14. NOTICE OF CASUALTY

Other than for de minimis damage or injury, the Railroad shall give immediate notice to the Association of any damage to property, death, personal injury, or other casualty occurring upon the Line.

15. IMPROVEMENTS TO THE LINE

Except as otherwise provided, the Railroad shall not make any alterations, additions, obstructions, encumbrances or improvements to the Line without the prior written consent of the Association, which consent shall not be unreasonably withheld. Additions and improvements made by the Railroad to the Line shall remain property of the Association. Upon termination of this Agreement, unless the Association pays the Railroad the depreciated cost thereof, the Railroad reserves the right to remove any improvements in the track, right of way, or facilities it has funded or supplied at its sole cost, provided it can do so easily without causing damage to the Line.

16. LIMITATIONS ON NON-OPERATING REVENUE SOURCES

The Railroad shall not place nor permit to be placed any signs, structures, or other non-operating revenue sources of any kind upon or about the Line without the prior written consent of the Association. Any non-operating revenues sources such as signs and structures permitted by the Association shall at all times conform with all applicable municipal ordinances or other laws or regulations.

Notwithstanding the foregoing, the Railroad may without the consent of the Association place and maintain such signs that are necessary for the safe operation of the railroad or to the operation of grade crossings, bridges, and other facilities on the Line. The Railroad shall not enter into any agreement for access or use of the Line or any sort of license agreement or any other form of agreement with any third-party without prior written consent of the Association. However, at no time shall any agreement between the Railroad and a third party have a term or duration for a period longer than the remaining term of this Agreement.

17. ALLOCATION OF LIABILITY; INDEMNIFICATION

Liability for death, personal injury, or property damage, including liability for any environmental claims within the meaning of applicable federal and state laws pertaining to the condition of the environment and transportation, use, or spillage of hazardous materials, shall be allocated between the parties as follows:

a. The Association shall defend, indemnify, and hold harmless the Railroad against any and all liabilities, expenses, claims, or causes of action relating to conditions which occurred before the commencement of this Agreement or after its termination except where actions of the Railroad have exacerbated a preexisting condition on the Line or where the condition is due to the presence of the Railroad or its agents, consultants, employees, and officers on the Line before the commencement of this Agreement or after its termination.

b. Except where the sole proximate cause of such liability, expense, claim, or cause of action is the negligence of the Association or as a result of property rights reserved by the Association, the Railroad will defend, indemnify, and hold harmless the Association and its officers, agents, employees, successors, and assigns against any and all liabilities, expenses, claims, or causes of action for: (1) injury to or death of any person occurring on or about the Line during the term of this Agreement; and (2) the loss of or damage to any property whatsoever, including, but not limited to any property whatsoever, including, but not limited to, the property covered by this Agreement, where such injury, death, loss, or damage is caused by, arises out of, results from, or is incident to (A) the condition or existence of the property covered by this Agreement (except that the Railroad will not defend, indemnify, and hold harmless the Association for any loss or damage

to the Line due to an Act of God) or (B) actions of the Railroad and its officers, agents, employees, invitees, successors, and assigns upon the property.

c. Notwithstanding the provisions of paragraph (b), the Railroad will defend, indemnify, and hold harmless the Association and its officers, agents, employees, successors, and assigns against any and all liabilities, expenses, claims, or causes of action, including attorneys' fees, arising from the Railroad's violation of or from its failure to comply with any provisions of this Agreement, regardless of whether the negligence of the Association, its officers, agents, or employees, and regardless of degree, contributes thereto.

d. The Railroad shall defend, indemnify, and hold harmless the Association and its officers, employees, agents, successors or assigns from all suits and actions of any kind or character that may be brought or instituted by any subcontractor, or laborer who has performed work or furnished materials for or upon the Line under contract with the Railroad.

e. The Railroad shall be responsible for and shall defend, indemnify, and hold the Association harmless for the actions of any parties who obtained rights under easements, licensing, and crossing rights granted by it.

18. NON-ASSIGNABILITY

The Railroad shall not assign, mortgage, or hypothecate this Agreement nor permit the Line to be occupied or used for any purpose other than those uses

contemplated herein. Notwithstanding this provision, the Railroad's shareholders and management may assign this Agreement or transfer control of the Railroad (a) to a wholly-owned subsidiary or a wholly-owned and commonly controlled affiliate without the Association's consent or (b) to any other person upon the Association's written consent which shall not be unreasonably withheld.

Moreover, the Railroad may grant occupancy rights, licenses, or easements to third parties to the extent permitted by this Agreement.

19. WAIVER

The failure of the Association or the Railroad to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be considered as a waiver of any legal rights or claims. Nothing contained in this Agreement shall be deemed in derogation of any right or remedy that the Association or the Railroad may have at law or equity.

20. DEFAULT BY RAILROAD

In the event that there should occur any default on the part of the Railroad in the performance of any terms, conditions, or covenants contained herein, which default results in the disruption of railroad services as provided for in this Agreement, or if the Railroad shall file a petition in any Bankruptcy Court of the United States, or make an assignment for the benefit of creditors, or if this Agreement shall pass to another party by virtue of any court proceeding or

operation of law, or be placed in receivership, then the Association may immediately terminate this Agreement and take possession of the Line and any improvements thereon. The Association may, upon taking such possession, obtain the services intended herein from any other party.

21. EMINENT DOMAIN AND CONDEMNATION

If at any time during the term of this Agreement a suit or other action shall be instituted for the taking or condemnation of the Line by a governmental or other public authority, agency, or body, neither the Railroad nor the Association shall have the option to terminate this Agreement and both parties shall cooperate, to the fullest extent possible, to defend against such taking or condemnation. If, however, such defense shall fail, after exhaustion of all recourse and appeals, and the Line or the underlying right of way or any part thereof or any interest therein shall be taken under eminent domain or condemnation, this Agreement may be terminated by either party. In the event of any taking or condemnation of all or any part of the Line, the entire proceeds of the award or sale shall be paid to the Association, and the Railroad shall have no right to any part thereof; provided, however, that nothing contained herein shall be construed to prevent the Railroad from recovering any allowance for its personal property or for moving expenses which the law permits to be made to tenants, so long as such allowance does not diminish the award paid to the Association.

22. NOTICE

All notices required pursuant to this Agreement shall be in writing and addressed to the parties at their respective addresses as set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested. This section shall not be construed as waiving proper service of process. Notice to each party will be to the following:

THE RAILROAD:

1562 Treasure Lake
P.O. Box 585,
Dubois, PA 15801

THE ASSOCIATION:

1562 Treasure Lake
P.O. Box 585,
Dubois, PA 15801

23. SECTION AND PARAGRAPH HEADINGS

Section and paragraph heading in this Agreement are for ease of reference only and shall have no bearing on the construction or interpretation of this Agreement.

24. ENTIRE AGREEMENT

This Agreement and the exhibits and attachments set forth all the covenants, provisions, agreements, conditions and understandings between the parties and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. No modification or addition to this

Agreement shall be binding or effective unless executed in writing as an amendment to this instrument and signed by the parties.

25. PARTIAL ILLEGALITY

If any provision of this Agreement is held to be illegal, the remainder of the Agreement shall not be affected thereby.

26. GOVERNING LAW

This Agreement and all rights of the parties thereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

27. DISPUTE RESOLUTION

All disputes between the parties shall be resolved through arbitration pursuant to the commercial arbitration rules of the American Arbitration Association.

28. FORCE MAJEURE

The Railroad shall have no obligation to operate over any portion of the Line as to which it is prevented or hindered from operating by Acts of God, public authority, strikes, riots, labor disputes, orders of the STB, or any cause beyond its control; PROVIDED, HOWEVER, the Railroad shall use its best efforts to take whatever action is necessary or appropriate to be able to resume operations. In the event of damage or destruction caused by an Act of God, the Railroad shall commence repairs at its own expense within 10 days of the occurrence causing

same and shall pursue such repairs with reasonable diligence. Should damage caused by a Force Majeure affect only a portion of the Line, the Railroad shall at its option continue to provide service over the undamaged portion.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year written on page one of this Agreement.

ATTEST:

EAST BROAD TOP CONNECTING RAILROAD

_____ BY _____

ATTEST:

EAST BROAD TOP RAILROAD
PRESERVATION ASSOCIATION

_____ BY _____