

STB FD 33388 (Sub 63) 10-21-97 A 182854 1/2

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October 21, 1997

**BY HAND DELIVERY**

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, D.C. 20423-0001

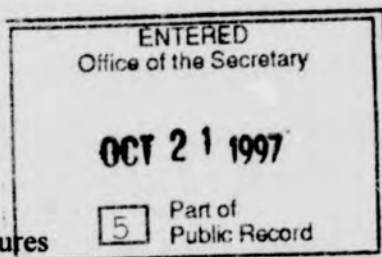
Sub-No. 63  
**Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corporation and Norfolk Southern Railway Company --  
Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated  
Rail Corporation -- Transfer of Railroad Line by Norfolk Southern Railway  
Company to CSX Transportation, Inc.**

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of the Responsive Application Of R.J. Corman Railroad Company/Western Ohio Line For Trackage Rights Or Ownership (RJC-6), together with a 3.5 inch diskette containing the filing in WordPerfect 5.1. Also enclosed is a check to the Surface Transportation Board in the amount of \$4,700, which is applicable filing fee.

Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,



Enclosures

Kevin M. Sheys

**FEE RECEIVED**

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 SUB 63

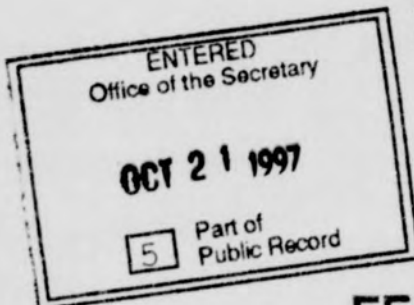


CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
CONTROL AND OPERATING LEASES/AGREEMENTS  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

FINANCE DOCKET NO. 33388 (SUB-NO. 63)

R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE  
--TRACKAGE RIGHTS--  
LINES OF CONSOLIDATED RAIL CORPORATION

**RESPONSIVE APPLICATION OF R.J. CORMAN  
RAILROAD COMPANY/WESTERN OHIO LINE  
FOR TRACKAGE RIGHTS OR OWNERSHIP**



**FEE RECEIVED**

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SURFACE  
TRANSPORTATION BOARD

Kevin M. Sheys  
Christopher E. V. Quinn  
Oppenheimer Wolff & Donnelly  
1020 Nineteenth Street, N.W.  
Suite 400  
Washington, DC 20036-6105  
202-496-4906

**ATTORNEYS FOR R.J. CORMAN PARTIES**

Dated: October 21, 1997

**FILED**

OCT 21 1997

SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 33388**

**CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK  
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**Dated: October 21, 1997**



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**Attachments:**

Verified Statement of M.W. Grubb, Jr.

Exhibit 1 - Maps

Exhibit 2-A - Trackage Rights Agreement

Exhibit 2-B - Asset Purchase Agreement

Exhibit 15 - Operating Plan - Minor

Exhibit 22 - Opinion of Counsel

Exhibit 23 - Verified Statement of Michael M. Fry

**[CORRECTED PAGE]**

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Exhibit 22 - Opinion of Counsel

Exhibit 24 - Verified Statement of Michael M. Fry

Exhibit 25 - Support Letters from Other Shippers and  
Interested Parties

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 33388**

**CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
CONTROL AND OPERATING LEASES/AGREEMENTS  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

**FINANCE DOCKET NO. 33388 (SUB-NO. 63)**

**R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE  
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LINES OF CONSOLIDATED RAIL CORPORATION**

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**RESPONSIVE APPLICATION OF R.J. CORMAN  
RAILROAD COMPANY/WESTERN OHIO LINE  
FOR TRACKAGE RIGHTS OR OWNERSHIP**

R.J. Corman Railroad Company/Western Ohio Line ("RJCW") hereby submits its Application, pursuant to 49 U.S.C. §§ 11323-11325 and the Railroad Consolidation Procedures, 49 C.F.R. Part 1180, Subpart A, for approval and authorization of RJCW's acquisition of ownership or trackage rights on Conrail's line of railroad between approximately milepost 54.4 and approximately milepost 52.1 in Lima, Ohio, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board. This Application is responsive to the Primary Application filed herein by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"),

Conrail, Inc. ("CRI") and Consolidated Rail Corporation ("CRC")<sup>1</sup> seeking authority for common control of Conrail by CSXC and NSC and the division of CRC's assets between CSXT and NSR. RJCW hereby requests that the rail line or trackage rights acquisition sought by herein be imposed as a condition upon any approval of the Primary Application.

### **STATUTORY FRAMEWORK**

The authority to condition the primary application (e.g., by imposing the conditions to be sought by Applicants) is found in 49 U.S.C. 11324(c). The statutory criteria for regulatory consideration of the proposed transaction are provided in 49 U.S.C. §§ 11323-11325. Section 11324(d) states:

- (d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that -
- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and
  - (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In Decision No. 30, served September 10, 1997, page 3, the STB held that RJCW's responsive application clearly "[is] not [a] major transaction because [it] does not involve the merger or control of two or more Class I railroads." *Id.* The STB further held that RJCW's responsive application is a "minor transaction, rather than a significant transaction." *Id.*

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<sup>1</sup> CSXC and CSX are referred to collectively herein as "CSX." NSC and NS are referred to collectively herein as "NS." CRI and CRC are sometimes referred to collectively herein as "Conrail." CSX, NS and Conrail are sometimes referred to collectively herein as the "Primary Applicants."



Therefore, RJCW is exempt from certain evidentiary submissions, including 49 CFR 1180.6(a)(8) (environmental consultation);<sup>2</sup> 1180.6(c) (ownership information, other relevant issues, a corporate chart, noncarrier information and certain other relationships); 1180.7 (market analyses); and 1180.8(a) (operational data). Despite the lessened evidentiary submissions, RJCW must submit sufficient evidence to justify a grant of its responsive application. The Board interprets Section 11324(d) to require the imposition of conditions if the consolidation "may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger." *Id.*

**SECTION 1180.6 (a)**  
**IDENTIFICATION OF APPLICANT AND PERSONS**  
**TO WHOM CORRESPONDENCE WITH RESPECT TO**  
**THIS APPLICATION SHOULD BE ADDRESSED**

Applicant RJCW is a Class III railroad operating approximately 51.5 miles of line between Lima, Ohio and the Indiana/Ohio border. RJCW also operates a line of railroad between Lima and Glenmore, Ohio, pursuant to a modified certificate of public convenience and necessity. See R.J. Corman Railroad Company/Western Ohio Line -- Modified Rail Certificate -- Between Lima and Glenmore, Ohio, Finance Docket No. 32753 (ICC served June 26, 1996). The Lima-Glenmore line is owned by the Van Wert County Port Authority and the Port Authority of Allen County.<sup>3</sup>

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<sup>2</sup> Pursuant to Decision No. 30, RJCW filed RJC-5, the Verified Statement of M.W. Grubb, regarding environmental issues.

<sup>3</sup> Pursuant to Decision No. 30, the STB waived the requirements of 49 C.F.R. 1180.3(b).

Applicant's name, business address and telephone number are as follows:

R.J. Corman Railroad Company/Western Ohio Line  
One Jay Station, Box 788  
Nicholasville, KY 40356  
Ph: (606) 885-9457, ext. 206  
Fax: (606) 885-7804

Applicant's counsel to whom correspondence with respect to this Application should be addressed is as follows:

Kevin M. Sheys  
Christopher E. V. Quinn  
Oppenheimer, Wolff & Donnelly  
1020 Nineteenth Street, N.W.  
Suite 400  
Washington, DC 20036-6200

**SECTION 1180.6 (a) (1) (i)**  
**SUMMARY OF THE PROPOSED TRANSACTION**

RJCW believes that the proposed control of Conrail by CSX and NS and the division of Conrail's assets between CSX and NS will adversely affect competitive rail service for the shippers and receivers on RJCW's line. RJCW accordingly opposes the proposed transaction in its present, unconditioned form. RJCW hereby files its responsive application pursuant to 49 C.F.R. §1180.4(d)(4) asking that any Board approval of the Primary Application be conditioned upon RJCW's acquisition of ownership of or trackage rights on Conrail's line of railroad between approximately milepost 54.4 and approximately milepost 52.1 in Lima, Ohio (subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board).



**SECTION 1180.6 (a) (1) (ii)**  
**PROPOSED TIME SCHEDULE FOR**  
**CONSUMMATION OF TRANSACTION**

RJCW would consummate the proposed transaction promptly after (i) the effective date of any final order of the Board approving the Primary Application and (ii) Primary Applicants' consummation of the transactions proposed in the Primary Application.

**SECTION 1180.6 (a) (1) (iii)**  
**PURPOSE SOUGHT TO BE**  
**ACCOMPLISHED BY THE PROPOSED TRANSACTION**

The purposes for the conditions sought by RJCW are to mitigate the adverse impact on existing competition for (i) grain traffic moving from western Ohio to grain markets in the south and (ii) fertilizer traffic moving from the south to western Ohio. RJCW seeks to keep its shippers competitive with other grain and fertilizer shippers in the region, diminish CSX's control over the chokepoint of the Lima-Glenmore line, located at Lima, Ohio; and guarantee access to both NS and CSX for RJCW's shippers. RJCW is the only shortline operator operating on the Lima-Glenmore line and provides the only rail service for Country Mark Cooperative and Mercer-Landmark, Inc. on this rail line.

Due to the relatively lower costs of rail transportation versus motor carrier transportation, both RJCW-served shippers on the Glenmore-Lima line, have begun to substantially increase their use of rail transportation. For example, Mercer Landmark, a farmer's cooperative, has invested \$750,000 to expand its rail transfer facilities at Elgin, Ohio, and concentrated all of its transportation needs into and out of the region at that facility on the Lima-Glenmore line.

RJCW currently interchanges with Conrail at Lima, on Conrail's property just east of the Lima-Glenmore line. Traffic to or from points served by CSX or NS are switched by RJCW for Conrail to CSX and NS through a British Petroleum yard located in Lima. To make this "paper" intermediate switch, RJCW traverses its line from MP 54.4 to MP 52.1, in Lima. RJCW has no other means of interchanging directly with NS or CSX. The Applicants' proposed transactions would transfer ownership of this two mile segment of line from Conrail to CSX.

After consummation of the transactions contemplated by the Primary Application, NS and CSX will become intensely competitive with each other and do everything possible to preserve revenues on line-haul movements. What might be in the economic interest of NS or CSX might not be in the interest of certain rail customers. This is particularly the case with respect to RJCW customers located on the Glenmore-Lima line. Conrail's intermediate switch for movement of RJCW traffic to or from the Glenmore-Lima line is \$60.00 per carload. Conrail is willing to move the traffic to NS and CSX at this rate, because Conrail is not competitive with respect to the origins/destinations on the NS/RJCW or CSX/RJCW traffic. After consummation of the transactions contemplated by the Primary Application, CSX will not have the same economic indifference that Conrail has today and consequently will not offer a comparable intermediate switch charge for RJCW's customers to reach NS. Furthermore, once CSX's sole control over the interchange and traffic is established, there will be no competitive pressure from NS to promptly service the interchange, thereby impeding or blocking the flow of our traffic and causing undue delays. With no competitive check in the form of NS, CSX will be free to either raise its line-haul rate, diminish the level and frequency of interchange with RJCW or do both.

It is critical to the short and long term viability of RJCW's customers that they preserve access to both NS and CSX. With access to both railroads, RJCW-served shippers on the Glenmore-Lima line will be able to continue to take advantage of the comparatively lower costs of rail transportation versus motor carrier transportation. This is very easily achieved with no harm to the Applicants by allowing RJCW direct access, through purchase or trackage rights, over only approximately 2.3 miles of track. This narrowly drawn condition would prevent CSX from establishing a "chokepoint" in Lima.

**SECTION 1180.6 (a) (1) (iv)**  
**THE NATURE AND AMOUNT OF NEW**  
**SECURITIES AND OTHER FINANCIAL ARRANGEMENTS**

The line acquisition or trackage rights sought in this transaction would not involve the issuance of any new securities by RJCW. RJCW is willing and able to negotiate and to take whatever steps are appropriate to establish reasonable compensation and other terms to Conrail for the purchase or to CSX for acquisition of the trackage rights sought.

**SECTION 1180.6 (a) (2)**  
**PUBLIC INTEREST JUSTIFICATIONS**

**(i) Effect of the Proposed Transaction on Competition.**

The proposed transaction is pro-competitive and clearly in the public interest. It will mitigate the adverse impact that the transactions contemplated by the Primary Application will have on competition for grain and fertilizer traffic in Ohio. As discussed in the attached Verified Statements, the proposed transaction will ensure open and competitive access to RJCW's shippers

over both NS and CSX routes and prevent CSX from controlling a small segment of line as a chokepoint.

Finally, the proposed trackage rights will not result in harm to the essential services of any carrier and will not result in a reduction in competition at any point.

**(ii) Financial Consideration.**

The financial consideration for the purchase or trackage rights involves payment of a purchase price or trackage rights use charge (as negotiated between RJCW and CSX or, if necessary, as determined by the Board). In addition, the proposed purchase or trackage rights will confer financial benefits on shippers resulting from the rate and service competition that NS and CSX will provide. NS will realize financial benefits from increased traffic and earnings. RJCW will realize financial benefits from increased traffic and earnings.

**(iii) Effect of Increase in Total Fixed Charges Resulting from the Transaction.**

RJCW's acquisition of the line or trackage rights is not expected to result in any increase in fixed charges on RJCW. The additional net income which RJCW expects to earn from operation of the proposed trackage rights will enhance RJCW's ability to meet its existing fixed charge obligations.

**(iv) Effect of Transaction Upon the Adequacy of Transportation Service to the Public.**

The primary public benefits of the proposed trackage rights are the preservation of competitive rail service options for shippers to or from the Glenmore-Lima line and the preservation of RJCW as a provider of essential services on the line.

**(v) Effect of Transaction on Employees.**

There are no anticipated effects upon personnel. Current RJCW operations would only extend over an additional 2.3 miles of track.

**(vi) Inclusion of Other Railroads in the Territory.**

Inclusion is not a relevant consideration in this Application since the proposed transaction, which consists of the acquisition of rail line or trackage rights, does not involve the merger or control of at least two Class I railroads. See 49 U.S.C. § 11324(b)(2) and (d). Nonetheless, the proposed transaction will not result in harm to the essential services provided by any carrier and, therefore, there is no basis for ordering the inclusion of any carrier in the transaction.

**SECTION 1180.6 (a) (3)  
OTHER SUPPORTING INFORMATION**

The Verified Statements of Pat Grubb, President of R.J. Corman Railroad Company and Michael M. Fry (Exhibit 23) are submitted with this Application.

**SECTION 1180.6 (a) (4)  
OPINION OF COUNSEL**

An opinion of counsel is attached to this Application. (See Exhibit 22).

**SECTION 1180.6 (a) (5)  
STATES WHERE APPLICANT OWNS PROPERTY**

RJCW owns and/or operates railroad property in the state of Ohio.



**SECTION 1180.6 (a) (6)**  
**MAPS -EXHIBIT 1**

A map depicting RJCW's lines is submitted as Exhibit 1 to this Application.

**SECTION 1180.6 (a) (7) (i)**  
**DESCRIPTION OF THE TRANSACTION**

RJCW's acquisition of ownership of or trackage rights on Conrail's line of railroad between approximately milepost 54.4 and approximately milepost 52.1 in Lima, Ohio, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.

**SECTION 1180.6 (a) (7) (ii)**  
**AGREEMENT - EXHIBIT 2-A and 2-B**

A proposed Trackage Rights Agreement and a proposed Purchase and Sale Agreement, each containing the significant terms of the proposed alternative transaction, are submitted with this Application as Exhibits 2-A and 2-B, respectively.

**SECTION 1180.6 (a) (7) (iii)**  
**INFORMATION REGARDING THE CONSOLIDATED ENTITY**

This criterion is not applicable to this Application because neither a consolidation nor a merger is proposed.

**SECTION 1180.6 (2) (7) (iv)**  
**COURT ORDER**

This subsection is not applicable to this Application, because neither a trustee, receiver, assignee, nor personal representative of RJCW is an Applicant herein.

**SECTION 1180.6 (2) (7) (v)**  
**PROPERTY INVOLVED IN THE PROPOSED TRANSACTION**

RJCW seeks to acquire RJCW's acquisition of ownership of or trackage rights on Conrail's line of railroad between approximately milepost 54.4 and approximately milepost 52.1 in Lima, Ohio, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board. The proposed transaction does not involve any property of RJCW. The properties involved in the proposed transaction do not include all of the property of Conrail.

**SECTION 1180.6 (a) (7) (vi)**  
**PRINCIPAL ROUTES, TERMINI, POINTS OF INTERCHANGE AND MILEAGE OF THE INVOLVED LINES**

For a description of the Glenmore-Lima line see Page 7, *supra*. For a description of Conrail's line see Page 7, *supra*.

**SECTION 1180.6 (a) (7) (vii)**  
**GOVERNMENT FINANCIAL ASSISTANCE**

No governmental financial assistance is involved in the proposed transaction.

**SECTION 1180.6 (a) (8)**  
**ENVIRONMENTAL DATA**

The proposed transaction will not result in changes in carrier operations that exceed the thresholds established in 49 C.F.R. § 1105.7 (e) (4) or (5). Therefore, no energy or environmental documentation need be prepared with regard to this Application. Under 49 C.F.R. § 1105.8 (b)(1) and (3), the proposed transaction also is exempt from historic preservation reporting requirements. Accordingly, no Environmental or Historic Report accompanies this Application.

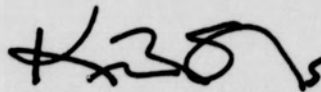


**SECTION 1180.8(b)**  
**OPERATING PLAN/MINOR - EXHIBIT 15**

Operational data, prepared in accordance with 49 C.F.R. § 1180.8(b), is attached hereto as Exhibit 3.

WHEREFORE, Applicant respectfully requests that the Board accept this Application for consideration and authorize the trackage rights proposed herein.

Respectfully submitted,




Kevin M. Sheys  
Christopher E. V. Quinn  
Oppenheimer Wolff & Donnelly  
1020 Nineteenth Street, N.W.  
Suite 400  
Washington, DC 20036-6105  
202-496-4906

**ATTORNEYS FOR R.J. CORMAN PARTIES**

Dated: October 21, 1997

### VERIFICATION

M.W. Grubb, Jr., under oath, says that he is President of R.J. Corman Railroad Company/Western Ohio Line, applicant herein; that he has been duly authorized and designated by R.J. Corman Railroad Company/Western Ohio Line to sign, verify and file the foregoing application with the Surface Transportation Board; that he has examined all of the statements contained in said application; that he has knowledge of the matters set forth therein insofar as those matters relate to R.J. Corman Railroad Company/Western Ohio Line; and that all such statements made and matters set forth therein with respect to R.J. Corman Railroad Company/Western Ohio Line are true and correct to the best of his knowledge, information and belief.



M.W. Grubb, Jr.

**CERTIFICATION**

I, Kenneth D. Adams, am Secretary of R.J. Corman Railroad Company/Western Ohio Line, and I hereby certify that M.W. Grubb, Jr. is President of R.J. Corman Railroad Company/Western Ohio Line and is duly authorized and designated to sign, verify and file the foregoing Application on behalf of R.J. Corman Railroad Company/Western Ohio Line.

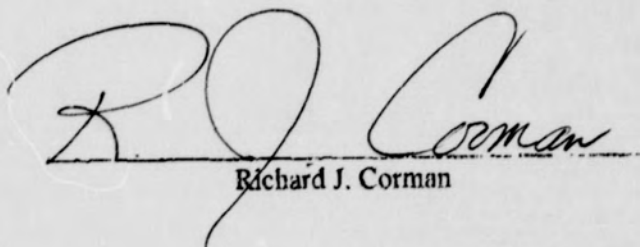
Kenneth D. Adams

Kenneth D. Adams

Dated: October 20, 1997.

**VERIFICATION**

Richard J. Corman, under oath, deposes and says that he is owner of R.J. Corman Railroad Company/Western Ohio Line, applicant herein; that he has examined all of the statements contained in said application; that he has knowledge of the matters set forth therein insofar as those matters relate to R.J. Corman Railroad Company/Western Ohio Line; and that all such statements made and matters set forth therein with respect to R.J. Corman Railroad Company/Western Ohio Line are true and correct to the best of his knowledge, information and belief.



Richard J. Corman

Dated: October 20, 1997

**VERIFIED STATEMENT  
OF  
M.W. GRUBB, JR.**

My name is M.W. "Pat" Grubb, Jr. I am the President of R.J. Corman Railroad Company/Western Ohio Line ("RJCW"). I am responsible for the administration and overall operations of RJCW

My career spans more than thirty years in the coal and railroad industry. I was the President of the Witcher Mining Corporation (1979-1987), the Transcontinental Terminals, Inc. (1987-1988) (1988-1996) and Transkentucky Transportation Railroad, Inc. (a subsidiary of CSX). Throughout my career I have been involved in every facet of rail transportation, as both a shipper and carrier. At each company I have worked at, I have brought profitability by improving operations, increasing efficiencies and reducing costs.

RJCW is a Class III railroad operating approximately 51.5 route miles of rail line between Lima, Ohio and the Indiana/Ohio border. RJCW also operates a line of railroad between Lima and Glenmore, Ohio, pursuant to a modified certificate of public convenience and necessity. The Lima-Glenmore Line is owned by the Van Wert County Port Authority and the Port Authority of Allen County.

RJCW believes that the proposed control of Conrail by CSX and NS and a division of Conrail's assets between CSXT and NSR will have an adverse impact on competitive transportation service for the shippers and receivers on the Lima-Glenmore Line. Accordingly, RJCW has filed its responsive application asking that any Board approval of the Primary Application be conditioned upon RJCW's acquisition of ownership of or trackage on Conrail's line of railroad between approximately Milepost 54.4 and approximately Milepost 52.1 in Lima,



Ohio, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.

Due to the relatively low costs of rail transportation (as compared with motor carrier transportation), several RJCW customers on the Glenmore-Lima Line have begun to substantially increase their use of rail transportation. RJCW currently interchanges with Conrail at Lima, on Conrail's property just east of the Lima-Glenmore Line. Traffic to and from points served by CSXT and NSR are switched by RJCW for Conrail to CSXT and NSR through a British Petroleum yard located in Lima. To make this intermediate switch, RJCW for Conrail traverses its line from approximately Milepost 54.4 to approximately Milepost 52.1, in Lima. RJCW has no other means of interchanging directly with NSR or CSXT. The Applicants' proposed transactions would transfer ownership of this two-mile segment of line from Conrail to CSXT. RJCW is the only shortline operator operating on the Lima-Glenmore Line and provides the only rail service to CountryMark Cooperative and Mercer-Landmark, Inc.

The purpose of the conditions sought by RJCW is to mitigate the adverse impact on existing competition for grain traffic moving from Western Ohio to grain markets in the South and fertilizer traffic moving from the South to Western Ohio. RJCW wants to keep its shippers competitive with other grain and fertilizer shippers in the region, diminish CSXT's control over the chokepoint of the Lima-Glenmore Line, located at Lima, and guarantee access to both NSR and CSXT for RJCW's shippers.

After consummation of the transactions contemplated by the Primary Application, I would expect that NSR and CSXT will become intensely competitive with each other and do everything possible to preserve revenues on line-haul movements. What might be in the economic

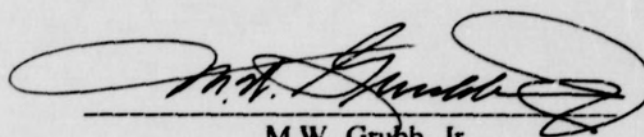
interest of NSR or CSXT might not be in the interest of rail customers located on the Glenmore-Lima Line. Conrail's intermediate switch for movement of RJCW traffic to or from the Glenmore-Lima Line is \$60.00 per carload. Conrail is willing to allow this traffic to move to NSR and CSXT at this rate, because Conrail is not competitive with respect to the origins/destinations on the NSR/RJCW or CSXT/RJCW traffic. After consummation of the transactions contemplated by the Primary Application, I do not believe CSXT will have the same economic indifference that Conrail has today and consequently will not offer a comparable intermediate switch charge for RJCW's customers to reach NSR. Furthermore, once CSXT's sole control over the interchange and traffic is established, there will be no competitive pressure from NSR to promptly service the interchange. This will impede the flow of our traffic and cause undue delays. With no competitive check in the form of NSR, I believe CSXT will be free to either raise its line-haul rate, diminish the level and frequency of interchange with RJCW or do both.

It is critical to the short and long term viability of RJCW's customers that they preserve access to both NSR and CSXT. With access to both railroads, RJCW-served shippers on the Glenmore-Lima Line will be able to continue to take advantage of the comparatively lower costs of rail transportation versus motor carrier transportation. This is very easily achieved with no harm to the Applicants by allowing RJCW direct access, through purchase or trackage rights, over only approximately 2.3 miles of track. This narrowly drawn condition would prevent CSXT from establishing a "chokepoint" in Lima.



Verification

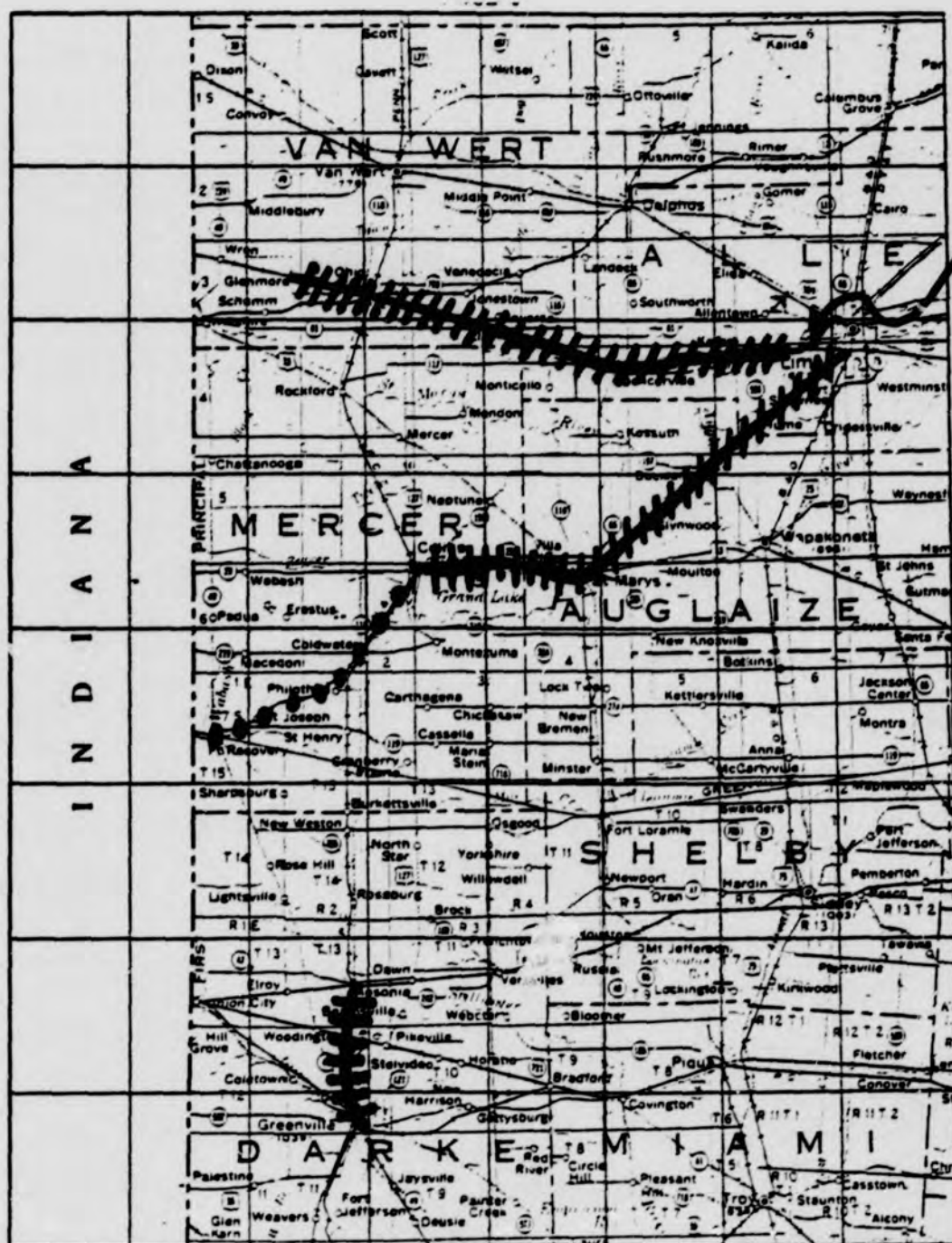
I, M.W. Grubb, Jr., declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

A handwritten signature in black ink, appearing to read "M.W. Grubb, Jr.", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.

M.W. Grubb, Jr.  
President

Executed on: October 20, 1997

R. J. Corman Railroad Company/Western Ohio Line



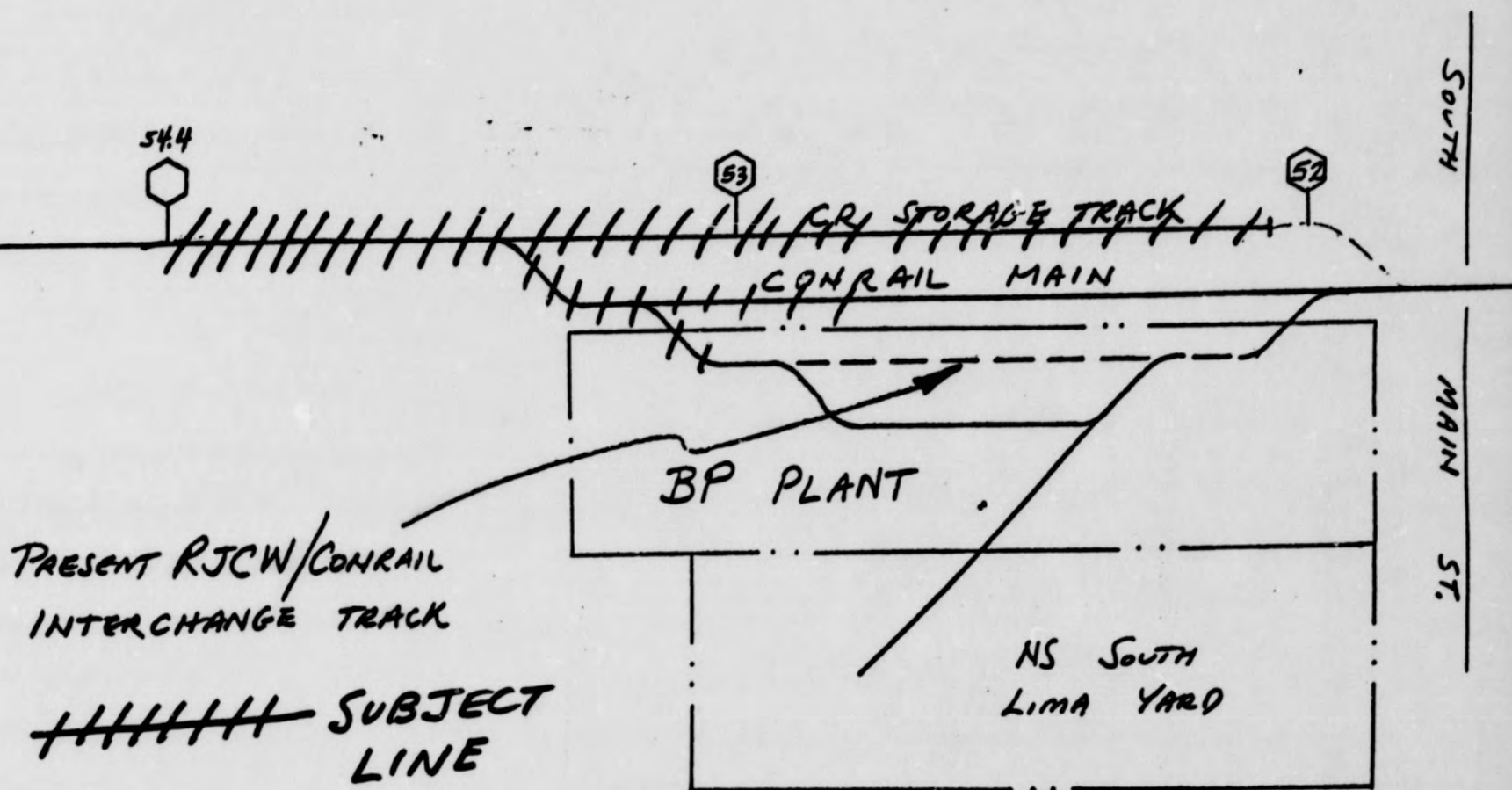
Proposed  
Trackage  
Rights  
or  
Acquisition

~~+++++~~ Ownership  
..... Trackage Rights

CONRAIL INTERCHANGE

LIMA, OHIO

APRIL 19, 1996



TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, by and among R.J. Corman Railroad Company/Western Ohio Line and CSX Transportation, Inc.;

WITNESSETH:

WHEREAS, CSX Transportation, Inc. ("CSXT") and R.J. Corman Railroad Company/Western Ohio Line ("RJCW"); and

WHEREAS, pursuant to the the Order of the Surface Transportation Board, Decision Number \_\_, dated \_\_\_\_\_, 199\_\_, and under the terms and conditions of the Order, CSXT has agreed to grant to RJCW certain trackage rights; and

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

SECTION 1. DESCRIPTION:

CSXT, as owner, and CSXT, as operator, hereby grant to RJCW, subject to the terms and conditions of the referenced in this agreement, and as further governed herein below, the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over the following segment of railroad owned by CSXT, and operated by CSXT (hereinafter referred to as "Subject Trackage"):

Approximatly milepost 54.4 to approximatly milepost 52.1 in Lima, Ohio, as marked on Drawing No. 1 attached hereto and made a part hereof.

SECTION 2. RESTRICTION ON USE:

The Trackage Rights herein granted are granted for the sole purpose of RJCW using same for bridge traffic only between the terminals of Subject Trackage and RJCW shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 3. COMPENSATION:

(a) The factor to be used in calculating payments to be made by RJCW for the Trackage Rights shall be 29 cents (\$0.29) per car mile (hereinafter referred to as the "Current Charge").

(b) RJCW will pay CSXT a sum computed by multiplying (i) the Current Charge, as may be revised in Section 4 of this Agreement by (ii) the number of cars (loaded and empty), locomotive and caboose units moved by CSXT with its own crews and power over the Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive unit and caboose, for the purpose of this Agreement, shall be counted as one (1) car. With respect



to articulated units, the number of cars shall be determined by the AAR Car Type code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type code "S566" would equate to a five (5) car count as these type cars have five (5) wells capable of handling forty-foot (40') to fifty-foot (50') containers in each well. A single unit of RoadRailer® equipment (or comparable bimodal freight hauling equipment in either RJCW's or CSXT's account) shall count as one-half ( $\frac{1}{2}$ ) of a Railcar.

(c) CSXT shall on or about the fifteenth (15<sup>th</sup>) day of each month render billing to RJCW for RJCW's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.

#### SECTION 4. REVISION OF CURRENT CHARGE:

(a) The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.

(b) The Current Charge shall be revised upward or downward each year, 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, excluding fuel, as reflected in the annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating 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 Current Charge.

(c) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977 appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, 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 Exhibit A.

(d) At the option of either party hereto, the compensation provided for shall be open for renegotiation every five (5) years from the Effective Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

**SECTION 5. TERM AND TERMINATION:**

(a) This Agreement shall become effective the latter of the date first above written, or when regulatory approval is received and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by either party upon six (6) months written notice.

**Section 6. GENERAL CONDITIONS:**

Exhibit A attached hereto is hereby made part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and the Agreement shall arise, the portions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement between the parties dated \_\_\_\_\_, 19 \_\_\_\_ to be duly executed as of the date first above written.

WITNESS:

R.J. Corman Railroad  
Company/Western Ohio Line

\_\_\_\_\_

By: \_\_\_\_\_  
(Title)

WITNESS:

CSX Transportation, Inc.

\_\_\_\_\_

By: \_\_\_\_\_  
(Title)

EXHIBIT A  
GENERAL AGREEMENT

ARTICLE 1.     USE OF SUBJECT TRACKAGE

- (a) RJCW's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement (all references to "Agreement" include Exhibit A unless otherwise indicated). CSXT shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- (b) Except as may otherwise be provided by this Agreement RJCW shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, or service to an industry, except that nothing contained herein shall, upon prior approval of CSXT, preclude the emergency use by RJCW of such auxiliary tracks as may be designated by CSXT for such purposes.
- (c) Except as may otherwise be provided in this Agreement RJCW shall have the right to enter on and exit from the Subject Trackage only at (i) the endpoints of the Subject Trackage, or (ii) points other than the endpoints where RJCW may make a connection with an existing railroad line.
- (d) CSXT shall have exclusive control of the management and operation of the Subject Trackage. RJCW shall not have any claim against CSXT for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by RJCW is interrupted or delayed at any time from any cause.

ARTICLE 2.     MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, RJCW's locomotives and crews will be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of CSXT's representative or its designee.
- (c) Before RJCW's locomotives enter onto CSXT's trackage, RJCW shall request permission from CSXT's designated dispatcher or other designated representative. Further, RJCW shall ascertain that said trackage is clear and shall await confirmation from said representative that such permission has been issued to allow RJCW's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, RJCW will notify CSXT's designated representative that it has completed its operations and that its equipment has cleared CSXT's



trackage. Once RJCW has notified CSXT's representative that it has cleared the Subject Trackage, RJCW shall not reenter the Subject Trackage without again obtaining permission from CSXT's representative. RJCW shall provide and maintain at its expense all communication facilities needed and as may be required by CSXT to permit RJCW to use the Subject Trackage.

#### ARTICLE 3. PAYMENT OF BILLS

- (a) All payments called for under this Agreement shall be made by RJCW within thirty (30) days after the date of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.
- (b) Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CSXT at the time any work is performed by CSXT for RJCW or shall include actual costs and expense, upon mutual agreement of the parties.

#### ARTICLE 4. MAINTENANCE OF SUBJECT TRACKAGE

- (a) CSXT shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CSXT shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 10, RJCW shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by RJCW resulting from any such failure or neglect.
- (b) CSXT shall perform, at the expense of RJCW, such additional maintenance as RJCW may reasonably require or request.

#### ARTICLE 5. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements 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 such agreements.

- (b) If, in the opinion of RJCW, a new or upgraded connection is required at a "Permitted Point of Entry or Exit" other than the endpoints, or, if in the opinion of RJCW, other upgrading, including but not limited to switches, power switches, signals, communications, etc. is required for operational efficiency, then CSXT will, subject to its own operational needs, cooperate and RJCW will be responsible for funding that construction/upgrading at actual cost or a cost mutually agreed to by RJCW and CSXT. Such construction/upgrading shall be progressed as follows:
- (i) RJCW or others shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way of RJCW or others which connect the respective lines of the parties hereto.
  - (ii) CSXT shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by CSXT which connect the respective lines of the parties hereto. Upon termination of this Agreement CSXT may at its option remove any portion of trackage and appurtenances located on right-of-way operated by CSXT, constructed as a result of this Article, at the sole cost and expense of RJCW. The salvage material removed shall be released to RJCW or, as otherwise agreed upon, CSXT will credit RJCW the current fair market value for said salvage.
  - (iii) CSXT will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by CSXT which connect the respective lines of the parties hereto at the sole cost and expense of RJCW.

ARTICLE 6. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) CSXT, from time to time and at its sole cost and expense, 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 thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- (b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate RJCW's operations beyond that required by CSXT to accommodate its operations CSXT shall construct the additional or altered facilities and RJCW shall pay to CSXT the cost thereof, including the annual expense of

maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 7.        MANAGEMENT AND OPERATIONS

- (a) RJCW shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other 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. RJCW shall indemnify, protect, defend, and save harmless CSXT and their respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CSXT or their respective parent corporations, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of RJCW to comply with its obligations in this regard.
- (b) RJCW in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of RJCW's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. RJCW'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 published in Railway Line Clearances, 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 CSXT's operating rules and regulations without the prior consent of CSXT.
- (c) RJCW shall make such arrangements with CSXT 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, and RJCW shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of RJCW, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.
- (d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by RJCW's employees while on the Subject Trackage, RJCW shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by RJCW, and any such investigation or hearing shall be conducted in accordance with the collective



bargaining agreements, if any, that pertain to RJCW's employee or employees required to attend such hearings.

- (e) CSXT shall have the right to exclude from the Subject Trackage any employee of RJCW determined by the above, to be in violation of CSXT's rules, regulations, orders, practices, or instructions issued by CSXT's Timetable or otherwise. RJCW shall release, indemnify, defend, and save harmless CSXT, its respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (f) The trains, locomotives, cars and equipment of CSXT, RJCW, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.
- (g) In the event that a train of RJCW shall be forced to stop on the Subject Trackage, due to mechanical failure of RJCW's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of RJCW fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of RJCW's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and RJCW shall reimburse CSXT for the cost of rendering any such assistance.
- (h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by CSXT, and RJCW shall reimburse CSXT for the cost thereof.
- (i) In the event RJCW and CSXT agree that CSXT should retain employees or provide additional employees for the sole benefit of RJCW, the parties hereto shall enter into a separate agreement under which RJCW shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CSXT and which would not have been incurred had the retained or additional employees not been provided.

#### ARTICLE 8. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in RJCW's trains on the Subject Trackage shall be assumed by RJCW and reported and paid by it directly to the owner of such cars.

## ARTICLE 9. CLEARING OF WRECKS

Whenever RJCW's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures. 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 Article 10 hereof. All locomotives, Railcars, and 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 RJCW at the time of such wreck, shall be promptly delivered to RJCW.

## ARTICLE 10. LIABILITY

For the purpose of this Article 10, the term "Damage" means all assessments, losses, damages, liabilities, costs and expenses, including without limitation interest, penalties and attorneys' and consultants fees. For the purpose of this Article 10, the term "Railroad Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to either CSXT or RJCW. The responsibility between and among RJCW and CSXT for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned without consideration of fault or negligence of any kind or degree as follows:

- (a) Sole Responsibility. Subject to Article 10(e), each party shall assume and bear all responsibility for Damage to or resulting from its own trains, locomotives and equipment, including but not limited to, Railcars and lading in its possession or being handled for its account, and for the death of or injury to its own employees.
- (b) CSXT and RJCW Responsibility. Subject to Article 11(e), the parties shall jointly and equally (50% CSXT and 50% RJCW) assume and bear all responsibility for all Damage, other than Damage which is subject to Article 10(a).
- (c) Process. Each party shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under Article 10(a), and both parties shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under Article 10(b). In assigning joint responsibility to both parties, it is not the intent of this Agreement that the parties will actually act jointly, but rather that the parties will agree between themselves on the most practical and efficient arrangements for handling, administering, and



disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.

- (d) Indemnification. Each party to this Agreement covenants and agrees to (i) fully indemnify and save harmless the other parties to this Agreement from and against any payments which are the responsibility of such party under this Agreement, and all expenses, including attorney's fees and expenses and other expenses of any court or regulatory proceeding, incurred by such other parties in defending any claim for which they are liable for such payments, and (ii) defend such other parties against such claims with counsel selected by such party and reasonably acceptable to such other parties.
- (e) Limitation. Article 10(a) and (b) shall apply only to the amount of Loss resulting from a single incident which is \$25 million or less. Responsibility for Damages resulting from a single incident which exceed \$25 million shall be allocated to the extent of such excess to RJCW and CSXT in proportion to their respective fault or negligence in causing such Damage, subject to the following rules: (1) the total amount of Damage for which each party would otherwise be responsible under Article 10 (a) and (b) shall be determined, on a comparative percentage basis; (2) for each party, multiply \$25 million by the comparative percentage determined for that party in Article 10(e)(1); (3) the Damage for which each party is responsible in excess of the amount determined in Article 10(e)(2) shall be allocated between or among RJCW and CSXT in proportion to their respective fault or negligence in causing the Damage. As used in this Article 10(e) only, the term "Damage" shall exclude Railroad Consequential Damages (which are always borne by the railroad which sustained them) and claims for exemplary and punitive Damages by any party hereto on its own behalf against another party hereto. By way of example, if Damage from a single incident were \$100 million, of which RJCW would be responsible for \$80 million under Article 10(a) and (b) and CSXT would be responsible for \$20 million under Article 10(a) and (b), RJCW would be responsible for \$20 million and CSXT would be responsible for \$5 million of such Damage under Article 10(e)(1), and the remaining \$75 million of Damage would be apportioned between or among RJCW and CSXT in proportion to their respective fault or negligence in causing the Damage. Any dispute between or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Damage or otherwise relating to their respective responsibilities for Damage arising out of, incidental to or occurring in connection with any such incident, including any Damage exceeding \$25 million, shall be submitted for

resolution by binding arbitration pursuant to Article 15. The \$25 million amount referred to in this Article 10(e) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in sole discretion of each party.

- (f) Exceptions. Each party shall assume and bear all responsibility for Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol or by the intentional criminal misconduct of any such employee, and Article 10(b) and (e) shall not apply to any such Damage.

#### ARTICLE 11. CLAIMS

- (a) The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in Railcars handled in interline service by or for the account of both parties.
- (b) Each party shall indemnify and hold harmless the other party 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.

#### ARTICLE 12. DEFAULT AND TERMINATION

- (a) In the event of any substantial failure on the part of RJCW to perform its obligations provided under the terms of this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CSXT, CSXT shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CSXT of any prior breach thereof, to terminate the Trackage Rights and RJCW's use of the Subject Trackage as granted by this Agreement. The exercise of such right by CSXT shall not impair its rights under this

Agreement or any cause or causes of action it may have against RJCW for the recovery of damages.

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

#### ARTICLE 13. REGULATORY APPROVAL

Both parties agree that this Agreement will be jointly submitted to the Surface Transportation Board (STB) for approval.

#### ARTICLE 14. ABANDONMENT OF SUBJECT TRACKAGE

- (a) Notwithstanding the provisions of Section 5 of this Agreement, CSXT shall have the right, subject to securing any necessary regulatory approval and subject to the PRR Operating Agreement, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, CSXT shall give RJCW ninety (90) days' advance notice in writing of its intention to do so in order that RJCW may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- (b) If RJCW desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event CSXT receives more than one such offer, CSXT will exercise its statutory right to negotiate with RJCW rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to RJCW's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- (c) In any one of the circumstances listed below RJCW shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:
  - (i) RJCW fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
  - (ii) RJCW, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with CSXT as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
  - (iii) RJCW, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
  - (iv) RJCW, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.



In such event RJCW shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage. If RJCW does not file an application seeking approval of the discontinuance of RJCW's operations over the Subject Trackage within ninety (90) days, CSXT shall be deemed to have been given RJCW's power of attorney to take such action on RJCW's behalf.

- (d) In the event any application filed by CSXT is granted but an application filed by RJCW under Subarticle (c) above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage to RJCW (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- (e) In the event CSXT abandons the Subject Trackage (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that RJCW either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- (f) In the event CSXT's application for authority to abandon is denied, RJCW will withdraw any application it has filed under Subarticle (c) above.
- (g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 14 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

#### ARTICLE 15. ARBITRATION

Any dispute, controversy or claim (or any failure by the parties to agree on a matter as to which this Agreement expressly or implicitly contemplates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within 30 days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the parties. Each

party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, and to require the cessation or nonperformance of acts found to be prohibited by this Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award, of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any other Person, except as required by law and except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

ARTICLE 16. SUCCESSORS AND ASSIGNS

- (a) Except as provided herein, neither this Agreement (including the documents and instruments referred to herein) nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, except to a controlled subsidiary.
- (b) Any party without the consent of the other party may assign all of its rights and obligations under this Agreement only to any successor in the event of a merger, consolidation, sale of all or substantially all its assets, if such assignee executes and delivers to the other party hereto an agreement reasonably satisfactory in form and substance to such other party under which such assignee, which is reasonably satisfactory to the other party, assumes and agrees to perform and discharge all the obligations and liabilities of the assigning party; provided that any such assignment shall not relieve the assigning party from the performance and discharge of such obligations and liabilities.

ARTICLE 17. NOTICE

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

If to RJCW: (To be provided)

If to CSXT: (To be provided)



Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 18. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto 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 to this Agreement.
- (d) 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.
- (e) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (f) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (g) This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- (h) Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

ARTICLE 19. 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 party shall also extend to and indemnify the parent corporation, its subsidiaries and affiliates

of such other party, and all of their respective directors,  
officers, agents and employees.

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**ASSET PURCHASE AGREEMENT**

**Between**

**R.J. Corman Railroad Company/Western Ohio Line**

**and**

**Consolidated Rail Corporation**

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**Dated**

**\_\_\_\_\_, 1997**

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Appendix A—Description of Assets

Appendix B—Assigned Contracts

Appendix C—Allocation of Purchase Price

Exhibit 1—Disclosure Schedule

## ASSET PURCHASE AGREEMENT

R.J. Corman Railroad Company/ Western Ohio Line ("Purchaser") and Consolidated Rail Corporation ("Seller") agree as follows:

### 1. DEFINITIONS

1.1. The following terms when used with initial capitalization in this Agreement, whether in the singular or the plural, have the meanings ascribed to them below:

**"Agreement"** means this Asset Purchase Agreement, including its Appendices and Exhibits.

**"Assets"** means the assets of Seller identified in Appendix A to this Agreement.

**"Cash"** has the meaning given to it in Section 4.1 of this Agreement.

**"CERCLA"** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

**"Closing"** has the meaning given to it in Section 9.1 of this Agreement.

**"Closing Date"** has the meaning given to it in Section 9.2 of this Agreement.

**"Contracts"** means contracts, leases, commitments, agreements and arrangements.

**"Board"** means the Surface Transportation Board established under 49 U.S.C. §10101 et seq. or any successor agency.

**"Environmental Law"** means any law, judgment, decree, order, license, rule or regulation pertaining to environmental matters, including without limitation, those arising under the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), CERCLA, the Superfund Amendments and Reauthorization Act of 1986, as amended (Pub. L. 99-499, Pub. L. 99-563, Pub. L. 100-202 and Pub. L. 101-144), the Clean Water Act, as amended (33 U.S.C. §1251 et seq.), the Clean Air Act, as amended (42 U.S.C. §7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §300f et seq.), the Emergency Planning and Community Right-to-Know Act of 1986, as amended (42 U.S.C. §11001 et seq.) and any other federal, state or local statute, regulation, ordinance, order or decree pertaining to the environment.

**"Hazardous Substances"** means any "hazardous waste" as defined by 42 U.S.C. §6903(5), any "medical waste" as defined by 42 U.S.C. §6903(40), any "hazardous substance" as defined by 42 U.S.C. §9601(14), any "pollutant or contaminant" as defined by 42 U.S.C. §9601(33), any "hazardous chemical" pursuant to 29 CFR §1910.1200(c), any substance designated pursuant to 40 CFR Part 302, any "extremely hazardous substance" pursuant to 40 CFR 355, any "toxic chemical" pursuant to 40 CFR Part 372, and any toxic substance, oil, petroleum, hazardous material or other chemical or substance deemed hazardous by an Environmental Law.

**"Inventory"** means inventory, fuel, supplies and other materials relating to or acquired or used for locomotive or car repair, trackage, signal, structure and building maintenance, or otherwise in connection with the operation, use or enjoyment of the Rail Lines or the other Assets.

**"Inventory Accounts"** means the accounts on Seller's balance sheets where Inventory is carried, which accounts shall be kept in accordance with generally accepted accounting principles.

**"Knowledge"**, when used in this Agreement to modify a representation, warranty or other statement of a party, means that the facts or situations described in the representation, warranty or other statement as being to the knowledge of such party are believed to be true and correct by the president, each vice president (including senior vice presidents, executive vice presidents, and vice presidents with other similar designations), and each officer who is principally responsible for the subject matter involved, after suitable investigation.

**"Permitted Encumbrances"** means any

- 1.2. liens for taxes, assessments, levies, fees and other government charges not yet due or payable or which, if due and unpaid, are being contested in good faith and by appropriate proceedings,
- 1.3. mechanics' and materialmen's liens and similar charges incurred in the ordinary course of Seller's business which individually or in the aggregate do not materially interfere with railroad operations on the Rail Lines,
  - (a) utility easements, licenses or permits located on or crossing any portion of the Assets that do not materially interfere with railroad operations on the Rail Lines,
  - (b) road crossing agreements with governmental authorities or private parties that do not materially interfere with railroad operations on the Rail Lines,
  - (c) leases, easements, trackage rights agreements and tenancy agreements existing as of the date of this Agreement which are assumed by Purchaser in accordance with this Agreement,
  - (d) rights of reverter which have not been violated and will not be violated as long as the affected real property is used for railroad purposes,
  - (e) encumbrances specifically agreed to by Purchaser in a separate writing delivered to the Seller,
  - (f) matters customarily excepted by title companies in their commitments for title insurance or title policies as "standard exceptions,"
  - (g) rights reserved to or vested in any governmental authority with respect to the Assets or their regulation, and
  - (h) acts done by, through or under Purchaser, its employees, agents and contractors.

**"Purchase Price"** has the meaning given to it in Section 4.1 of this Agreement.

**"Purchaser"** means R.J. Corman Railroad Company/ Western Ohio Line .

**"Rail Lines"** means the lines of railroad included in the Assets which are owned or operated by Seller.

**"Seller"** means Consolidated Rail Corporation.

## **2. PURCHASE AND SALE OF ASSETS; ASSIGNMENT OF CONTRACTS**

- 2.1. **General.** Under the terms and subject to the conditions contained in this Agreement, Seller agrees to sell and transfer to Purchaser, and Purchaser agrees to purchase, on the Closing Date, all of the Assets.
- 2.2. **Assignment of Contracts.** Contemporaneous with the transfer of the Assets to Purchaser, each Seller agrees to assign and set-over to Purchaser all of such Seller's rights and interests under the Contracts listed on Appendix B hereto.

## **3. EXCLUSION OF ASSETS**

- 3.1. **Contracts.** The Assets do not include any rights under Contracts not specifically assumed by Purchaser under Section 2.2 of this Agreement and all records of Seller relating to such Contracts.
- 3.2. **Current Assets.** The Assets do not include any accounts receivable, cash on hand or deposits and cash equivalents, and other current assets of the Seller, except for the Inventory, Contracts and intangible assets specifically identified in Appendix A.
- 3.3. **Corporate Records.** The Assets do not include general ledgers, minute books, tax returns and similar records required for the Seller's corporate, partnership and tax purposes.
- 3.4. **Claims and Litigation.** The Assets do not include rights under claims and litigation or settlements of such claims and litigation by or against Seller.

## **4. PURCHASE PRICE**

- 4.1. **Amount of Purchase Price.** The purchase price ("Purchase Price") for the Assets is \$ \_\_\_\_\_, to be paid as follows: \_\_\_\_\_ (\$ \_\_\_\_\_) to be paid to Seller in cash (the "Cash").
- 4.2. **Adjustment of Purchase Price.** The Purchase Price is subject to adjustment in accordance with Section 5 below. Any such adjustment made to the Purchase Price shall be deducted from the Cash.
- 4.3. **Payment of Purchase Price.** The Cash, as adjusted, shall be paid at the Closing by wire transfer of immediately available funds to one or more bank accounts designated by Seller prior to the Closing or, at the Seller's sole election, by one or more cashier's checks.
  - (a) **Allocation of Purchase Price.** The Purchase Price shall be allocated to the Assets as set forth on Appendix C. The Purchase Price shall be paid to the Seller in accordance with instructions given to Purchaser by the Seller. Purchaser shall



have no responsibility to the Seller for the application of the Purchase Price paid pursuant to instructions given pursuant to this Section.

**5. TAX ALLOCATION, LEASE INCOME**

- 5.1. **Proration of Taxes.** The Cash Purchase Price shall be adjusted for current real and personal property taxes affecting the Assets and due and payable in calendar year 1997, which shall be prorated over the calendar year by Seller and Purchaser. If the tax bill for the 1997 calendar year or any prior year has not been received at the Closing Date and the tax amount cannot otherwise be definitely ascertained, allocations shall be made on the basis of the prior year's taxes. Any refund of such taxes applicable to the period prior to Closing shall be the property of and sent to Seller, and any refunds applicable to the period after Closing shall be the property of and sent to Purchaser.
- 5.2. **Lease Rentals and License Income.** Lease rentals and license income (which is not already by its terms calculated on a per diem basis) shall be prorated to the Closing Date and the amount due Purchaser, if any, paid within 30 days after Closing.

**6. ASSUMPTION OF LIABILITIES AND OBLIGATIONS**

- 6.1. **Liabilities to be Assumed.** As of the Closing, Purchaser agrees to assume, discharge and pay in accordance with their respective terms and to become responsible for the liabilities and obligations of the Seller under all Contracts set forth on Appendix B, to the extent those liabilities and obligations accrue after the Closing.
- 6.2. **Liabilities Not to be Assumed.** Except as expressly provided elsewhere in this Agreement, Purchaser shall not be obligated to assume any liability or obligation whatsoever, including but not limited to, the following:
- (a) any litigation, arbitration, claim or similar liability of any type with respect to the Assets or Seller's ownership thereof, which is based on or arises out of an event or circumstance occurring prior to the Closing;
  - (b) obligations under any plan to which the Seller contributes pursuant to the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, or under any other employee benefit plan, pension plan or similar plan; and
  - (c) all claims against or obligations of Seller arising out of or in connection with any labor agreement or arrangement.
- 6.3. **Insurance.** The provisions of this Section 6 shall not be construed to constitute the assumption of any liabilities or obligations in a manner which would avoid the applicability of any insurance policy with respect to any event or circumstance arising prior to the Closing.
- 6.4. **No Third Party Rights.** This Section 6 is not intended to create any rights in favor of any person other than Purchaser and Seller.



## **7. REPRESENTATIONS AND WARRANTIES**

**7.1. Representations and Warranties of Seller.** To the best of each Seller's knowledge, information and belief, Seller represents and warrants to Purchaser as follows:

- (a) Seller is a validly organized and existing corporation, in good standing under the laws of the state of its incorporation. Seller has the necessary authority to own property and conduct its business as now conducted in [STATE] and in such other states where it conducts business.
- (b) All necessary corporate action of Seller required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been taken. Subject to the effectiveness of the exemption or approval by the Board, (i) Seller has obtained all necessary governmental authorizations and approvals (or exemptions from or waivers of such authorizations or approvals) required in connection with this Agreement, and (ii) this Agreement constitutes the valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting rights of creditors generally and general principles of equity.
- (c) Except as set forth on Exhibit 1, the sale of the Assets and the consummation of the other transactions contemplated by this Agreement will not result in any breach of or default under, violate the conditions of, or accelerate any obligation under, Seller's articles of incorporation or bylaws or any material agreement, mortgage, lease, deed, order, law, judgment or rule to which Seller is a party or by which it is bound.
- (d) Seller owns the Assets described in Appendix A free and clear of all liens, claims or encumbrances (other than Permitted Encumbrances), and Appendix A is a full and complete listing of all assets used by Seller in the operation of the Rail Lines. The Assets are in good working order and are sufficient to permit the Purchaser to operate the Rail Lines from and after the Closing Date in the same manner operated by Seller prior to the Closing Date.
- (e) Seller has sufficient interest in the Assets to permit the operation of the Rail Lines as presently conducted, and there are no claims which would affect its interest in the Assets so as to affect Purchaser's ability to conduct operations with the Assets following the Closing as currently conducted.
- (f) Each Contract listed on Appendix B is in full force and effect and no default has occurred under any such Contract which would permit the other party to such Contract to terminate the Contract or otherwise refuse to perform its obligations thereunder, or which would otherwise have an adverse effect on the Assets or Purchaser's ability to operate the Rail Lines as currently operated. Seller has not waived or assigned to any other person any of its rights under any of the Contracts on Appendix B, and each of those Contracts may be assigned to Purchaser without impairment of any rights under the Contract.

- (g) Seller is not a party to any indenture, security, contract or other agreement or subject to any judgment, order, writ or decree which would (A) impose any adverse condition upon Purchaser, the Assets or the operation of the Rail Lines or result in the loss of any material rights currently possessed or used by Seller or otherwise adversely affect or materially restrict the Assets or the operation of the Rail Lines as a result of the sale of the Assets to Purchaser as contemplated by this Agreement or (B) adversely affect Purchaser's ability to conduct the operations of the Rail Lines following Closing as currently conducted.
- (h) Seller is in material compliance with all applicable Environmental Laws with respect to the Assets and the operation of the Rail Lines.
- (i) Seller has received no written notice from any governmental agency having authority (including, without limitation, any federal, state or local governmental agency) (A) that it has been identified by the United States Environmental Protection Agency as a potentially responsible party under CERCLA with respect to a site included within the Assets listed on the National Priorities List (40 CFR Part 300 Appendix B (1990)); (B) that any Hazardous Substance has been discovered on a site included within the Assets; or (C) that any site included within the Assets is the subject of any ongoing or ordered remedial investigation, removal or other response action pursuant to any Environmental Law.
- (j) Except with respect to matters which would not adversely affect the assets, or adversely affect Purchaser's ability to operate the Assets as currently operated or impose any cost upon Purchaser following the Closing, (A) no portion of the Assets has been used for the handling, storage, disposal or processing of Hazardous Substances except in material compliance with applicable Environmental Laws, (B) no underground storage tanks for Hazardous Substances are located in, on or about the Assets, (C) the Assets do not contain asbestos, urea formaldehyde foam insulation or transformers or other equipment containing polychlorinated biphenyls, and (D) there have been no releases of Hazardous Substances in, on, under or from the Assets except in material compliance with Environmental Laws.

**7.2. Representations and Warranties by Purchaser.** To the best of its knowledge, information and belief, Purchaser represents and warrants to Seller as follows:

- (a) Purchaser is a validly organized and existing [STATE] corporation, in good standing. Purchaser has full corporate power and authority to conduct its business as such business is now being conducted and to own and operate its properties.
- (b) All necessary corporate action of Purchaser required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been authorized and obtained. Subject to the effectiveness of the exemption or approval by the Board, (i) Purchaser has obtained all necessary governmental authorizations and approvals (or waivers of such authorizations or approvals) required in connection with this Agreement, and (ii) this Agreement constitutes the valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its

terms, except as enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting rights of creditors generally and general principles of equity.

- (c) The purchase of the Assets and the consummation of the transactions contemplated by this Agreement will not result in any breach of or default under, violate the conditions of or accelerate any obligation under Purchaser's certificate of incorporation, bylaws or any material agreement, mortgage, lease, deed, order, law, judgment or rule to which Purchaser is a party or by which it is bound.
- (d) There are no actions, suits or proceedings pending or, to the Knowledge of Purchaser, threatened against Purchaser in any court or before any federal, state, local or other governmental agency which, if decided adversely to the Purchaser, would prohibit the execution, delivery and performance of this Agreement by Purchaser.

7.3. **Survival.** The representations and warranties contained in this Agreement shall survive the Closing and any termination of this Agreement and shall remain in full force and effect for five (5) years after the Closing.

## **8. CONDITIONS TO THE CLOSING**

8.1. **Obligation of Purchaser to Close.** The obligation of Purchaser to effect the closing of the transactions contemplated by this Agreement is subject to the satisfaction at or prior to the Closing of the following conditions:

- (a) The representations and warranties of Seller contained in Section 7 of this Agreement shall have been true in all material respects when made and at the time of Closing as if those representations and warranties had been made at that time.
- (b) Seller shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing.
- (c) Seller shall have removed prior to Closing all liens, security interests or other encumbrances, except for Permitted Encumbrances, if placed or caused to be placed on the Assets.
- (d) The Board shall have approved the transactions contemplated by this Agreement under the ICC Termination Act of 1995 or exempted the transactions contemplated by this Agreement from the provisions of the ICC Termination Act of 1995 requiring Board approval, and that approval or exemption shall have become final or effective (as the case may be).
- (e) No condition shall have been imposed by the Board in connection with the transactions contemplated by this Agreement which has a material and significant adverse effect on the cost of the transaction or value of the transaction to Purchaser or on Purchaser's ability to own, use or operate the Assets taken as a whole in substantially the same manner as Seller owned, used or operated the Assets.

- (f) Purchaser shall have received an executed copy of each document, agreement and instrument referred to in this Agreement required to be executed and delivered by Seller prior to or at the Closing.
- (g) The transactions contemplated by this Agreement to whatever extent necessary shall have been performed pursuant to proper and requisite action taken by Seller under applicable law.
- (h) There shall not have been instituted or threatened on or before Closing, any action or proceeding before any court or governmental agency or body or by a public authority to restrict or prohibit the acquisition by Seller of the Assets.

The satisfaction of any of the conditions set forth in this subsection may be waived by Purchaser in writing delivered at or prior to the Closing.

**8.2. Obligation of Seller to Close.** The obligation of Seller to effect the transactions contemplated by this Agreement is subject to the satisfaction prior to or at the Closing of the following conditions:

- (a) The representations and warranties of Purchaser set forth in Section 7 of this Agreement shall have been true in all material respects when made and at the time of the Closing as if those representations and warranties had been made at that time.
- (b) Purchaser shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by Purchaser prior to or at the Closing.
- (c) The Board shall have approved the transactions contemplated by this Agreement under the ICC Termination Act of 1995 or exempted the transactions contemplated by this Agreement from the provisions of the ICC Termination Act of 1995 requiring Board approval, and that approval or exemption shall have become final or effective (as the case may be).
- (d) Seller shall have received an executed copy of each document, agreement and instrument referred to in this Agreement required to be executed and delivered by Purchaser prior to or at the Closing.
- (e) The transactions contemplated by this Agreement to whatever extent necessary shall have been performed pursuant to proper and requisite action taken by Purchaser under applicable law.
- (f) There shall not have been instituted or threatened on or before Closing, any action proceeding before any court or governmental agency or body or by a public authority to restrict or prohibit the acquisition by Purchaser of the Assets.

The satisfaction of any condition set forth in this subsection may be waived by Seller in writing delivered at or prior to the Closing.



9. **CLOSING**

- 9.1. **Place of Closing.** The closing of the transactions contemplated by this Agreement ("Closing") shall take place at \_\_\_\_\_.
- 9.2. **Date and Time of Closing.** The Closing shall take place at 10:00 a.m. Eastern Standard Time not later than the 10th business day following the date on which an order by the Board approving the acquisition of the Assets by Purchaser has become final or the date on which an exemption from approval by the Board becomes effective. The date on which the Closing occurs is referred to in this Agreement as the "Closing Date."
- 9.3. **Deliveries by Purchaser at Closing; Post-Closing Deliveries.** At the Closing, Purchaser shall:
- (a) Pay to Seller the Purchase Price as adjusted (subject to any withholding that Purchaser is required to make under Section 1445 of the Internal Revenue Code of 1986, as amended).
  - (b) Deliver to Seller its undertakings to assume, perform and discharge the liabilities and obligations of Seller to the extent assumed by Purchaser under this Agreement, and deliver such other documents or instruments as are required of Purchaser in order to effect or evidence the consummation of the transactions contemplated by this Agreement.
  - (c) Purchaser shall take all other reasonable steps that Seller reasonably requests in order to effectuate the transactions contemplated by this Agreement.
- 9.4. **Deliveries by Seller at Closing.** At the Closing, Seller shall:
- (a) Effect the transfer of the Assets to Purchaser by such quit claim deeds in recordable form (as permitted for filing by a railroad or transmitting utility where allowed), bills of sale, assignments, releases, satisfactions and other documents of transfer or release reasonably required to transfer the interests of Seller in the Assets to Purchaser free and clear of all liens (except Permitted Liens) consistent with the terms of this Agreement (which deeds, bills of sale, assignments and other documents may reflect payment of such specific portions of the Purchase Price as requested by Purchaser, provided that such allocations and direction will not be inconsistent with Appendix C or the provisions of Section 1060 of the Internal Revenue Code of 1986, as amended).
  - (b) Furnish to Purchaser any consents to assignments necessary to transfer to Purchaser all of Seller's rights under the Contracts listed on Appendix B.
  - (c) Furnish to Purchaser an affidavit as to Seller of the type referred to in Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, if Seller wishes to avoid the withholding of taxes as provided in Section 1445.
  - (d) Take all other reasonable steps that Purchaser reasonably requests in order to effectuate the transactions contemplated by this Agreement, including the

assignment of all Contracts that Purchaser is to assume pursuant to this Agreement.

## **10. OPERATIONS PRIOR TO CLOSING**

**10.1. Operations Prior to Closing.** Seller agrees that, except with the written consent of Purchaser, from the date of this Agreement to the Closing:

- (a) Seller will not grant (or make any material amendment to) any trackage rights, operating rights, licenses, permits, easements or encumbrances affecting the Assets;
- (b) Seller will not sell, lease, assign, mortgage, hypothecate or otherwise transfer or dispose of any of the Assets (other than Inventory used in the ordinary course of business);
- (c) Seller shall maintain, repair and renew the Assets in the ordinary course, consistent with past practices (and in any event to a condition equal to their condition on the date of this Agreement, ordinary wear and tear excepted);
- (d) Seller shall maintain in full force and effect all Contracts, licenses, authorizations and approvals necessary for or related to the operation and use of the Assets as currently operated and used; provided, however, that Seller may amend, extend or terminate Contracts, licenses, authorizations and approvals in the ordinary course of business following written notice to Purchaser and written approval of such action from Purchaser; and

## **11. CONSENTS AND APPROVALS**

**11.1. Consents and Approvals.** Purchaser and Seller each will cooperate and use their best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to prepare all necessary documentation, to effect promptly all necessary filings and to satisfy all other conditions and obtain all necessary permits, consents, approvals, orders and authorizations of or any exemptions by, all third parties and all governmental entities necessary to consummate the transactions contemplated by this Agreement. Purchaser shall be solely responsible for filings or proceedings before the Board with respect to the approval of the acquisition of the Assets or securing an exemption from that approval. Seller will, without cost to Purchaser, cooperate in the filings and proceedings before the Board and provide any reasonably necessary data in connection with securing approval or exemption. Prior to filing any application for approval or exemption with the Board, Purchaser will deliver a copy to Seller with sufficient time for Seller to comment upon the application. Any costs, including filing fees, associated with any filing before the Board shall be paid by Purchaser.

## **12. INDEMNIFICATION**

**12.1. Purchaser's Indemnification.** Purchaser shall defend, indemnify and hold harmless the Seller from and against all claims, losses, costs and expenses (including attorneys' fees and expenses) which arise out of or are based on (i) the ownership or operation of the Assets

after the Closing, (ii) any material misrepresentation or material breach of warranty by Purchaser and (iii) all liabilities of Seller assumed by Purchaser pursuant to this Agreement, and (iv) any breach of an Environmental Law or the placement of any Hazardous Substance in, on, about or under the Assets at any time after the Closing.

- 12.2. **Seller's Indemnification.** Seller shall defend, indemnify and hold harmless Purchaser from and against all claims, losses, costs and expenses (including attorneys' fees and expenses) which arise out of or are based on (i) the ownership or operation of the Assets by Seller prior to the Closing; (ii) any material misrepresentation or material breach of warranty by Seller; (iii) all liabilities of Seller that are not assumed by Purchaser pursuant to this Agreement and (iv) any breach of an Environmental Law or the existence of any Hazardous Substance in, on, about or under the Assets at any time prior to the Closing.

All claims, losses, costs, and expenses giving rise to any indemnification hereunder, the underlying facts of which have arisen in part prior to the Closing and in part on or after the Closing, shall be reasonably apportioned between Seller and Purchaser.

12.3. **Indemnification Procedures.**

- (a) The party seeking indemnification pursuant to Sections 12.1 or 12.2 above (the "Indemnified Party") shall give the party obligated to indemnify (the "Indemnifying Party") notice of any claim or assertion of liability by a third party with respect to which the Indemnified Party is seeking indemnification (a "Claim").
- (b) The Indemnifying Party shall have the right to undertake the defense of such Claim (by counsel or other representatives of its own choosing and reasonably acceptable to the Indemnified Party) at the Indemnifying Party's sole risk and cost. Notwithstanding the fact that the Indemnifying Party undertakes the defense of a Claim, if there is a reasonable probability that the Claim may materially and adversely affect the Indemnified Party, the Indemnified Party (by counsel or through other representatives of its own choosing) shall have the right, at its expense, to participate in the defense, compromise or settlement of the Claim.
- (c) If the Indemnifying Party undertakes the defense of a Claim, (i) the Indemnifying Party shall keep the Indemnified Party informed of the status of the defense and furnish the Indemnified Party with copies of all documents, instruments and information reasonably requested by the Indemnified Party in connection with the Claim; (ii) the Indemnified Party (by counsel or other representatives of its own choosing and at its own expense) shall have the right to consult with the Indemnifying Party (and its counsel and representatives) concerning the Claim, and the Indemnifying Party and the Indemnified Party (and their respective counsel and representatives) shall cooperate with respect to the Claim; and (iii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise a Claim or consent to the entry of a judgment without obtaining from the claimant or plaintiff an unconditional release of all liability of the Indemnified Party in respect of such Claim in a form satisfactory to the Indemnified Party and under circumstances which do not require the Indemnified

Party to pay any money or consent to the taking or withholding of any action affecting it or any of its properties, assets or businesses.

- (d) If the Indemnifying Party does not elect to undertake the defense of a Claim or fails to defend the Claim within a reasonable time after notice of the Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of the Claim (by counsel or other representatives of the Indemnified Party's own choosing) on behalf of, for the account of and at the risk and cost of the Indemnifying Party. In such event, the Indemnifying Party shall pay (in addition to any other sums required to be paid under the terms of this Agreement) the costs and expenses incurred by the Indemnified Party in connection with the defense, settlement or compromise of the Claim as and when those costs are incurred.

### **13. TERMINATION**

**13.1. Grounds for Termination.** This Agreement and the consummation of the transactions contemplated by this Agreement may be terminated prior to the Closing:

- (a) By the agreement in writing of Seller and Purchaser at any time,
- (b) By Purchaser, by written notice to Seller, if Seller has made a material misrepresentation in, or if Seller is guilty of a material breach of the representations and warranties of seller contained in, this Agreement, or if there has been a failure by Seller to comply with any of its material obligations under this Agreement (including without limitation the failure by Seller to timely satisfy the conditions to Closing set forth in Section 8.1), and such material misrepresentation or breach of warranty or material failure has not been cured after 30 days' notice,
- (c) By Seller, by written notice to Purchaser, if Purchaser has made a material misrepresentation in, or if Purchaser is guilty of a material breach of the representations and warranties of Purchaser contained in, this Agreement, or if there has been a failure by Purchaser to comply with any of its material obligations under this Agreement (including without limitation the failure by Purchaser to timely satisfy the conditions to Closing set forth in Section 8.2), and such material misrepresentation or breach of warranty or material failure has not been cured after 30 days' notice, or
- (d) By either Purchaser or Seller if the Board shall have disapproved the transactions contemplated by this Agreement and such disapproval shall have become final and not subject to further proceedings or appeal, whether by lapse of time or otherwise.

Termination by Purchaser or Seller pursuant to paragraphs (c) or (d) above shall not relieve the non-terminating party of any liability for misrepresentation or breach.



## 14. MISCELLANEOUS

- 14.1. **Title and Other Descriptions.** Prior to the Closing, the description of the Assets may be changed by mutual agreement of Purchaser and Seller to add or delete items of tangible property or Contracts. From time to time after the Closing, at Purchaser's request and without further consideration, Seller will execute and deliver other instruments of conveyance and transfer and take other actions as Purchaser reasonably requires to convey, transfer to and vest in Purchaser whatever title Seller may have in and to the Assets, and to put Purchaser in possession of the Assets. In the case of Contracts and rights, if any, that cannot be transferred effectively without the consent of third parties, Seller will request these consents promptly and will make all reasonable efforts to obtain the consents. From time to time after the Closing, at Seller's request and without further consideration, Purchaser will execute and deliver other instruments of conveyance, transfer and assumption and take other actions as Seller reasonably requires to assume the liabilities and obligations of Seller to be assumed by Purchaser pursuant to this Agreement.
- 14.2. **Waiver.** Purchaser may in writing extend the time for or waive performance of any of the obligations, representations or warranties of Seller under this Agreement. Seller may in writing take similar action with respect to the obligations, representations or warranties of Purchaser under this Agreement.
- 14.3. **Expenses.** Purchaser shall be responsible for and shall pay all expenses, including attorney's fees, incurred by Purchaser in connection with this Agreement and the consummation of the transactions contemplated by this Agreement, and Seller shall be responsible for and shall pay all expenses, including attorney's fees, incurred by Seller in connection with this Agreement and the consummation of the transactions contemplated by this Agreement, except that sales, use, gross receipts, excise or similar taxes or governmental charges arising or levied with respect to the sale and transfer of the Assets, whether assessed against the Assets, Seller or Purchaser, shall be shared equally between Seller and Purchaser.
- 14.4. **Transitional Matters.** Prior to the Closing, Purchaser and Seller may agree on different or additional procedures to implement their respective rights and obligations, including procedures which are required to minimize or avoid any disruption of the settlement of interline accounts by draft in the normal course of business.
- 14.5. **Information Releases.** No press release, information release or other public or private announcement of the existence of this Agreement or of the pendency of the transactions contemplated by this Agreement shall be made by any party without the prior approval of the other party, except as may be required by law.
- 14.6. **Entire Agreement.** This Agreement, including the Appendices and Exhibits attached to this Agreement, constitutes the entire agreement and understanding between Seller and Purchaser with respect to the sale and purchase of the Assets and the other transactions contemplated by this Agreement. All prior representations, understandings and agreements between the parties with respect to the purchase and sale of the Assets and the other transactions contemplated by this Agreement are superseded by the terms of this Agreement.

- 14.7. **Choice of Law.** The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the [STATE], including for the purposes of choice of law, as though all acts and omissions related to this Agreement occurred in [STATE].
- 14.8. **Severability.** The provisions of this Agreement shall, where possible, be interpreted in a manner necessary to sustain their legality and enforceability; the unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in other situations or of other provisions of this Agreement.
- 14.9. **Counterparts.** This Agreement may be executed in two or more original counterparts, each of which shall for all purposes be considered an original of this Agreement.
- 14.10. **Headings.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions of this Agreement.
- 14.11. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties. Purchaser may assign its rights under this Agreement, in whole or in part, to the Parent or to another a wholly-owned subsidiary of Parent.
- 14.12. **Notices.** All notices given pursuant to this Agreement shall be delivered by hand, sent by United States registered or certified mail, postage prepaid, delivered by recognized express mail or overnight courier service, or delivered by electronic facsimile with a confirmation or delivered by any of the preceding methods, addressed as follows (or to another address or person as a party may specify on notice to the other):

(a) If to Seller (which shall constitute notice to all Sellers):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) If to Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
[Name]

[Company]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
[Name]

[Company]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **APPENDIX A**

### **DESCRIPTION OF ASSETS**

The Assets consist of the real and personal property, rights, intangibles and interests described in Section A below, but exclude the assets described in Section B below. Section A contains a general description of the Assets. If there is any conflict or contradiction between Sections A and B, Section B shall in all cases supersede Section A.

#### **A. GENERAL DESCRIPTION**

The Assets consist of Seller's estate, right, title and interest in the following:

- (1) The Rail Lines, which consist of the following:

[INSERT DESCRIPTION OF RAIL LINES]

- (2) All connecting branch lines and spurs, and all rail lines, associated rights-of-way, real and personal property or other interests in, related to or used in connection with the foregoing, including, without limitation, all abandoned rail lines, spurs and rights-of-way and all properties contiguous to any of the foregoing (whether carried on Seller's books as operating or non-operating property);

- (3) All of Seller's [LIST] listed on Attachment 1 to this Appendix A;

- (4) All written interchange agreements, all joint facility agreements, all trackage agreements, all paired track agreements and all trackage and operating rights granted to or otherwise owned, used, held for use or otherwise held by Seller which relate to the Rail Lines;

- (5) All interests in and agreements relating to industry and side tracks and facilities which form a part of or relate to the Rail Lines;

- (6) All operating rail property, including without limitation, the roadbed, rail, track (including the main track, side tracks, spur tracks, drill tracks, connecting tracks, yard tracks, industry tracks and team tracks), connections, ties, bridges, stations, culverts, structures, communications and signal facilities, parking and storage areas, depots, yards, shops, communication, signaling and related equipment, buildings (and their contents), and all other fixtures and appurtenances owned, used, held for use or otherwise held by Seller in connection with or that relate to the operation, use or enjoyment of the Rail Line, wherever located;



(7) All rights, benefits and privileges of Seller in its capacity as grantor, licensor, lessor or franchisor, or in any similar capacity, arising out of or under any Contract, easement, franchise, right-of-way, license or lease relating to the Rail Lines or other Assets;

(8) All of Seller's rights relating to the ownership or operation of the Rail Lines under Contracts (including, without limitation, any Contracts, environmental indemnifications, trackage rights, joint facility or similar agreements with other railroads, any transportation contracts with shippers and any other indemnification and similar agreements relating to environmental matters);

(9) All of Seller's materials and supplies, including rail, ties, ballast, other track material, equipment parts and supplies, and inventory;

(10) All available records pertaining primarily to the Rail Lines or the other Assets, wherever located.

#### **B. EXCLUDED ASSETS**

The Assets do not include the following assets:

- (1) Any labor or employment agreement;
- (2) Any lease of office space or other Contract with affiliates of Seller providing for shared overhead expense, tax sharing or similar inter-corporate matters;
- (3) The Contracts listed on attached Schedule I;
- (4) Corporate record books of Seller.

STB FD 33388 (Sub 63) 10-21-97 A 182854 2/2

**APPENDIX B**  
**ASSIGNED CONTRACTS**

## APPENDIX C

### ALLOCATION OF PURCHASE PRICE

<u>Asset Type</u>	<u>Purchase Price Allocation</u>
Real Estate	\$ _____
Track, Structures & Signals	\$ _____
Equipment and Machinery	\$ _____



**EXHIBIT 1**

**Disclosure Schedule**

OPERATING PLAN - MINOR

Under 49 C.F.R. Section 1180.8(b), Applicant must discuss any significant changes in patterns or types of service expected to result from this proposed transaction. Consistent with the minor nature of this transaction as described in the Responsive Application, Applicant anticipates only very minor changes in operations if ownership or trackage rights occur over the subject trackage. RJCW is a Class III railroad which operates the Glenmore-Lima shortline. RJCW currently interchanges with Conrail at Lima, on Conrail's property just east of the Lima-Glenmore line. Traffic to or from points served by CSXT or NSR are switched by RJCW for Conrail to CSXT and NSR through a British Petroleum yard located in Lima. To make this intermediate switch, RJCW for Conrail traverses its lines from approximately MP 54.4 to approximately MP 52.1, in Lima. RJCW has no other means of interchanging directly with NSR or CSXT.

As is more fully described in the Responsive Application, RJCW is seeking ownership or trackage rights in order to directly interchange with NS over approximately MP 54.4 to approximately MP 52.1 in Lima. RJCW will operate over only a little over two miles of additional track as a result of the proposed transaction, in order to interchange at least some of its existing traffic directly with NSR instead of 100 percent interchange with CSX.

As a result of the proposed transaction, Applicant does not anticipate any change in traffic density as a result of the proposed transaction as it will be replacing Conrail on the small segment of line in order to interchange existing traffic itself rather than through CSXT. Furthermore, RJCW does not anticipate that any commuter or passenger service will be effected

by the proposed transaction as no commuter or passenger services operate on the subject trackage. RJCW does not anticipate any change in operating economies (excepting the competitive and operational benefits identified in the Responsive Application). RJCW does not anticipate any discontinuances or abandonments of the subject trackage.

OPPENHEIMER WOLFF & DONNELLY

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Washington, D.C. 20036-6105

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Los Angeles  
Minneapolis  
New York  
Paris  
Saint Paul  
San Jose  
Washington, D.C.

**SECTION 1180.6(a)(4)**

**OPINION OF COUNSEL**

October 21, 1997

Surface Transportation Board  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: ***Finance Docket No. 33388  
CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corporation and Norfolk Southern  
Railway Company – Control and Operating  
Leases/Agreements – Conrail Inc. and Consolidated  
Rail Corporation***

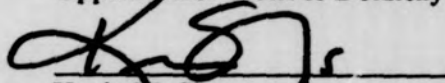
Ladies and Gentlemen:

As counsel for Responsive Applicant R.J. Corman Railroad Company/Western Ohio Line, I have examined the accompanying Application for authority under 49 U.S.C. § 11323, et seq.

I am of the opinion that the transaction described in that Responsive Application meets the requirements of the law, is within the corporate powers of the above-referenced Responsive Applicant, and will be legally authorized and valid if approved by the Surface Transportation Board.

Respectfully submitted,

Oppenheimer Wolff & Donnelly

  
Kevin M. Sheys



**VERIFIED STATEMENT  
OF  
MICHAEL M. FRY**

My name is Michael M. Fry. I am General Manager and President of Mercer Landmark, Inc., one of the largest farm cooperatives in west central Ohio. I am responsible for the administration of Mercer Landmark's business and for the planning and transportation of all grain and fertilizer transactions. I am also responsible for the development of a major rail transfer facility at Mercer Landmark's Elgin facility.

I have served as General Manager and President of Mercer Landmark for the last two years of my nearly 30 years in the farm cooperative business. Prior to joining Mercer Landmark, I worked for CountryMark Cooperative, Inc. for seven years as a regional manager, working with 23 different cooperatives in Ohio. Prior to CountryMark, I managed ADA Farmer's Exchange for three years; and prior to ADA, I worked for Landmark, Inc. and CountryMark for approximately eighteen years, and managed approximately 15 farm supply facilities.

I hold an Associate's Degree of Business, concentrating in agribusiness from Clark Technical College. I have completed a Strategic Agribusiness Marketing Program at Purdue University and numerous industry training programs.

Mercer Landmark is a farmer's cooperative located in Ohio. Mercer Landmark is locally owned by approximately 1,500 farmer members and is one of the largest farmers' cooperatives in west central Ohio, measured by sales of \$60 million with ten locations. All of our profits are distributed to our farmer members. Mercer Landmark handles approximately 8 million bushels of grain a year, and sells approximately 40,000 tons of fertilizer annually. Mercer

Landmark's \$60 million in annual sales are broken down approximately half and half between grain and fertilizer supplies. Mercer Landmark's facilities are primarily located in west central Ohio and include our main facility in Elgin, Ohio; a grain elevator and retail fertilizer operation in Ohio City, Ohio; a 800,000-bushel grain elevator and retail fertilizer facility in Rockford, Ohio; a retail fertilizer facility in Chattanooga, Ohio; a retail fertilizer facility, feed mill, and 300,000-bushel grain elevator in Celina, Ohio; a retail fertilizer facility in Coldwater, Ohio; a feed mill, retail fertilizer facility, and a small grain elevator in Chickasaw, Ohio; a grain elevator and feed mill in Saint Henry, Ohio; a 220,000-bushel grain elevator, feed mill, and retail fertilizer facility in New Weston, Ohio; and a petroleum bulk plant for farmers in Celina, Ohio. Mercer Landmark also participates in two joint limited liability companies, one of which involves grain handling and a fertilizer warehouse and the other involves retail fertilizer sales.

Mercer Landmark's main facilities in Elgin, Ohio has a grain storage capacity of 1.5 million bushels of grain; wholesale and retail fertilizer operations, and a 15,000-ton liquid fertilizer tank farm. Mercer Landmark is vastly expanding its Elgin facilities and hence is in the process of spending approximately \$750,000 to develop Elgin's rail transfer capabilities. Historically, Elgin has received approximately 150 cars of fertilizer a year and shipped a lesser amount of grain. Historically, Mercer Landmark has trucked the vast majority of its grain (7 million bushels) and fertilizer shipments (25,000 tons). However, given the relatively higher cost of truck transportation, Mercer Landmark recently began to consolidate its grain and retail fertilizer operations from its Ohio City and Rockford facilities to its Elgin facility. In turn, Mercer Landmark is greatly expanding the Elgin facilities and anticipates, in the near future, shipping 600 to 700 cars a year of grain, eventually growing to 1,000 cars a year by the end of the century.

Mercer Landmark also anticipates receiving 300 to 400 fertilizer cars, both liquid and dry, inbound a year.

Mercer Landmark owns and operates the grain facility and retail fertilizer facility at Elgin. CountryMark Cooperative owns the 15,000 ton tank farm at Elgin, which Mercer Landmark operates for CountryMark Cooperative under contract. Mercer Landmark, a locally owned cooperative, is a member of CountryMark Cooperative, a regional cooperative serving 140 cooperatives in Ohio, Indiana, and Michigan.

Mercer Landmark anticipates that inbound fertilizer cars will originate in part on CSXT's lines out of Florida for phosphates and over NS' lines in Louisiana for nitrates. Mercer Landmark anticipates that most of its outbound grain shipments will be corn to the southeastern United States for the poultry and swine markets via both NS and CSXT.

The Elgin facility is serviced by rail on the Glenmore-Lima shortline operated by R.J. Corman Railroad Company/Western Ohio Line ("RJCW"). RJCW currently interchanges with Conrail at Lima, on Conrail's property just east of the Lima-Glenmore line. Traffic to or from points served by CSXT or NSR are switched by Conrail to CSXT and NSR at a British Petroleum yard located in Lima. To make this intermediate switch, Conrail traverses its lines from MP 54.4 to MP 52.1, in Lima. RJCW has no other means of interchanging directly with NS or CSXT.

With the substantial capital investment being put into our rail facilities and our concentration of a significant portion of our grain and fertilizer transportation that will now occur in Elgin, it is critical that we continue to have competitive and efficient rail service for our operations and investment to remain economically viable. The whole purpose for our substantial capital investment and concentration in Elgin is to greatly expand our use of rail services given the

lower transportation costs that we anticipate receiving from rail transportation. Our plan requires access to competitive rail service. Our member owners, approximately 1,500 farmers, have invested \$6 million in our cooperative. We are risking almost a sixth of that money on our expanding rail service by improving tracks and building new loading facilities.

After consummation of the transaction contemplated by the Primary Application, NS and CSXT have announced a plan that would transfer ownership of the approximately two mile interchange area (MP 54.4 to 52.1 in Lima, Ohio) to CSXT, which would be owned and operated solely by CSXT. We applaud any efforts by NS and CSXT to provide meaningful competition, service, and adequate capacity for our needs in the future. However, we are very concerned that the proposed Conrail transaction will, in fact, have a substantial adverse effect on Mercer Landmark's long-term transportation needs and seriously threaten the huge investment that our farmer members are making at Elgin. After the consummation of the proposed transaction, NS and CSXT will become intensely competitive and do everything possible to preserve revenues on line-haul movements. This is particularly the case on the Glenmore-Lima line. Conrail currently performs intermediate switching at \$60.00 per carload to move traffic to NS or CSXT, as Conrail is not competitive on the rest of the haul. After the proposed transaction occurs, CSXT will not have the same economic incentives to switch equally to NS or CSXT, but will have an economic incentive to keep the traffic itself and not interchange with NS. Because of these competitive pressures, the Glenmore-Lima line is held hostage at this small two mile "chokepoint", with access to NS almost in sight, but with CSXT guarding the gate.

Without access to CSXT directly, our farmers are at the mercy of CSXT, who may raise its line-haul rate, raise the intermediate switch charge, diminish the level or frequency of interchange or otherwise choke our farmers in Lima. With access to both rails, our exposure to



price disruptions, service interruptions and price inefficiencies is greatly minimized, therefore allowing us to take advantage of the comparatively lesser costs of rail transportation versus motor carrier transportation. Once CSXT establishes sole control of the chokepoint, competitive pressures from NS will not force CSXT to serve our lines with the speed and efficiency that is required to keep us competitive. Without assurances, our farmers' substantial capital investments and our willingness to rely on rail transportation is severely threatened. We simply must have the ability to insure competitive pricing.

Mercer Landmark strongly supports the conditions sought by RJCW to assure a fair opportunity to interchange with both CSXT and NS. We believe that in the absence of an enforceable commitment from Applicants to assure competitive access to both NS and CSXT, RJCW's proposal is the only way to reasonably assure that Mercer Landmark be given access to competitive pricing.

Michael M. Fry

Michael M. Fry

SUBSCRIBED AND SWORN TO before me  
this 15<sup>th</sup> day of October, 1997.

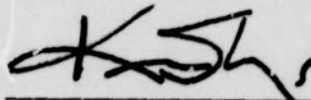
Tim Weininger

Notary Public

Tim Weininger  
Notary Public - State of Ohio  
My commission expires October 6, 2001  
Recorded in Mercer County

**CERTIFICATE OF SERVICE**

I certify that I have served a conformed copy of the foregoing responsive application in Finance Docket No. 33388, and a conformed copy of the verified statements, appendices and exhibits in support of the responsive application, by first class mail properly addressed, with postage pre-paid or by more expeditious manner of delivery upon (i) all persons required to be served as set forth in 49 C.F.R. § 1180.4(c)(5), (ii) Administrative Law Judge Jacob Leventhal and (iii) all Parties of Record on the Service List.

A handwritten signature in black ink, appearing to read 'K. Sheys', is written over a horizontal line.

Kevin M. Sheys

Dated: October 21, 1997