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June 21, 2011

Via e-filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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Office of Proceedings
JUN 21 2011
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Public Record

**Re: *Virginia Port Authority – Acquisition Exemption – Norfolk and
Portsmouth Belt Line Railroad Company***
STB Docket No. FD 35532

Dear Ms. Brown:

Attached for e-filing in the above-referenced proceeding is Virginia Port Authority's Motion to Dismiss Verified Notice of Exemption.

Please feel free to contact me with any questions.

Regards,

Thomas W. Wilcox
Attorney for Virginia Port Authority

Enclosure

230227

EXPEDITED HANDLING REQUESTED

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. FD-35532

**VIRGINIA PORT AUTHORITY
— ACQUISITION EXEMPTION —
NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY**

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**MOTION TO DISMISS
VERIFIED NOTICE OF EXEMPTION**

I. INTRODUCTION

Comes now the Virginia Port Authority ("VPA") and moves the Surface Transportation Board ("STB" or "Board") to dismiss the Verified Notice of Exemption that VPA has filed in this proceeding. As more fully explained herein, this Motion to Dismiss ("Motion") is being filed simultaneously with VPA's Notice of Exemption to establish that VPA's acquisition from the Norfolk and Portsmouth Belt Line Railroad Company ("Belt Line") of a 5,700 foot length of railroad line and associated right-of-way between a point on Belt Line's track known as West Junction westward and across Hampton Boulevard to a point of connection with VPA track on VPA property, all located on Sewell's Point in the City of Norfolk, Virginia (the "Line") (1) does not require STB authorization under the line of precedent beginning with *Maine, DOT—Acq. Exemption, Me. Central R. Co.*, 8 I.C.C. 2d 835 (1991) ("*State of Maine*"), and (2) that VPA will not become a rail common carrier as a result of the transaction. For the reasons set forth herein, VPA respectfully requests that the Board give expedited consideration to this Motion and rule on

it on or before August 1, 2011. The Belt Line has authorized VPA to represent that Belt Line does not oppose this Motion.

II. BACKGROUND

The Belt Line commenced operations at Hampton Roads in 1898, having been formed by eight line-haul railroads. As a result of various industry consolidations, Norfolk Southern Corporation ("NSC") presently owns about fifty-seven percent of the Belt Line and CSX Corporation ("CSX") owns about forty-three percent. The Belt Line is a common carrier railroad that performs freight rail service and terminal switching operations over its 36 miles of track, and over additional tracks of other railroads via trackage rights. It primarily links commerce around the Hampton Roads deepwater ports from Sewells Point in the City of Norfolk, Virginia to Portsmouth Marine Terminal in the City of Portsmouth, Virginia, including the Southern Branch of the Elizabeth River. The Belt Line interchanges traffic with both of its owners, and the Bay Coast Railroad and the Chesapeake and Albemarle Railroad. The Belt Line serves approximately 24 industries located in the cities of Norfolk and Portsmouth.

VPA was established in 1952 as a political subdivision of the Commonwealth of Virginia for the purpose of stimulating commerce of the ports of the Commonwealth, promoting the shipment of goods and cargoes through the ports, improving the navigable tidal waters within the Commonwealth, and in general performing any act or function which may be useful in developing, improving, or increasing the commerce of the ports of the Commonwealth. VPA owns and is responsible for the operations and security of three marine terminals: Norfolk International Terminals ("NIT"), Portsmouth Marine Terminal ("PMT"), and Newport News Marine Terminal ("NNMT"), and an inland intermodal facility, the Virginia Inland Port ("VIP") located in Front Royal, VA. Additionally, in July of 2010, VPA executed a 20-year lease with

APM Terminal North America (“APM”), allowing VPA to assume operations at APM’s facility in Portsmouth, Virginia. These facilities primarily handle import and export containerized and break bulk cargoes.¹

VPA’s total volume of container traffic has increased annually for the past eleven years. In 2010, 1.895 million twenty-foot equivalent units (“TEUs”) were handled by the port. This annual growth is expected to continue. To meet the increased volume of container traffic, VPA has developed a multi-faceted strategy to increase the capacity and efficiency of its terminals. As the only VPA-owned terminal with “on-dock” rail service, NIT handles the vast majority of intermodal container traffic flowing through the Port. However, intermodal expansion is limited by the size and configuration of the existing rail yard, which has reached maximum capacity.

The Belt Line presently owns an approximately 33.5 acre parcel of real property adjacent to NIT on Sewells Point in the City of Norfolk, Virginia (“Sewells Point Property”). This property includes a segment of the Belt Line’s mainline track over which it provides contract and common carrier freight rail operations to VPA and other rail shippers in the Sewells Point area. The track segment at issue runs across the property in an east-west direction from a point on Belt Line’s track known as West Junction across Hampton Boulevard to a point of connection with VPA track on VPA property, a distance of approximately 5,700 feet, located on Sewell’s Point in the City of Norfolk, Virginia (the “Line”). See Exhibit A to this Motion. As part of its infrastructure improvement project, VPA desires to acquire the Sewells Point Property, including

¹ Virginia International Terminals, Inc. (“VIT”), a non-stock, nonprofit corporation operates all the marine terminals owned by VPA. VIT operates the state-owned ports through a Service Agreement with VPA. The organizational structure of VIT provides it with the ability to enter into contracts with union labor (prohibited by state agencies under state law), negotiate and enter into contractual relationships with ship lines and others, and more efficiently manage the flow of traffic at the marine terminals.

the rail assets comprising the segment of Belt Line's main line, but not the common carrier obligation attached to that line. VPA's acquisition of the Belt Line's property will allow it to enhance operations of NIT by expanding train assembly and movement capacity, improving railroad access and routing, and increasing operating efficiency. A key component of the infrastructure enhancement project is VPA's construction of a rail yard on the Sewells Point Property that will connect to the Belt Line's main line, and which will be managed by VPA and VIT.

The infrastructure project is essential to the NIT overall strategy of increasing the annual volume of containers moved by rail from 250,000 TEUs to over 500,000 TEUs. It will also provide NIT with the capability to assemble full 6,000 foot long trains. Railcars with loaded containers are staged in 2,000 foot long segments, and trains are assembled with three segments forming a 6,000 foot long train. Due to real property constraints, NIT presently lacks uninterrupted track length to assemble a full 6,000 foot long train. VPA's acquisition of the Sewells Point Property will provide this capability, and the newly-constructed rail yard will have the capacity to accommodate five additional 2,000 foot long train segments for rapid assembly of additional trains. The property acquisition is related to efforts to ameliorate two at-grade rail crossings at key choke-points into VIT.

After VPA's acquisition of the Sewells Point Property, the Belt Line will continue to provide common carrier rail operations over its main line pursuant to a retained exclusive easement described more fully below. These operations will be enhanced and improved by the rail tracks and yard to be constructed and operated by VPA connected to the Belt Line main line. For example, as part of the acquisition, VPA has agreed to construct and make available to Belt Line, on a 24 hour 7 days a week basis, a side track for the use by Belt Line for locomotive "run-

around operations” as part of its provision of common carrier rail operations. *See* Section 4 of the proposed Operating Agreement.

VPA’s acquisition of the Sewells Point Property is being accomplished through three separate instruments, final drafts which are attached hereto as exhibits: a Real Estate Purchase Agreement (Exhibit B, the “Purchase Agreement”); a Deed (Exhibit C); and an Operating Agreement (Exhibit D).² All of the foregoing instruments have been prepared, in part, to ensure that the Belt Line will retain an exclusive, permanent, and irrevocable rail freight easement to provide common carrier operations on and over the Line, and to ensure that VPA will not unreasonably interfere with, or restrict the Belt Line’s common carrier freight operations over the Line.

Specifically, the proposed Purchase Agreement provides that Belt Line reserves for itself and its successors a permanent, irrevocable, exclusive and assignable freight operating easement and associated right-of-way for purposes of (1) providing rail freight services to existing and/or future customers, (2) permitting Belt Line in its sole discretion the assignment of freight operating rights over the Line to third party common carriers and their successors, and (3) providing for the modification, repair, removal or maintenance of existing industrial lead tracks or side tracks attached to the Line *See* Section 25(a) of the proposed Purchase Agreement. The Purchase agreement further provides that VPA “neither has the intention nor will have any right, to hold out, or permit, or license any other party to hold out to provide rail service as a common carrier on the Line” *See Id.*, at Section 25(c). The Deed contains the same reservation and acknowledgment. *See* Subsections (a) and (b) of the Deed. Similarly, the proposed Operating Agreement provides that “Belt Line has retained a permanent, irrevocable, and exclusive

² Key exhibits to each document are also attached.

easement to continue to provide common carrier freight rail service over the main line track and associated right-of-way being conveyed.” See page 1 of the proposed Operating Agreement. It further provides that while VPA will be responsible for maintaining and dispatching the Line in coordination with Belt Line, and VPA will have the right to conduct some rail operations on the line, VPA will not “hold itself out as a common carrier by rail and VPA’s usage of the track shall not unduly interfere with the nature and timing of Belt Line’s freight rail operations over the Line.” See Section 3.2 of the proposed Operating Agreement.

Applying the *State of Maine* case law discussed in the following section to the material facts of this transaction, it is clear that this transaction does not require STB approval and does not confer common carrier status upon VPA.

III. DISCUSSION

Pursuant to 49 U.S.C. § 10901, the Board has exclusive jurisdiction over the acquisition of a railroad line by a non-carrier (including public entities such as VPA), where common carrier rights and obligations also are being transferred (“Section 10901”). *State of Maine* at 836-837. However, where “no common carrier rights or obligations are being transferred” the Board does not impose the underlying common carrier obligation on the purchaser and Board authorization is not required for the transfer of assets. *Id.* at 837. The STB (like its predecessor, the Interstate Commerce Commission (“ICC”)) examines the specific circumstances of the transaction, and the rights being transferred. See STB Finance Docket No. 32374, *Los Angeles County Transportation Commission—Petition for Exemption—Acquisition from Union Pacific Railroad Co.*, (Served July 23, 1996). In a typical line acquisition under Section 10901, the acquiring entity obtains an interest sufficient to provide common carrier rail service, and that interest is the basis for the Board’s jurisdiction. STB Finance Docket No. 33889, *The State of Texas (acting by*

and through the Texas Dept. of Transp.)—Acquisition Exemption—West Texas & Lubbock Railroad Co. (Served March 6, 2001).

Applying ICC precedent, the Board has held that under certain circumstances, it will not exercise jurisdiction over a non-carrier's acquisition of a railroad line, and that the acquisition does not confer common carrier-status upon the non-carrier. *See* STB Finance Docket No. 33876, *State of Georgia, Dept. of Transp.—Acquisition Exemption—Georgia Southwestern Railroad, Inc.*, (Served July 7, 2000) (applying *State of Maine.*) In *State of Maine*, the Maine Department of Transportation (“MDOT”), acting on behalf of the State, sought an exemption to acquire certain railroad physical assets from Maine Central Railroad Company (“MEC”), subject to MEC's retained easement for common carrier railroad operations. MDOT desired to acquire the line's rail assets for potential mass transit use. MEC retained a permanent easement, including rights to operate, maintain, and renew the line. As a result, MDOT's acquisition of the line's assets did not impair freight railroad operations. The ICC determined that the transaction did not transfer common carrier rights or obligations to MDOT because MEC retained the common carrier obligation through the permanent and unconditional easement, could still fulfill its common carrier obligations, and operations could not be ceased without ICC approval. Thus, the ICC found “MEC has both the intent and unconditional ability to continue to assume and exercise its common carrier rights and obligations. Under these circumstances we can see no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation.” *State of Maine*, 8 I.C.C.2d at 837.

The STB has consistently upheld the policy and rules established in *State of Maine*. For instance, in STB Finance Docket No. 35312, *Massachusetts Department of Transportation – Acquis. Exemption – Certain Assets of CSX Transportation, Inc.* (Served May 3, 2010); *aff'd* ,

Brotherhood of Railroad Signalmen v. STB, 638 F.3d 807 (D.C. Circuit 2011) (“*MassDOT*”), two labor unions requested that the STB reexamine the decision of the ICC in *State of Maine*. The labor unions argued that the agency’s interpretation of Section 10901 was wrong because: (1) the physical assets of a rail line cannot be separated from the freight line operating rights and common carrier obligation, (2) the sale to a non-carrier of a track, track bed and other physical assets used to provide rail service requires the STB’s approval, whenever the purchaser is responsible for maintaining and dispatching the line, and (3) *State of Maine* is contrary to judicial precedent.. Those arguments did not convince the Board that its “longstanding interpretation of Section 10901 as reflected in *State of Maine* is impermissible.” *Id.* at 5. The Board further found that the unions did not submit evidence or arguments to undermine the applicability of *State of Maine*, and have not “offered sufficient policy considerations to cause the Board to consider other permissible readings of Section 10901.” *Id.* Specifically, with respect to the argument that where a purchaser is responsible for maintaining and dispatching the line the sale of the line requires the STB’s approval, the Board reiterated its prior determinations that “the public agency may assume responsibility for maintaining the line and dispatching freight operations if the operating procedures are reasonable and do not discriminate against freight service, and if the freight carrier has the right to inspect and to request prompt repair of any track defects.” *Id.*, at 10.³

³ See e.g. *Fla. Dep’t of Trans. – Acquisition Exemption – Certain Assets of CSX Transp. Inc.*, (Served December 15, 2010), at 9, n. 17; *Metro Reg’l Transit Auth. – Acquis. Exemption – CSX Transp., Inc.*, FD 33838, slip. op. at 2 (STB served Oct. 10, 2003); *Sacramento-Placerville Transp. Corridor Joint Powers Auth. – Acquis. Exemption – Certain Assets of S. Pac. Transp. Co.*, FD 35258, slip. op. 2 (STB served Oct. 28, 1996); *Los Angeles County Transp. Comm’n – Pet. For Exemption – Acquis. from Union Pac. R.R.*, FD 32374 slip. op. at 2 (STB served July 23, 1996).

In sum, the STB has consistently applied the rules established in *State of Maine* and its progeny, that an entity may acquire the physical assets of a rail line without becoming a carrier when the seller retains sufficient interest to operate on the line and to conduct common carrier freight rail operations without undue interference from the purchaser. Therefore, as the STB clarified, “[A]s long as the transferor retains . . . the common carrier rights and obligations along with sufficient contractual rights to meet those obligations, the acquisition of the right-of-way is not a transaction requiring Board authorization.” STB Finance Docket No. 35128, *The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway, Inc.*, 2008 STB Lexis 616, *8-9 (Served Oct. 27, 2008). If an acquisition of a rail line is subject to the existing operating interests of a common carrier and the acquiring entity does not gain the ability to unreasonably interfere with the incumbent carrier’s operations, then acquiring entity does not become a common carrier subject to Board jurisdiction.

The transaction described herein is similar in all material respects to the transactions at issue in the decisions discussed above except that VPA does not intend to conduct any commuter rail operations over the Line. VPA will acquire certain real property and rail assets from the Belt Line, but it does not desire, and therefore will not acquire any right to conduct common carrier rail operations, or to control the Belt Line’s common carrier freight operations. Pursuant to the reservation set forth in the Deed, the Real Estate Purchase Agreement and relevant portions of the Operating Agreement, the Belt Line will have and maintain the exclusive right to continue to provide or permit common carrier rail freight service on the common carrier line of rail being conveyed. Neither VPA nor any other person or entity (other than the Belt Line’s third party operator or assigns) will be permitted to provide any type of freight rail service on the line. VPA’s acquisition of the Line will not constitute an acquisition of a line of railroad subject to

STB jurisdiction, and VPA's ownership interest in the Line will not make it a common carrier subject to STB jurisdiction.

IV. EXPEDITED HANDLING REQUESTED

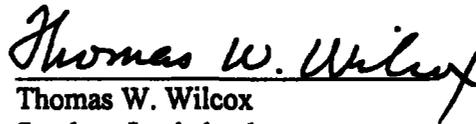
VPA requests that the Board rule on this Motion expeditiously, by August 1, 2011. A ruling on or before August 1, 2011 is necessary to enable VPA to meet certain deadlines affecting the purchase of the Belt Line track described hereinabove and the associated 33.5 acre parcel of land. Specifically, VPA is the recipient of grant funds from the Virginia Department of Rail and Public Transportation (DRPT) for the construction of a new rail yard on the property once it is acquired. As stated above, part of the construction entails the construction of a side track for the use of the Belt Line for locomotive run-around operations as part of its retained easement to continue to provide common carrier rail operations over the track being conveyed. However, in order for VPA to receive these funds, the planned construction must be completed by October 2011. In order to meet this October deadline, VPA must become the owner of the property and track and to begin construction no later than August 2, 2011.

V. CONCLUSION.

For the reasons set forth above, VPA respectfully requests that the Board dismiss its Verified Notice of Exemption for lack of jurisdiction.

Respectfully submitted,

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*Special Counsel to
the Virginia Port Authority*

Dated: June 21, 2011

Exhibit A

MAP

Exhibit B

**REAL ESTATE
PURCHASE
AGREEMENT**

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is dated this ___ day of _____, 2011, by and between NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY, a Virginia corporation ("Seller"), and VIRGINIA PORT AUTHORITY, a political subdivision of the Commonwealth of Virginia ("Purchaser").

For and in consideration of the mutual covenants herein set forth, it is agreed as follows:

1. Agreement to Sell and Convey.

Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all of that certain parcel of land lying and being situated in the City of Norfolk, Virginia, containing approximately thirty three and one-half (33.5) acres, and being more particularly described on Exhibit A, attached hereto and made a part hereof, together with the following:

- a. All railroad fixed assets, including but not limited to tracks, switches, crossing gates and other mechanical equipment, and improvements situated thereon;
- b. All and singular the rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, roads, alleys, access easements and rights-of-way, and any railroad fixed assets of Seller situated thereon;
- c. All fixtures, equipment and machinery located on, attached to, or used in connection with any buildings and/or other improvements situated thereon; and
- d. Such other rights, interests, and properties as may be specified in this Agreement to be sold, transferred, assigned or conveyed by Seller to Purchaser.

The parcel of land described on Exhibit A, together with the buildings and other improvements thereon, and the rights, interests, fixtures, personal property, access easements, and other properties described above, are collectively called the "Premises."

2. Purchase Price.

Seller shall convey to Purchaser and Purchaser shall purchase from Seller the Premises for a purchase price of Five Million One Hundred Thousand Dollars (\$5,100,000.00) (the "Purchase Price"). Payment of the Purchase Price, less any deductions herein authorized, shall be by cash, wire transfer or check from Purchaser, delivered to the Settlement Agent (hereinafter defined) at Settlement (hereinafter defined), with disbursement to Seller upon recordation of the Deed.

3. Deposit.

Upon full execution of this Agreement, a deposit of ten dollars (\$10.00) (the "Deposit") shall be delivered by Purchaser to and held by LandAmerica Lawyers Title Insurance Corporation, Richmond, Virginia, as settlement agent (the "Settlement Agent"), at which time the Deposit shall be paid over to the Settlement Agent and deposited into the Settlement Agent's escrow account. Upon default hereunder or upon any cancellation of this Agreement, the Deposit shall be paid to the person or entity lawfully entitled thereto pursuant to law or otherwise as expressly provided in this Agreement.

4. Environmental Matters.

a. Except as may be set out in an addendum attached hereto or set forth in a Phase 1 Environmental Site Assessment report dated April 2005 prepared by Malcolm Pirnie for VPA, a September 24, 2008 letter to VPA updating the 2005 report, and any other environmental report in possession of VPA, Seller warrants and represents that to the best of Seller's knowledge, information and belief, there have never been, nor are there now, any underground storage tanks on the Premises; nor has there been any activity on the Premises which has been conducted, or is being conducted, except in compliance with all statutes, ordinances, regulations, orders, permits and common law requirements concerning (1) handling and/or rail transportation of any toxic or hazardous substances, (2) discharges of toxic or hazardous substances to the air, soil, surface water or groundwater, and (3) storage, treatment or disposal of any toxic or hazardous substances at or connected with any activity on the Premises; nor is there any contamination present on or in the Premises; nor is there any of the following present on or in the Premises: (i) polychlorinated biphenyls or substances containing polychlorinated biphenyls; (ii) asbestos or materials containing asbestos; (iii) urea formaldehyde or materials containing urea formaldehyde; (iv) lead or lead-containing paint; or (v) radon. The term "contamination" shall mean the unconfined presence of toxic or hazardous substances on or in the Premises, or arising from the Premises, which may require remediation under any applicable law. For purposes of this Agreement, "hazardous substance(s)" shall have the meaning of "hazardous substance" set forth in 42 U.S.C. §9601(14), as amended, and of "regulated substance" at 42 U.S.C. §6991(2), as amended, and of any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia. If Seller has any knowledge to the contrary, Seller has checked here (X) to indicate that an addendum labeled "Addendum as to Environmental Matters" is attached in which Seller has set forth the details of such knowledge. The Addendum, which is attached hereto as Exhibit B, consists of an agreement between the Seller and the United States of America dated June 9, 1992 relating to the installation by the United States of America of one or more ground water monitoring wells on the Premises, along with a letter from the Department of the Navy dated December 1, 2004 providing the most recent ground water test results available.

b. Purchaser will conduct whatever environmental tests or studies it may deem necessary or appropriate to satisfy itself as to the environmental condition of the Premises. Purchaser therefore shall accept the Premises at Settlement in their "as is, where is" condition.

Seller makes no environmental warranty or guarantee as to the condition of the Premises, except for its representations set forth in the preceding paragraph. Should Purchaser conclude that there are any unacceptable environmental conditions related to the Premises, it shall have the right to cancel this Purchase Agreement and receive the refund of the Deposit. The right of cancellation shall cease and terminate upon the occurrence of Settlement hereunder.

5. Plans, Engineering, Title Examination and Records; Warranties.

a. Seller agrees to provide to Purchaser, at no cost, immediately, but not later than five (5) days after the Effective Date (hereinafter defined), any physical or topographic surveys, development information, soil boring or groundwater data, and other agreements affecting the Premises, all title examination records, and a copy of the title insurance policy issued when Seller acquired the Premises as well as any other records relating to the Premises.

b. At Settlement, Seller will assign to Purchaser all rights in and to any warranties applicable to the Premises.

c. Seller warrants that all mechanical equipment on the Premises is in compliance with Federal Railroad Administration ("FRA") Class 1 Standards as of the date Seller executes this Agreement and will remain so as of Settlement.

6. Seller's Ownership

a. Seller warrants and represents that it is the sole fee simple owner of the Premises except for that portion of the Premises underlying Hampton Boulevard over which Seller has 1922 easement to cross in order to reach Purchaser's property, and that it otherwise has all necessary authority to sell the Premises; there are no other contracts for sale or options involving the Premises; and no other party has any right, title or interest in the Premises except (i) as described in this Agreement; or (ii) for the easements, agreements and other documents of record and affecting the Premises. Between the date Seller executes this Agreement and Settlement, Seller shall not subject the Premises to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Premises, without the written consent of the Purchaser; provided however, that Seller's continued performance of its contractual obligations pursuant to the Greenbrier Project Agreement described in Section 6.b. below both before and after Settlement shall not require such written consent.

The Premises is affected by a March 15, 1977 operating rights "Agreement" between Seller and Norfolk and Western Railway Company, a copy of which agreement has been provided to Purchaser and is attached as Exhibit C hereto.

b. There are other miscellaneous land title issues affecting the Premises, including the aforementioned 1922 easement for Seller to cross Hampton Boulevard, a 2000 agreement with the City of Norfolk regarding the installation and maintenance of crossing signals and gates, and a 2003 agreement with the City of Norfolk regarding the access road to Fleet Park, all of which documents have previously been provided to Purchaser and are attached hereto as Exhibit

D. Seller and Purchaser are also parties to an Agreement made and executed as of the 5th day of January 2007 between Seller, Purchaser, the Commonwealth of Virginia, acting by and through the Chief Engineer of the Department of Transportation, the Norfolk Southern Railway, and the City of Norfolk ("Greenbrier Project Agreement"), governing the reconstruction and improvement of a section of Hampton Boulevard and the construction of a new grade separation rail crossing at that location. This project involves the relocation of part of the track being conveyed pursuant to this Agreement. This Agreement in no way modifies or supersedes Seller's and Purchaser's respective rights and obligations under the Greenbrier Project Agreement, or constitutes an assignment of any of Seller's obligations under that Agreement to Purchaser, and all of Seller's right, title and interest in the reconstructed and/or modified rail trackage, crossings, and related rail facilities and property at this location at the conclusion of the reconstruction project pursuant to the Greenbrier Project Agreement are included within the Premises being conveyed under this Agreement. Notwithstanding the foregoing, any materials owned by Seller or its agents which are used for the reconstruction project which Seller and/or its agents intend to remove at the conclusion of the Project shall not convey to Purchaser under this Agreement.

7. Zoning and Regulations; Condemnation

Railroad owned land is not zoned by local municipalities; there are no eminent domain or condemnation proceedings pending against the Premises, and Seller has no knowledge of such proceedings or of any intentions or plans, definite or tentative, that such proceedings might be instituted; and Seller has no knowledge of any federal, state, county or municipal zoning or other restrictions, rules, or regulations that will prevent the utilization of the Premises for the purposes of a rail storage yard.

8. Actions or Suits.

Unless set forth by Seller in an attachment to this Agreement, Seller warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Seller, threatened against Seller in connection with the Premises, and there is no outstanding order, writ, injunction or decree of any court or governmental agency affecting the Premises.

9. Proffers and Commitments.

Seller represents there has not been made and will not be made, without Purchaser's consent, any proffers or other commitments relating to the Premises, which would impose any obligation on Purchaser or its successors and assigns, after Settlement, to make any contribution of money or dedications of land or to construct, install or maintain any improvements of a public or private nature on or off the Premises.

10. Other Agreements.

Seller warrants and represents that the execution and delivery of this Agreement, the completion of the transaction(s) contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Seller is a party or by which it or the Premises is bound, or any judgment, decree, order, or award of any court, governmental body or arbitrator, or any law, rule or regulation applicable to Seller.

11. Code Compliance.

Intentionally omitted.

12. Other Adverse Facts.

Seller knows of no materially adverse fact, affecting or threatening to affect the Premises which has not been disclosed to Purchaser in writing. Between the date Seller executes this Agreement and Settlement, Seller will notify Purchaser in writing of any events which occur or any facts of which it becomes aware which would make any of its representations or warranties false or misleading. Except as otherwise permitted by Purchaser in writing, in its sole discretion, each of the warranties or representations made in this Agreement by Seller shall be true and correct as of the date of Settlement.

13. Settlement.

a. Settlement and delivery of possession shall be on or before _____, 2011, or as soon thereafter as practicable, but not before the Surface Transportation Board (STB) rules favorably on Purchaser's Motion to Dismiss described in Section 26 of this Agreement, allowing a reasonable time for preparation and approval of documents and correction of defects reported as a result of a title examination, survey or inspections of the Premises ("Settlement"). Settlement shall be held at the offices of the Settlement Agent, or at such other place as the parties may agree. Seller shall deliver to Purchaser, at Settlement, a fully executed Special Warranty Deed conveying the Premises in fee simple to Purchaser (the "Deed"). The Deed shall be in a form satisfactory to the Purchaser.

b. With the sole exception of any modifications to the Premises resulting from the Greenbrier Project Agreement, the Premises shall be in substantially the same condition at Settlement as on the date Seller and Purchaser execute this Agreement.

c. Seller shall deliver to Purchaser at Settlement an affidavit, on a form acceptable to Purchaser or Purchaser's title insurance company, signed by Seller, that no labor or materials have been furnished to the Premises within the statutory period for the filing of mechanics' or materialmen's liens against the Premises, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full and no other persons or entities have the right of possession of the Premises (the "Seller's Affidavit").

d. Seller agrees to execute at Settlement any affidavit or forms required by the Internal Revenue Service or the Virginia Department of Taxation to report this transaction and/or to exempt the Purchaser from any withholding requirements under applicable law (the "Tax Certificate").

e. Seller agrees to deliver to Purchaser or Settlement Agent the following at or prior to Settlement:

- (i) The fully executed Deed.
- (ii) The Seller's Affidavit
- (iii) The Tax Certificate
- (iv) A fully executed Bill of Sale in the form attached hereto as Attachment E, conveying to Purchaser any and all Personal Property listed in Attachment F.
- (v) A signed closing or settlement statement prepared or approved by Settlement Agent; and
- (vi) Any other documents reasonably required by Settlement Agent or Purchaser.

14. Title.

a. The Premises shall be sold free from all mortgages, deeds of trust, liens, security interests and other encumbrances, except for the operating rights Agreement attached as Exhibit C. Title shall be good, marketable and insurable, without exception, at regular rates by a title insurance company of the Purchaser's choice, subject, however, to those covenants, easements, conditions and restrictions of record as of the date Seller executes this Agreement constituting constructive notice in the chain of title to the Premises which have not expired by a time limitation contained therein or otherwise become ineffective and that do not, in Purchaser's sole opinion, materially adversely affect the use and enjoyment of the Premises by Purchaser. Without affecting the foregoing requirements, Purchaser may elect not to obtain title insurance.

b. Seller warrants that it owns the Personal Property to be sold hereunder and that the same shall be free of liens or security interests at Settlement.

c. If Seller is unable because of any defect in title to deliver acceptable title as aforesaid at Settlement and Purchaser is unwilling to waive such defect, Purchaser may either (i) request Seller to correct the defect if same can be done within a reasonable time not to exceed thirty (30) days from the date of the Seller's receipt of notice of the defect, or (ii) immediately terminate this Agreement and cause the Deposit to be returned to the Purchaser. If Seller is unwilling or unable or fails to timely remedy the defect, Purchaser may immediately terminate

this Agreement upon written notice to Seller and the Deposit shall be returned to Purchaser immediately and no party shall have any further liability hereunder.

15. Expenses of Settlement.

a. Purchaser shall pay for its own attorney's fees as well as other charges customarily paid by a purchaser of real estate in Virginia; to the extent the Purchaser is not lawfully exempt therefrom.

b. Seller shall pay for the preparation and/or review of the Deed, any other documents it is required to provide hereunder, and its own attorney's fees as well as other charges customarily paid by a seller of real estate in Virginia, including the Virginia Grantor's Tax.

c. All real estate taxes, assessments, utility charges, if any, shall be prorated as of Settlement. Rent shall not be pro-rated.

16. Risk of Loss.

All risk of loss or damage to the Premises shall be borne by Seller until Settlement. However, in the event of any loss of or damage to the Premises, or any part thereof, prior to Settlement, Purchaser shall have the option, in its sole discretion, to (i) terminate this Agreement or (ii) proceed to Settlement as required hereunder, without decrease in the Purchase Price, conditioned upon Seller assigning all its interest in insurance or other payments for loss or damage to the Premises. In the event of condemnation or threat of condemnation of any part of the Premises prior to Settlement, Purchaser shall have the option, in its sole discretion, to (i) terminate this Agreement or (ii) proceed to Settlement without decrease in the Purchase Price conditioned upon any condemnation award being paid, credited, or assigned, as appropriate, to Purchaser at Settlement.

17. Inspections.

a. Seller shall give to Purchaser and its designated agents and representatives full access to the Premises during normal business hours throughout the Study Period as defined in Section 17.c., including the right, at Purchaser's own risk, cost and expense, to cause its agents or representatives to enter upon the Premises for the purpose of (i) making physical and topographic surveys; (ii) conducting such tests, investigations and studies as Purchaser may desire, including those related to engineering, water, groundwater, sanitary and storm sewer, utilities and environmental matters, as well as soil borings.

b. Purchaser shall, at its expense, restore the Premises to its prior condition to the extent of any changes made by its agents or representatives in the event it does not purchase the Premises. Seller shall furnish to Purchaser during the Study Period all information concerning the Premises which Purchaser may reasonably request and which is in the possession of Seller.

c. Purchaser shall have sixty (60) days from the Effective Date, or the date on which all information and data and the copies of all documents to be provided hereunder are in fact provided to Purchaser by Seller, whichever occurs last ("Study Period"), to complete the studies described in Paragraph 17.a. and to determine in its sole discretion that the condition of the Premises is satisfactory for the intended use of Purchaser. In the event that Purchaser is not so satisfied for any reason whatsoever, at any time prior to the expiration of the Study Period, Purchaser shall advise Seller in writing of its intention not to proceed to Settlement under the terms of this Agreement, and in such event, this Agreement shall automatically be terminated, the Deposit shall be returned to Purchaser immediately and no party shall have any liability hereunder. In the event the Study Period shall not have expired as of the Settlement date set out in Paragraph 13, then, at the option of Purchaser, Settlement may be delayed until ten (10) business days following the expiration of the Study Period.

d. Nothing in this Agreement shall bar the Commonwealth of Virginia or any other agency thereof, (other than VPA or its assigns) from enforcing any applicable laws or regulations if contamination by toxic or hazardous substances is discovered on the Premises.

e. Seller acknowledges that Purchaser is required to prepare and submit an Environmental Impact Report ("EIR") for the Premises as required by Virginia Code §10.1-1188. If the EIR shows environmental impacts or existing conditions which would adversely affect the Purchaser's use of the Premises or would result in the Department of Environmental Quality or the Governor not approving this purchase and if Seller, in its sole discretion, is unwilling or unable within a reasonable period of time to have such impacts or conditions remedied, then the Purchaser, at its sole option, may terminate this Agreement by giving written notice to Seller. Seller agrees that the approval of the Governor required by Virginia Code §10.1-1190 is an additional condition precedent to the Purchaser's obligations under this Agreement.

If Purchaser fails to obtain the required approval or terminates this Agreement, the Deposit shall be returned to Purchaser immediately and no party shall have any further liability hereunder.

18. Default.

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of Purchaser or the Commonwealth of Virginia.

19. Brokerage.

Each party represents to the other that it has not engaged the services of any real estate broker or agent in connection with the Premises and/or this Agreement.

20. Prior Agreements; Merger.

This Agreement supersedes any and all prior understandings and agreements between the parties as to sale of the Premises and constitutes the entire agreement between them as to sale of the Premises. No representations, warranties, conditions or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered, or modified except by an instrument in writing signed by the party sought to be charged therewith.

21. Miscellaneous.

a. Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns. No assignment of this Agreement shall be permitted except with the written consent of the other party, which consent shall not be withheld unreasonably. The warranties, representations and terms of this Agreement shall survive delivery of the Deed and shall not be merged therein.

b. Seller agrees to deliver the railroad tracks, switches and other items affixed to the real estate as of the Effective Date of this Agreement at the time of Settlement. Such tracks, switches and other items shall be in compliance with all applicable FRA Class 1 Standards. Purchaser and its representatives shall have the right to make a further inspection immediately before Settlement and Purchaser's obligation to settle is subject to the condition of the Premises complying with the provisions of this Agreement.

22. Notices.

Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, or if delivered in hand, as follows:

If to Purchaser:

Mr. David M. James
Director, Contracts & Real Estate
Virginia Port Authority
600 World Trade Center
Norfolk, Virginia 23510

If to Seller:

Mr. David H. Stinson
President
Norfolk and Portsmouth Belt Line Railroad Company
P.O. Box 7547
Portsmouth, Virginia 23704

or to such other persons or addresses as the parties may hereafter direct by written notice. Notices, except those hand delivered, shall be deemed delivered two (2) days after being deposited with the United States Postal Service. Hand delivered notices shall be deemed delivered upon actual delivery to the person noted above.

23. Governing Law.

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

24. Execution and Delivery of Agreement.

a. The date upon which this Agreement shall be finally executed by Seller and by the authorized representative of Purchaser (with the approval described in Subsections 24.b. and 24.c.) shall be the effective date ("Effective Date") hereof.

b. Notwithstanding the foregoing, this Agreement shall be effective and binding upon Purchaser only upon approval by the Department of General Services, Division of Engineering and Buildings, pursuant to Chapter 2 (*Fee Acquisition*) of the Department of General Services/Division of Engineering and Buildings' Real Property Management Manual.

c. Settlement under this Agreement, and the acceptance of delivery and recordation of the Deed from Seller, shall be expressly subject to and contingent upon the final written approval of the Governor of Virginia or his designee, which shall be appended to and recorded with the Deed from Seller, and which final approval is required by Virginia Code §2.2-1149. The Purchaser may immediately terminate this Agreement upon the decision of the Governor not to give final written approval of this acquisition.

25. Reservation of Easement for Seller to Conduct Rail Freight Operations

a. Seller reserves unto itself and to its successors and assigns a permanent, irrevocable, exclusive, transferable and assignable freight operating easement on and over the single segment of railroad track and associated right-of-way traversing the Premises and identified on Exhibit G and consisting of a railroad line as that term is used in 49 U.S.C. §10901(a)(4) extending from the point on Belt Line's trackage known as West Junction to a point of connection with VPA trackage on the west side of Hampton Boulevard (the "Line"), as the same may be replaced or relocated between the same right-of-way on the Premises for the purpose of (1) providing rail freight service to existing and/or future customers located on, adjacent to or beyond the Premises described herein and for the purpose of otherwise fulfilling Seller's common carrier obligations, including provision of adequate rail freight service to customers on reasonable request without unreasonable hindrance or delay by Purchaser, (2) permitting in Seller's sole discretion the joint use of the freight operating rights over the Line through trackage rights agreements with related third party common carriers and their successors, and (3) providing for the use, modification, repair, or removal of existing industrial

lead tracks, spur tracks, or sidetracks connected to the Line, and all subject to Seller's and any common carrier trackage rights operator's unfettered right in its sole discretion to abandon or discontinue freight rail service along all or any part of the Line (subject to required governmental approvals, if any) (the "Easement"). The abandonment of the obligation to provide freight rail service over a portion of the Line by Seller shall not result in the termination of the Easement with respect to the entire Line, but only with respect to the portion of the Line over which the common carrier obligation is being abandoned. The grant of trackage rights, discontinuance of service or abandonment shall not occur absent authorization from the Surface Transportation Board ("STB").

b. Purchaser acknowledges Seller's retained Easement and operating rights and agrees that the Deed conveying the Premises shall contain language which preserves the Easement and operating rights set forth in the preceding subparagraph.

c. Purchaser acknowledges Seller's retained Easement to continue fulfilling the common carrier obligations associated with the Line. Purchaser further acknowledges that Purchaser neither has the intention nor will have any right, to hold out, or permit or license any other party to hold out to provide rail service as a common or contract carrier on the Line or to circumvent Seller's retained Easement by other means directly or indirectly.

d. It is understood and agreed that Purchaser and Seller shall enter into an operating agreement (the "Operating Agreement") in order to coordinate Purchaser's activities on the Premises with Seller's operation of the Line pursuant to its reserved Easement. Settlement under this Agreement is subject to Purchaser and Seller executing the Operating Agreement at or prior to Settlement.

26. Actions before the Surface Transportation Board

The parties agree that the transaction contemplated herein, in particular, Purchaser's acquisition of the Premises subject to Seller's reservation of the Easement requires approval or exemption before the STB. Seller agrees to reasonably cooperate with Purchaser with regard to any necessary filings it submits to the STB concerning this transaction. The costs of preparing and submitting such filings shall be borne by Purchaser. Seller agrees to bear its own expenses and attorney fees, if any, should it elect to respond to said STB filings, or otherwise participate in an STB proceeding concerning this transaction. Purchaser shall file a Notice of Exemption pursuant to 49 C.F.R. Section 1150.31 no later than three (3) business days after the Effective Date, and shall file a Motion to Dismiss the notice either concurrently with or after the filing of the Notice of Exemption based on the precedent of *Maine DOT-Acq. Exemption-Me. Central R. Co.*, 8 I.C.C.2d 835 (1991).

[Signature Page to follow]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

SELLER: NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY, a Virginia corporation.

By: _____
Title: _____
Date: _____

PURCHASER: VIRGINIA PORT AUTHORITY

By: _____
Title: _____
Date: _____

**STATE OF VIRGINIA
CITY/COUNTY OF _____, to wit:**

The foregoing Agreement was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of Norfolk and Portsmouth Belt Line Railroad Company, a Virginia corporation, on behalf of the corporation.

My commission expires: _____

Notary Public

**STATE OF VIRGINIA
CITY/COUNTY OF _____, to wit:**

The foregoing Agreement was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of Virginia Port Authority, on behalf of the agency.

My commission expires: _____

Notary Public

**APPROVED AS TO FORM:
OFFICE OF THE ATTORNEY GENERAL**

By: _____
Assistant Attorney General

Date

Approved by the Department of General Services

Pursuant to the provisions of Chapter 2 (*Fee Acquisition*) of the Department of General Services, by its Division of Engineering and Buildings' Real Property Management Manual, I hereby approve this Agreement.

Director, Department of General Services

Date

LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE A - C0037724
LEGAL DESCRIPTION CONTINUED

All that certain piece or parcel of land, situate, lying and being in the City of Norfolk (formerly in Tanner's Creek Magisterial District, County of Norfolk), Virginia, and more particularly bounded and described by reference to that certain plat entitled "Boundary Survey of Norfolk and Portsmouth Beltline Railroad for Commonwealth of Virginia Virginia Port Authority," dated March 23, 2009, made by Waterway Surveys & Engineering, Ltd., Robert L. Taliaferro, L.S., which boundary survey is recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book -, page -, as follows:

COMMENCING at a point at the northwestern corner of the Norfolk and Portsmouth Beltline Railroad Property, said corner being north of the north right of way of Greenbriar Avenue by approximately 347 feet along the eastern right of way of Hampton Boulevard, and being the northeasternmost portion of a parcel acquired by the Commonwealth of Virginia, Department of Transportation, by deed dated June 20, 2006, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, as instrument 060025732; said point being the Point of Beginning; from said point, along a bearing of North 84°45'20" East, 410.57 feet along the southern boundary of the United States of America to a point; thence along a bearing of North 5°16'42" West, 75.00 feet to a point; thence North 84°45'09" East, 1,350.08 feet to a point; thence North 4°55'19" West, 124.81 feet to a point; thence North 84°45'20" East, 3,711.33 feet; thence along a bearing of South 50°56'05" East, 393.80 feet along the common line of Interstate Route 864 to a point; thence South 39°01'55" West, 50.03 feet crossing the railroad to a point, intersecting a curve; thence along said curve to the left, having a radius of 603.80 feet, with a delta of 10°47'11" and a length of 113.80 feet to the point of tangency; thence from said point of tangency, along the northern boundary of the lands now or formerly United States of America and now or formerly Eastern Holding Corp. South 84°45'20" West, 5,604.80 feet to a point; thence along the eastern boundary of the parcel acquired by the Commonwealth of Virginia Department of Transportation a bearing of North 6°19'05" West, 100.14 feet to the Point of Beginning.

BEING a portion of the same property conveyed to Norfolk and Portsmouth Belt Line Railroad Co., a corporation, by deed from Bough Creek Land Corporation, dated July 17, 1917 and recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake (formerly Norfolk County), Virginia in Deed Book 438, page 512.

BEING a portion of the same property conveyed to Norfolk & Portsmouth Belt Line Railroad Company, a Virginia corporation, by deed from Norfolk-Hampton Roads Company, a Virginia corporation, dated July 18, 1917 and recorded in Deed Book 438, page 514.

BEING the same property conveyed to the Norfolk and Portsmouth Belt Line Railroad Company, a Virginia corporation, and designated as Parcel "U" in the deed from the City of Norfolk, dated August 2, 1921 and recorded in Deed Book 508, page 584.

**EXHIBIT B TO
REAL ESTATE PURCHASE AGREEMENT**

**[1992 Agreement Between Belt Line and US Government, and December 1, 2004
letter from Department of Navy referenced in Section 4]**

THIS AGREEMENT, made this 15TH day of MARCH
1977
~~1976~~, by and between NORFOLK AND WESTERN RAILWAY COMPANY
(hereinafter "NW") and NORFOLK AND PORTSMOUTH BELT LINE
RAILROAD COMPANY (hereinafter "Belt Line"),

W I T N E S S E T H :

WHEREAS, by deed dated January 4, 1974, NW conveyed
to the United States Government (hereinafter "Navy") 494.859
acres of land situate at Sewells Point in the City of Norfolk,
Virginia;

WHEREAS, as a result of said conveyance, NW's present
interchange facilities with the Navy at the Naval Station
at Sewells Point will be eliminated, thereby preventing NW
from furnishing rail transportation service to the Naval
Station at the present location;

WHEREAS, the Navy has constructed or will construct
new railroad interchange facilities on a new side track
within said Naval Station in order to continue to
receive rail transportation service from NW at the Naval
Station; and

WHEREAS, in order to provide rail transportation service
to the Naval Station at the Navy's new interchange facilities,
NW must acquire the right to operate over approximately 1.17
miles of the Belt Line's main line track between its con-
~~nection with NW's side track at West Junction, Norfolk,~~
Virginia, and its connection with NW's side track beginning
at the east side of Hampton Boulevard, Norfolk, Virginia;

NOW, THEREFORE, in consideration of the premises, the parties hereto do hereby mutually agree as follows:

(1) The Belt Line hereby grants to NW the right, in conjunction with the Belt Line and with any other party to which the Belt Line may grant similar rights, to operate over the Belt Line's main line track beginning at its connection with NW's side track at West Junction, Norfolk, Virginia, thence west approximately 1.17 miles to the beginning of NW's side track at the east side of Hampton Boulevard, Norfolk, Virginia, said Belt Line track being shown in red on Plan No. 16217 which is attached to this agreement and hereby made a part hereof.

(2) Said Belt Line track shall be used by NW on a run-through basis only in order to provide rail transportation service to the Naval Station at the Navy's new interchange facilities hereinabove described and shall not be used by NW for any other purpose, including but not limited to the provision of switching service to industries which can be served only through use of said Belt Line track.

(3) In consideration of the right to operate over said Belt Line track, NW shall pay the Belt Line EIGHT AND ONE-HALF CENTS (8-1/2¢) per mile for the movement of each loaded and empty railroad car and each locomotive over the 1.17 mile length of said track. NW shall provide the Belt Line with a monthly count of cars and locomotives to which said payments shall apply, and said payments shall be effected by monthly settlements through the joint facility accounts of the parties hereto.

In further consideration of the right to operate over said track, and in full satisfaction of its obligation to provide sufficient trackage to the Belt Line as contemplated in a resolution of April 10, 1974, of the Belt Line's Board of Directors, NW hereby leases to the Belt Line the six (6) tracks at West Junction designated as yard tracks in NW's Norfolk Terminal Operations Bulletin No. 28, issued February 17, 1977, for use by the Belt Line for any purposes whatsoever; provided, however, that NW may use said yard tracks as long as said use does not interfere with the Belt Line's use thereof.

(4) The Belt Line shall have the supervision and control of said Belt Line track and shall maintain the same in good condition and repair.

(5) NW's operation over said Belt Line track shall be subject to such reasonable rules and regulations as may be issued from time to time by the Superintendent of the Belt Line. NW shall not operate any railroad equipment over said track which is in violation of the Federal Safety Appliance Act, any other federal, state or local statutes, or any orders, rules or regulations of the Interstate Commerce Commission.

(6) The costs of all loss or damage to property (including but not limited to said Belt Line track, rolling stock and contents thereof) and injury to or death of persons arising from the use of said Belt Line track shall be borne as follows:

(a) Each party shall bear the costs of all loss or damage to property (including but not limited to property owned by the parties hereto) and injury to or death of persons (including but not limited to the employees of the parties hereto) caused solely by its own negligence.

(b) In case of loss or damage to property or injury to or death of persons caused by the joint negligence of both parties, or attributable to fire, to causes beyond the control of either party, or to unknown causes, each party shall bear the costs of all loss or damage to its property and injury to or death of its employees, and of all loss or damage to property and injury to or death of persons in its care or control.

(c) All other costs of loss or damage to property owned by third parties and injury to or death of third parties not subject to the provisions of subparagraphs (a) and (b) of this section and paid in settlement of claims for such costs prior to judgment in a court of law shall be borne by the parties hereto on the basis of the comparative negligence of

each party in causing said loss, damage, injury or death.

(d) Each party shall pay the cost of clearing its own wreckage in the event of derailment, except that if such derailment is caused by the sole negligence of one of the parties, the negligent party shall pay all costs of clearing the wreckage of both parties.

(7) In the event of any difference or dispute arising under this Agreement, the same shall be submitted to arbitration. Within thirty (30) days after notice in writing shall have been given by either party of the parties hereto to the other, there shall be chosen one disinterested and competent arbitrator by each of the said parties hereto, and the two so chosen shall select a third disinterested and competent arbitrator. The three arbitrators so chosen shall examine into the cause of dispute or difference, and their decision, or that of a majority of them, shall be final and binding between the parties hereto upon the matter in question. In case either of the parties hereto shall fail to appoint an arbitrator within the thirty days aforesaid, the arbitrator appointed by the party not in default shall appoint an arbitrator for the defaulting party and the said two arbitrators shall select a third, and arbitration shall proceed in accordance with the

foregoing terms of this section.

All expenses attending arbitration shall be borne equally by the parties hereto.

(8) This Agreement shall continue in full force and effect until terminated by notice given by either party hereto to the other thirty (30) days prior to the date upon which it is desired that this Agreement shall cease and determine; provided, however, that this Agreement shall not be terminated when the result thereof would be to prohibit NW from furnishing rail transportation service to the Navy at the Naval Station in violation of military requirements for such service or of any orders of the Interstate Commerce Commission.

(9) The agreement dated January 19, 1977, previously entered into between the parties hereto for the purposes stated herein is hereby terminated.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

NORFOLK AND WESTERN RAILWAY COMPANY

[Signature]
SENIOR VICE PRESIDENT - OPERATIONS

ATTEST:

[Signature]
J. B. Wall

NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY

By *[Signature]*
President and General Manager

ATTEST:

[Signature]

APPROVED BY: J. B. Wall

[Signature]

EXHIBIT D TO REAL ESTATE PURCHASE AGREEMENT

**[1922 EASEMENT FROM THE CITY OF NORFOLK TO CROSS HAMPTON
BOULEVARD; 2000 AGREEMENT WITH THE CITY OF NORFOLK FOR
MAINTAINANCE OF SIGNALS, ETC; AND 2003 AGREEMENT WITH CITY
OF NORFOLK REGARDING ACCESS TO FLEET PARK]**

SECTION 6.B

EXHIBIT E TO REAL ESTATE PURCHASE AGREEMENT

[BILL OF SALE]

SECTION 13.E.IV

EXHIBIT F TO REAL ESTATE PURCHASE AGREEMENT

[LIST OF PERSONAL PROPERTY BEING CONVEYED]

SECTION 13.E.IV

Exhibit C

DEED

FINAL DRAFT

This Deed is exempt (i) from recordation taxes pursuant to Section 58.1-811.A.3. of the Code of Virginia (1950), as amended, and (ii) from the payment of Clerk's fees pursuant to Section 17.1-266 of the Code of Virginia (1950), as amended.

DEED

This DEED is dated the _____ day of _____, 2011, by and between NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY, a Virginia corporation, "Grantor," and the VIRGINIA PORT AUTHORITY, a political subdivision of the Commonwealth of Virginia, "Grantee."

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby grant and convey, with Special Warranty of Title, to the Grantee, the land parcel described in Exhibit A attached hereto and made a part hereof.

EXCEPTING AND RESERVING THEREFROM, the following easement, covenants, conditions, and restrictions, which Grantor and Grantee acknowledge and agree shall run with the land and be binding upon the successors and assigns of Grantor and Grantee until such time as Grantor has abandoned the railroad common carrier obligation attached to the Line (as defined below) pursuant to all required governmental approvals:

a. Grantor reserves unto itself and to its successors and assigns a permanent, irrevocable, exclusive, transferable and assignable rail freight operating easement on and over the railroad track and associated right-of-way traversing the Premises described in the Real Estate Purchase Agreement between Grantor and Grantee dated May __, 2011, said track being specifically identified on Exhibit B, hereto, and consisting of a railroad line as that term is used in 49 U.S.C. §10901(a)(4) extending from the point on Belt Line's trackage known as West Junction to a point of connection with VPA trackage on the west side of Hampton Boulevard (the "Line"), as the same railroad track may be replaced or relocated between the same right-of-way on the Premises for the purpose of (1) providing rail freight service to existing and/or future customers located on, adjacent to or beyond the Premises described in Exhibit A and for the purpose of otherwise fulfilling Grantor's common carrier obligations, including provision of adequate rail freight service to customers on reasonable request without unreasonable hindrance or delay by Grantee, (2) permitting in Grantor's sole discretion the joint use of the freight operating rights over the Line through trackage rights agreements with related third party common carriers and their successors, and (3) providing for the use, modification, repair or removal of existing industrial lead tracks, spur tracks, or sidetracks connected to the Line, and all subject to Grantor's and any common carrier trackage rights operator's unfettered right in its sole discretion to abandon or discontinue freight rail service along

FINAL DRAFT

all or any part of the Line on the reserved easement (subject to required governmental approvals, if any)(the "Easement"). The abandonment of the obligation to provide freight rail service over a portion of the Line by Grantor or any assignee of Grantor shall not result in the termination of the Easement with respect to the entire Line, but only with respect to the portion of the Line over which the common carrier obligation is being abandoned. The discontinuance of service or abandonment shall not occur absent authorization from the Surface Transportation Board ("STB").

b. Grantee, for itself, and on behalf of its subsidiaries and affiliates, and all of their successors and assigns acknowledges Grantor's Easement to continue fulfilling the common carrier obligations associated with the Line. Grantee further acknowledges that Grantee neither has the intention nor any right, to hold out, or permit or license any other party to hold out to provide rail service as a common or contract carrier on the Line or to circumvent or unreasonably interfere with Grantor's Easement by other means, directly or indirectly. Subject to applicable law, neither Grantee, nor its successors, assigns, transferees, and grantees shall have any right to control or to require abandonment or discontinuance of common carrier rail service over the Line.

c. Grantor agrees to establish, in consultation with Grantee, appropriate switches and other facilities connecting the Line to private tracks now existing or to be constructed by Grantee on the premises.

d. Grantee shall not reduce the clearances on the Line whether permanently or temporarily, and whether in width, height, weight or length, unless Grantor agrees in writing that a proposed reduction in clearances will not impede or hamper its operations and that the reduced clearance will continue to meet minimum FRA or other governmental agency regulations or industry standards for minimum safe clearances.

e. Grantor and a predecessor of Norfolk Southern Railway Company have entered into a March 15, 1977 operating rights Agreement, and rights acquired by Grantee under this Deed are subject to the rights of Norfolk Southern Railway Company under that Agreement.

f. Grantor and Grantee have entered into an Operating Agreement, dated _____, 2011, for purposes of coordinating Grantee's operations on the premises with Grantor's operations on the Line pursuant to the reservation set forth herein, and rights acquired by Grantee under this Deed are subject to the terms of that Operating Agreement, and any amendments thereto.

In addition to, and without limitation of the foregoing reservation, this conveyance is made subject to covenants, easements, conditions, restrictions, and agreements, appearing of record in the chain of title to the property herein conveyed, insofar as they may be lawfully applicable to the property.

FINAL DRAFT

Witness the following signature and seal:

**NORFOLK AND PORTSMOUTH BELT LINE
RAILROAD COMPANY
a Virginia corporation**

By: _____
Title: _____

**STATE OF VIRGINIA
CITY/COUNTY OF _____, to wit:**

The foregoing Deed was acknowledged before me this ____ day of ____, 2011 by
_____ acting in his/her capacity as _____
of _____ **NORFOLK AND PORTSMOUTH BELT LINE
RAILROAD COMPANY**, on behalf of the corporation.

My commission expires: _____

Notary Public

Grantor's Address:

LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE A - C0037724
LEGAL DESCRIPTION CONTINUED

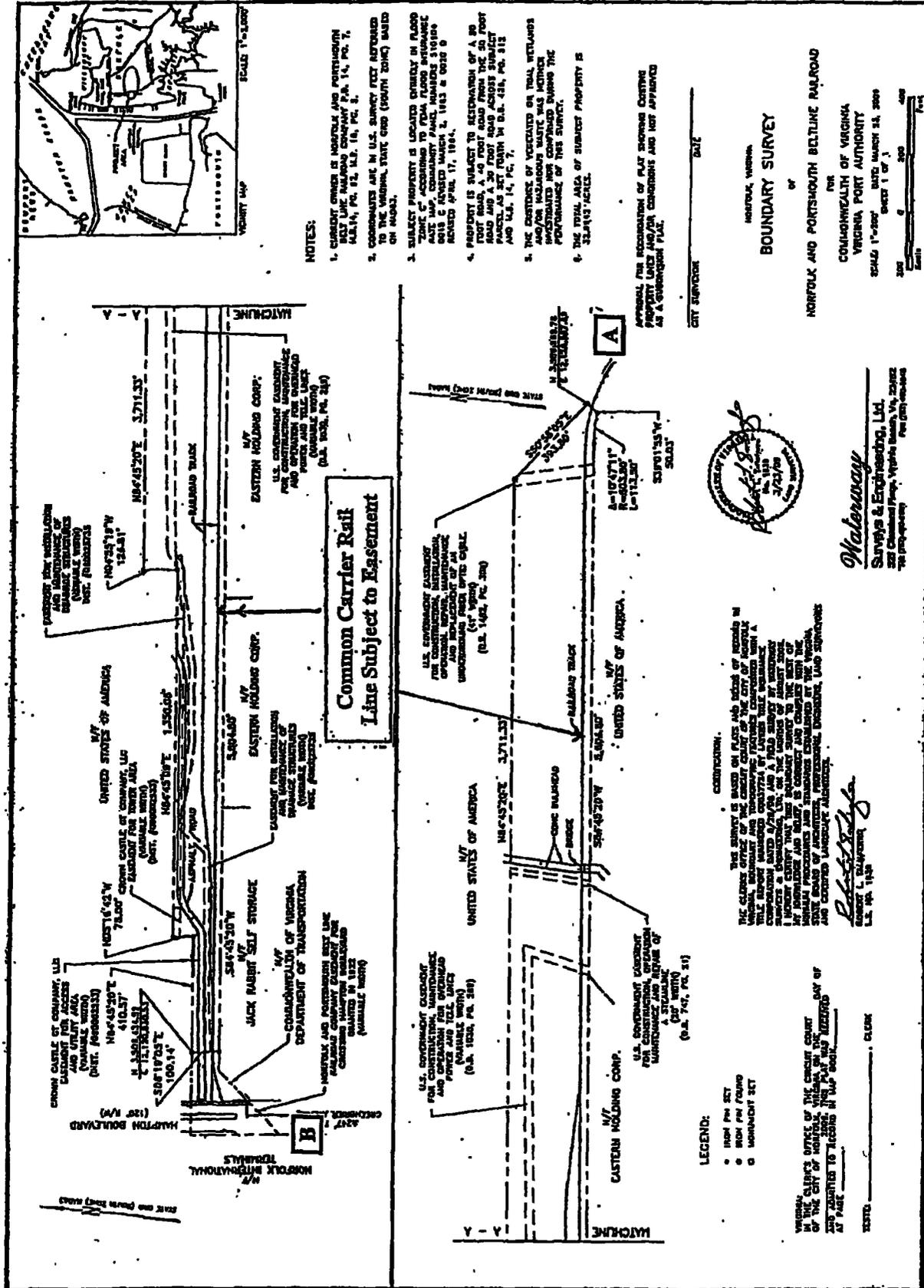
All that certain piece or parcel of land, situate, lying and being in the City of Norfolk (formerly in Tanner's Creek Magisterial District, County of Norfolk), Virginia, and more particularly bounded and described by reference to that certain plat entitled "Boundary Survey of Norfolk and Portsmouth Beltline Railroad for Commonwealth of Virginia Virginia Port Authority," dated March 23, 2009, made by Waterway Surveys & Engineering, Ltd., Robert L. Taliaferro, L.S., which boundary survey is recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book =, page -, as follows:

COMMENCING at a point at the northwestern corner of the Norfolk and Portsmouth Beltline Railroad Property, said corner being north of the north right of way of Greenbriar Avenue by approximately 247 feet along the eastern right of way of Hampton Boulevard, and being the northeasternmost portion of a parcel acquired by the Commonwealth of Virginia, Department of Transportation, by deed dated June 20, 2006, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, as instrument 060025735; said point being the Point of Beginning; from said point, along a bearing of North 84°45'20" East, 410.57 feet along the southern boundary of the United States of America to a point; thence along a bearing of North 5°16'42" West, 75.00 feet to a point; thence North 84°45'09" East, 1,350.08 feet to a point; thence North 4°55'19" West, 124.81 feet to a point; thence North 84°45'20" East, 3,711.33 feet; thence along a bearing of South 50°58'05" East, 393.80 feet along the common line of Interstate Route 564 to a point; thence South 39°01'55" West, 50.03 feet crossing the railroad to a point, intersecting a curve; thence along said curve to the left, having a radius of 603.80 feet, with a delta of 10°47'11" and a length of 113.50 feet to the point of tangency; thence from said point of tangency, along the northern boundary of the lands now or formerly United States of America and now or formerly Eastern Holding Corp. South 84°45'20" West, 5,604.80 feet to a point; thence along the eastern boundary of the parcel acquired by the Commonwealth of Virginia Department of Transportation a bearing of North 6°19'05" West, 100.14 feet to the Point of Beginning.

BEING a portion of the same property conveyed to Norfolk and Portsmouth Belt Line Railroad Co., a corporation, by deed from Boush Creek Land Corporation, dated July 17, 1917 and recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake (formerly Norfolk County), Virginia in Deed Book 438, page 512.

BEING a portion of the same property conveyed to Norfolk & Portsmouth Belt Line Railroad Company, a Virginia corporation, by deed from Norfolk-Hampton Roads Company, a Virginia corporation, dated July 16, 1917 and recorded in Deed Book 438, page 514.

BEING the same property conveyed to the Norfolk and Portsmouth Belt Line Railroad Company, a Virginia corporation, and designated as Parcel "U" in the deed from the City of Norfolk, dated August 2, 1921 and recorded in Deed Book 508, page 584.



NOTES:

- CURRENT OWNER IS NORFOLK AND PORTSMOUTH RAIL LINE HOLDING COMPANY P.A. 14, P.O. 1, NORFOLK, VA. 23510, U.S. 16, P.C. 1.
- COORDINATES ARE IN U.S. SURVEY FEET REFERRED TO THE VIRGINIA STATE GRID (NAD 83) BOUND ON NAD 83.
- SUBJECT PROPERTY IS LOCATED ENTIRELY IN PLATS 1084520 AND 1084521, U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, PLAT 1084520, 1084521, 1084522, 1084523, 1084524, 1084525, 1084526, 1084527, 1084528, 1084529, 1084530, 1084531, 1084532, 1084533, 1084534, 1084535, 1084536, 1084537, 1084538, 1084539, 1084540, 1084541, 1084542, 1084543, 1084544, 1084545, 1084546, 1084547, 1084548, 1084549, 1084550, 1084551, 1084552, 1084553, 1084554, 1084555, 1084556, 1084557, 1084558, 1084559, 1084560, 1084561, 1084562, 1084563, 1084564, 1084565, 1084566, 1084567, 1084568, 1084569, 1084570, 1084571, 1084572, 1084573, 1084574, 1084575, 1084576, 1084577, 1084578, 1084579, 1084580, 1084581, 1084582, 1084583, 1084584, 1084585, 1084586, 1084587, 1084588, 1084589, 1084590, 1084591, 1084592, 1084593, 1084594, 1084595, 1084596, 1084597, 1084598, 1084599, 1084600.
- PROPERTY IS SUBJECT TO RESTRICTIONS OF A 50 FOOT ROAD, A 40 FOOT ROAD FROM THE 50 FOOT ROAD AND A 30 FOOT ROAD ACROSS SUBJECT PARCELS AS SET FORTH IN B.L. 438, P.O. 313 AND U.S. 14, P.C. 7.
- THE EXISTENCE OF VEGETATION OR TALL WETLANDS AND/OR HAZARDOUS WASTE WAS NOTICED IMMEDIATELY AND COMPROMISED DURING THE PERFORMANCE OF THIS SURVEY.
- THE TOTAL AREA OF SUBJECT PROPERTY IS 33.9143 ACRES.

APPROVAL FOR RECORDATION OF PLAT SHOWING CORRECT PROPERTY LINES AND/OR CONDITIONS AND NOT APPROVED AS A SUBSEQUENT PLAT.

CITY SURVEYOR _____ DATE _____

BOUNDARY SURVEY

NORFOLK AND PORTSMOUTH BELTLINE RAILROAD FOR COMMONWEALTH OF VIRGINIA VIRGINIA PORT AUTHORITY

DATE: MARCH 24, 2009
SHEET 1 OF 1

SCALE: 1"=200'

Common Carrier Rail Line Subject to Easement



Waterway Surveys & Engineering, Ltd.

220 Chestnut Street, Virginia Beach, VA 23462
Tel: (757) 461-1000

CERTIFICATION.
THIS SURVEY IS BASED ON PLATS AND BOOKS OF RECORDS IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF NORFOLK, VIRGINIA, AND THE RECORDS OF THE VIRGINIA PORT AUTHORITY. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING COMPANION ACT (S.A. 2008) AND A FIELD SURVEY BY WATERSWAY SURVEYS & ENGINEERING, LTD. ON THE MORNING OF JANUARY 20, 2009. I, THE SURVEYOR, HAVE PERSONALLY CONDUCTED THE SURVEY AND HAVE PERSONALLY AND INDIVIDUALLY EXAMINED THE ORIGINAL RECORDS AND PLATS AND COMPARED THEM WITH THE SURVEY DATA. I HAVE FOUND THEM TO BE CORRECT AND COMPLETE WITH THE EXCEPTIONS LISTED HEREIN. I HAVE BEEN LICENSED BY THE BOARD OF ARCHITECTURE, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEODETIC SURVEYORS OF VIRGINIA.

ROBERT L. BLALOCK
STATE OF VIRGINIA
NO. 11429

LEGEND:

- IRON PIN SET
- IRON PIN FOUND
- WOODEN SET

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL OF THE CITY OF NORFOLK, VIRGINIA, ON THE DAY OF MARCH 24, 2009.

CLERK

A West Junction
B Point of Connection With VPA Property

Exhibit D

**OPERATING
AGREEMENT**

FINAL DRAFT

OPERATING AGREEMENT

THIS OPERATING AGREEMENT is made as of the _____ day of June, 2011 between NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY, a Virginia Corporation, hereinafter called "Belt Line," and the VIRGINIA PORT AUTHORITY, a political subdivision, existing under the laws of the Commonwealth of Virginia, hereinafter called "VPA;"

WHEREAS, VPA has agreed to purchase from Belt Line certain property and railroad tracks situated in the City of Norfolk, Virginia pursuant to a Real Estate Purchase Agreement dated June __ 2011 ("2011 Purchase Agreement");

WHEREAS, as part of the 2011 Purchase Agreement, VPA will acquire all right and title to a main line of railroad and associated track and right-of-way designated on Exhibit A to this Operating Agreement over which the Belt Line has historically provided common carrier freight rail service to VPA and other rail shippers in the Norfolk International Terminals area;

WHEREAS, under the 2011 Purchase Agreement, Belt Line has retained a permanent, irrevocable, and exclusive easement to continue to provide common carrier freight rail service over the main line railroad track and associated right of way being conveyed ("Easement"); and

WHEREAS, VPA and Belt Line desire to set forth in this Operating Agreement the terms governing rail operations over and maintenance of the main line railroad track, associated right of way and Easement upon consummation of the 2011 Purchase Agreement and other related matters.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

SECTION 1. VPA TRACKAGE SUBJECT TO THIS OPERATING AGREEMENT

The track subject to this Operating Agreement is the segment of the Belt Line's main line of railroad track located on the Premises conveyed to VPA by the 2011 Purchase Agreement and specifically identified on Exhibit A (the "Line"). The track at issue extends from a point on Belt Line's track known as West Junction westward and across Hampton Boulevard to a point of connection with VPA's track on VPA's property. This Operating Agreement also covers any portions of the Line that are subsequently relocated or reconstructed over the term of this Operating Agreement.

SECTION 2. TERM AND TERMINATION

2.1 This Operating Agreement shall become effective on the date the transaction under the 2011 Purchase Agreement is consummated (the "Effective Date"), and shall remain in full force and effect as long as VPA owns the Line and Belt Line conducts common carrier freight rail operations over it, unless terminated beforehand by mutual agreement. The parties agree and acknowledge that any termination of the Operating Agreement will not affect the validity, continuation or permanent nature of the Easement.

2.2 If the parties wish to terminate this Operating Agreement by mutual agreement while Belt Line is still conducting common carrier freight rail operations, Belt Line covenants and agrees to seek appropriate regulatory approval to convey its Easement to an operator to be designated by VPA ("Designated Operator"). Belt Line also covenants and agrees that, upon termination of this Operating Agreement by mutual agreement, and upon the receipt of required regulatory approvals, Belt Line shall cease its rail operations on the Line, vacate its occupancy of any portion of the Line and remove any of its property from the Line and underlying property.

2.3 Belt Line shall not be prevented from discontinuing service or abandoning the common carrier obligation attached to the Line under applicable law. In the event of such discontinuance or abandonment VPA shall have the right to terminate this Operating Agreement.

2.4 The rights, benefits, duties and obligations running from or to either party under this Operating Agreement shall in all events expire (except liabilities incurred prior to termination) upon the termination of this Operating Agreement.

2.5 Unless otherwise mutually agreed and with the prior approval of the Surface Transportation Board, termination of this Operating Agreement shall not affect the parties' rights and obligations under the Easement, or relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Operating Agreement prior to termination hereof.

SECTION 3. PERMITTED USE OF THE LINE

3.1 Subject to the terms and conditions provided herein, Belt Line shall have the exclusive right, in its capacity as a common carrier conducting freight rail operations, to conduct freight rail operations with its trains, locomotives, cars and equipment and with its own crews over the Line pursuant to its Easement.

3.2 VPA shall have the right to conduct rail operations on the Line, but shall not hold itself out as a common carrier by rail and VPA's usage of the track shall not unduly interfere with the nature and timing of Belt Line's freight rail operations over the Line, or the operations of third party railroads who have been granted rights by Belt Line to use the Line as authorized by this Operating Agreement. In addition, the parties recognize and understand that Norfolk Southern Railway Company ("NSR") has certain operating rights over the Line, as more specifically described in a March 15, 1977 operating rights Agreement (the "Operating Rights Agreement") between Belt Line and NSR's predecessor.

3.3 Belt Line shall be entitled to all revenues derived from its provision of freight rail service on the Line.

3.4 Belt Line shall retain the full common carrier obligation with respect to the Line; provided however, Belt Line shall have the right, in its sole discretion, to (i) assign the Easement to related third party common carriers and their successors, or (ii) permit joint use of the freight operating rights over the Line through trackage rights agreements to related third party common carriers and their successors, both subject to the provisions of this Operating Agreement.

3.5 Belt Line shall have the right from time to time to inspect the Line and inform VPA of any observable conditions that Belt Line maintains might require maintenance or other action by VPA pursuant to Section 7. Upon receiving such notification, VPA shall, after consultation with Belt Line, and, provided that the work is not required as a result of the negligence or willful wrongful act of Belt Line, its employees, agents or assigns, perform any necessary repairs, maintenance or other actions, all at VPA's cost, subject to the other provisions of this Operating Agreement. In the event that the work is required as a result of the negligence or willful wrongful act of Belt Line, VPA shall perform any necessary repairs and Belt Line shall reimburse VPA for the cost of such repairs.

SECTION 4. SIDING PROVIDED FOR LOCOMOTIVE RUN-AROUND OPERATIONS

4.1 VPA shall at all times during the term of this Operating Agreement make available to Belt Line a siding, constructed and maintained at no cost to Belt Line and connected to the Line, for the purpose of enabling Belt Line to conduct locomotive run-around operations necessary for Belt Line to provide freight railroad service to its customers.

4.2 The particular siding track to be used for this purpose, which may from time to time vary, shall be designated by VPA, which shall make reasonable efforts to keep the designated

track clear. Belt Line shall provide a minimum of six (6) hours advance notice to VPA in order to help ensure that the designated track is clear upon the arrival of a train. Notice under this provision shall be provided in a manner which is reasonable under the circumstances.

4.3 VPA agrees that the obligation to provide Belt Line access to a siding for locomotive run-around operations shall be on a twenty-four (24) hour, seven (7) days a week basis. VPA's use of the designated siding shall not unduly interfere with the Belt Line's locomotive run-around operations.

4.4 VPA's obligation to provide Belt Line with access to a rail siding pursuant to this Section 4 shall not extend to providing access to Belt Line of the Line or other VPA-owned track for the purpose of storing rail cars or parking trains. Permission to store rail cars or park trains on VPA-owned track must be obtained separately from VPA.

SECTION 5. RESTRICTIONS ON USE OF THE LINE

5.1 Belt Line shall not, without prior written consent of VPA, which shall not be unreasonably withheld:

5.1.1 grant any easement, lease, license or right of occupancy in, on, under, through, above, across or along the Line, or any portion thereof, to any third party that is not an assignee or grantee of track rights under Subsection 3.4.; or

5.1.2 cause or knowingly suffer the creation of any encumbrance or lien on the Line or any portion thereof, provided however, that Belt Line and NSR may from time to time amend the Operating Rights Agreement without consent of VPA. Any such grant by Belt Line shall not exceed its rights hereunder and shall be subject to this Operating Agreement and the Easement.

SECTION 6. TAXES AND UTILITIES

6.1 VPA shall be responsible for the payment of all taxes which may be assessed, levied, charged, confirmed or imposed by any governmental authority on the Line and underlying right-of-way.

6.2 Belt Line shall be solely responsible for all costs, expenses, charges, obligations and liabilities, of any nature and kind, relating to or arising from Belt Line's use, occupancy, or operations on the Line during the term of this Operating Agreement, except as specifically otherwise provided herein.

SECTION 7. MAINTENANCE OF THE LINE; DISPATCHING

7.1 The Line shall be maintained to applicable FRA standards by VPA, or a qualified third party contractor selected by VPA, at VPA's expense, except to the extent that the costs of any maintenance or repair are incurred as a result of the negligence or willful wrongful act of Belt Line or its employees, agents, or assigns, in which case the costs shall be borne by Belt Line. Each shall have the right to enter onto the right-of-way and the Line for the purpose of performing necessary maintenance, subject to providing advance notice to Belt Line, and ensuring that maintenance activities will not unduly interfere with Belt Line's freight rail operations.

7.2 For the purpose of this Operating Agreement, maintenance will be assumed to include (without limitation and subject to applicable FRA standards) replacing rail, checking and correcting rail gauge, adding ballast and maintaining vertical and horizontal rail alignment, replacing and/or setting spikes, cleaning and lubricating switches, restoring switch and frog points, replacing cross ties as needed, removing debris and controlling vegetation and erosion in rights of way, and maintaining signals, lights, crossings, and signage.

7.3 VPA shall, at its own expense, provide the necessary property outside the Belt Line right-of-way required for the proper construction, maintenance and operation of VPA Tracks.

7.4 In the event that the Line passes over any public or private street or road, or in the event any such street or road shall hereafter be constructed across the Line, VPA will, at its expense, maintain the crossing in safe and secure condition and comply with all requirements of public authority relating thereto.

7.5 Should VPA fail to comply with its obligation to maintain the track, resulting in the Line becoming unsafe for freight rail operations, Belt Line, after providing advance notification to VPA, shall have the right, but not the obligation, to suspend rail operations over the Line until such compliance has occurred; provided, however, that VPA shall have 48 hours after receiving such notification to implement corrective action consistent with its obligations under this section. Should VPA fail to make or cause to be made needed repairs within the 48-hour period, and within any additional time as may be reasonable and necessary under the circumstances, Belt Line may make or cause to be made such repairs at VPA's expense.

7.6 Dispatch of the Line will be by VPA or its agents in coordination with the Belt Line, and subject to the Belt Line's permanent easement to conduct freight rail operations and the rights of the NS under the Operating Rights Agreement.

SECTION 8. ADDITIONS AND ALTERATIONS

If any changes to, additions and betterments of the Line are required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction over the Line, or if the operations of Belt Line should require any such additions, betterments or retirements, at VPA's request to do so, Belt Line shall construct the additional or altered facilities and VPA shall pay to Belt Line the cost thereof.

SECTION 9. MANAGEMENT AND OPERATIONS

9.1 Belt Line shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Line. Belt Line shall indemnify, protect, defend, and save harmless VPA and its agents and employees from and against all fines, penalties and liabilities imposed upon VPA and its agents and employees under such laws, rules and regulations by any public authority or court having jurisdiction of the Line, when attributable solely to the failure of Belt Line to comply with its obligations in this regard.

9.2 Belt Line's trains shall not include locomotives, cars or equipment which exceed any width, height, weight or other restrictions or capacities of the Line.

9.3 Belt Line shall have exclusive control over the terms and conditions upon which it provides railroad transportation services to its customers, to the same extent as if Belt Line owned the Line outright, subject to the terms of this Operating Agreement.

SECTION 10. VPA RIGHT OF ENTRY

In addition to the right to enter upon the right-of-way and track for the purposes of fulfilling its obligation to maintain the Line, VPA shall have the right at all times to enter upon the property underlying the Line for the purpose of inspecting said property and the track; provided, however, VPA's exercise of such right to inspect shall not unduly interfere with Belt Line's freight rail operations over the Line.

SECTION 11. VPA's OWNERSHIP INTEREST

Notwithstanding Belt Line's Easement and its use and control of the Line pursuant to this Operating Agreement, VPA shall at all times remain the owner of all its right, title and interest in the Line. Nothing herein shall be construed as the conveyance of an interest in real or personal property. Belt Line shall not take any action inconsistent with the foregoing, and in particular shall not represent to third parties that its interest in the Line exceeds that under its retained Easement and this Operating Agreement.

SECTION 12. CONDITION OF TRACKAGE AND FACILITIES

It shall be the duty of Belt Line to disclose to VPA any reasonably observable defects of the trackage and facilities while operating on the Line.

SECTION 13. LIABILITY

13.1 To the extent permitted by Virginia law, VPA and Belt Line agree to assume responsibility for any and all claims for any property damage, personal injury and/or death caused by their own actions or failure to act under the terms and conditions of this Operating Agreement.

13.2 Belt Line shall be responsible for (1) any loss and/or liability for loss of, damage to, or destruction of the property of VPA, its employees, agents, contractors or invitees; or any other person, entity, agency, firm, partnership or corporation whatsoever to the extent caused by the negligence of Belt Line; and (2) any liability for injury to or death of any person whomsoever, in each case relating to, resulting from or arising out of Belt Line's negligence in the use, maintenance of or operations on the Line.

13.3 Belt Line shall not be responsible for any landowner liability not involving Belt Line's negligent use, maintenance or operations on the Line, as VPA shall be and remain the owner of the real estate underlying the Line, as well as the Line itself.

13.4 At all times under this Operating Agreement, Belt Line shall be responsible for causing any contamination to occur, including but not limited to contaminants present in the soil, groundwater or soil vapor, located in, on or under the Line to the extent the presence of the contamination is the result of any act or omission by the Belt Line or its agent(s) or subcontractors. In instances where it cannot be determined with certainty whether Belt Line or VPA was the sole cause of any contamination, responsibility under this agreement shall be apportioned between them in accordance with applicable law. The term "contamination" shall mean the unconfined presence of toxic or hazardous substances on or in the Premises, or arising from the Premises, which may require remediation under any applicable law. For purposes of this Operating Agreement, "hazardous substance(s)" shall have the meaning of "hazardous substance" set forth in 42 U.S.C. §9601(14), as amended, and of "regulated substance" at 42 U.S.C. §6991(2), as amended, and of any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia. At all times, Belt Line shall also be responsible if any of its activities or those of its agents or subcontractors, results in the exacerbation of any contamination, including but not limited to those present in the soil, groundwater or soil vapor, located in, on or under the Line, whether known or unknown.

13.4.1 If contamination for which the Belt Line is responsible under this agreement is discovered in, on or under real property within the Line right of way, the Belt Line shall, at its sole cost and expense, do the following:

13.4.1.1 Immediately report the presence or release of hazardous substances to VPA;

13.4.1.2 Make any required notifications to and obtain any required approvals from the U.S. Environmental Protection Agency, the U.S. Coast Guard, the Virginia Department of Environmental Quality, or other appropriate state or federal agency for the proper

management and remediation of the hazardous substances in order to restore the real property to its condition prior to the presence of the hazardous substances; and, manage, remove and properly dispose of any hazardous substances in accordance with any approved plans and all applicable laws, regulations and ordinances or as required by VPA to restore the property to its pre-existing condition. This shall include, to the extent required, any grading and reinforcement necessary to restore the weight-bearing capacity of the Line right-of-way.

13.4.2. If hazardous substances for which Belt Line is not responsible under the terms of this Operating Agreement are discovered in, on, or under real property within the Line right-ofway, Belt Line shall immediately notify VPA.

13.4.2.1 Belt Line shall indemnify, protect, defend and hold harmless VPA and the Commonwealth of Virginia from any and all claims (including but not limited to response costs, administrative costs, fines, charges, penalties and cost recovery or similar actions brought by a governmental or private party and including third party tort liability) arising, directly or indirectly, from any presence, threat of release, placement, use, generation, manufacture, encapsulation, storage, treatment, disposal, discharge, burial, repair, cleanup, detoxification, removal or remediation of any hazardous substances for which Belt Line is responsible under this Operating Agreement. Without limiting its generality, the indemnity above is intended to operate as agreements pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) to insure, protect, hold harmless and indemnify the indemnified parties from any liability pursuant thereto.

13.4.2.2 VPA and Belt Line shall cooperate with each other in the prosecution of any Claims against or the defense of any Claims made by third parties in connection with hazardous substances present in, on, or under the Line right of way. In addition, each party not responsible hereunder for any remediation of hazardous substances shall accommodate any reasonable needs and requests of the responsible party hereunder and cooperate with the

responsible party in connection with the responsible party's investigation, analysis of alternatives and conduct of remedial action. Without limiting the foregoing, the party not responsible hereunder shall cooperate in order to preserve and protect the responsible party's right to recover costs from other potentially responsible parties, including but not limited to cooperating in maintaining consistency with the National Contingency Plan or any other regulations of the U.S. Environmental Protection Agency, or cooperating in the responsible party's conduct of a remediation substantially equivalent to one which would be conducted under the supervision of the Virginia Department of Environmental Quality. All references in this to remediation, remedial action, remedial work and similar terminology include, without limitation, removal and proper disposal, if elected by or required of the party responsible to remediate.

13.4.3 VPA shall not create or permit to be created or to exist upon or about the Line any nuisance, public or private, during the term of this Operating Agreement; and, to the extent permitted by law, shall assume responsibility for VPA's violation of any applicable law, ordinance or governmental regulation, including, without limitation, laws, ordinances and governmental regulations controlling air, water, noise, solid wastes and other pollution control structures, devices or equipment which may be required during the term and continuance of this Operating Agreement under any applicable laws, ordinances or governmental regulations because of or arising from the condition of the Line, or any use thereof or operations thereon by VPA or those claiming by, through or under VPA, exclusive of any violation committed by Belt Line or those acting by, through or under Belt Line.

SECTION 14. INSURANCE

14.1 Belt Line warrants and represents that, at all times during the term of this Operating Agreement, it shall either self insure against all claims which may arise out of or result from the performance of rail transportation services hereunder by Belt Line or its assigns, or by

any subcontractor or by anyone directly or indirectly employed by Belt Line, or it shall purchase and maintain such insurance as will protect it from all claims which may arise out of or result from the performance of rail transportation services hereunder by Belt Line or its assigns, or by any subcontractor or by anyone directly or indirectly employed by Belt Line. Should insurance be purchased, coverages shall be in the amount of \$5 million perincident/\$10 million cumulative for each of the covered areas of insurance found below. Such self insurance or insurance shall comply with all applicable Virginia state and federal laws and include, but not be limited to, coverages for:

14.1.1 Claims under Federal Employers Liability Act ("FELA"), disability benefits laws and any other employee benefit acts or laws applicable to Belt Line in the performance of its services;

14.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of Belt Line's employees;

14.1.3 Claims for damages because of bodily injury or death of any person other than its employees;

14.1.4 Claims for damages insured by the usual personal injury liability coverage and which are sustained by any person as a result of an offense directly related to the employment of such person by Belt Line;

14.1.5 Claims for damages because of injury to or destruction of tangible property of VPA or any third party, including loss of use resulting therefrom due to the negligence of any employee of Belt Line;

14.1.6 Claims for damage to or destruction of property of others in Belt Line's care, custody or control, including that of VPA.

SECTION 15. FORCE MAJEURE

Each party shall be excused from the performance of any of its obligations under this Operating

Agreement where such non-performance is occasioned by any event beyond the non-performing party's control, which shall include, without limitation, any order by any federal, state, or local governmental body, agency, or instrumentality (other than orders relating to correction by the Belt Line of its non-compliance with applicable laws and regulations applicable to Belt Line's performance hereunder); natural disaster; acts of war; civil disorder, provided however that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove the cause of the force majeure event in the shortest practical time. Neither party shall be liable for any damages or costs incurred by the other party that are caused by the occurrence of a force majeure event, unless the party claiming the occurrence of a force majeure event fails or refuses to make reasonable efforts to minimize its non-performance and to overcome, remedy or remove the cause of the force majeure, in which case the continuation of the claimed event shall not be an excuse for failing to perform obligations under this Operating Agreement.

SECTION 16. DEFAULT, NON WAIVER OF SOVEREIGN IMMUNITY

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the VPA or the Commonwealth of Virginia.

SECTION 17. SUCCESSORS AND ASSIGNS

17.1 This Operating Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, Belt Line shall not transfer or assign this Operating Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior consent of VPA, which consent may not be

unreasonably withheld, conditioned or delayed; provided however, that VPA's consent is not required for joint use of the Line through trackage agreements pursuant to Subsection 3.4.

SECTION 18. GENERAL PROVISIONS

18.1 This Operating Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the parties hereto.

18.2 This Operating Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings among the parties.

18.3 No term or provision of this Operating Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Operating Agreement.

18.4 All words, terms and phrases used in this Operating Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

18.5 All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Operating Agreement.

18.6 This Operating Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.7 This Operating Agreement shall be governed and construed in accordance with the laws of the State of Virginia.

IN WITNESS WHEREOF, the parties have caused these presents to be signed by duly authorized officers all as and for the day and year first above written.

**NORFOLK AND PORTSMOUTH BELT
LINE RAILROAD COMPANY**

By _____
President and General Manager
Date: _____

Approved as to form on behalf of
Norfolk and Portsmouth Belt Line
Railroad Company

General Counsel
Date: _____

Approved as to form on behalf of
Norfolk and Portsmouth Belt Line
Railroad Company

Chief Engineer
Date: _____

VIRGINIA PORT AUTHORITY

By _____
Date: _____

Approved as to form on behalf of the
Virginia Port Authority

By: Jeffrey R. Allen
Assistant Attorney General
Date: _____

