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APPENDIX A – INTERMODAL AND AUTOMOTIVE TRACKAGE RIGHTS

**SECTION 1. SUBJECT TRACKAGE; END POINTS**

(a) Subject Trackage. The following segments of railroad owned or operated by Pan Am Southern are hereby identified as the “Subject Trackage” for this Appendix A:

(i) The line between Mechanicville, NY, at or near Milepost 467.40, and the Ayer Intermodal Facility in Ayer, MA, at or near Milepost [ ], a distance of approximately [ ] miles (which distance will be used to determine the compensation due for use of these rights pursuant to Section 5(c) of the Agreement).

(ii) The line between Mechanicville, NY, at or near Milepost 467.40, and the Ayer Automotive Facility in Ayer, MA, at or near Milepost [ ], a distance of approximately [ ] miles (which distance will be used to determine the compensation due for use of these rights pursuant to Section 5(c) of the Agreement).

(iii) The main line between Mechanicville, NY, at or near Milepost 467.40, and the Sanvel Properties in Ayer, MA, at or near Milepost [ ], a distance of approximately [ ] miles (which distance will be used to determine the compensation due for use of these rights pursuant to Section 5(c) of the Agreement).

The Subject Trackage for this Appendix A is reflected on the attached Map A.

(b) End Points. The following locations are hereby identified as the “End Points” for this Appendix A: The main line in Mechanicville, NY, at or near Milepost [ ], the Ayer Intermodal Facility in Ayer, MA, at or near Milepost [ ], the Ayer Automotive Facility in Ayer, MA, at or near Milepost [ ], and the Sanvel Properties in Ayer, MA, at or near Milepost [ ].

**SECTION 2. ADDITIONAL RESTRICTIONS ON USE**

In addition to other restrictions on use described in the Agreement, the Trackage Rights pursuant to this Appendix A may only be used for the movement of loaded or empty Intermodal Cars and Equipment or Automotive Traffic Cars and Equipment.

## APPENDIX B – DEFINITION OF MAJOR SERVICE STANDARD FAILURE

### Section 1. Service Standards.

(a) The Service Standards contained in this Section 1 shall become effective beginning with the start of the calendar year following the earlier of (i) completion of the spending of the Capital Proceeds as defined in the Capital Planning and Facility Management Agreement (“CPFMA”), excluding the two million five hundred thousand dollars (\$2,500,000) for improvements at Ayer; or (ii) the fourth anniversary of the Closing of the Transaction.

(b) For the purpose of this Appendix B, the following definitions shall apply:

(i) The term “End Points” shall mean Mechanicville, on the one hand, and the Ayer Intermodal Facility, the Ayer Automotive Facility or the Sanvel Properties, depending upon the intended origin or destination of the relevant Qualifying Train.

(ii) The term “Release” shall refer to the verified time that the terminal contractor at (1) Mechanicville releases the eastbound train or (2) Ayer releases the westbound train, to the Railroad Operator’s transportation department for furtherance to Ayer and Mechanicville respectively.

(iii) The term “Placement” shall be the time that the Norfolk Southern Intermodal/Automotive Traffic railcars are placed on the loading tracks of the relevant intermodal or automotive terminal and blue flags are placed so that the train can be unloaded.

(iv) The term “Qualifying Trains” shall be trains carrying primarily Norfolk Southern Haulage Traffic permitted to be moved pursuant to Appendix F to this Agreement (“Norfolk Southern Intermodal/Automotive Traffic”) released within thirty (30) minutes of the scheduled released time. In addition, Qualifying Trains must meet the following criteria to be included in the computation for Service Standards:

(A) The train must not have been delayed en route between the End Points directly as a result of:

(1) a crossing accident;

(2) the failure of locomotives in Norfolk Southern’s account on the train, unless said failure is intentionally caused by the acts of the crews, in the case of trains moving Norfolk Southern Intermodal/Automotive Traffic,

(3) trains carrying Norfolk Southern Intermodal/Automotive Traffic that undergo a 1,000 mile inspection between the End Points;

(4) concentrated FRA audits;

(5) a scheduled maintenance of way window where Pan Am Southern has given Norfolk Southern at least thirty (30) days advance notice, and, despite the good faith efforts of the Railroad Operator and Norfolk Southern under the direction of the JOC to resolve potential conflicts in scheduling, said train delays could not be avoided; or

(6) Force Majeure; or

(B) The train must not have begun its transit over the Line on any of the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(c) At the time Service Standards become effective, the following transit times for Qualifying Trains will apply:

(i) On eastbound services, the Service Standard Transit Time for a Qualifying Train moving Norfolk Southern Intermodal/Automotive Traffic from Release at Mechanicville Yard to Placement at the Ayer Intermodal Facility or Ayer Automotive Facility shall be set forth in a schedule that will specify a transit time of seven (7) hours or less.

(ii) On westbound services, the Service Standard Transit Time for a Qualifying Train moving Norfolk Southern Intermodal/Automotive Traffic from Release at, as may be relevant for the affected Norfolk Southern Intermodal/Automotive Traffic, the Ayer Intermodal Facility, the Sanvel Properties or the Ayer Automotive Facility (or, should the Qualifying Train contain both intermodal and automotive rail cars, whichever of the same is later) to Placement in either the yard or on the loading tracks at Mechanicville, whichever the operations manager for that facility directs, shall be set forth in a schedule that will specify a transit time of seven (7) hours or less.

(iii) If the Qualifying Train is a mixed train (containing both: (x) multilevels and/or unilevels and (y) intermodal cars), then the seven (7) hour service standard set forth in Section 1(c)(i) shall only apply to the Placement of the first of the Norfolk Southern Intermodal/Automotive Traffic to be delivered to the relevant terminal, provided that:

(A) Pan Am Southern shall, and shall cause its Railroad Operator and its Terminal Operator to, place first the railcars running closest to scheduled availability, and;

(B) Pan Am Southern shall, and shall cause its Railroad Operator and its Terminal Operator to, take all reasonable efforts to move the remaining railcars to their respective terminals within one (1) hour or less.

(iv) In the event that a Qualifying Train requires fueling en route over Pan Am Southern, then a one (1) hour allowance shall be added to the relevant service standard.

(d) The Service Standard Transit Times provided for herein will not be amended or modified as a result of a Pan Am Change in Control, as defined in the LLC Agreement.

(e) Pan Am Southern shall, or shall cause its contractors to, provide Norfolk Southern a monthly report detailing scheduled release, actual Release and Placement times to support any necessary audit, review and enforcement of the provisions of this Appendix B.

(f) If a Qualifying Train length exceeds the available pad tracks at the relevant Terminal, then only the portion of the Qualifying Train that can fit on the available pad tracks is subject to the on-time metric detailed herein.

## **Section 2. Major Service Standard Failure**

(a) A “Major Service Standard Failure” occurs when Qualifying Trains do not operate to the Service Standard Transit Times at least eighty five percent (85%) of the time, measured with a sixty (60) minute leeway, in any given rolling ninety (90) day period (the “Initial Period”).

(b) Upon notification to Pan Am Southern of a Major Service Standard Failure, Pan Am Southern shall have three (3) months (the “Correction Period”) to make such operational and other adjustments as may be reasonable or necessary to eliminate the causes of the deficiency. During this Correction Period, Pan Am Southern shall provide Norfolk Southern periodic (but no less than every other week) reports as to efforts undertaken. Within the Correction Period, Pan Am Southern shall certify that the causes of the deficiency have been corrected or that the causes of the deficiency cannot be corrected. In the event that Pan Am Southern certifies that the causes of the deficiency have been corrected, this certification shall be validated by Pan Am Southern operations for any thirty (30) consecutive day period within the Correction Period in conformance with the Service Standard Transit Times.

(c) If either (a) Pan Am Southern certifies that the causes of the deficiency cannot be corrected or (b) Pan Am Southern is unable to validate (in conformance with the final sentence of Section 2(b) of this Appendix B) that its certification that the causes of the deficiency have been corrected, then Norfolk Southern has the option, but not the obligation, to provide notice (“Trackage Rights Notification”) to Pan Am Southern that it will invoke its right to begin to exercise the trackage rights provided by Section 2(a) of this Agreement.

(d) Upon service of the Trackage Rights Notification, Pan Am Southern and Norfolk Southern will continue to work to eliminate the causes of the deficiency giving rise to the Major Service Standard Failure, and to return haulage operations to the ninety percent (90%) on time requirement, taking into account the thirty (30) minute tolerance factor described above. Norfolk Southern shall have the right to withdraw its Trackage Rights Notification (without prejudice to service of the same for any future Major Service Standard Failure) during the subsequent ninety (90) day period (the “Termination Period”). Norfolk Southern may, at its option, initiate trackage rights operations at any time following the expiration of the Termination Period.

(e) For calculation purposes, a subsequent Initial Period can overlap with a prior Correction Period and Termination Period, and a subsequent Correction Period can overlap with a prior Termination Period.

APPENDIX C – HAULAGE RIGHTS FOR P&W INTERCHANGE

**SECTION 1. SUBJECT TRACKAGE; END POINTS**

(a) Subject Trackage. The following segment of railroad owned or operated by Pan Am Southern is hereby identified as the “Subject Trackage” for this Appendix C: The main line between Mechanicville, NY, at or near Milepost [ ], and a connection with the P&W in Gardner, MA, at or near Milepost [ ], a distance of approximately [ ] miles, each such location being designated as an “End Point” for this Appendix C. The Subject Trackage for this Appendix C is reflected on the attached Map C.

(b) Permitted Traffic. In addition to traffic for which a rate is provided in Section 1(c) of this Appendix C, haulage provided to Norfolk Southern for interchange to the P&W shall include movements of the following [REDACTED] flows:

- (1) [REDACTED]  
[REDACTED]; and
- (2) [REDACTED]  
[REDACTED].

(c) Compensation. For each loaded carload of [REDACTED], the following per car haulage rates shall apply [REDACTED]  
[REDACTED]:

[REDACTED]

[REDACTED]

All rates set forth herein shall be subject to rate adjustment and fuel surcharge as set forth in Appendix G.

APPENDIX D – HAULAGE RIGHTS FOR VTR INTERCHANGE

**SECTION 1. SUBJECT TRACKAGE; END POINTS**

(a) Subject Trackage. The following segment of railroad owned or operated by Pan Am Southern is hereby identified as the “Subject Trackage” for this Appendix D: The main line between Mechanicville, NY, at or near Milepost [ ], and a connection with the VTR in Hoosick Junction, at or near Milepost [ ], a distance of approximately [ ] miles, each such location of which are hereby identified as “End Points” for this Appendix D. The Subject Trackage for this Appendix D is reflected on the attached Map D.

(b) Compensation. For each loaded carload of [REDACTED], the following per car haulage rates shall apply [REDACTED]:

[REDACTED]

All rates set forth herein shall be subject to rate adjustment and fuel surcharge as set forth in Appendix G.

APPENDIX E – HAULAGE RIGHTS FOR NECR INTERCHANGE

**SECTION 1. SUBJECT TRACKAGE; END POINTS**

(a) Subject Trackage. The following segment of railroad owned or operated by Pan Am Southern is hereby identified as the “Subject Trackage” for this Appendix E: The main line between Mechanicville, NY, at or near Milepost [ ], and a connection with the NECR in Brattleboro, VT, and, following construction of a connection at Millers Falls, Millers Falls, at or near Milepost [ ], a distance of approximately [ ] miles, each such location of which are identified as “End Points” for this Appendix E. The Subject Trackage for this Appendix E is reflected on the attached Map E.

(b) Compensation. For each loaded carload of [REDACTED], the following per car haulage rates shall apply [REDACTED]:

[REDACTED]

All rates set forth herein shall be subject to rate adjustment and fuel surcharge as set forth in Appendix G.

## APPENDIX F – INTERMODAL AND AUTOMOTIVE HAULAGE RIGHTS

### SECTION 1. ADDITIONAL DEFINITIONS

Capitalized terms defined in Section 1 of the Agreement shall have the same meaning in this Appendix F as set forth in that section. The following capitalized terms shall have, for the purposes of this Appendix F, the defined meaning set forth below:

“**Auxiliary Services**” shall refer to those services described in Schedule C, not included in the line haul rate, requested by and paid for by either a Customer or Norfolk Southern.

“**Cause**” shall have the meaning given to that term in Section 9 of this Appendix F.

“**Customers**” shall refer to shippers and consignees and their agents tendering Intermodal trailers and containers, or Automotive Traffic to Norfolk Southern for movement by rail.

“**Interchange**” shall refer only to the physical exchange of Cars, Intermodal Equipment, Automotive Traffic or trains at Mechanicville, NY and shall not constitute or imply the transfer of any liabilities or obligations not specifically set forth in this Agreement.

“**Intermodal Equipment**” shall refer to all containers, trailers and chassis transported or used in the provision of the Haulage Services or the Lift Services.

“**Haulage Services**” shall refer to those services described in Schedule A, provided by Pan Am Southern, included in the rates and paid for solely by Norfolk Southern.

“**Lift Services**” shall refer to those services described in Schedule B, which Pan Am Southern shall cause to be provided by the Terminal Operator, and for which Norfolk Southern shall pay the Terminal Operator directly as set forth in Schedule D.

“**Norfolk Southern Operations Service Representatives**” shall refer to the Norfolk Southern employees designated to work with Pan Am Southern and the Terminal Operator to ensure that the service meets the needs of Customers.

“**Railcars**” shall refer to all flatcars, multilevels and other rail equipment used to provide Haulage Services.

“**Terminal Operator**” shall refer to that operator performing the Lift Services and the Auxiliary Services at each of the Destination Facilities and the Waterville Facility.

“**Waterville Facility**” shall refer to the intermodal facility owned by one or more of the Pan Am System Parties and/or one or more of their subsidiary or affiliated companies in Waterville, ME.

### SECTION 2. DESCRIPTION OF SERVICES

(a) Haulage, Lift and and Auxiliary Services. Subject to the terms and conditions of this Agreement and this Appendix F, Pan Am Southern shall perform the Haulage Services and shall cause its Terminal Operators to perform the Lift Services (at the Ayer Intermodal) and Vehicle Loading/Unloading Services (at the Automotive terminals) and the Auxiliary Services. Norfolk Southern shall (i) pay Pan Am Southern for the performance of the Haulage Services, (ii) pay Pan Am Southern for the performance of the Lift Services and (iii) pay Pan Am Southern for the performance of the Auxiliary Services that are requested by Norfolk Southern, all at the rates set forth or calculable in accordance with Schedule D. For purposes of clauses (ii) and (iii) of this Subsection 2(a), Pan Am Southern directs Norfolk Southern to pay the fee it owes to Pan Am Southern directly to the Terminal Operator, and Pan Am Southern will require the Terminal Operator to report the activity and payments to Pan Am Southern

(b) Traffic Permitted to be Handled. The Haulage Services, the Lift Services and the Auxiliary Services shall be provided to traffic tendered to Pan Am Southern for the provision of such services under this Appendix F, which traffic shall be limited to loaded or empty Intermodal or Automotive Cars moving in the revenue waybill account of Norfolk Southern, CP or D&H. Without limiting the foregoing, Norfolk Southern need not handle the tendered traffic prior to, or subsequent to the tendering of traffic to Pan Am Southern for the provision of the Haulage Services, the Lift Services or the Auxiliary Services under this Appendix F.

(b) Terminal Schedules and Operating Hours. Pan Am Southern shall perform, and shall cause its Terminal Operators to perform, according to the schedules and Destination Terminals' operating hours set forth in Schedule E.

(c) Terminal and Dispatching Holidays. Pan Am Southern shall not be obligated to operate any of the Destination Terminals or dispatch trains handling traffic pursuant to this Appendix F on the following holidays: New Years Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Notwithstanding the foregoing, the Participant Parties shall review operations and commercial requirements prior to these and other holidays and determine if any adjustments to service or Destination Terminal operating hours are required to accommodate Customer demands.

(d) Provision of Personnel and Equipment. Pan Am Southern shall provide, and shall cause its Terminal Operators to provide, all qualified operating and supervisory personnel, locomotives, track, utilities, materials and supplies reasonably necessary for the efficient performance of their respective components of the Haulage Services, the Lift Services and the Auxiliary Services.

(e) Record Keeping. Pan Am Southern shall keep, and shall cause its Terminal Operators to keep, all appropriate records and prepare and deliver to Norfolk Southern (or its designee) all reports reasonably required by Norfolk Southern regarding the services listed in Schedule A and Schedule B or as described elsewhere in this Appendix F.

(f) Loading Efficiency. Pan Am Southern shall cause its Terminal Operator to make every effort to load Intermodal Equipment and Automotive Traffic onto Railcars in such a way

that the minimum number of Railcars are used for the given amount, type, size and arrival time of Intermodal Equipment and Automotive Traffic at respective Destination Terminals. For Intermodal Railcars with capacity of two or more units, Pan Am Southern shall cause the Terminal Operator of any Intermodal Destination Facility or the Waterville Facility to make every effort to load each Railcar with the same destination terminal Intermodal Equipment. Pan Am Southern shall follow, and shall cause its Terminal Operator to follow, reasonable Norfolk Southern loading and blocking instructions and restrictions. Norfolk Southern, Pan Am Southern and the Terminal Operator shall periodically discuss loading and possible blocking priorities to best suit market conditions.

(g) Terminal Operation Rules. Pan Am Southern shall cause its Terminal Operator to operate (i) the Ayer Intermodal Facility and the Waterville Facility in accordance with the Norfolk Southern Intermodal Rules Circular the AAR Intermodal Trailer and Container Securement Manual for Intermodal Cars and Intermodal Equipment, and as detailed in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-Level Manual, for Automotive Cars and Automotive Traffic, and (ii) the Sanvel Properties and the Ayer Automotive Facility in accordance with the Norfolk Southern Conditions of Carriage and the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-Level, for Automotive Traffic, in each case including without limitation with respect to the application of free time and storage charges; provided that Norfolk Southern may make exceptions to the application of such rules with respect to select accounts with the approval of Pan Am Southern and existing exceptions to the application of such rules (with respect to the Ayer Intermodal Facility and the Waterville Facility) shall be respected until requested otherwise by Norfolk Southern.

### **SECTION 3. RAILCAR AND EQUIPMENT MAINTENANCE**

(a) Railcar and Equipment Maintenance Generally. All work on Railcars and Intermodal Equipment shall be performed in accordance with Section 3(d) and Section 3(e) of this Appendix F, as may be relevant to the affected Railcars or Intermodal Equipment. Norfolk Southern shall not have, and shall not be deemed to have, any responsibility for the direct supervision of the Destination Terminal employees engaged in the performance of any such maintenance, cleaning, repair or related services. Any repairs must be authorized in writing by the Norfolk Southern Operations Service Representative.

(b) Pan Am Southern and Terminal Operator Equipment. Pan Am Southern shall be responsible for maintaining and repairing at its own expense (including parts and materials) its own work equipment and machinery, and causing the Terminal Operators to maintain and repair (including parts and materials) any work equipment, tools, and machinery used by the Terminal Operators.

(c) Norfolk Southern Equipment. Without limiting the Participant Parties' responsibilities under various provisions of this Agreement and this Appendix F, the Norfolk Southern Operations Service Representatives shall have overall responsibility to coordinate, order and request from Pan Am Southern (or, if directed by Pan Am Southern, from its Terminal

Operators) maintenance, cleaning, repair and replacement for Intermodal Equipment owned, leased or otherwise controlled by Norfolk Southern (or CP or D&H).

(d) Norfolk Southern Railcars. Section 9(b) of the Agreement dictates responsibilities and obligations should a Railcar owned by or in the account of Norfolk Southern (or CP or D&H) require repairs while on the Subject Trackage. For the purpose of implementing Section 9(b), Railcars owned by or in the account of CP or D&H moving pursuant to this Appendix F shall be considered to be, for the purpose of Section 9(b), a Railcar owned by or in the account of Norfolk Southern, and Norfolk Southern shall be principally responsible for the cost of repairs that are performed pursuant to that Section, notwithstanding the acknowledgement of the Parties that Norfolk Southern will request CP and D&H to pay any invoices directly.

(e) Customer Owned Equipment. Pan Am Southern shall cause its Terminal Operators to perform maintenance, cleaning, and repair work on Customers' privately owned or leased Intermodal Equipment as requested and authorized by the Customer. Where such services are performed at the request of the Customer, Pan Am Southern shall send, or cause its Terminal Operator to send, the invoice directly to the Customer. Where such services are performed at the request of Norfolk Southern, Pan Am Southern shall send, or shall cause its Terminal Operator to send, the invoices directly to Norfolk Southern. Norfolk Southern shall not be responsible for any cost incurred by a Terminal Operator in performing Customer authorized service work for which the Terminal Operator is not fully reimbursed by the Customer.

(f) Damaged Equipment and Lading. Pan Am Southern shall be responsible for repairing at its own expense or cause the Terminal Operator to repair (including parts and materials) any damage to Intermodal Equipment caused by negligence or abuse by Pan Am Southern or its Terminal Operators, their subcontractors or agents or other parties while said Intermodal Equipment is in the control of Pan Am Southern or its Terminal Operators. Pan Am Southern shall cause its Terminal Operators to report on a regular basis as directed by Norfolk Southern as to any damaged Norfolk Southern (or CP or D&H) Intermodal Equipment and will give Norfolk Southern (and CP and D&H, as the case may be) an opportunity, at Norfolk Southern's option, to inspect such damage prior to any repairs being made. If such damage or destruction is beyond economic repair, Pan Am Southern shall pay Norfolk Southern the depreciated replacement value of the Intermodal Equipment as determined under the AAR Rules. Norfolk Southern may direct that payment be made directly to CP or D&H for CP or D&H Intermodal Equipment. Pan Am Southern shall be liable for damage to the contents of Intermodal Equipment caused by the negligence of Pan Am Southern, its employees, contractors (including Springfield Terminal and the Terminal Operators), or agents, except that Pan Am Southern shall not be liable for any damage that is latent or that cannot be readily ascertained from a visual inspection of the exterior of the Intermodal Equipment. The Participant Party responsible for damage to any lading that is required to be transferred to other Intermodal Equipment shall be responsible for the cost of transferring same. As between Norfolk Southern (or CP or D&H) and Pan Am Southern, liability for Loss or Damage to Intermodal Equipment or its contents or to Automotive Traffic shall be determined on the basis of principles of comparative negligence.

#### **SECTION 4. DESTINATION FACILITIES AND DESTINATION TERMINAL PREMISES**

(a) Access to Destination Terminals. Pan Am Southern hereby grants Norfolk Southern and Norfolk Southern's Customers full access to the Destination Facility areas and facilities in Ayer, MA, and Waterville, ME, including yard, loading areas, parking areas and other outdoor areas, for all activities required for normal intermodal and automotive terminal operations subject to all reasonable operations and security limitations. Pan Am Southern hereby grants Norfolk Southern the right to extend that grant of access to CP, D&H, and their respective Customers. Draymen of Customers shall have access to the Destination Terminals only for the purpose of picking up or dropping off Intermodal Equipment and Automotive Traffic.

(b) Maintenance and Repair to Destination Facilities. Pan Am Southern shall cause the Destination Facilities and the Waterville Facility to be kept in good and safe condition for the operations reasonably expected to be performed there. Except as otherwise stated herein, Pan Am Southern shall be responsible for all maintenance and repairs of the Destination Terminals and facilities. Maintenance and repair shall include, but are not limited to, providing utilities, snow removal, security, janitorial services, maintenance and repair of paved or stoned or other surfaces, work equipment and track. Such maintenance and repair services shall be separate from and in addition to the Haulage Services, the Lift Services and the Auxiliary Services and shall not be subject to additional consideration hereunder.

#### **SECTION 5. SPECIAL LOSS OR DAMAGE PROVISIONS**

(a) Loss or Damages Generally. The procedures outlined in this Section are intended to allocate on an equitable basis responsibility for Loss or Damage to Intermodal Equipment and lading and to Automotive Traffic. The Participant Parties agree to periodically review these procedures for the purpose of achieving this intent, improving the procedures, and reducing the incidents of loss and damage.

(b) Westbound Loading at Terminal. For all westbound traffic, Pan Am Southern shall be responsible for ensuring that all trailers, containers and vehicles loaded onto Railcars are properly secured, using normal and customary procedures as detailed in the AAR Intermodal Trailer and Container Securement Manual, for Intermodal Cars and Intermodal Equipment, and as detailed in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-level Manual, for Automotive Cars and Automotive Traffic. Notwithstanding the provisions of Section 8(c) of the Agreement, Pan Am Southern shall be responsible for Loss or Damage due to failure to ensure that all trailers, containers and vehicles are so properly secured. With respect to any Railcars delivered to Norfolk Southern (or CP or D&H) at Mechanicville, NY, Norfolk Southern shall be responsible for inspection, or for causing the inspection, of Intermodal Equipment, Automotive Traffic and Railcars delivered by Pan Am Southern, using normal and customary procedures. Forwarding of Intermodal Equipment, Automotive Traffic and Railcars without inspection or exception by Norfolk Southern (or CP or D&H) shall constitute acceptance.

(c) Eastbound Exchange at Mechanicville, NY. For all eastbound traffic, Norfolk Southern shall be responsible for ensuring that all trailers, containers and vehicles loaded onto Railcars are properly secured, using normal and customary procedures as detailed in the AAR Intermodal Trailer and Container Securement Manual, for Intermodal Traffic, and as detailed in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-level Manual, for Automotive Traffic. With respect to any Railcars to be delivered to Pan Am Southern by Norfolk Southern (or CP or D&H) at Mechanicville, NY, Pan Am Southern shall be responsible for inspection of Intermodal Equipment, Automotive Traffic and Railcars prior to the departure of the eastbound train from Mechanicville, NY, using normal and customary procedures. Pan Am Southern shall not be responsible for any damage to Intermodal Equipment, Automotive Traffic and Railcars that is reported to Norfolk Southern (or CP or D&H, for that of CP or D&H) prior to departure of the Railcars. Forwarding of Intermodal Equipment, Automotive Traffic and Railcars without inspection or exception by Pan Am Southern shall constitute acceptance.

(d) Security. Pan Am Southern shall be responsible for the security of all Intermodal Equipment and Automotive Traffic (i) for west bound moves, from the time the same enters a Destination Terminal gate to the time that it is delivered to Norfolk Southern at Mechanicville, NY and (ii) for east bound moves, from the time such is delivered from Norfolk Southern at Mechanicville, NY to the time the same leaves a Destination Terminal gate. All seal exceptions and associated lading theft or damage will be reported to the other Participating Party within thirty-six (36) hours. If seal exceptions are not noted, any claims arising from damage and theft resulting from seal exceptions will be the responsibility of the terminating carrier.

(e) Additional Security at Destination Facilities. Pan Am Southern may require its Terminal Operator to provide additional security at each or all of the Destination Facilities or the Waterville Facility (including any associated facilities and rail yards) to the extent reasonably required to ensure the integrity and commercial viability of the associated Destination Terminal operation.

(f) Qualified Drayman. Pan Am Southern shall only permit, and shall cause its Terminal Operators to only permit, those draymen, to whom the physical possession of containers or trailers are transferred at the respective Destination Terminals, who have signed an interchange agreement with Norfolk Southern to accept Intermodal Equipment and Automotive Traffic in interchange at the Destination Terminals. Norfolk Southern shall be responsible for providing Pan Am Southern' Terminal Operators with a current and updated list of qualified draymen.

## **SECTION 6. CAR HIRE AND EQUIPMENT PER DIEM**

(a) Per Diem. Under this Appendix F, all per diem for Intermodal Equipment and Railcars will be maintained in the account of Norfolk Southern, CP or D&H, and the ultimate management of said Intermodal Equipment and Railcars will be the responsibility of Norfolk Southern. Pan Am Southern represents that its accounting and reporting systems are capable of supporting the objectives of this Section 6(a).

(b) Dwell Time. Pan Am Southern and Norfolk Southern hereby agree to work toward, and Pan Am Southern shall cause its Terminal Operators to work toward, minimizing the average Car dwell time (the amount of time that the Car is in the possession of Pan Am Southern from the day Pan Am Southern receives the Car until Pan Am Southern returns the Car to Norfolk Southern, CP or D&H). Pan Am Southern shall provide Norfolk Southern a daily inventory of Cars on Pan Am Southern or in the Terminal and such inventory shall include Car initial and number and day and date that Car was delivered by Norfolk Southern, CP or D&H to Pan Am Southern at Mechanicville, NY.

(c) All Railcars, Intermodal Equipment and Automotive Traffic exchanged between Norfolk Southern (or CP or D&H) and Pan Am Southern and destined to one or more of the Destination Facilities or the Waterville Facility are to be used solely in this service and are not to be interchanged to another carrier or placed into another Pan Am Southern service without written consent from Norfolk Southern, CP or D&H with respect to Cars interchanged by each with Pan Am Southern. Pan Am Southern will use its best efforts to retrieve or replace any Railcars, Intermodal Equipment or Automotive Traffic so interchanged or placed. If not retrieved or replaced within 15 days of its delivery to Pan Am Southern by Norfolk Southern, CP or D&H, then said Railcars, Intermodal Equipment or Automotive Traffic shall thereafter be considered as in the account of Pan Am Southern.

## **SECTION 7. PERFORMANCE REQUIREMENTS**

(a) Pan Am Southern Performance Requirements. Pan Am Southern shall cause its Terminal Operators to not load any Intermodal Equipment that is not in transportable condition. The Participating Parties agree to the train schedules, terminal hours and operating parameters as detailed in Schedule E to this Appendix F, and Pan Am Southern shall operate in accordance with said criteria. The Participating Parties agree to accommodate changes to each other's train schedules, including release cutoff times, provided that such changes are not unreasonable.

(b) Safety Regulations. The Participating Parties shall at all times during the term of this Appendix F comply with all applicable federal and state safety laws, regulations and procedures, including, but not limited to, those promulgated under the Occupational Safety and Health Act.

(c) Norfolk Southern Performance Requirements. Norfolk Southern is responsible for the spotting of eastbound trains at the appropriate Interchange area and time agreed to with Pan Am Southern and for prompt delivery of billing information to Pan Am Southern.

## **SECTION 8. SPECIAL DEFAULTS**

(a) Terminal Operator Default. Norfolk Southern may require that Pan Am Southern replace a Terminal Operator with the Person it designates for "cause" by giving sixty (60) days written notice to Pan Am Southern. "Cause" shall mean:

- (i) Failure of Pan Am Southern to perform or cause its Terminal Operators to perform obligations under Section 7(a) of this Appendix F to Norfolk Southern's satisfaction based upon reasonable commercial standards of performance. For example, damaged containers, where the occurrence of same is more than occasional, would constitute "cause" under this Section 8(a)(i).
- (ii) Failure of Pan Am Southern to correct or cause its Terminal Operators to correct a performance deficiency or other breach of this Appendix F, as it relates to a Destination Terminal, within 60 days of written notice thereof.
- (iii) Failure of Pan Am Southern to timely repair or cause its Terminal Operators to timely repair damaged Norfolk Southern, CP, D&H or Customer Intermodal Equipment in accordance with authorization, where such failure is more than occasional.

Pan Am Southern shall ensure that agreements with its Terminal Operators permits the replacement of such Terminal Operators as required by this Section 8(a).

(b) Failure to Interchange – Westbound. Should Pan Am Southern fail to Interchange westbound traffic prior to the cutoff time, the following procedure and guidelines shall apply:

- (i) Pan Am Southern shall notify Norfolk Southern as soon as possible of any delays and an estimated time of arrival at Mechanicville, NY.
- (ii) Both Participating Parties shall make every reasonable effort to accommodate such delays and to make scheduled connections.

(c) Failure to Interchange – Eastbound. Should Norfolk Southern fail to Interchange eastbound traffic prior to the cutoff time for Pan Am Southern' eastbound trains departing from Mechanicville, NY, the following procedure and guidelines shall apply:

- (i) Norfolk Southern shall notify Pan Am Southern as soon as possible of any delays and an estimated time of arrival at Mechanicville, NY.
- (ii) Both Participating Parties shall make every reasonable effort to accommodate such delays and to make scheduled arrival time at the intended Destination Terminal.

(d) Event of Default Not Related to Performance. Either of the following events shall constitute an "Event of Default" which shall give Norfolk Southern or Pan Am Southern cause to terminate at the non-defaulting Participating Party's option.

- (i) The admission in writing by Norfolk Southern or Pan Am Southern of its inability to pay its debts when due.

(ii) A force majeure event as defined in Section 10 of the Agreement prevents either party from performing its obligations hereunder for a period of sixty (60) days.

(d) Service Standards. The parties shall perform their responsibilities hereunder in accordance with the line haul and terminal service standards set forth in Schedule E to this Appendix F.

## SCHEDULE A TO APPENDIX F – HAULAGE SERVICES

Westbound Haulage Services between the Destination Facilities or the Waterville Facility and Interchange at Mechanicville, NY shall include:

- Transportation of Intermodal Equipment and Automotive Traffic from terminal to Interchange point at Mechanicville, NY using Pan Am Southern power.
- Notification to Norfolk Southern of Interchange.
- Generation of invoices to Norfolk Southern for Haulage Services.

Eastbound Haulage Services between Norfolk Southern Interchange at Mechanicville, NY and the Destination Facilities or the Waterville Facility shall include:

- Transportation between Mechanicville, NY interchange and the Destination Facilities or the Waterville Facility using Pan Am Southern power.
- Generation of invoices to Norfolk Southern for Haulage Services.

## SCHEDULE B TO APPENDIX F – LIFT SERVICES

Lift Services for westbound traffic between the Destination Facilities or the Waterville Facility and Interchange at Mechanicville, NY shall include:

- Receipt of Intermodal Equipment and Automotive Traffic through gate at terminal.
- Inspection of Intermodal Equipment and seal and Automotive Traffic at gate and documentation of any exceptions.
- Confirmation and/or input of waybill data.
- Storage of Intermodal Equipment and Automotive Traffic in Destination Facility or the Waterville Facility until:
  - 1) Next departing train; or
  - 2) Disposition instructions received from Customer or Norfolk Southern
- Proper loading of Intermodal Equipment and Automotive Traffic onto Railcars at Destination Facility or the Waterville Facility.
- For Automotive Traffic, vehicle unloading, shuttling, baying and inventory management.
- Generation of invoices in the name of Pan Am Southern to Norfolk Southern for Lift Services with instructions to pay the Terminal Operator directly.

Lift Services for eastbound traffic between Norfolk Southern Interchange at Mechanicville, NY and the Destination Facilities or the Waterville Facility shall include:

- Proper unloading and grounding of Intermodal Equipment and Automotive Traffic from Railcars.
- Live lifting upon request.
- Notification of arrival to Customer.
- Storage of Intermodal Equipment and Automotive Traffic.
- Provision of any customs or bonding services for international traffic.
- Outgate clerical services and collection of storage or other fees.
- Generation of invoices in the name of Pan Am Southern to Norfolk Southern for Lift Services with instructions to pay the Terminal Operator directly.

## SCHEDULE C TO APPENDIX F – AUXILIARY SERVICES

- 1) Equipment Maintenance – Maintain Intermodal Equipment at the request of the Customer or Norfolk Southern - whomever owns, leases or otherwise controls the Intermodal Equipment - in accordance with the provisions and guidelines contained in Appendix V. Intermodal Equipment Maintenance shall include the cleaning of Intermodal Equipment.
- 2) Miscellaneous Terminal Services - These services shall include:
  - a. Transferring or adjusting lading - This shall be billable only if such activity is requested by Customer or Norfolk Southern and is not the result of sole negligence or error in handling the Intermodal Equipment or Automotive Traffic by Pan Am Southern or the Terminal Operator.
  - b. Inspecting Intermodal Equipment prior to lease termination or other inspections not associated with lift operations.
  - c. Any other miscellaneous services not associated with linehaul services that Norfolk Southern and/or its Operations Service Representatives may request.
- 3) Generation of invoices in the name of Pan Am Southern to Norfolk Southern for Auxiliary Services requested by Norfolk Southern with instructions to pay the Terminal Operator directly.
- 4) Generation of invoices in the name of Pan Am Southern to Customers for Auxiliary Services requested by Customers with instructions to pay the Terminal Operator directly.

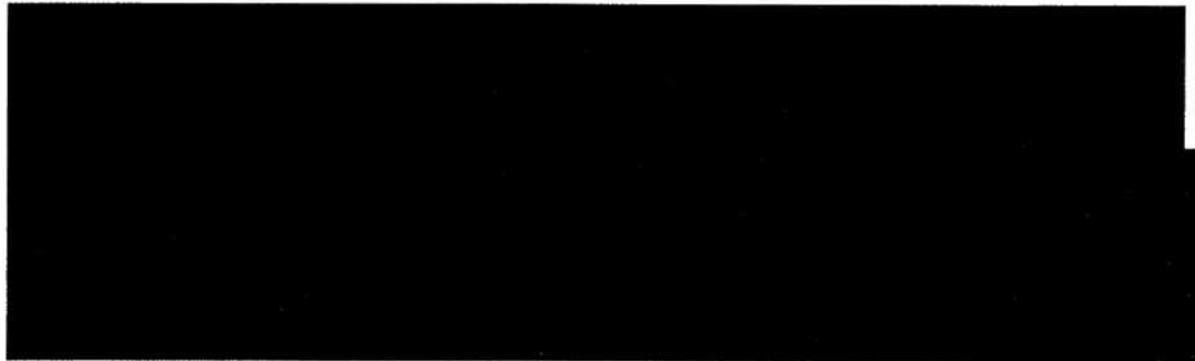
SCHEDULE D TO APPENDIX F – RATES FOR HAULAGE SERVICES, LIFT SERVICES AND AUXILIARY SERVICES

1. Haulage Charges

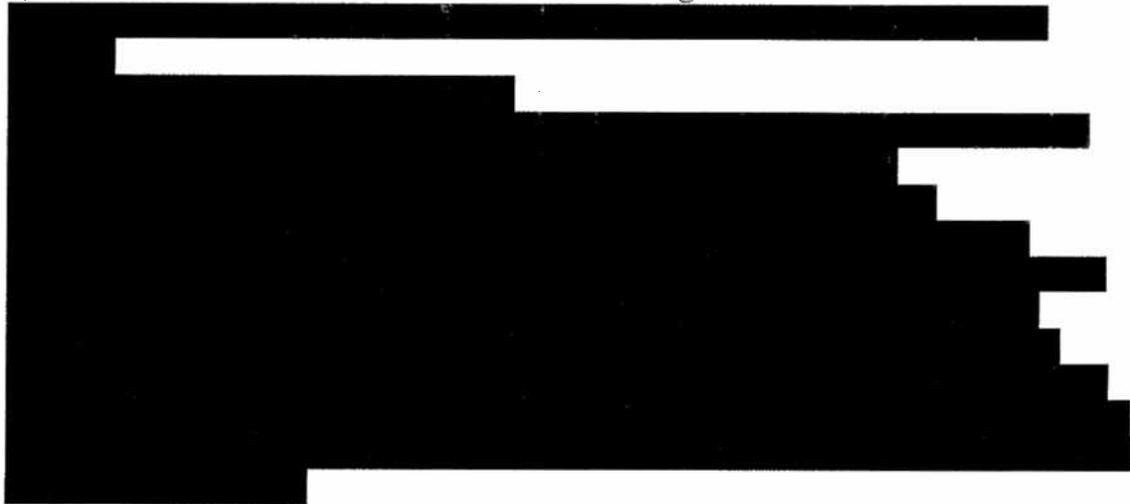
(a) Intermodal

Intermodal Equipment

Rate Per Unit



1) Rates and/or service are to be marketed as single-line Norfolk Southern.



(b) Automotive

Automotive Traffic

Rate Per Multilevel



[REDACTED]

[REDACTED]

(d) Intermodal and Automotive charges shall be subject to fuel surcharge pursuant Appendix G to the Agreement.

2. Lift Services

[REDACTED]

3. Auxiliary Services

[REDACTED]

SCHEDULE E TO APPENDIX F – SCHEDULES AND HOURS OF OPERATIONS

Depart Waterville                      Arrive/Dep. Ayer                      Arrive MCV/Mohawk

[To be determined]

EASTBOUND SCHEDULES AND DAYS OF OPERATION

Depart MCV/Mohawk                      Arrive/Dep. Ayer                      Arrive Waterville

[To be determined]

WATERVILLE TERMINAL GATE HOURS OF OPERATION

MON-FRI: 24 hours                      SAT: 0800-1700                      SUN: 0800-1700

AYER TERMINAL GATE HOURS OF OPERATION

[To be determined]

PERFORMANCE STANDARDS

[To be determined, will include commitments by parties for continuous improvement of schedule efficiencies.]

## APPENDIX G – COMPENSATION

### Section 1. Compensation.

(a) Norfolk Southern shall compensate Pan Am Southern for the trackage rights use of the Subject Trackage by paying to Pan Am Southern a sum computed by multiplying (i) the Trackage Rights Charge, as hereinafter defined, by (ii) the number of cars (loaded or empty) and locomotives moved over the Subject Trackage by (iii) the miles of the Subject Trackage over which the cars and/or locomotives moved, with multi-platform cars being counted as one car for each four axles.

(b) Norfolk Southern shall compensate Pan Am Southern for the haulage rights use of the Subject Trackage by paying to Pan Am Southern a sum computed by multiplying (i) the Haulage Rights Charge, as hereinafter defined, by (ii) the number of cars (loaded or empty) and locomotives moved over the Subject Trackage, with multi-platform cars being counted as one car for each four axles.

### Section 2. The Trackage Rights Charge.

(a) The Trackage Rights Charge shall initially be set at [REDACTED] (United States currency).

(b) The Trackage Rights Charge shall be revised upward or downward each year by a “Cost Factor”, beginning with the bill rendered for the month of July first following the Effective Date of this Agreement, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the “AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East – Materials, prices, wage rates and supplements combined (excluding fuel) (the “Cost Index”. The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(c) The Trackage Rights Charge shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Trackage Rights Charge. In computing the adjusted Trackage Rights Charge, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(d) In the event the base for the Cost Index shall be changed from that in effect at the Effective Date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the “AAR Railroad Cost Indexes”, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 14 of this Agreement.

(e) In the event that the Cost Factor is a negative number, no adjustment to the Trackage Rights Charge will take place for that calendar year. Said negative Cost Factor will be taking into consideration in calculating subsequent years' Cost Factor. Specifically, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor goes negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account.

(f) Notwithstanding any of the foregoing, under no circumstances shall the rate paid to Pan Am Southern by Norfolk Southern be less than the initial Trackage Rights Charge set forth in Section 2(a) of this Appendix G.

### Section 3. The Haulage Rights Charge.

The per car charges for each loaded haulage car are set forth in the individual appendices. Those charges shall be subject to adjustment as set forth below:

#### (a) Rate Adjustment

(1) The Rates shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July 2009 (or, in the case of Automotive Traffic, the first July thereafter following the initial commencement of Haulage Services with respect to Automotive Traffic), to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes – Table A -- Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East – Materials, prices, wage rates and supplements combined (excluding fuel)" (the "Cost Index"). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(2) The Rates shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Rates. In computing the adjusted Rates, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(3) In the event the base for the Cost Index shall be changed from that in effect at the effective date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

(4) In the event that the Cost Factor is a negative number, no adjustment to the Haulage Rights Charge will take place for that calendar year. Said negative Cost Factor will be



**TRANSPORTATION AGREEMENT ASSIGNMENT AND DIVISIONS ALLOCATION  
AGREEMENT**

**THIS TRANSPORTATION AGREEMENT ASSIGNMENT AND DIVISIONS ALLOCATION AGREEMENT** (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and among Pan Am Southern LLC, a Delaware limited liability company (“Pan Am Southern”) and Springfield Terminal Railway Company (“Springfield Terminal”). Each of Pan Am Southern and Springfield Terminal is sometimes referred to as a “Party” and collectively as “Parties.”

**RECITALS**

**WHEREAS**, Pan Am Railways, Inc. (“Pan Am”), on behalf of itself and its subsidiaries, Boston and Maine Corporation (“B&M”), and Springfield Terminal (collectively, the “Pan Am System Parties”) and Norfolk Southern Railway Company (“Norfolk Southern”) and [ ] entered into a Transaction Agreement (the “Transaction Agreement”), dated as of [ ], 2008, which provides, among other things, for Norfolk Southern and B&M to form Pan Am Southern; and

**WHEREAS**, prior to Closing, as defined in the Transaction Agreement, Springfield Terminal was responsible for developing and quoting Rates and Allowances, as each of those terms is defined hereinafter, for rail transportation over the then-existing Pan Am system (the portion of such system as is not included in the Assets (as hereinafter defined) being defined as “Remaining Springfield Terminal System”); and

**WHEREAS**, the Transaction Agreement provides for B&M and the other Pan Am System Parties to sell in part, and contribute in part, certain railroad lines and trackage rights owned or operated generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the “Line”, as more specifically defined in the Transaction Agreement) and certain other related assets previously operated in a unified manner with other railroad lines, trackage rights and assets by Springfield Terminal (collectively, the “Assets”, as more specifically defined in the Transaction Agreement) to Pan Am Southern (the “Contribution”); and

**WHEREAS**, as a result of the Contribution, the rail lines previously operated in a unified manner by Springfield Terminal will, after Closing, be operated by two entities, Pan Am Southern (as to the lines contributed and sold to Pan Am Southern) and Springfield Terminal (as to the Remaining Springfield Terminal System); and

**WHEREAS**, the Transaction Agreement contemplates that railroad operations over the Line, including the quoting of Rates and Allowances initially will be performed on behalf of Pan Am Southern by a railroad operator (the “Railroad Operator”) pursuant to a Railroad Operating Agreement (as defined in the Transaction Agreement) and that the initial Railroad Operator shall be Springfield Terminal; and

**WHEREAS**, for so long as Springfield Terminal remains the Railroad Operator, it will have direct knowledge of the costs for the provision of particular railroad transportation services over the rail lines of Pan Am Southern, because Springfield Terminal will be the Railroad Operator, and will be compensated, pursuant to the Railroad Operating Agreement, for providing that Railroad Operator service; and

**WHEREAS**, for so long as the Railroad Operating Agreement remains effective, Springfield Terminal will continue, after the Closing, to be responsible for developing and quoting Rates and Allowances for movements over the same lines as it did prior to Closing, but owner and operator with respect to the Remaining Springfield Terminal System and, under separate agreements, as the Railroad Operator for Pan Am Southern; and

**WHEREAS**, the Parties acknowledge the difficulty in, and legal impediments against, Springfield Terminal developing independent Rates and Allowances for Pan Am Southern, principally in the context of a joint line transportation move involving both the Line and Remaining Springfield Terminal System (a “Joint Move”), or a transportation move involving only the Line (a “Pan Am Southern Only Move” and, collectively with a Joint Move, a “Rail Move”), when Springfield Terminal also develops Rates and Allowances for itself with respect to the Remaining Springfield Terminal System; and

**WHEREAS**, Pan Am Southern and Springfield Terminal have determined to implement a formulaic model (the “Model”, as further defined in Section 4) for allocation of revenues and certain Allowances from transportation provided by Pan Am Southern (as to the lines contributed and sold) and Springfield Terminal (as to the Remaining Springfield Terminal System) pursuant to a Rail Move as a result of Rates developed and quoted by Springfield Terminal; and

**WHEREAS**, Pan Am Southern and Springfield Terminal have determined that the Model shall provide for a certain set amount (the “Terminal Credit”) to be allocated to either or both Carrier(s) if the Rail Move involves an origin or termination on said Carrier, and to allocate the remainder, after allocating for any Terminal Credits and/or any Local Service Charges, to each Carrier on the basis of each Carrier’s on-line route miles involved in the Rail Move, if any; and

**WHEREAS**, Norfolk Southern and Springfield Terminal obtained the prior approval of the Surface Transportation Board (“STB”) to consummate the transactions set forth in the Transaction Agreement, including the authority to enter into, and perform pursuant to, this Agreement;

**NOW, THEREFORE**, with reference to the foregoing facts and in consideration of the mutual agreements and understandings set forth herein, the Parties hereto, intending to be legally bound, agree as follows:

## **Section 1. Definitions and Interpretation**

(a) Interpretation Generally.

Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(b) Capitalized Terms.

All capitalized terms shall have the defined meaning set forth below:

“AAA” shall have the meaning given to that term in Section 11(c)(ii).

“Agreement” shall have the meaning given to that term in the introductory paragraph.

“Allowance” shall have the meaning given to that term in Section 2(e).

“Assets” shall have the meaning given to that term in the Recitals.

“B&M” shall have the meaning given to that term in the Recitals.

“Carrier” shall mean Pan Am Southern and/or Springfield Terminal, as the context requires.

“Cars” shall mean each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment.

“Contribution” shall have the meaning given to that term in the Recitals.

“Cost Factor” shall have the meaning given to that term in Section 5(b).

“Cost Index” shall have the meaning given to that term in Section 5(b).

“Customers” shall mean shippers and receivers of rail freight.

“Customer Transportation Agreements” shall mean contracts, exempt quotations and common carrier offerings pursuant to which Springfield Terminal and/or Pan Am Southern has undertaken, alone or in conjunction with other rail carriers to provide through rail transportation to Customers.

“Delaware Courts” shall have the meaning given to that term in Section 11(c)(i).

“Dispute” shall have the meaning given to that term in Section 11(a).

“Effective Date” shall mean the effective date of the Railroad Operating Agreement.

“Existing Customer Transportation Agreement” shall have the meaning given to that term in Section 2(a).

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB.

“HPH” shall mean horse power hours.

“JOC” shall have the meaning given to that term in the LLC Agreement.

“Joint Move” shall have the meaning given to that term in the Recitals.

“Line” shall have the meaning given to that term in the Recitals.

**“LLC Agreement”** shall mean the Limited Liability Company Agreement of Pan Am Southern between Norfolk Southern and B&M dated \_\_\_\_\_.

**“Local Services”** shall mean those local services not necessary for completion of the line haul transportation, including, without limitation, loading or unloading, weighing of cars, intra-plant switching, storage or warehousing. The weighing of cars for the purpose of assessing transportation charges shall be a Local Service.

**“Local Service Charge”** shall have the meaning given to that term in Section 4(b).

**“Management Committee”** shall have the meaning given to that term in the LLC Agreement.

**“Model”** shall have the meaning given to that term in the Recitals and Section 4.

**“Monthly Statement”** shall have the meaning given to that term in Section 7(a).

**“New Customer Transportation Agreement”** shall have the meaning given to that term in Section 3(a)(ii).

**“Norfolk Southern”** shall have the meaning given to that term in the Recitals.

**“Pan Am”** shall have the meaning given to that term in the Recitals.

**“Pan Am System Parties”** shall have the meaning given to that term in the Recitals.

**“Party”** and **“Parties”** shall have the meaning given to those terms in the introductory paragraph.

**“Person”** shall mean an individual or a partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity.

**“Pan Am Southern”** shall have the meaning given to that term in the introductory paragraph.

**“Pan Am Southern Only Move”** shall have the meaning given to that term in the Recitals.

**“Rail Move”** shall have the meaning given to that term in the Recitals.

**“Railroad Operator”** shall have the meaning given to that term in the Recitals.

**“Rate”** shall mean any public or private commercial transportation charge quoted for the movement of loaded or empty freight rail cars, locomotives or other rail-moved equipment, exclusive of any and all Allowances, and not including any charges for Local Services.

**“Remainder”** shall have the meaning given to that term in Section 4.

**“Remaining Springfield Terminal System”** shall have the meaning given to that term in the Recitals.

“**Rules**” shall have the meaning given to that term in Section 11(c)(ii).

“**Springfield Terminal**” shall have the meaning given to that term in the introductory paragraph.

“**STB**” shall have the meaning given to that term in the Recitals.

“**Terminal Credit**” shall have the meaning given to that term in the Recitals.

“**TIH/PIH**” shall mean, as defined by the definition of “material poisonous by inhalation” to be found at 49 CFR Section 171.8, specifically:

(1) A gas meeting the defining criteria of Section 173.115(c) of Subchapter C (which is titled “Hazardous Materials Regulations”) and assigned to Hazard Zone A, B, C or D in accordance with Section 173.116(a) of Subchapter C;

(2) A liquid (other than as a mist) meeting the defining criteria in Section 173.132(a)(1)(iii) of Subchapter C and assigned to Hazard Zone A or B in accordance with Section 173.133 (a) of Subchapter C; or

(3) Any material identified as an inhalation hazard by a special provision in Column 7 of the Section 172.101 table.

“**Transaction Agreement**” shall have the meaning given to that term in the Recitals.

“**Transportation Agreement**” shall mean an Existing Customer Transportation Agreement or a New Customer Transportation Agreement, as the context requires.

(c) Construction of Certain Terms and Phrases

Unless the context otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refers to the specified Article or Section of this Agreement; (v) the terms “and” and “or” include the term “and/or” when the context is appropriate; (vi) the terms “include” or “including” also include the words “without limitation” when the context is appropriate. Whenever this Agreement refers to a number of days, such number shall refer to calendar days. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. All dollar amounts set forth herein are in United States currency. Whenever this Agreement refers to an Appendix, Exhibit or Schedule attached hereto, the Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference. References herein to any agreement or contract mean such agreement or contract as amended.

## **Section 2. Existing Customer Transportation Agreements**

(a) Appendix B lists all identified existing Customer Transportation Agreements pursuant to which Springfield Terminal, prior to Closing, has committed to undertake freight rail transportation requiring the use of the Line (each an “Existing Customer Transportation Agreement”). If,

subsequent to the effective date of this Agreement, Springfield Terminal discovers any additional Existing Customer Transportation Agreements, said Appendix B shall be amended accordingly.

(b) Subject to the terms of the Transaction Agreement, and for value received, Springfield Terminal does hereby transfer and assign unto Pan Am Southern all of Springfield Terminal's rights, titles and interests in those various Existing Customer Transportation Agreements to the extent that said instruments involve freight rail transportation requiring the use of the Line, and retaining to itself said Existing Customer Transportation Agreements to the extent, if any, that said instruments involve freight rail transportation requiring the use of Remaining Springfield Terminal System.

(c) Subject to the terms of the Transaction Agreement, Pan Am Southern does hereby accept and assume, to the extent of the interest hereby assigned, all of the rights, titles, interests, covenants, promises and obligations of Springfield Terminal contained within the Existing Customer Transportation Agreements.

(d) For the avoidance of doubt: (1) Pan Am Southern shall cause to be performed all the necessary operations to complete the transportation to and from Pan Am Southern's stations, or in interchange with other carriers, pursuant to Existing Customer Transportation Agreements, in each case in accordance with its terms, and (2) Springfield Terminal shall cause to be performed all the necessary operations to complete the transportation to and from stations on the Remaining Springfield Terminal System, or in interchange with other carriers, pursuant to Existing Customer Transportation Agreements, in each case in accordance with its terms and to the extent not assigned.

(e) Except as described in Section 6(b), revenues received from, and any obligations to provide refunds, rebates or other such payments or discounts, including the obligation to pay car hire or expenses or horse power hours on utilized locomotives (each an "Allowance"), if any, arising out of Existing Customer Transportation Agreements shall be allocated in accordance with the Model.

### **Section 3. Appointment of Springfield Terminal**

(a) Pan Am Southern hereby retains and engages Springfield Terminal and Springfield Terminal agrees to become and act as the agent for Pan Am Southern for:

(i) the allocation of revenues and Allowances between Pan Am Southern and Springfield Terminal, if any, arising from Existing Customer Transportation Agreements, and

(ii) the development and quoting of Rates and Allowances and charges for Local Services for Customer Transportation Agreements entered into on or after Closing (each a "New Customer Transportation Agreement") involving the movement of rail traffic over either: (A) the Line exclusively (either for a move local to the Line or a move involving carriers other than the Remaining Springfield Terminal System) or (B) both the Line and the Remaining Springfield Terminal System (either for a move local to the Line and the Remaining Springfield Terminal System or a moving involving carriers other than Pan Am Southern and the Remaining Springfield Terminal System), including:

(A) the form and content of said New Customer Transportation Agreement, be it common carrier rate, exempt rate quote, circular, contract, or other, provided, however, that Rates and Allowances generally shall be quoted on a joint line (through rate) basis, except with regard to movements of TIH/PIH movements, which generally shall be quoted on a Rule 11 basis; and

(B) any applicable fuel surcharge to be applied; and

(C) charges for demurrage and Local Services.

(it being understood that Springfield Terminal, when developing and quoting a Rate and Allowance for Customer Transportation Agreements involving the movement of rail traffic over the Remaining Springfield Terminal System but not over the Line shall do so, if at all, pursuant to a different authority granted pursuant to a different agreement).

(b) Generally the pricing for Pan Am Southern will be on through rates, but allowing for exceptions (e.g. TIH/PIH). Pan Am Southern and Springfield Terminal agree that the pricing strategy should support the commercial objectives established by Pan Am Southern.

(c) In order to maximize the development of competitive market opportunities for Pan Am Southern, Springfield Terminal shall consult with the JOC when necessary or appropriate on the development of a Rate and Allowance, if any, for a New Customer Transportation Agreement involving the movement of rail traffic over the Line but not over Remaining Springfield Terminal System.

#### **Section 4. Allocation of Transportation Revenues.**

For all movements pursuant to a Transportation Agreement, Pan Am Southern and Springfield Terminal shall be allocated revenues and Allowances in accordance with the following Model:

(a) If either or both of the Carriers shall have an origin or destination covered by the transportation provided pursuant to a Transportation Agreement, the Carrier with that origin or destination shall be allocated a Terminal Credit.

(b) If either or both of the Carriers shall perform Local Services for which a charge ("Local Service Charge") is separately assessed to the Customer (in addition to the Rate), the Carrier shall be allocated the associated applicable charge.

(c) The Terminal Credit, and all Local Service Charges assessed as a portion of the Rate, shall be subtracted from the Rate to arrive at the "Remainder".

(d) The Remainder shall then be allocated to each Carrier in a ratio that equals a ratio of the on-system main line miles over which the transportation is provided. On-system main line miles shall be calculated using the distances between stations using Springfield Terminal timetables in effect on May 1, 2008, and shall be rounded to the nearest whole mile, with decimals under .50 rounding down, and decimals at .50 and above rounding up.

(e) Allowances and surcharges, such as fuel surcharges, shall be allocated in the same proportion as the Rate is allocated.

Examples of the application of the Model are set forth in Appendix A.

## **Section 5. Terminal Credit**

(a) The Terminal Credit for the movement of Cars [REDACTED].

(b) The Terminal Credit shall be revised upward or downward each year by a “Cost Factor”, beginning with the bill rendered for the month of July first following the Effective Date of this Agreement, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the “AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East – Materials, prices, wage rates and supplements combined (excluding fuel) (the “Cost Index”). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(c) The Terminal Credit shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Terminal Credit. In computing the adjusted Terminal Credit, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(d) In the event the base for the Cost Index shall be changed from that in effect at the Effective Date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the “AAR Railroad Cost Indexes”, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under the terms of Section 11 of this Agreement.

(e) In the event that the Cost Factor is a negative number, no adjustment to the Terminal Credit will take place for that calendar year. Said negative Cost Factor will be taken into consideration in calculating subsequent years’ Cost Factor. Specifically, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year’s negative Cost Index was taken into account. If the Cost Factor is negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years’ negative Cost Index was taken into account.

(f) Notwithstanding any of the foregoing, under no circumstances shall the Terminal Credit be less than the initial Terminal Credit set forth in Section 5(a).

## **Section 6. Car Hire and Special Locomotive Provisions**

(a) Car Hire.

For all traffic moving pursuant to a Customer Transportation Agreement, car hire shall be placed in the account of Pan Am Southern, while Cars are located on Pan Am Southern, and in the account of Springfield Terminal, while the Cars are located on the Remaining Springfield Terminal System, [REDACTED]

(b) Special Locomotive Provisions.

[REDACTED]

**Section 7. Reports**

(a) On or before the 15th day of each calendar month during the term of this Agreement, Springfield Terminal shall prepare on behalf of and deliver to Pan Am Southern a monthly statement setting forth the number of Cars operated over the Line during the prior calendar month (the "Monthly Statement"), which shall detail the associated allocation of revenues and Allowances to be billed and paid and the basis (respective on-line route miles traversed, on-line destination/termination, and other matters reasonably requested by Pan Am Southern) for such allocation. The Parties acknowledge that Springfield Terminal, pursuant to the Railroad Operating Agreement, shall be responsible for invoicing Customers pursuant to Transportation Agreements. The Monthly Statement shall be in electronic format and shall contain a detailed list of the Cars that moved during the subject month, which list shall include, for each Car, information relating to such Cars that Pan Am Southern may reasonably request in connection with accounting for the allocation of revenues and Allowances hereunder.

(b) Any dispute regarding the details of a Monthly Statement or allocation thereunder shall be raised no later than three (3) years from the date of the Monthly Statement and shall be reconciled between the Parties pursuant to Section 11, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Monthly Statement.

(c) Pan Am Southern and Springfield Terminal shall each have the right, at its own expense, to audit the records of any other Party pertaining to any Monthly Statements or the data used to determine the allocations thereunder, provided, however, that such audit is initiated at any time within three (3) years of the date of the relevant Monthly Statement. All such audits shall be conducted at reasonable intervals, locations, and times. All such audits shall be prosecuted with reasonable due diligence. Each Party acknowledges that all information disclosed to it or its representatives in connection with such an audit will be subject to Section 13. Any adjustment resulting from an audit conducted pursuant to this Section 7(c) with respect to which the Parties are in concurrence shall be reflected in a subsequent Monthly Statement. The initiation of an audit pursuant to this Section 7(c)

within the three (3) year time frame provided for in this Section 7(c) shall be considered the raising of a timely dispute pursuant to Section 7(b).

**Section 8. Term and Termination**

This Agreement shall become effective on the Effective Date and shall continue until the earlier of: (i) termination by mutual agreement, and (ii) the termination or expiration of the Railroad Operating Agreement. Pan Am Southern shall have the right to terminate this Agreement upon a Pan Am Change in Control, as that term is defined in the Transaction Agreement.

**Section 9. Successors and Assigns**

(a) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. Third party beneficiary status shall inure to the benefit of Norfolk Southern and its subsidiary railroads and each of its and their successors and permitted assigns.

(b) No Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Parties, which consent may be withheld at the discretion of such other Parties.

**Section 10. Notice**

Any notice required or permitted to be given by one Party to any other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to Pan Am Southern:	Chairman Pan Am Southern c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
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With a copy to  
Norfolk Southern  
and Springfield  
Terminal

If to Norfolk Southern:	Mike R. McClellan Vice President – Intermodal and Automotive Marketing Norfolk Southern Corporation Three Commercial Place Norfolk, Virginia 23510-2191
With a copy to:	Vice President – Law Norfolk Southern Corporation Three Commercial Place Norfolk, VA 23510 (757) 629-2374 (757) 533-4872 (fax)
If to Springfield Terminal:	David A. Fink President Springfield Terminal Railway Company c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692 (978) 663-1186 (978) 663-6907 (fax)
With a copy to:	Robert Culliford Vice President Law Pan Am Systems Iron Horse Park North Billerica, MA 01862-1692 (603) 766-2002 (603) 766-2094 (fax)

Any Notice, other than a Notice sent by registered or certified mail, shall be effective when received; a Notice sent by registered or certified mail, postage prepaid return receipt requested, shall be effective on the earlier of when received or the third day following deposit in the United States mails. Any Party may from time to time change its address for further Notices hereunder by giving notice to the other Parties in the manner prescribed in this Section.

**Section 11. Dispute Resolution**

(a) Reference to Senior Management.

Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof (“Dispute”) shall be referred to the JOC (for Pan Am Southern) for resolution and if the parties are unable to resolve the dispute, it will be referred, in writing, to the Management Committee (for Pan Am Southern) to resolve.

(b) Reference for Formal Dispute Resolution.

Any Dispute not resolved within sixty (60) days after receipt by any of the involved parties of written notice of reference of such Dispute to the senior management pursuant to Section 11(a), shall be submitted, if at all, by any Party for formal dispute resolution pursuant to Section 11(c).

(c) Formal Dispute Resolution.

(i) Submission to Jurisdiction. Each of the Parties hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 11(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (B) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof.

(ii) Dispute Resolution. Each of the Parties stipulates and agrees that any Dispute that is not resolved pursuant to Section 11(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the American Arbitration Association ("AAA") then in effect (the "Rules"), under the following terms and conditions:

(A) Selection of Arbitrator. A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator.

(B) Conduct of Arbitration. The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement.

(C) Replacement of Arbitrator. Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator.

(D) Findings and Conclusions. The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(E) Time is of the Essence. The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding.

(F) Temporary Equitable Relief. By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect.

(G) Consolidation. The parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this Agreement and/or any other JV Transaction Agreement, as that term is defined in the LLC Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under this Agreement and/or any other JV Transaction Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or the other JV Transaction Agreement be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration; (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(H) Discovery. Recognizing the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(I) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 11(c)(ii) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(J) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(d) As a third party beneficiary, Norfolk Southern may initiate and prosecute arbitration pursuant to Section 11(b) on behalf of Pan Am Southern. Pan Am Southern and Springfield Terminal

shall cooperate with Norfolk Southern in the preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

## **Section 12. Relationship of the Parties.**

Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between the Parties. In the performance of transportation and other services by the Carriers, each shall be independent of the other, and employees of Pan Am Southern and Springfield Terminal shall be subject to the direction, supervision and control of their respective employer.

## **Section 13. Confidentiality**

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by any Party to any person other than members, officers, employees, and attorneys, without the prior written approval of the other Parties. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

## **Section 14. Miscellaneous**

### (a) Entire Agreement.

This Agreement, including any attached exhibits and schedules, contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are hereby merged herein. Except as expressly provided herein, nothing in this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies under or by way of this Agreement.

### (b) Extension, Waiver and Amendment.

The Parties may (i) extend the time for the performance of any of the obligations or other acts of any other Party hereto or (ii) waive compliance by any other Party hereto with any of the provisions hereof, in each case only if set forth in writing in an instrument signed by or on behalf of such Party. The waiver by any Party hereto of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach. This Agreement may be amended only by a written agreement executed by all of the Parties to this Agreement.

### (c) Governing Law.

THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF

THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

(d) Judicial Interpretation.

Should any provision of this Agreement require judicial interpretation, it is agreed that a court or other tribunal interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any Person by reason of the rule of construction that a document is to be construed more strictly against the Person who itself or through its agent prepared the same, it being agreed that all Parties have participated in the preparation of this Agreement.

(e) No Third Party Beneficiaries.

Other than specifically set forth herein, this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto; provided, however, that this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns.

(f) Captions.

The various captions of this Agreement are for reference only and shall not be considered or referred to in resolving questions of interpretation of this Agreement.

(g) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

(h) Costs and Attorneys' Fees.

Each of the parties shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PAN AM SOUTHERN LLC

By: \_\_\_\_\_

Name:

Title:

NORFOLK SOUTHERN RAILWAY  
COMPANY

SPRINGFIELD TERMINAL RAILWAY  
COMPANY

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

## Appendix A

### Example 1. Rail Car Moving Between Buffalo, NY and Deerfield, MA

The interchange point between Norfolk Southern and Pan Am Southern is located at Mechanicville, NY. Springfield Terminal, on behalf of Pan Am Southern, quotes a joint line rate division of \$1,000 for the movement of a single loaded rail car between Mechanicville and Deerfield, MA. Pan Am Southern is allocated a Terminal Credit of [REDACTED]. The Remainder [REDACTED] is determined. The Remainder is allocated 100% to Pan Am Southern because there is no movement of the loaded rail car over the Remaining Springfield Terminal System. Any Allowance is allocated 100% to Pan Am Southern because the entirety of the revenues from the Rate is allocated to Pan Am Southern. The revenue waybill will indicate a routing of Buffalo – Norfolk Southern – Mechanicville – Pan Am Southern – Deerfield.

### Example 2. Rail Car Moving Between Buffalo, NY and Portland, ME

The interchange point between Pan Am Southern and Remaining Springfield Terminal System is just east of Ayer, MA near Forge Village, MA. Springfield Terminal, on behalf of Pan Am Southern and Springfield Terminal, quotes a joint line rate division of \$1,000 for the movement of a single loaded rail car between Mechanicville and Portland, ME. Springfield Terminal is allocated a Terminal Credit of [REDACTED]. The Remainder [REDACTED] is determined. The Remainder is allocated 56.03% to Pan Am Southern and 43.97% to Springfield Terminal because the traffic will move 158 route miles over Pan Am Southern and 124 route miles over the Remaining Springfield Terminal System. Total revenues allocated to Pan Am Southern are [REDACTED] and total revenues allocated to Springfield Terminal are [REDACTED]. The revenue waybill will indicate a routing of Buffalo – Norfolk Southern – Mechanicville – Pan Am Southern – Forge Village – Springfield Terminal – Portland.

### Example 3. Rail Car Moving Between Deerfield, MA and Portland, ME

Springfield Terminal, on behalf of Pan Am Southern and Springfield Terminal, quotes a joint line rate division of \$1,000 for the movement between Deerfield, MA and Portland, ME. Pan Am Southern and Springfield Terminal are both allocated a Terminal Credit [REDACTED] each, totaling [REDACTED]. The Remainder [REDACTED] is determined. The Remainder is allocated 37.37% to Pan Am Southern and 62.63% to Springfield Terminal because the traffic will move 74 route miles over Pan Am Southern and 124 route miles over the Remaining Springfield Terminal System. Total revenues allocated to Pan Am Southern are [REDACTED] and total revenues allocated to Springfield Terminal are [REDACTED]. The revenue waybill will indicate a routing of Deerfield – Pan Am Southern – Forge Village – Springfield Terminal – Portland.

### Example 4. Rail Car Moving Between Worcester, MA (P&W) and Auburn, ME (SLR)

The interchange point between the Providence and Worcester (“P&W”) and Pan Am Southern is located at Gardner, MA. The interchange point between Remaining Springfield Terminal System and Saint Lawrence & Atlantic Railroad (“SLR”) is located at Danville Junction, ME. Springfield Terminal, on behalf of Pan Am Southern and Springfield Terminal, quotes a joint line rate division of \$1,000 for the movement between Gardner and Danville

Junction. Neither Pan Am Southern nor Springfield Terminal is allocated a Terminal Credit. The Remainder equals the entire \$1,000 quoted division. The Remainder is allocated 16.38% to Pan Am Southern and 83.62% to Springfield Terminal because the traffic will move 29 route miles over Pan Am Southern and 148 route miles over the Remaining Springfield Terminal System. Total revenues allocated to Pan Am Southern are [REDACTED] and total revenues allocated to Springfield Terminal are [REDACTED]. The revenue waybill will indicate a routing of P&W – Gardner – Pan Am Southern – Ayer – Springfield Terminal – Danville Junction-SLR-Auburn, ME.

**Appendix B – Transportation Agreements**

[to be completed at closing]

Appendix C – [REDACTED]

[REDACTED]

## SPRINGFIELD TERMINAL JOINT USE AGREEMENT

**THIS AGREEMENT** (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2008, by and among Pan Am Southern LLC, a Delaware limited liability Company (“Pan Am Southern”), Springfield Terminal Railway Company (“Springfield Terminal”), a Vermont corporation that is a wholly-owned subsidiary of Pan Am Railways, Inc. (“Pan Am”, and collectively with Boston and Maine Corporation (“B&M”) and Springfield Terminal, the “Pan Am System Parties”). Pan Am Southern and Springfield Terminal are referred to individually herein as a “Party” and collectively as the “Parties”.

**RECITALS:**

**WHEREAS**, Norfolk Southern, Pan Am, on behalf of itself and its subsidiaries, including B&M, and Springfield Terminal entered into a Transaction Agreement (the “Transaction Agreement”), dated as of [ ], 2008, which provides, among other things, for Norfolk Southern Railway Company (“Norfolk Southern”) and B&M to form Pan Am Southern; and

**WHEREAS**, the Transaction Agreement provides for B&M and the other Pan Am System Parties to sell in part and contribute in part certain railroad lines and trackage rights owned or operated generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the “Line”, as more specifically defined in the Transaction Agreement) and certain other related assets to Pan Am Southern (the “Contribution”); and

**WHEREAS**, Massachusetts Bay Transportation Authority (“MBTA”) operates passenger train service over a portion of the Line; and

**WHEREAS**, MBTA owns a line of railroad between CPF 312, at or near Milepost 311.97±, in the region of Ayer, MA and Milepost 329.55±, near Fitchburg, MA (the “MBTA Segment”), which constitutes a portion of the operating rights included in the Line; and

**WHEREAS**, MBTA and one or more of the Pan Am System Parties are parties to several agreements that govern the rights and obligations of each relating to the provision of passenger service, including passenger service on the Line that has been assigned to Pan Am Southern; and

**WHEREAS**, pursuant to a Railroad Operating Agreement, Pan Am Southern initially hired Springfield Terminal to perform as the designated operator (“Railroad Operator”) for all railroad operations on behalf of Pan Am Southern, including Pan Am Southern railway operations required pursuant to this Agreement; and

**WHEREAS**, the Transaction Agreement provides for Pan Am Southern to grant to Springfield Terminal overhead trackage rights for the movement of traffic in Springfield Terminal’s revenue waybill account (“Springfield Terminal Traffic”) over certain rail lines of Pan Am Southern (“Subject Trackage” as is further defined herein) between the rail lines remaining to Springfield Terminal immediately following the completion of the Contribution

that lie north and east of Willows, and a connection with the rail lines remaining to Springfield Terminal that lie south of Harvard; and

**WHEREAS**, the Parties acknowledge the operating constraints governing the use of the Subject Trackage and limiting its use by Springfield Terminal to the extent set forth herein; and

**WHEREAS**, the Transaction Agreement provides for Pan Am Southern to grant to Springfield Terminal certain haulage rights for the movement of Intermodal Traffic and Automotive Traffic, as hereinafter defined, between CPF 312 and an intermodal and automotive facility to be constructed by Pan Am Southern in Mechanicville, NY (the “Mechanicville Facility”); and

**WHEREAS**, Norfolk Southern, Pan Am, B&M and Springfield Terminal obtained the prior consent of the Surface Transportation Board to consummate the transactions set forth in the Transaction Agreement, including the grant of the trackage rights described herein; and

**WHEREAS**, Norfolk Southern and B&M formed Pan Am Southern in accordance with the Transaction Agreement; and

**WHEREAS**, Pan Am Southern now wishes to grant Springfield Terminal overhead trackage rights under the terms and conditions hereinafter provided; and

**WHEREAS**, MBTA has granted consent for Pan Am Southern to grant trackage rights over the MBTA Segment to Springfield Terminal as provided herein; and

**WHEREAS**, Pan Am Southern now wishes to grant Springfield Terminal Haulage Rights, as defined herein, under the terms and conditions hereinafter provided; and

**WHEREAS**, given the structure of Pan Am Southern, the Parties desire to grant Norfolk Southern third-party beneficiary status to enforce this Agreement on behalf of Pan Am Southern; and

**WHEREAS**, the Parties desire to set forth the terms and conditions upon which Springfield Terminal may use trackage rights to transport Springfield Terminal Traffic over the Subject Trackage;

**NOW, THEREFORE**, the Parties hereto, intending to be legally bound, agree as follows:

## **SECTION 1. DEFINITIONS AND INTERPRETATION**

(a) Interpretation Generally.

(i) Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(ii) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word “including” means “without limitation”, and the words “herein”, “hereof” and “hereunder” refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(iii) The Parties acknowledge that Springfield Terminal initially will be the Railroad Operator for Pan Am Southern pursuant to the Railroad Operating Agreement. Unless the context requires otherwise, a reference to Pan Am Southern shall be a reference to Pan Am Southern and its Railroad Operator. Except when Springfield Terminal is operating on behalf of Pan Am Southern pursuant to the Railroad Operating Agreement, its actions shall not be considered to be those of the Railroad Operator.

(b) Capitalized Terms.

All capitalized terms shall have the defined meaning set forth below:

“**AAR**” shall mean the Association of American Railroads.

“**Abandonment Notice Period**” shall have the meaning given to that term in Section 16(c).

“**Abandonment Segment**” shall have the meaning given to that term in Section 16(a).

“**Agreement**” shall have the meaning given to that term in the introductory paragraph.

“**Automotive Traffic**” shall mean finished automobiles, sport utility vehicles, vans (including minivans), trucks and other vehicles.

“**B&M**” shall have the meaning given to that term in the introductory paragraph.

“**Carload Operating Charges**” shall mean those per carload mile charges imposed on Pan Am Southern to operate freight rail service over the MBTA Segment.

“**Cars**” means each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment.

“**Clearance File**” shall have the meaning given to that term in Section 5(b).

“**Contribution**” shall have the meaning given to that term in the Recitals.

“**CSXT**” shall mean CSX Transportation, Inc.

“**Effective Date**” shall have the meaning given to that term in Section 11(a).

**“End Points”** shall mean: (1) Harvard, MA at Milepost 25.70; and (2) CPF 312 at Milepost 311.97.

**“Equipment”** shall mean and be confined to hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

**“Exercise Notice”** shall have the meaning given to that term in Section 16(c).

**“FMV”** shall have the meaning given to that term in Section 16(c).

**“Foreign Railroad”** shall mean a railroad that is not a party to this Agreement.

**“Governmental Authority”** shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB.

**“Haulage Rights”** shall have the meaning given to that term in Section 2(b)(i).

**“Haulage Traffic”** shall have the meaning given to that term in Section 2(b).

**“Hazardous Materials”** shall mean any traffic moving on STCC 49-XXX-XX.

**“Intermodal Traffic”** generally shall mean the movement of containers and trailers on rail cars.

**“JOC”** shall mean that Joint Operating Committee of Pan Am Southern established pursuant to the LLC Agreement.

**“JV Transaction Agreements”** shall have the meaning given to that term in the LLC Agreement.

**“Line”** shall have the meaning given to that term in the Recitals.

**“LLC Agreement”** shall mean that Limited Liability Company Agreement of Pan Am Southern Railway LLC, by and between Norfolk Southern and B&M, and dated as of [ ], 2008.

**“Loss or Damage”** shall have the meaning given to that term in Section 8.

**“Management Committee”** shall mean the Management Committee of Pan Am Southern as provided in the LLC Agreement.

**“MBTA”** shall have the meaning given to that term in the Recitals.

**“MBTA Segment”** shall have the meaning given to that term in the Recitals.

**“Mechanicville Facility”** shall have the meaning given to that term in the Recitals.

**“Monthly Statement”** shall have the meaning given to that term in Section 7(a).

**“Norfolk Southern”** shall have the meaning given to that term in the Recitals.

**“Pan Am”** shall have the meaning given to that term in the introductory paragraph.

**“Pan Am Southern”** shall have the meaning given to that term in the introductory paragraph.

**“Pan Am Southern Cars”** shall mean Cars and Equipment in the revenue and/or car hire account of Springfield Terminal.

**“Pan Am System Parties”** shall have the meaning given to that term in the Recitals.

**“Parties”** shall have the meaning given to that term in the introductory paragraph.

**“Party”** shall have the meaning given to that term in the introductory paragraph.

**“Person”** shall mean an individual or partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity.

**“Railroad Operator”** shall have the meaning given to that term in the Recitals.

**“Remaining Springfield Terminal”** shall mean those lines owned or operated by Springfield Terminal on the day after the Closing.

**“Springfield Terminal”** shall have the meaning given to that term in the introductory paragraph.

**“Springfield Terminal Cars”** shall mean Cars and Equipment in the revenue and/or car hire account of Springfield Terminal.

**“Springfield Terminal Capacity Improvements”** shall have the meaning given to that term in Section 3(j).

“**Springfield Terminal Capacity Study**” shall have the meaning given to that term in Section 3(j)

“**Springfield Terminal Traffic**” shall have the meaning given to that term in the Recitals.

“**STB**” shall mean the Surface Transportation Board or any successor entity thereto.

“**Subject Trackage**” shall mean the certain lines of railroad generally running between the End Points.

“**Subject Traffic**” shall have the meaning given to that term in Section 8(a).

“**Trackage Rights**” shall have the meaning given to that term in Section 2(a)(i).

“**Transaction Agreement**” shall have the meaning given to that term in the Recitals.

“**Use Invoice**” shall have the meaning given to that term in Section 7(a).

“**Waiver Notice**” shall have the meaning given to that term in Section 16(e).

(c) Successor Laws.

A reference to any particular statute or regulation shall include a reference to any successor statute or regulation.

## **SECTION 2. TRACKAGE RIGHTS AND HAULAGE RIGHTS**

(a) Trackage Rights.

(i) Pursuant to the Transaction Agreement and subject to the terms set forth in this Agreement, Pan Am Southern hereby grants Springfield Terminal trackage rights for the sole purpose of transporting Springfield Terminal Traffic over the Subject Trackage, including the MBTA Segment (collectively, “Trackage Rights”). These rights consist of the right to operate its trains, locomotives, Cars, and Equipment with its own crews over the entirety of the Subject Trackage. Springfield Terminal’s use of the Trackage Rights shall be subject to the limitations and restrictions set forth in this Section 2(a) and Section 3.

(ii) Springfield Terminal locomotives and crews operating over the Subject Trackage shall be equipped to communicate with Pan Am Southern on radio frequencies normally used by Pan Am Southern in directing train movements on the Subject Trackage.

(iii) Springfield Terminal’s operations over the Subject Trackage shall at all times be subject to the direction and control of Pan Am Southern and comply in all respects with the safety rules, operating rules and other regulations of Pan Am Southern.

(iv) Springfield Terminal shall make such arrangements with Pan Am Southern as may be required to have all of its employees who shall operate its trains, locomotives, Cars and Equipment over the Subject Trackage qualified for operation thereover. Pan Am Southern shall provide, and shall cause its Railroad Operator to provide, reasonable cooperation and assistance in the qualification of Springfield Terminal operating (train and engine) crews for service over the Subject Trackage upon request. Springfield Terminal supervisory personnel who have been qualified to operate over the Subject Trackage may qualify other Springfield Terminal employees for operation of trains over the Subject Trackage.

(b) Haulage Rights. Pursuant to the Transaction Agreement and subject to the terms set forth in this Agreement, Pan Am Southern hereby grants Springfield Terminal haulage rights (collectively, the "Haulage Rights") between CPF 312 and the Mechanicville Facility [REDACTED] ("Haulage Traffic").

### **SECTION 3. USE AND RESTRICTIONS ON USE OF THE SUBJECT TRACKAGE**

(a) Traffic moving pursuant to this Agreement shall at all times remain in the revenue waybill and car hire accounts of Springfield Terminal while moving over the tracks of Pan Am Southern.

(b) Pan Am Southern shall not be entitled to any line haul revenue for the handling of Haulage Traffic, or movement of traffic pursuant to the Trackage Rights, nor shall Pan Am Southern participate in the routing of, nor appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of any of the same.

(c) Springfield Terminal's use of Subject Trackage pursuant to the trackage rights grant shall be in common with Pan Am Southern, and other than as explicitly set forth herein, Pan Am Southern's right to use the Subject Trackage shall not be diminished by this Agreement.

(d) Springfield Terminal's operations over the Subject Trackage shall at all times be subject to the direction and control of Pan Am Southern and comply in all respects with the safety rules, operating rules and other regulations of the Pan Am Southern.

(e) In its exercise of the Trackage Rights grant, Springfield Terminal may operate trains in either direction over the Subject Trackage.

(f) In its exercise of the Trackage Rights grant, Springfield Terminal may use its Trackage Rights only to move traffic between:

(i) an interchange with CSXT south of Harvard and Springfield Terminal's own line at Willows; and

(ii) customers local to the Springfield Terminal's line south of Harvard and Springfield Terminal's line north of Willows; and

(iii) a connection with the Providence and Worcester at Worcester, MA and Springfield Terminal's line north of Willows; and

(iv) Ayer and an interchange with CSXT at Barbers, south of Harvard, but only for movements of empty Equipment originating at Ayer, such empty Equipment to be picked up by through trains that are operated by Springfield Terminal pursuant to this Agreement; and

(v) Ayer and Springfield Terminal's own line at Willows, but only for movements of traffic originating at Ayer that, in addition, is either (A) dimensional traffic requiring the use of the Ayer – Barber line segment or (B) empty Equipment originating at Ayer, such dimensional traffic or empty equipment to be picked up by through trains that are operated by Springfield Terminal pursuant to this Agreement.

(g) Except as provided in Section 3(f)(iii) and Section 3(f)(iv), Springfield Terminal may use its Trackage Rights solely to operate its trains in overhead movements. The Trackage Rights shall not include the right of ingress and egress to any tracks, switches, turnouts, or other track classifications that connect to any point along the Subject Trackage except the End Points.

(h) Except as may otherwise be permitted by this Agreement, Springfield Terminal shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing Cars or Equipment, or the making or breaking up of trains; provided, however, that Springfield Terminal may use such auxiliary Subject Trackage as may be designated by the Railroad Operator as necessary for the handling of locomotives or Cars bad ordered en route.

(i) Springfield Terminal may not, pursuant to this Agreement, grant haulage rights, trackage rights, or other operating rights of any nature on or over the Subject Trackage to any other Person.

(j) In its exercise of the Trackage Rights grant, Springfield Terminal may not move, in any one calendar year, over the Subject Trackage more than one hundred twenty percent (120%) of Cars, loaded or empty, in the aggregate (counting each one-way movement as a single movement) that moved over the Subject Trackage in 2007, unless and until: (i) Springfield Terminal funds fifty percent (50%) of a study (the "Springfield Terminal Capacity Study", to be conducted by an independent third party) to identify the capacity improvements ("Springfield Terminal Capacity Improvements") necessary to handle the potential additional traffic with no negative impact on Pan Am Southern, and (ii) the Springfield Terminal Capacity Improvements are constructed at Springfield Terminal's sole risk and expense. Should the Springfield Terminal Capacity Improvements be constructed, the number of Cars, loaded or empty, Springfield Terminal may move over the Subject Trackage in any one calendar year shall be expanded only by an amount equal to the added capacity. Pan Am Southern agrees to fund fifty (50%) of the Springfield Terminal Capacity Study. Pan Am Southern shall have the right to

approve the individual Springfield Terminal Capacity Improvements constructed, but such approval shall not be unreasonably withheld, provided the Springfield Terminal Capacity Improvements conform to the recommendations of the Springfield Terminal Capacity Study.

(k) Springfield Terminal Cars shall not move on trains transporting Norfolk Southern Intermodal Traffic or Automotive Traffic unless Norfolk Southern and the JOC consent.

#### **SECTION 4. INFRASTRUCTURE**

(a) Maintenance.

(i) Pan Am Southern shall be solely responsible for the maintenance, repair, and renewal of the Subject Trackage. Pan Am Southern shall arrange to keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition (following the upgrading anticipated by the Transaction Agreement) not to be, as to Hill Yard, less than industry yard standard but in any event not less than Federal Railroad Administration Class 1, and, as to the remainder of the Subject Trackage, less than Federal Railroad Administration Class 2 (or any replacement of it), subject to normal slow orders and the like, but Pan Am Southern does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Pan Am Southern shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use commercially reasonable efforts to avoid such interruptions.

(ii) Existing connections or facilities connecting the trackage owned or operated by Springfield Terminal with those of the Subject Trackage shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under applicable agreements.

(b) Infrastructure Improvements.

Pan Am Southern from time to time may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any Governmental Authority having jurisdiction, provided that no such retirement shall materially affect operations over the Subject Trackage. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(c) Loss of Use of the Line.

(i) Other than as specifically set forth in this Agreement, Springfield Terminal shall not have, pursuant to this Agreement, any claim against Pan Am Southern for liability on account of Loss or Damage of any kind in the event the use of the Subject Trackage by Springfield Terminal is interrupted or delayed at any time by any cause.

(ii) If the Subject Trackage is unavailable for service due to a derailment, line outage or other interruption of service, then Pan Am Southern shall cooperate and consult, and shall cause its Railroad Operator to cooperate and consult, with Springfield Terminal in order to address any resulting backlog of trains over a period of time following the resolution of such derailment as may be required to reduce such backlog of Springfield Terminal Traffic or trains. The operation of such trains shall be prioritized according to service standard protocols to be developed by the JOC.

## **SECTION 5. MANAGEMENT AND OPERATIONS**

### (a) Dispatching

(i) Pan Am Southern, through its Railroad Operator, shall have exclusive control over the management and dispatching of the Subject Trackage. Dispatching of the Subject Trackage shall be conducted in a manner as to afford each of Pan Am Southern and Springfield Terminal, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the Subject Trackage consistent with the demands and needs of other authorized users. For the purposes of dispatching, trains of the same class shall be treated with equal priority, with the four (4) classes of trains (in order of priority) being:

- (1) Passenger;
- (2) Unit trains carrying Intermodal Traffic or Automotive Traffic;
- (3) Regular (unit and freight trains not scheduled to set off/pick up en route); and
- (4) Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements);

provided, that in the event of a conflict, the dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains.

(ii) Springfield Terminal shall have the right to station a Springfield Terminal employee or agent in the dispatch center operated by Pan Am Southern or its Railroad Operator. Said person shall be present solely as an observer, and shall have no authority to control the movement of trains or otherwise interfere with or adjust the operation of trains, Cars or Equipment operating on the Subject Trackage.

### (b) Dimensional Loads/Excess Clearance Cars

In the exercise of its Trackage Rights grant, but not its Haulage Rights grant, Springfield Terminal shall have the right to operate all dimensional loads and excess clearance railcars for handling over the Subject Trackage, subject to a clearance file (the "Clearance File") applicable to traffic of Pan Am Southern and all other carriers authorized to operate over the line. Pan Am

Southern shall promptly inform Springfield Terminal of any changes made to the Clearance File, provided, however, that for so long as Springfield Terminal shall be the Railroad Operator, all changes in the Clearance File shall be assumed to have been communicated to Springfield Terminal.

(c) Compensation.

Springfield Terminal shall compensate Pan Am Southern for the use of the Subject Trackage in accordance with Appendix B – Compensation.

(d) Mileage, Car Hire and Carload Operating Charges.

All mileage and car hire charges accruing on Springfield Terminal Cars on the Subject Trackage shall be assumed by Springfield Terminal and reported and paid by it directly. All Carload Operating Charges shall be paid by Pan Am Southern.

## **SECTION 6. COMPLIANCE WITH APPLICABLE LAWS AND RULES**

(a) Each of Pan Am Southern and Springfield Terminal shall comply, and Pan Am Southern shall cause its Railroad Operator to comply, with all applicable federal, state and local laws, rules, regulations and orders promulgated by any Governmental Authority that relate to the operations contemplated hereunder. If any fine, penalty, cost or charge is imposed or assessed on or against either of them by reason of the other Party's non-compliance (or, in the case of Pan Am Southern, the non-compliance of the Railroad Operator, for which Pan Am Southern shall be responsible) with any such laws, rules, regulations or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, cost, or charge, and all expenses and attorney's fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge or expense to that other Party.

(b) Without affecting the generality of the foregoing Section 6(a), each of Pan Am Southern and Springfield Terminal shall comply, and Pan Am Southern shall cause its Railroad Operator to 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 Subject Trackage. Each of those Parties shall indemnify, protect, defend, and save harmless the other Party from and against all fines, penalties and liabilities imposed upon such Party under such laws, rules, and regulations by any Governmental Authority or court having jurisdiction, when attributable solely to the failure of indemnifying Party (or, in the case of Pan Am Southern, the failure of the Railroad Operator, for which Pan Am Southern shall be responsible) to comply with its obligations in this regard.

(c) Springfield Terminal's trains shall not include locomotives, Cars or Equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as contained in the Clearance File maintained by Pan Am Southern, and no train shall contain

locomotives, Cars or Equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Pan Am Southern's operating rules and regulations, without the prior consent of Pan Am Southern. The JOC shall make proper accommodation for exceptions, should that be reasonable, necessary, and practicable.

(d) If any employee of Springfield Terminal shall neglect, refuse, or fail to abide by Pan Am Southern's rules, instructions and restrictions governing the operation on or along Pan Am Southern's property, such employee shall, upon written request of Pan Am Southern, be prohibited by Springfield Terminal from working on Pan Am Southern's property. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of Springfield Terminal, then upon such notice presented in writing, Springfield Terminal shall promptly hold an investigation in which all Parties concerned shall participate, with each Party bearing the expense for its officers', counsel's, witnesses' and employees' participation. Springfield Terminal shall give notice of such investigations to its employees, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between the employer and its employees. If the result of such investigation warrants, such employee shall, upon written request by Pan Am Southern, be withdrawn by Springfield Terminal from service on Pan Am Southern's property and Springfield Terminal shall release and indemnify Pan Am Southern from and against any and all claims and expenses because of such withdrawal.

## **SECTION 7. INVOICES AND PAYMENT OF BILLS**

(a) On or before the 15<sup>th</sup> day of each calendar month during the term of this Agreement, the Railroad Operator shall prepare on behalf of Pan Am Southern a monthly statement setting forth the number of Springfield Terminal Cars operated over the Subject Trackage during the month (the "Monthly Statement") and an invoice (the "Use Invoice"). The Monthly Statement shall be in electronic format, and shall contain a detailed list of the Springfield Terminal Cars that moved during the subject month, which list shall include, for each Car, information relating to such Cars that Pan Am Southern may reasonably request in connection with accounting for the use of the services and rights provided hereunder. The Monthly Statement and the Use Invoice shall be delivered to Springfield Terminal and Springfield Terminal shall make payment to Pan Am Southern within thirty (30) days after the date of receipt of such Use Invoice.

(b) Any dispute regarding the details of a Monthly Statement or amount of a Use Invoice shall be reconciled between the Parties pursuant to Section 14, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If Springfield Terminal disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing

within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(c) Pan Am Southern and Springfield Terminal shall each have the right, at its own expense, to audit the records of any other Party pertaining to the use of the Subject Trackage under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by Pan Am Southern pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to this Agreement. All such audits shall be conducted at reasonable intervals, locations, and times. All such audits shall be prosecuted with reasonable due diligence. Each Party agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 7(c) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(d) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices, shall include direct labor and material costs, together with the surcharges, overhead percentages, and Equipment rentals as specified by Pan Am Southern at the time any work is performed by Pan Am Southern for Springfield Terminal, or shall include actual costs and expenses, upon mutual agreement of the Parties.

## **SECTION 8. LIABILITY**

As between the Parties hereto, responsibility for all claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages and expenses of every character, including any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever (including employees of the Parties), resulting from, arising out of, incidental to or occurring in connection with this Agreement ("Loss or Damage"), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise specifically provided for hereinafter):

(a) Springfield Terminal Cars moving pursuant to this Agreement shall, for the purposes of this Section 8, be referred to as "Subject Traffic". Otherwise, for the purposes of assigning responsibility for Loss or Damage under this Section 8 (including but not limited to Section 8(d)) as between the Parties, the trains, Cars and Equipment of a Foreign Railroad shall be considered to be the trains, Cars and Equipment of Pan Am Southern. By way of illustration only, if, for example, Pan Am Southern were to grant D&H trackage rights pursuant to a trackage rights agreement, then traffic moving pursuant to that D&H trackage rights agreement would be considered Pan Am Southern traffic.

(b) Springfield Terminal shall be responsible for: (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein; and (2) to the extent not allocated pursuant to Section 8(c)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors, or employees, either solely or in conjunction with a third party.

(c) Pan Am Southern shall be responsible for: (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein; and (2) to the extent not allocated pursuant to Section 8(b)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors (including the Railroad Operator), or employees, either solely or in conjunction with a third party.

(d) Loss or Damage arising from or growing out of the negligence or willful misconduct of both Springfield Terminal and Pan Am Southern (or their respective officers, agents, contractors or employees) shall be borne by the Parties in proportion to their fault.

(e) To the extent responsibility for Loss or Damage is not allocated pursuant to Section 8(b), 8(c), and 8(d) such responsibility for Loss or Damages shall be: (i) borne solely by Springfield Terminal if the involved trains are handling only Subject Traffic, or (ii) borne by each of Pan Am Southern and Springfield Terminal in proportion to the number of Cars in such trains that are moving in that Party's revenue waybill account or car hire account.

(f) Notwithstanding anything to the contrary in Section 8(b), Section 8(c), Section 8(d), and Section 8(e) above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, or to third parties from substances transported in Cars or contained in locomotives occurs with one or more trains handling Subject Traffic being involved, then, as between themselves, (i) Pan Am Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Pan Am Southern Cars and/or contained in a Pan Am Southern locomotive which was released, (ii) Springfield Terminal shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Subject Traffic and/or contained in a Springfield Terminal locomotive which was released, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in Cars, Equipment or locomotives in the revenue waybill and car hire accounts of both Springfield Terminal and Pan Am Southern which was (or were) released shall be borne by the Parties in proportion to the total number of such Cars, Equipment or locomotives in that Party's revenue waybill or car hire account from which there was (or were) such a release.

(g) Notwithstanding anything to the contrary in this Section 8, if: (i) Loss or Damage occurs with one or more trains being involved; (ii) one or more of the involved trains is handling (A) only Subject Traffic or (B) both Subject Traffic and Pan Am Southern Cars; (iii) such Loss or Damage is attributable solely to the Gross Negligence or Willful or Wanton Misconduct of only one of the Parties (or of Springfield Terminal in its role as the Railroad Operator for Pan Am Southern); and (iv) such Gross Negligence or Willful or Wanton Misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such Gross Negligence or Willful or Wanton Misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Section 8(g), (1) "Gross Negligence or Willful or Wanton Misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify

the presumption of willfulness and wantonness” and shall include, by definition, acts or omissions of any its employees while under the influence of drugs or alcohol; and (2) Subject Traffic being handled in haulage shall be considered Pan Am Southern Cars.

(h) If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of another Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 8.

(i) In every case of death or injury suffered by an employee of one of the Parties, when compensation to such employee or employee’s dependents is required to be paid under any present or future state or federal worker’s compensation, occupational disease, employers’ liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

(j) Whenever any liability, cost or expense is assumed by or allocated to a Party under this Section 8, that Party shall: (i) forever protect, defend, indemnify and save harmless the other Party from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the Party indemnified, or their directors, officers, agents or employees, and (ii) defend such Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

(k) Each of Pan Am Southern and Springfield Terminal shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(l) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Section 8; provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.

(m) No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709) for which another Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement

or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000). The foregoing amount of Thirty-Five Thousand Dollars (\$35,000) shall be adjusted annually consistent with the provisions of Section 2(b) and Section 2(c) of Appendix B.

(n) Each Party shall indemnify and hold harmless the other Parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that each Party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

#### **SECTION 9. RERAILING, WRECKING, BAD ORDERS AND REPAIRS**

(a) Whenever one or more Cars and/or locomotives in the account of Springfield Terminal requires rerailling, wrecking service or wrecking train service, Pan Am Southern shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage and structures. Pan Am Southern shall promptly inform Springfield Terminal of its intent to proceed with wrecking service or wrecking train service, and shall permit a Springfield Terminal representative to be present on the scene, to work in concert with the employees of Pan Am Southern and its Railroad Operator to manage such wrecking service or wrecking train service. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom shall be apportioned in accordance with the provisions of Section 8 hereof. All locomotives, Cars, Equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by Springfield Terminal at the time of such wreck, shall be promptly delivered to it.

(b) If any Cars or locomotives of Springfield Terminal are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those Cars or locomotives shall, after being repaired, be picked up by Pan Am Southern, or if agreed upon by the parties, Pan Am Southern will transport them to a mutually acceptable location to be picked up by Springfield Terminal. Pan Am Southern may, upon request of Springfield Terminal and at the expense of Springfield Terminal, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered Cars or locomotives safe and lawful for movement, and

billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

#### **SECTION 10. FORCE MAJEURE**

The obligations, other than payment obligations, of Springfield Terminal and Pan Am Southern under this Agreement shall be subject to force majeure (including flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, wreck, derailment, washout, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, or governmental laws, orders or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either of Springfield Terminal's or Pan Am Southern's ability to fulfill its obligations to the other Parties under this Agreement, said Party shall take all commercially reasonable measures to restore performance of its obligations in a timely manner.

#### **SECTION 11. TERM AND TERMINATION**

(a) This Agreement shall become effective following the latest date of: (a) the date first written above; (b) receipt of any required regulatory approvals or exemptions; and (c) the expiration of any time periods required by the issuance of labor notices by the Parties, should such labor notices be required ("Effective Date"). The Parties shall determine the Effective Date through an exchange of written correspondence.

(b) This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement.

(c) Termination of this Agreement shall not relieve or release any Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof, nor shall it terminate any underlying right, or contingent right, of movement pursuant to the trackage rights grant.

#### **SECTION 12. SUCCESSORS AND ASSIGNS.**

(a) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. Third party beneficiary status shall inure to the benefit of Norfolk Southern and each of its successors and permitted assigns.

(b) Except as otherwise specifically provided hereinafter, no Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Parties, which consent may be withheld at the discretion of such other Parties.

(c) In the event of a sale of substantially all of the assets or business of Springfield Terminal, or the merger or consolidation of Springfield Terminal into or with a firm or corporation not controlled by Springfield Terminal, Springfield Terminal may, without the prior consent of Pan Am Southern, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Springfield Terminal, or merging or consolidating with Springfield Terminal; provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of Springfield Terminal under this Agreement that existed prior to such assignment.

(d) In the event of a sale of substantially all of the assets or business of Pan Am Southern, or the merger or consolidation of Pan Am Southern, Pan Am Southern may, without the prior consent of Springfield Terminal, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Pan Am Southern, or merging or consolidating with Pan Am Southern; provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of Pan Am Southern under this Agreement that existed prior to such assignment.

### **SECTION 13. NOTICE**

Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to Pan Am Southern:	Chairman Pan Am Southern LLC c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
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With a copy to Norfolk Southern:	Mike R. McClellan Vice President – Intermodal and Automotive Marketing Norfolk Southern Corporation Three Commercial Place Norfolk, Virginia 23510-2191
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and

	Vice President – Law Norfolk Southern Corporation Three Commercial Place Norfolk, VA 23510 (757) 629-2374 (757) 533-4872 (fax)
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If to Springfield Terminal: David A. Fink  
President  
Springfield Terminal Railway Company  
c/o Pan Am Railways  
Iron Horse Park  
North Billerica, MA 01862-1692  
(978) 663-1186  
(978) 663-6907 (fax)

With a copy to: Robert Culliford  
Vice President Law  
Pan Am Systems  
Iron Horse Park  
North Billerica, MA 01862-1692  
(603) 766-2002  
(603) 766-2094 (fax)

Any Party (or Norfolk Southern) may provide notice of changes in the above addressees to the others by personal service or certified mail.

#### **SECTION 14. DISPUTE RESOLUTION**

(a) Reference to JOC.

Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof (“Dispute”) shall be referred to the JOC (for Pan Am Southern) for resolution and if the Parties are unable to resolve the dispute, it will be referred, in writing, to the Management Committee (for Pan Am Southern) to resolve.

(b) Reference for Formal Dispute Resolution.

Any Dispute not resolved within sixty (60) days after receipt by any of the involved parties of written notice of reference of such Dispute to the Management Committee pursuant to Section 14(a), shall be submitted, by either Party for formal dispute resolution pursuant to Section 14(c).

(c) Formal Dispute Resolution.

(i) Submission to Jurisdiction. Each of the Parties hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the “Delaware Courts”) in any action to enforce or in aid of the agreement to arbitrate in Section 14(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (B) agrees that it will not

attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof.

(ii) Dispute Resolution. Each of the Parties stipulates and agrees that any Dispute that is not resolved pursuant to Section 14(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the “Rules”), under the following terms and conditions:

(A) Selection of Arbitrator. A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator.

(B) Conduct of Arbitration. The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement.

(C) Replacement of Arbitrator. Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator.

(D) Findings and Conclusions. The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(E) Time is of the Essence. The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding.

(F) Temporary Equitable Relief. By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator’s orders to that effect.

(G) Consolidation. The parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this

Agreement and/or any other JV Transaction Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under this Agreement and/or any JV Transaction Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or any other JV Transaction Agreement be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration; (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(H) Discovery. Recognizing the express desire of the parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(I) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 14(c)(ii) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(J) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(c) As a third party beneficiary, Norfolk Southern may initiate and prosecute arbitration pursuant to Section 14(b) on behalf of Pan Am Southern. Pan Am Southern and Springfield Terminal shall cooperate with Norfolk Southern in the preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

## **SECTION 15. CONFIDENTIALITY**

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or in connection with an audit by the Internal Revenue Service or other tax authority, or as may be necessary or appropriate for

a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than members, officers, employees, independent auditors, and attorneys, without the prior written approval of the other Party. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

## **SECTION 16. ABANDONMENT**

(a) Pan Am Southern shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon or discontinue service on the Subject Trackage or any portion thereof (the "Abandonment Segment") during the term of this Agreement. Pan Am Southern shall provide Springfield Terminal no less than ninety (90) days prior notice of its intention to seek to abandon or discontinue service over any Abandonment Segment.

(b) If Pan Am Southern elects to abandon or discontinue service over the Subject Trackage (or any portion thereof) pursuant to Section 16(a), this Agreement shall continue to apply in all respects to any remaining portion of the Subject Trackage not abandoned or subject to discontinuance by Pan Am Southern.

(c) Pan Am Southern shall, not less than 60 days prior to any submission to the STB (or successor agency having jurisdiction over said abandonment or discontinuance) of an application or exemption for authority to abandon or discontinue service over an Abandonment Segment(s), first offer Springfield Terminal the first right to purchase such Abandonment Segment(s) for fair market value ("FMV") of such Abandonment Segment(s), and on such other terms and conditions as are customary with respect to line sales, which such notice shall specifically identify this Section 16 and the time periods for action hereunder. Springfield Terminal shall have forty-five (45) days ("Abandonment Notice Period") within which to advise Pan Am Southern that it will exercise its right to purchase ("Exercise Notice"). If the Parties are unable to agree upon the FMV of the Abandonment Segment(s) that Springfield Terminal wishes to purchase, either Party may refer the issue to arbitration pursuant to Section 14, which arbitration shall determine all other issues relating to terms and conditions for the sale not then (at the time of the initiation of the arbitration) agreed to by the Parties. Such arbitration shall be conducted on an expedited basis, with selection of the arbitrators within thirty (30) days of the initiation of arbitration, all submissions to be made by the Parties within sixty (60) days of the initiation of arbitration, and a written decision to be rendered within thirty (30) days following the final submissions of the Parties.

(d) The Parties shall consummate the sale contemplated by this Section 16 within forty-five (45) days of the latest of: (i) the rendering of a written arbitration decision, should issues related to the sale proceed to arbitration; (ii) the execution of a purchase and sale agreement, should the Parties execute the same; and (iii) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(e) If Springfield Terminal elects not to purchase the Abandonment Segment, it shall so advise Pan Am Southern within the same forty-five (45) day Abandonment Notice Period by delivering to Pan Am Southern a notice of waiver of right to purchase said segment (“Waiver Notice”). Failure of Springfield Terminal to provide Pan Am Southern (including a copy to Norfolk Southern) with either an Exercise Notice or a Waiver Notice within the aforesaid forty-five (45) day period shall constitute a Waiver Notice.

(f) In the event of a Waiver Notice and Springfield Terminal does not purchase the Abandonment Segment pursuant to its rights in this Agreement, Springfield Terminal shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the Abandonment Segment and for the discontinuance of Springfield Terminal’s trackage rights over the Abandonment Segment.

## **SECTION 17. INDEMNITY COVERAGE**

As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Parties shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees.

## **SECTION 18. MISCELLANEOUS PROVISIONS**

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto. 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. Norfolk Southern shall have third party status solely for the purpose of enforcing this Agreement, and not by way of recovery for damages hereunder.

(b) This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties.

(c) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by all Parties.

(d) The division of this Agreement into articles, sections, and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to articles, sections or subsections are to articles, sections or subsections of this Agreement.

(e) This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

(f) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(g) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(h) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between Pan Am Southern and Springfield Terminal.

(i) THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

(j) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

PAN AM SOUTHERN LLC

By: \_\_\_\_\_

\_\_\_\_\_  
As to Pan Am Southern

WITNESS:

SPRINGFIELD TERMINAL RAILWAY  
COMPANY

\_\_\_\_\_  
As to Springfield Terminal

By: \_\_\_\_\_

**INDEX TO APPENDICES**

APPENDIX A – MAP OF SUBJECT TRACKAGE  
APPENDIX B – COMPENSATION

**APPENDIX B – COMMERCIAL APPENDIX**

Section 1. Trackage Rights Compensation

(a) Compensation.

Springfield Terminal shall compensate Pan Am Southern for the use of the Subject Trackage by paying to Pan Am Southern a sum computed by multiplying (i) the Trackage Rights Charge, as hereinafter defined, by (ii) the number of Cars (loaded or empty) and locomotives moved over the Subject Trackage, with multi-platform Cars being counted as one car for each four axles.

(b) The Trackage Rights Charge.

(i) The Trackage Rights Charge shall initially be set at:

[REDACTED]

(ii) The Trackage Rights Charge shall be revised upward or downward each year by a “Cost Factor”, beginning with the bill rendered for the month of July first following the Effective Date of this Agreement, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the “AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East – Materials, prices, wage rates and supplements combined (excluding fuel) (the “Cost Index”). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(iii) The Trackage Rights Charge shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Trackage Rights Charge. In computing the adjusted Trackage Rights Charge, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(iv) In the event the base for the Cost Index shall be changed from that in effect at the Effective Date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the “AAR Railroad Cost Indexes”, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 14 of this Trackage Rights Agreement.

(v) In the event that the Cost Factor is a negative number, no adjustment to the Trackage Rights Charge will take place for that calendar year. Said negative Cost Factor will be taken into consideration in calculating subsequent years' Cost Factor. For example, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor goes negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account.

(vi) Notwithstanding any of the foregoing, under no circumstances shall the rate paid to Pan Am Southern by Springfield Terminal be less than the initial Trackage Rights Charge set forth in Section 1(b)(i) of this Appendix B.

(c) In addition to any other adjustment to the Trackage Rights Charge described in this Appendix B, should the charges imposed on Pan Am Southern for the use of the MBTA Segment increase year-over-year in a rolling three year average by more than three percent (3%), then the Trackage Rights Charge shall be increased to reflect such change.

Section 2. Intermodal Haulage Compensation

(a) Compensation.

Springfield Terminal shall compensate Pan Am Southern for the Intermodal Haulage by paying to Pan Am Southern a sum computed by multiplying (i) the Intermodal Haulage Charge, as hereinafter defined, by (ii) the number of units (loaded or empty) moved.

(b) The Intermodal Haulage Charge.

(i) The Intermodal Haulage Charge shall initially be set as follows:

[REDACTED]

(i) Rate Adjustment

(A) The Rates shall be revised upward or downward each year by a “Cost Factor”, beginning with the bill rendered for the month of July 2009, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the “AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East – Materials, prices, wage rates and supplements combined (excluding fuel)” (the “Cost Index”). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(B) The Rates shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Rates. In computing the adjusted Rates, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

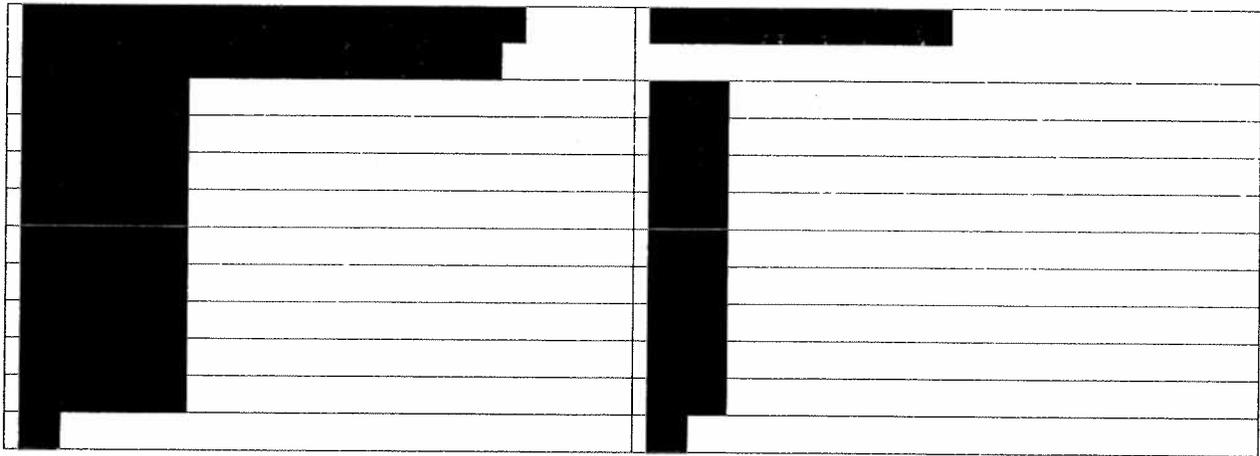
(C) In the event the base for the Cost Index shall be changed from that in effect at the effective date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the “AAR Railroad Cost Indexes”, an

appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

(D) In the event that the Cost Factor is a negative number, no adjustment to the Intermodal Haulage Charge will take place for that calendar year. Said negative Cost Factor will be taken into consideration in calculating subsequent years' Cost Factor. Specifically, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor goes negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account, and so on.

(E) Notwithstanding any of the foregoing, under no circumstances shall the Rates be less than those reflected in the tables above except as provided in Subsection 2(b)(1) of this Appendix B.

(ii) Fuel Surcharge:



The surcharge will be applied to the intermodal haulage component of the monthly invoice. For a given month, take the average of the DOE's Index value released on each of the Mondays during that month. Using the above scale, determine the appropriate fuel surcharge to apply.

(g) Increase in Fees based upon Volumes.

