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HAVE ANY RIGHT TO TERMINATE THIS AGREEMENT OR TO BE RELEASED, RELIEVED OR DISCHARGED FROM ITS OBLIGATION TO MAKE, AND SHALL NOT SUSPEND, REDUCE OR DISCONTINUE, ANY PAYMENT OF OPERATING FEES FOR ANY REASON WHATSOEVER (EXCEPT AS MAY BE EXPRESSLY PROVIDED HEREIN), including, without limitation:

(a) any default, misrepresentation, negligence, misconduct or other action or inaction of any kind by the Owner or any other Person, whether under or in connection with this Agreement or any other agreement relating to this Agreement or in connection with any unrelated transaction;

(b) the insolvency, bankruptcy, reorganization or cessation of existence, or discharge or forgiveness of indebtedness of any Person referred to in clause (a) above;

(c) the invalidity, unenforceability or impossibility of performance of this Agreement for any reason;

(d) any defect in the title, condition, design, operation or fitness for use of, or any Lien or other restriction of any kind upon, all or any part of any Allocated Asset, any loss or destruction of, or damage to, any Allocated Asset or any interruption in or cessation of the ownership, possession, operation or use of any Allocated Asset for any reason whatsoever;

(e) any restriction, prevention or curtailment of or interference with any Allocated Asset or the use thereof or any part thereof for any reason whatsoever, including, without limitation, by any Governmental Authority;

(f) any Applicable Law now or hereafter in force;

(g) any failure to obtain any required Governmental Action for a transfer of rights or title to the Owner, the Operator or any other Person;

(h) any amendment or other change of, or any assignment of any rights under, this Agreement, or any waiver or other action or inaction under or in respect of this Agreement, or any exercise or nonexercise of any right or remedy under or in respect of this Agreement; and

(i) any other cause, circumstance, happening or event whatsoever, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing.

The Operator hereby waives and hereby agrees to waive at any future time at the request of the Owner, to the extent now or then permitted by Applicable Law, any and all rights that the Operator may have or that at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to terminate, cancel, quit or surrender this Agreement other than in accordance with the express terms hereof. Each Operating Fee payment shall be final and the Operator agrees not

to seek to recover all or any part of any such payment (except for amounts paid to the Owner which the Owner in good faith agrees have been paid in error) from the Owner for any reason under any circumstance whatsoever.

**SECTION 3.5 Tax Provisions.** (a) During the Term and any Renewal Term, the Operator shall pay when due, all Taxes, other than Excluded Taxes (as hereinafter defined), imposed on the Owner, based upon the Allocated Assets or arising out of the use, lease, possession or operation of the Allocated Assets during that period. For purposes of this Section, (i) Owner shall mean the Owner and its Affiliates and (ii) Excluded Taxes shall mean (A) all Taxes based, in whole or in part, on net income or gross income (including, without limitation, any minimum tax) of the Owner or which are in substitution for, or relieve the Owner from, any Tax based upon or measured by the Owner's net income or gross income, together with any interest, penalties, additions to tax or additional amounts that may become payable in respect thereof; (B) business and occupation taxes, and gross receipts taxes of the Owner and Taxes based upon the equity interests of the Owner; and (C) interest, fines and penalties to the extent due to the acts or omissions of the Owner in connection with Excluded Taxes. The Operator shall not be required to pay any Tax it is obligated to pay under the provisions of this Section 3.5 during the time it shall reasonably and in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof.

(b) The Owner shall have the right and obligation, at its own expense, to prepare and file all Tax returns required to be filed by the Owner under Applicable Law. Prior to the Owner's filing of any Tax returns for Taxes required to be paid by the Operator under paragraph (a) of this Section 3.5, the Owner shall provide such returns to the Operator for its review and approval, which approval will not be unreasonably withheld or delayed.

(c) The Operator and its assignees and designees shall have the right (but only to the extent the Owner shall have such right, by contract or otherwise) to control at its expense any audit or examination by any Governmental Authority, or any judicial proceeding, relating to any Taxes required to be paid by it under paragraph (a) of this Section 3.5.

(d) During the Term and any Renewal Term, the Operator and any of its designees shall be entitled to claim federal, state and local tax benefits (including, without limitation, deductions and credits) arising out of Operator's expenditures in the use, possession or operation of the Allocated Assets by the Operator, or any of its respective assignees or designees, and the improvements thereto, that the Operator, or any of its designees is entitled to claim under federal, state and local laws and regulations. These tax benefits include but are not limited to: (i) deductions for depreciation or amortization attributable to property (both tangible and intangible) owned by the Operator, or any of its assignees or designees, including improvements made to any of the Allocated Assets by any of them, as well as expenditures made by any of them that are required to be capitalized under sections 263 or 263A or some other section of the Code; (ii) deductions for expenditures made by the Operator, or any of its assignees or designees, deductible as ordinary and necessary business expenses under section 162 of the Code; (iii)

deductions for losses attributable to property (both tangible and intangible) owned by the Operator, or any of its assignees or designees, deductible under section 165 of the Code; and (iv) any federal, state or local credits applicable to the use, lease, possession or operation of the Allocated Assets by the Operator, or any of its assignees or designees, and improvements thereto. The Owner is entitled to deductions for Taxes of the Owner paid by the Operator under paragraph (a) of this Section 3.5 and treated as rent paid by the Operator under this Agreement and taxable income received by the Owner under section 1.162-11(a) of the Income Tax Regulations.

## ARTICLE IV

### Representations, Warranties and Agreements

SECTION 4.1 Disclaimer of Warranties. AS BETWEEN THE OWNER AND THE OPERATOR, THE EXECUTION OF THIS AGREEMENT SHALL BE CONCLUSIVE PROOF OF ACCEPTANCE BY THE OPERATOR OF EACH ALLOCATED ASSET AS BEING IN COMPLIANCE WITH ALL REQUIREMENTS OF THIS AGREEMENT. THE OWNER AND THE OPERATOR TAKE EACH SUCH ALLOCATED ASSET "AS IS" AND "WHERE IS", AND THE OPERATOR ACKNOWLEDGES THAT THE OWNER HAS NOT MADE, NOR SHALL BE DEEMED TO HAVE MADE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, COMPLIANCE WITH SPECIFICATIONS, CONDITION, MERCHANTABILITY, DESIGN, QUALITY, DURABILITY, OPERATION OR FITNESS FOR USE OR PURPOSE OF EACH SUCH ALLOCATED ASSET OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO EACH SUCH ALLOCATED ASSET OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE, AS BETWEEN THE OWNER AND THE OPERATOR, BY THE OPERATOR IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY SUCH ALLOCATED ASSET, OF ANY NATURE WHETHER PATENT OR LATENT, AND THAT THE OWNER SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO, except that the Owner hereby represents, warrants and covenants that each such Allocated Asset shall be free of Owner Liens on the Closing Date and except as otherwise provided in the Transaction Agreement. The provisions of this Section 4.1 have been negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any other warranties made by the Owner, express or implied, with respect to any Allocated Asset, whether arising pursuant to Applicable Law now or hereafter in effect or otherwise. Nothing contained in this Section 4.1 shall in any way diminish or otherwise affect any right the Operator may have with respect to any Allocated Asset against any third Person. The Owner shall not at any time be required to inspect any Allocated Asset, and any actual inspection by the Owner shall not be deemed to affect or modify the provisions of this Section 4.1.



**SECTION 4.2 Operator To Exercise Certain Rights** (a) The Owner hereby authorizes the Operator, at the Operator's expense, to exercise in the name of and on behalf of the Owner and the Operator, as their interests may appear, the right and power to deal with any third party lessor, lessee, licensor, licensee, seller, manufacturer, shipper or any other Persons (including agents and consultants thereof) with respect to any Allocated Asset or who are party to any Assigned Rights (each a "Third Party Provider") and the right to enforce (by legal action or otherwise) against such Third Party Provider all rights, powers and privileges of the Owner and to receive all benefits of the Owner with respect to such Third Party Provider, under any Contract, express or implied warranty, indemnity or otherwise; *provided*, that if an Event of Default shall have occurred and be continuing (and until all Events of Default, then outstanding shall no longer be continuing) the Owner may terminate the authority of the Operator under this Section 4.2. Any amount paid to the Owner or Operator pursuant to the Operator's exercise of its authority under this Section 4.2 shall be paid to the Operator. After the end of the Term or any Renewal Term with respect to any Allocated Asset or after the termination of this Agreement with respect to such Allocated Asset pursuant to Article XIV, (a) the Operator shall have no further rights, powers, privileges or benefits under this Section 4.2 and (b) all amounts payable by any Third Party Provider paid with respect to periods arising thereafter shall be paid to, and retained by, the Owner or any other Person as shall then be the owner of the Allocated Asset as to which such payment is made.

(b) The Operator shall, with the Owner's prior consent, have the right and power to execute and deliver on behalf of the Owner, the extension, renewal, amendment or modification of any Assigned Rights or any other Contract in respect of the Allocated Assets.

(c) The Owner shall as expeditiously as possible use its reasonable efforts to obtain or transfer to the Operator any Governmental Action or the consent, authorization, or approval of any private Person required to be made, obtained or transferred to effectuate the purposes of this Agreement and the transactions contemplated herein, which actions shall include furnishing all information required under or in connection with such Governmental Action or the approvals of, or filing with such private Person.

(d) The Operator shall pay, perform and discharge fully all of the obligations of the Owner or its Affiliates under all Assigned Rights and Contracts that are Allocated Assets from and after the Closing Date. The Owner or its Affiliates shall, without further consideration therefor, pay, assign and remit promptly to the Operator, as appropriate, all monies, rights and other consideration received in respect of such performance. The Owner or its Affiliates shall exercise or exploit the rights and options under all such Contracts only as reasonably directed by the Operator.

SECTION 4.3 Representations and Warranties of the Operator. The Operator represents and warrants to the Owner as of the Closing Date as follows:

(a) Due Organization, etc. The Operator (i) is a corporation duly organized and validly existing under the laws of the Commonwealth of Virginia, (ii) has the power and authority to enter into and perform its obligations under this Agreement and (iii) has obtained all Governmental Action required to use or hold the Allocated Assets in accordance with this Agreement, and to enter into and perform its obligations under this Agreement.

(b) Due Authorization, Non-Contravention, etc. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of the Operator, do not and will not conflict with, result in any violation of, or constitute any default under, any provision of any Organic Document of the Operator or Applicable Law.

(c) Due Execution. This Agreement has been duly executed and delivered by the Operator, and constitutes the legal, valid and binding obligation of the Operator enforceable against the Operator in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights and except that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding therefor may be brought.

SECTION 4.4 Representations and Warranties of the Owner. The Owner represents and warrants to the Operator as of the Closing Date as follows:

(a) Due Organization, etc. The Owner (i) is a limited liability company duly organized and validly existing under the laws of the State of Delaware, (ii) has the power and authority to enter into and perform its obligations under this Agreement and (iii) has obtained all Governmental Action required to enter into and perform its obligations under this Agreement.

(b) Due Authorization, Non-Contravention, etc. The execution, delivery and performance of this Agreement have been duly authorized by all necessary company action on the part of the Owner, do not and will not conflict with, result in any violation of, or constitute any default under, any provision of any Organic Document of the Owner or Applicable Law.

(c) Due Execution. This Agreement has been duly executed and delivered by the Owner, and constitutes the legal, valid and binding obligation of the Owner enforceable against the Owner in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights and except that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding therefor may be brought.

## ARTICLE V

### Liens; Quiet Enjoyment

SECTION 5.1 Liens. The Operator shall not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on any Allocated Asset. The Operator will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien. The Operator's obligations under this Section 5.1 with respect to any such Lien on any Allocated Asset resulting from a claim arising prior to the termination of this Agreement with respect to such Allocated Asset shall survive such termination. The Operator agrees that, upon the termination of this Agreement, the Allocated Assets shall be returned to the Owner free and clear of Liens, other than Owner Liens.

SECTION 5.2 Quiet Enjoyment. Notwithstanding any other provision of this Agreement, so long as no Event of Default shall have occurred and be continuing, as between the Operator and Owner, the Operator shall have the exclusive rights to possession, control and use of all Allocated Assets and neither the Owner nor any Person acting or claiming through the Owner will take any action that shall interfere with the peaceful and quiet enjoyment or the possession and use or nonuse of any Allocated Asset by the Operator, and the Operator shall have the right to possess and use or not use such Allocated Asset in its sole discretion, subject always to the terms and conditions of this Agreement. The foregoing is not intended to limit the inspection rights of the Allocated Assets granted by the Operator pursuant to Section 12.1 hereof.

## ARTICLE VI

### Settlement Account

SECTION 6.1 Maintenance of Settlement Account. The Operator shall maintain a non-cash book account (the "Settlement Account") to reflect amounts owed by the Operator to the Owner as a result of transactions described in Sections 7.1(e), 8.1 and 10.1(a)(ii) hereof.

SECTION 6.2 Payment of Settlement Account Balance. The Operator shall pay to the Owner an amount equal to the then balance of the Settlement Account upon: (i) the sixth (6th), twelfth (12th), eighteenth (18th) and twenty-fourth (24th) anniversaries of the Closing Date, (ii) the expiration of the Term (or, if earlier, the termination of this Agreement), (iii) the sixth (6th) anniversary of the first day of each Renewal Term, (iv) the end of each Renewal Term (or, if earlier, the termination of this Agreement), (v) the Reversion Date (but only with respect to the Reversion Assets), and (vi) thirty (30) calendar days after the date on which a Substantial Allocated Asset (a) is not repaired or replaced under Section 7.1(e) hereof, (b) is abandoned, sold or otherwise disposed of under Section 8.1 hereof or (c) suffers an Event of Loss and is not replaced under Section 10.1(a)(i) hereof (each, a "Settlement Account Payment Date").

SECTION 6.3 Confirmation of Settlement Account. Within ten (10) days prior to a Settlement Account Payment Date, the Appraisal Procedure shall be used to confirm that credits to the Settlement Account were based on the fair market value of the relevant Allocated Assets consistent with the terms of this Agreement. The Settlement Account shall be adjusted consistent with the outcome of the Appraisal Procedure and the payments made pursuant to Section 6.2 hereof shall reflect any such adjustments.

## ARTICLE VII

### Operation; Maintenance

SECTION 7.1 Operation and Maintenance. The Operator shall at all times at its own expense during the Term:

- (a) use the Allocated Assets in such manner and for such purposes as the Operator considers necessary or appropriate in connection with the operation of its business;
- (b) keep and maintain such books, records and title documents relating to the Allocated Assets, and the acquisition, construction and installation of Modifications thereto and the payment of the purchase price of such Modifications, as the Operator considers appropriate consistent with the Operator's customary business practices;
- (c) maintain the Allocated Assets in accordance with the Operator's customary practice;
- (d) inspect, service, maintain, store, use, operate, repair, replace, modify and improve the Allocated Assets in compliance in all material respects with Applicable Law (including all applicable environmental and occupational safety laws), and in compliance in all material respects with all applicable licenses and permits relating to the Allocated Assets issued by any Governmental Authority; *provided*, the Operator may in good faith by appropriate proceedings contest the validity or application of any such Applicable Law in any reasonable manner which does not involve any risk of the imposition of criminal liability on the Owner, or any material danger of any fine, penalty, or other imposition upon the Owner for which the Operator has not acknowledged its obligation to indemnify the Owner pursuant to this Agreement; and
- (e) in case of any damage to any Allocated Asset, other than damage constituting an Event of Loss, at its election, in either case at its own expense, (i) repair such Allocated Asset so as to restore its utility consistent with the Operator's customary practice with respect to similar assets owned by the Operator (as determined solely by the Operator) or (ii) replace such Allocated Asset with an asset (which will become an Allocated Asset) having a fair market value (as determined solely by the Operator) equivalent to that of the damaged Allocated



Asset immediately prior to the damage (assuming, in either case, such Allocated Asset was then in the condition and state of repair required to be maintained by the terms of this Agreement), with such alterations and additions as may be made at the Operator's election pursuant to and subject to the conditions of Section 7.2 hereof; *provided, however*, that the Operator need not repair or replace any Allocated Asset to the extent that such Allocated Asset is not necessary to the operation of the Allocated Assets considered as a whole (as determined solely by the Operator), in which event the Operator shall credit to the Settlement Account the fair market value of such Allocated Asset as of the date immediately prior to the damage (assuming such Allocated Asset was then in the condition and state of repair required to be maintained by the terms of this Agreement). Upon the crediting of the Settlement Account with the fair market value of such Allocated Asset, such Allocated Asset shall no longer be subject to this Agreement and the Owner shall convey to the Operator or its designee, ownership of and title to such Allocated Asset. Notwithstanding the foregoing, until payment by the Operator to the Owner of the amount credited to the Settlement Account on the next succeeding Settlement Account Payment Date, such Allocated Asset shall be deemed to continue to be subject to this Agreement solely for the purpose of calculating the Operating Fee.

#### SECTION 7.2 Modification

(a) The Operator shall at its expense make any Modification to any Allocated Asset required (i) by Applicable Law or in order to operate, maintain, service, store, or use such Allocated Asset in accordance with Applicable Law, as soon as practicable after any such requirement may arise or (ii) in order for the Operator to comply with the provisions of this Agreement (all such Modifications being referred to herein as "Required Modifications"); *provided*, that the Operator may, so long as no Event of Default shall have occurred and be continuing, in good faith by appropriate proceedings contest the validity or application of any Applicable Law in any reasonable manner which does not involve any reasonably foreseeable risk of the imposition of criminal liability on the Owner, or any material danger of any fine, penalty or other imposition upon the Owner for which the Operator has not acknowledged its obligation to indemnify the Owner pursuant to this Agreement. The Operator at its expense, from time to time, may make any Modification to any Allocated Asset that the Operator in its discretion may deem desirable in the proper conduct of the Operator's business (all such Modifications which are not Required Modifications being referred to herein as "Optional Modifications"); *provided* that any construction of new trackage or facilities appurtenant to but not located on such Allocated Assets shall, at Operator's election, be deemed not to be Modifications hereunder and not subject to this Agreement.

(b) Title to each Modification shall vest as follows:

(i) in the case of each (A) Required Modification or (B) other Nonseverable Modification, whether or not the Owner shall have financed or provided financing (in whole or in part) for such Modification, the Owner shall, without further act, effective on the

date such Modification shall have been incorporated into the modified Allocated Asset, acquire title to such Modification free and clear of all Liens other than Permitted Liens; or

(ii) in the case of each Severable Modification, the Operator shall retain title to such Modification and the Operator may (subject to Section 7.2(c) hereof) remove such Modification at its expense at any time so long as the modified Allocated Asset remains in or is restored by the Operator to the condition required by this Agreement.

Immediately upon title to a Modification vesting in the Owner pursuant to this Section 7.2(b), such Modification shall, without further act, become subject to this Agreement and be deemed part of the applicable Allocated Asset for all purposes.

(c) Subject to compliance with Applicable Law, the Operator may remove, at its expense, any Severable Modification; *provided*, that the Operator, at its expense shall repair any damage to the Allocated Asset from which a Severable Modification has been removed caused by such removal; *provided, further*, that in the event the Operator shall not have removed any Severable Modification to which the Operator shall have title as provided in Section 6.2(b)(ii) prior to the end of the Term, title to such Severable Modification shall vest in the Owner upon the expiration of such Term.

## ARTICLE VIII

### Obsolescence Termination; Abandonment

SECTION 8.1 Obsolescence Termination; Abandonment. Except as may otherwise be contemplated in this Agreement, the Operator may not dispose of, or otherwise convey or transfer any interest in the Allocated Assets to any Person. Unless an Event of Default shall have occurred and be continuing, if the Operator has determined that an Allocated Asset is uneconomic or surplus to, or no longer necessary for, the Operator's operating requirements as determined by the Operator in its sole judgment, the Operator shall have the right, with the Owner's consent, to terminate the application of this Agreement with respect to such Allocated Asset and, with the Owner's consent, to abandon or sell or otherwise dispose of such Allocated Asset (as agent for the Owner) in which event the Operator may retain the sale proceeds, if any, received for such Allocated Asset and shall credit to the Settlement Account the fair market value (as of the time of the abandonment, sale or other disposition) of such Allocated Asset (which, in no event, shall be less than the sale proceeds received for such Allocated Asset). Upon the crediting of the Settlement Account with the fair market value of such Allocated Asset, such Allocated Asset shall no longer be subject to this Agreement and the Owner shall convey to the Operator or its designee, ownership of and title to such Allocated Asset. Notwithstanding the foregoing, until payment by the Operator to the Owner of the amount credited to the Settlement Account on the next succeeding Settlement Account Payment Date, such Allocated Asset shall be deemed to continue to be subject to this Agreement solely for the purpose of calculating the Operating Fee.

SECTION 8.2 Conditions of Termination. As a condition to a termination, abandonment or other disposition pursuant to this Article VIII, any necessary Governmental Actions in connection therewith shall have been obtained by and at the expense of the Operator. Upon the Operator's request, the Owner shall cooperate fully with the Operator in seeking and obtaining all necessary Governmental Actions in connection with the termination or abandonment of any Allocated Asset.

## ARTICLE IX

### Termination

SECTION 9.1 Termination. (a) Unless the Operator exercises its renewal option under Article XVII, upon termination of this Agreement or return of any Reversion Asset pursuant to Section 2.3 hereof, the Operator shall, at its risk, cost and expense, cause the Allocated Assets subject to this Agreement at such time or the Reversion Assets to be (i) free and clear of all Liens other than Owner Liens, (ii) in compliance with the maintenance and operating provisions of this Agreement, and (iii) otherwise capable of being maintained, used and operated substantially in compliance with Applicable Law for the operation of a railroad appropriate to conditions existing at such time.

(b) Upon the termination of this Agreement or return of any Reversion Asset pursuant to Section 2.3 hereof, the Operator will, at the Operator's expense, promptly and duly execute and deliver to the Owner such documents and take such further actions as the Owner may reasonably request in order to effect the return of such Allocated Assets or Reversion Assets, including any Assigned Right, to the Owner or its designee.

SECTION 9.2 Owner Assignment, Lease or Sale of Allocated Asset. The Operator agrees that during the last year of the Term or any Renewal Term, it will cooperate in all reasonable respects with efforts of the Owner to lease, sell assign or otherwise transfer any Allocated Asset to any designee of the Owner.

SECTION 9.3 Governmental Approvals. The Operator shall cooperate and assist the Owner, at the expense of the Owner, in transferring or obtaining all Governmental Actions which may be necessary for the Owner or its designee, as the case may be, to operate, lease, purchase, assume or otherwise be a party to or beneficiary of any returned Allocated Asset and any Reversion Asset.

SECTION 9.4 Severable Modifications. At any time after the Operator has notified the Owner that it has determined not to renew this Agreement pursuant to Article XVII, or operational responsibility for the Allocated Assets or Reversion Assets reverts to the Owner, the Operator shall at the Owner's request, advise the Owner of the nature and condition of all Severable Modifications owned by the Operator pursuant to Section 7.2(b)(ii) hereof which the



Operator has removed or intends to remove from the Allocated Assets or Reversion Assets in accordance with Section 7.2(c) hereof. The Operator may (and shall, if so directed by Owner), at its sole cost, expense and risk, remove from any Allocated Asset or Reversion Asset any Severable Modification; *provided*, that any such Modification not removed pursuant to this Section 9.4 shall be deemed to be part of the Allocated Asset or Reversion Asset to which it relates for all purposes hereof and title to such Modification shall thereupon vest in the Owner free and clear of all Liens, other than Owner Liens.

## ARTICLE X

### Loss, Destruction, Condemnation, Damage, etc.

#### SECTION 10.1 Replacement; Payment.

(a) Upon the occurrence of an Event of Loss, or an event which with the passage of time would become an Event of Loss, with respect to any Allocated Asset, the Operator shall:

(i) replace the Allocated Asset which suffered the Event of Loss, with a replacement asset (which will become an Allocated Asset) which has a fair market value equivalent to that of the Allocated Asset which suffered the Event of Loss (as determined solely by the Operator) immediately prior to such Event of Loss (assuming such Allocated Asset was then in the condition and state of repair required by this Agreement); or

(ii) the Operator may retain the sale proceeds, if any, received for the Allocated Asset suffering the Event of Loss and shall credit to the Settlement Account the fair market value of such Allocated Asset immediately prior to such Event of Loss (assuming such Allocated Asset was then in the condition and state of repair required by this Agreement), which fair market value in no event shall be less than the sale proceeds received for such Allocated Asset. Upon the crediting of the Settlement Account with the fair market value of such Allocated Asset, such Allocated Asset shall no longer be subject to this Agreement and the Owner shall convey to the Operator or its designee, ownership of and title to such Allocated Asset. Notwithstanding the foregoing, until payment by the Operator to the Owner of the amount credited to the Settlement Account on the next succeeding Settlement Account Payment Date, the Allocated Asset suffering the Event of Loss shall be deemed to continue to be subject to this Agreement solely for the purpose of calculating the Operating Fee.

(b) Upon compliance by the Operator with Section 10.1(a)(i), (i) this Agreement shall continue with respect to any replacement Allocated Asset as though no Event of Loss had occurred, (ii) the Owner shall convey "as is" "where is", free and clear of all Owner Liens, without recourse or warranty (except as to the ability and authority of the Owner to transfer and convey such Allocated Asset free and clear of Owner Liens), to the Operator or its



designee all right, title and interest of the Owner in and to the Allocated Asset being replaced by executing and delivering to the Operator or its designee such bills of sales and other documents or instruments as the Operator or its designee may reasonably request to evidence such conveyance, and (iii) the Owner shall assign to the Operator all claims it may have against any other Person arising from the event which gave rise to the replacement.

(c) Upon compliance by the parties with Section 10.1(a)(ii), the Owner shall convey "as is" "where is", free and clear of all Owner Liens, without recourse or warranty (except as to the ability and authority of the Owner to transfer and convey such Allocated Asset free and clear of Owner Liens) to the Operator or its designee all right, title and interest of the Owner in and to such Allocated Asset by executing and delivering to the Operator or its designee such bills of sales and other documents or instruments as the Operator or its designee may reasonably request to evidence such conveyance.

SECTION 10.2 Applications During Event of Default. Any amount that shall be payable to the Operator pursuant to this Agreement arising out of any warranty, governmental award or otherwise received in respect of any Allocated Asset shall not be paid to the Operator or, if it shall have been previously paid to the Operator, shall not be retained by the Operator but shall be paid to the Owner, if at the time of such payment any Event of Default shall have occurred and be continuing. In such event, all such amounts shall be paid to and held by the Owner in trust as security for the obligations of the Operator to make payments under this Agreement or applied by the Owner toward payment of any of such obligations of the Operator at the time due hereunder. At such time as there shall not be continuing any Event of Default all such amounts at the time held by the Owner in excess of the amount, if any, that the Owner shall have elected to apply as above provided shall be paid to the Operator.

SECTION 10.3 Application of Article VII. Article VII shall not apply to any Allocated Asset after an Event of Loss has occurred with respect to such Allocated Asset; *provided*, that the foregoing shall not limit the obligations of the Operator under Article VII hereof with respect to any replacement Allocated Asset.

## ARTICLE XI

### Indemnities

SECTION 11.1 Indemnity by Operator. (a) The Operator assumes and shall be fully responsible for all liabilities attributable in any way to the Allocated Assets, or to operations on or over the Allocated Assets, except for (i) Retained Liabilities and any other liabilities with respect to which it is the responsibility of any Person other than the Operator under the terms of the Transaction Agreement and the Ancillary Agreements to indemnify the Owner, and (ii) liabilities that arise prior to the Closing Date referred to in Section 2.8(b)(i) or Section 2.8(c) of the Transaction Agreement; *provided*, that for the purposes of this Section 11.1(a), the term

"Ancillary Agreements" as used in the parenthetical included in Sections 2.8(b) and 2.8(c) of the Transaction Agreement shall be deemed not to include this Agreement. To that end, the Operator agrees to and shall protect, indemnify and hold wholly harmless the Owner and its directors, officers, employees and agents (each an "Owner Indemnified Person") from and against any Damages arising from or attributable to the liabilities assumed by the Operator under the first sentence of this Section 11.1(a).

(b) Upon payment in full of any indemnity pursuant to this Section 11.1, the Operator shall, to the extent of such payment and so long as no Event of Default shall have occurred and be continuing, be subrogated to any rights of the Owner Indemnified Person in respect of the matter against which such indemnity was given (other than with respect to any insurance policies carried by such Owner Indemnified Person).

**SECTION 11.2 Indemnity by Owner.** (a) The Owner shall be fully responsible for all liabilities which arise prior to the Closing Date which are referred to in Section 2.8(b)(i) or Section 2.8(c) of the Transaction Agreement. To that end, the Owner agrees to and shall protect, indemnify and hold wholly harmless the Operator and its directors, officers, employees and agents (each, an "Operator Indemnified Person") from and against any and all Damages arising from or attributable to (i) Retained Liabilities and any other liabilities with respect to which it is the responsibility of any Person other than the Operator under the terms of the Transaction Agreement and the Ancillary Agreements to indemnify the Owner, and (ii) liabilities that arise prior to the Closing Date referred to in Section 2.8(b)(i) and Section 2.8(c) of the Transaction Agreement; *provided*, that for the purposes of this Section 11.2(a), the term "Ancillary Agreements" as used in the parenthetical included in Sections 2.8(b) and 2.8(c) of the Transaction Agreement shall be deemed not to include this Agreement.

(b) Upon payment in full of any indemnity pursuant to this Section 11.2, the Owner shall, to the extent of such payment, be subrogated to any rights of the Operator Indemnified Person in respect of the matter against which such indemnity was given (other than with respect to any insurance policies carried by such Operator Indemnified Person).

**SECTION 11.3 Indemnification Procedures.** (a) If any Action shall be threatened or instituted or any claim or demand shall be asserted against any Indemnified Party in respect of which indemnification may be sought under the provisions of this Agreement, the Indemnified Party shall promptly cause written notice of the assertion of any such claim, demand or Action of which it has knowledge to be forwarded to the Indemnifying Party. Such notice shall contain a reference to the provisions hereof or of such other agreement, instrument or certificate delivered pursuant hereto, in respect of which such claim is being made. The Indemnified Party's failure to give the Indemnifying Party prompt notice shall not preclude the Indemnified Party from obtaining indemnification from the Indemnifying Party under this Article XI unless the Indemnified Party's failure has materially prejudiced the Indemnifying Party's ability to defend the claim, demand or Action.

(b) If the Indemnified Party seeks indemnification from the Indemnifying Party as a result of a claim or demand being made by a third party (a "Third Party Claim"), the Indemnifying Party shall have the right promptly to assume the control of the defense of any Action with respect to such Third Party Claim, including, at its own expense, employment by it of counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party may, in its sole discretion and at its own expense, employ counsel to represent it in the defense of the Third Party Claim, and in such event counsel for the Indemnifying Party shall cooperate with counsel for the Indemnified Party in such defense, provided that the Indemnifying Party shall direct and control the defense of such Third Party Claim or proceeding. The Indemnifying Party shall not consent to the entry of any judgment, except with the written consent of the Indemnified Party, and shall not enter into any settlement of such Third Party Claim without the written consent of the Indemnified Party which does not include as an unconditional term thereof the release of the Indemnified Party from all Liability in respect of such Third Party Claim.

## ARTICLE XII

### Assignments, Sub-Operating Agreements

SECTION 12.1 Operator Assignments. Except as otherwise provided in this Agreement, the Operator may not, without the prior written consent of the Owner, and subject to any applicable Governmental Actions, assign, transfer, sublease or otherwise grant the right to use any Allocated Asset or its interest therein or rights with respect thereto, including any Assigned Right.

SECTION 12.2 Merger, Consolidation, Etc. The Operator, without the consent of the Owner, may assign all or any part of its rights and obligations under this Agreement to (i) any of its controlled Subsidiaries or (ii) any successor in the event of a merger, consolidation, sale of all or substantially all its assets, liquidation or dissolution, if such assignee executes and delivers to the Owner an agreement reasonably satisfactory in form and substance to the Owner under which such assignee assumes and agrees to perform and discharge all the obligations and liabilities of the Operator; *provided* that any such assignment shall not relieve the Operator from the performance and discharge of such obligations and liabilities.

SECTION 12.3 Owner Assignments. The Owner shall not transfer or assign any part of its right, title and interest in this Agreement or any Allocated Assets used hereunder without the prior written consent of the Operator.

## ARTICLE XIII

### Inspection; Markings

SECTION 13.1 Rights to Information. The Owner may at its own expense, upon reasonable prior notice to the Operator during the normal business hours of the Operator, no more frequently than once in any calendar year, inspect the Allocated Assets and the books and records of the Operator relating to the maintenance and performance of such Allocated Assets and make copies and extracts therefrom, and may discuss such matters with the Operator's officers. Upon the occurrence and during the continuance of an Event of Default, the Owner may inspect such books and records at any time, which inspections shall be at the expense of the Operator. The Owner also shall have the right to obtain information regarding the condition and state of repair of any Allocated Asset, compliance by the Operator with Article VII hereof and the absence of an Event of Default.

SECTION 13.2 Markings. The Operator shall affix to certain Allocated Assets agreed to by the Operator and Owner identifying labels, plates or tags each setting forth such information as the Operator and Owner may agree. The Operator covenants and agrees to replace any such label, plate or tag which may be removed or destroyed or become illegible, and the Operator shall indemnify each Owner Indemnified Person against any liability, loss or expense incurred by such Owner Indemnified Person as a result of the failure to maintain such markings.

## ARTICLE XIV

### Events of Default

SECTION 14.1 Events of Default. Each of the following events shall constitute an Event of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) the Operator shall fail to make any payment of (i) the Operating Fee when due and such failure shall continue unremedied for a period of thirty (30) Business Days and (ii) any Supplemental Operating Fees due under this Agreement and such failure shall continue unremedied for a period of thirty (30) Business Days; or

(b) the Operator shall fail to perform or observe any other material covenant, condition or agreement to be performed or observed by it under this Agreement and such failure shall continue unremedied for a period of one hundred twenty (120) Business Days after notice thereof shall have been given to the Operator by the Owner, *provided*, that the continuation of any such failure or breach (other than a failure or breach curable by payment of money) for a period longer than such one hundred twenty (120) Business Day period shall not constitute an



Event of Default if (i) such default is curable but cannot be cured within such one hundred twenty (120) Business Day period and (ii) the Operator is diligently pursuing the cure of such default; *provided, further*, that any such failure or breach (other than a failure or breach curable by payment of money) shall constitute an Event of Default if such failure is not cured within the earlier of the last Business Day of the Term and four hundred fifty (450) days from the date notice thereof has been given to the Operator; or

(c) The Operator (i) shall commence a voluntary Insolvency Proceeding, (ii) shall seek the appointment of a trustee, receiver, liquidator, sequestrator, custodian or other similar official of the Operator or any substantial part of the Operator's property, (iii) shall acquiesce in or consent to any such relief or to the appointment of or taking possession by any such official in an involuntary Insolvency Proceeding commenced against it, (iv) shall make a general assignment for the benefit of creditors, or (v) shall fail generally to pay its undisputed debts as they become due; or

(d) an involuntary Insolvency Proceeding shall be commenced against the Operator seeking liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, assignee, sequestrator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of one hundred twenty (120) consecutive Business Days.

## ARTICLE XV

### Remedies

SECTION 15.1 Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Owner may, at its option, declare by written notice to the Operator this Agreement to be in default; and at any time thereafter so long as such Event of Default shall not have been remedied, the Owner may do one or more of the following with respect to the Allocated Assets:

(a) sell the Allocated Assets at public or private sale, as the Owner may determine, or otherwise dispose of, hold, use, operate, lease to others or keep unused the Allocated Assets as the Owner, in its sole discretion, may determine, all free and clear of any rights of Operator;

(b) whether or not the Owner shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a) above, the Owner, by written notice to the Operator, may demand that the Operator pay to the Owner, and the Operator shall pay to the Owner, any accrued but unpaid Operating Fees (together with interest, if any, on such amount at

the Overdue Rate from such specified payment date until the date of actual payment of such amount);

(c) The Owner may terminate this Agreement and the rights of the Operator to use the Allocated Assets pursuant hereto.

The Owner may exercise one or more remedies in respect of certain Allocated Assets and one or more other remedies in respect of other Allocated Assets.

No termination of this Agreement, in whole or in part, or exercise of any remedy under this Article XV shall, except as specifically provided herein, relieve the Operator of any of its liabilities and obligations hereunder, all of which then outstanding shall survive such termination, repossession or exercise of remedy. In addition, the Operator shall be liable for any and all Fees and Expenses and other costs and expenses incurred by the Owner by reason of the occurrence of any Event of Default or the exercise of the remedies of the Owner with respect thereto. At any sale of any Allocated Assets or any part thereof pursuant to this Article XV, the Owner may bid for and purchase such property.

**SECTION 15.2 Owner Rights.** To the fullest extent permitted by Applicable Law, each and every right, power and remedy herein specifically given to the Owner or otherwise in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically given herein or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Owner, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Owner in the exercise of any right, power or remedy or in the pursuit of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Operator or to be an acquiescence therein. No express or implied waiver by the Owner of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

**SECTION 15.3 Exercise of Other Rights or Remedies.** In addition to all rights and remedies provided in this Article XV, the Owner may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

**SECTION 15.4 Subject to Governmental Action.** The exercise of any right or remedy provided for in this Article XV shall be subject to any applicable Governmental Action.

## ARTICLE XVI

### Right to Perform

SECTION 16.1 Right to Perform. If the Owner shall fail to make any payment or perform under, or comply with, any contract, lease, license or other agreement in respect of the Allocated Assets to which the Owner is a party, the Operator may (but shall have no duty to do so) make such payment or perform or comply with such agreement, and the Operating Fee shall be reduced in the amount of such payment and the amount of all expenses of the Operator (including Fees and Expenses) incurred in connection with such payment or the performance of or compliance with such agreement.

## ARTICLE XVII

### Renewal Options

#### SECTION 17.1 Renewal Notice

(a) The Operator shall have the option to renew this Agreement twice. Not less than one (1) year before expiration of the Term or the initial Renewal Term, the Operator may deliver to the Owner a notice (the "Renewal Notice") of the Operator's election to renew this Agreement in respect of all, but not less than all, Allocated Assets for a renewal period of ten (10) years (or, if there has already been a renewal period, an additional renewal period of ten (10) years), or such other period of time as the Owner and the Operator shall mutually agree (each such period, a "Renewal Term").

(b) All terms of this Agreement shall continue in full force and effect during each such Renewal Term.

(c) In the event the Operator elects to renew this Agreement, the Renewal Term will commence on the day immediately following the expiration of the Term or initial Renewal Term and continue until the end of such Renewal Term.

(d) The Renewal Notice, once given, shall be irrevocable and the option to renew this Agreement shall expire if the Operator does not deliver the Renewal Notice by the times provided in Section 17.1(a) hereof.

(e) Notwithstanding the foregoing, the Operator shall have no right to renew this Agreement if any Event of Default exists on the date of delivery of the Renewal Notice or the commencement of the Renewal Term.

## ARTICLE XVIII

### Certain Notices and Information

SECTION 18.1 Notice of Event of Default. Promptly after an executive officer of the Operator shall have actual knowledge of the occurrence or existence of any Event of Default or any event which, with the passing of time or giving of notice, would constitute an Event of Default, the Operator shall so notify the Owner and set forth in reasonable detail the circumstances surrounding such event or Event of Default and shall specify what actions the Operator has taken or intends to take to cure such event or Event of Default.

SECTION 18.2 Information Regarding Allocated Assets. The Operator shall promptly furnish the information at such times and in such format as is regularly produced by the Operator concerning the condition, maintenance and use of the Allocated Assets as the Owner may reasonably request.

## ARTICLE XIX

### Confidentiality

SECTION 19.1 Confidentiality. The parties hereto shall hold, and shall cause their respective officers, employees, agents, consultants and advisors to hold, in strict confidence, unless compelled to disclose by judicial or administrative process or, in the opinion of its independent legal counsel, by other requirements of law, all information furnished it by the other party hereto, or their respective representatives, pursuant to this Agreement (except to the extent that such information can be shown to have been (i) available to such Person on a non-confidential basis prior to its disclosure by the other Person, (ii) in the public domain through no fault of such Person or (iii) later lawfully acquired from other sources by the Person to which it was furnished), and no Person shall release or disclose such information to any other Person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors who shall be bound by the provisions of this Section 19.1. In the event that a subpoena, discovery or other request that arguably calls for production or disclosure of such confidential information is received, the Person receiving such request must promptly notify in writing the Person whose information has been requested. The Person receiving such request shall provide the Person whose confidential information has been requested, a reasonable opportunity to review such information and to assert any rights it may have with respect to the potential disclosure of such confidential information. Each party shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by the other party hereto, if it exercises the same care as it takes to preserve confidentiality for its own similar information.



## ARTICLE XX

### Miscellaneous

SECTION 20.1 Dispute Resolution. Except as otherwise specifically provided for herein, 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 or thereof, shall be settled in accordance with the provision of Section 11.12 of the Transaction Agreement.

SECTION 20.2 Documentary Conventions. This Agreement shall be governed by, and construed in accordance with, all the Documentary Conventions.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have each caused this Operating Agreement to be duly executed as of the date first above written.

NEW YORK CENTRAL LINES LLC,  
as OWNER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CSX TRANSPORTATION, INC.,  
as OPERATOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE I  
to Operating Agreement

ADDRESSES AND PAYMENT INFORMATION

Owner

New York Central Lines LLC

Operator

CSX Transportation, Inc.  
500 Water Street  
Jacksonville, Florida 32202  
Telecopy number: 904-366-5436  
Attention: [Name]

## DEFINITIONS AND RULES OF USAGE

### Rules of Usage

The terms defined below shall have the respective meanings set forth below for all purposes, and such meanings shall be equally applicable to both the singular and plural forms of the terms defined. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. "Writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form. Any instrument or Applicable Law defined or referred to below or in any instrument that recites it is to be construed in accordance with this Appendix means such instrument or Applicable Law as from time to time amended, modified or supplemented, including (in the case of instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of instruments) references to all attachments thereto and instruments incorporated therein; *provided*, that any reference to the Bankruptcy Code shall mean the Bankruptcy Code as in effect on the date of reference thereto and applicable to the relevant case. References to any Person are, unless the context otherwise requires, also to its successors and assigns. "Hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References to any gender include, unless the context otherwise requires, references to all genders, and references to the singular include, unless the context otherwise requires, references to the plural and vice versa. "Shall" and "will" have equal force and effect. References in an instrument to "Article", "Section" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section or subdivision of or an attachment to such instrument.

### Definitions

"Action" shall mean any action, claim, suit, arbitration, inquiry, subpoena, discovery request, proceeding or investigation by or before any Governmental Authority or forum or authority having jurisdiction over the matter involving or related to any Owner Indemnified Person, any Operator Indemnified Person or the Allocated Assets.

"Affiliate" means, with respect to a specified Person, any Person that directly or indirectly controls, is controlled by or is under common control with, the specified Person or any trust for the benefit of such Person or any entities controlled by such Person; *provided* that (a) NYC shall not be an Affiliate of CSX and its Subsidiaries or NSC and its Subsidiaries, (b) PRR shall not be an Affiliate of NSC and its Subsidiaries or CSX and its Subsidiaries and (c) CSX and NSC and their respective Subsidiaries shall not be Affiliates of CRR or CRR Parent and their respective Subsidiaries and vice versa.

"Agreement" means the Operating Agreement, dated as of the Closing Date, between the Owner and the Operator.



"Allocated Asset" means the assets identified in or pursuant to the Transaction Agreement as the NYC Allocated Assets other than, as of the Reversion Date, the Reversion Assets.

"Applicable Law" means, with respect to any Person or to any Allocated Asset, all laws, ordinances, judgments, decrees, injunctions, writs and orders of any Governmental Authority and any Governmental Actions applicable to or having jurisdiction over such Person or Allocated Asset.

"Appraisal Procedure" means a procedure whereby an independent third-party appraiser jointly by the Owner and the Operator determines the Fair Market Rental Value of the Allocated Assets or confirms the reasonableness of the fair market value of the Allocated Assets credited to the Settlement Account. The fees and expenses of the appraiser shall be divided equally between the Owner and the Operator.

"arises prior" means that the circumstances giving rise to the liability have transpired prior to the applicable date, whether or not such liability has been discovered, asserted or accrued prior to such date. If the circumstances giving rise to a liability bridge the Closing Date, the parties will apportion it to pre-Closing Date and post-Closing Date periods, with disagreement being subject to the dispute resolution provisions of Section 20.1 of the Agreement.

"Assigned Rights" means Contracts and rights included in the Allocated Assets.

"Bankruptcy Code" means the United States Bankruptcy Code of 1978, as amended from time to time, and the rules and regulations promulgated thereunder.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks are authorized or required to be closed in New York, New York and Richmond, Virginia.

"Closing Date" is the date of this Agreement.

"Contracts" means any contract, lease, loan agreement, deed, easement, license, reversion, mortgage, security agreement, trust indenture or other agreement or instrument to which the Owner is a party or by which it is bound or to which any of the Allocated Assets is subject.

"Contractual Obligation" means, with respect to any Person, any provision of any security issued by such Person or of any Contract to which such Person is a party or by which it or any of its property is bound.

"CRC" means Consolidated Rail Corporation, a Pennsylvania corporation.

"CRR" means Conrail Inc., a Pennsylvania corporation.

"CSX" means CSX Corporation, a Virginia corporation.

"CSXT" means CSX Transportation, Inc., a Virginia corporation.

"Documentary Conventions" means, with respect to an instrument that states in substance that it is governed thereby, that, except as otherwise expressly provided therein:

(a) Documentary Convention—Survival. The representations, warranties and agreements of the parties contained or provided for in such instrument and the parties' obligations under any and all thereof shall survive the execution and delivery of such instrument and the expiration or other termination of the Agreement and shall be and continue in effect notwithstanding the fact that any party may waive compliance with any other term, provision or condition of the Agreement.

(b) Documentary Convention—Governing Law. Such instrument shall become effective upon delivery and shall in all respects be governed by, and construed in accordance with, the laws (excluding principles of conflict of laws) of the Commonwealth of Virginia applicable to agreements made and to be performed entirely within such state, including all matters of construction, validity and performance.

(c) Documentary Convention—Counterparts. Except as otherwise specifically provided in the Agreement, such instrument may be executed by the parties thereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. To make proof of such instrument, it shall only be necessary to produce one such counterpart executed by each party thereto. All signatures need not be on the same counterpart.

(d) Documentary Convention—Method of Payment. All amounts required to be paid by any party to such instrument to any other party, either thereunder or under the Agreement shall be paid in such immediately available and freely transferable Dollars as at the time of payment shall be legal tender for the payment of public and private debts, by wire transfer, or other method of payment acceptable to the payee, of immediately available funds to the account of the payee set forth in Schedule I to the Agreement or to such other account located in the U.S. as such payee may specify by notice to the other parties.

(e) Documentary Convention—Parties in Interest; Limitation on Rights of Others. The terms of such instrument shall be binding upon, and inure to the benefit of, the parties thereto and their permitted successors and assigns. Nothing in such instrument shall be construed to give any Person (other than the parties thereto and their permitted successors and assigns and as expressly provided therein) any legal or equitable right, remedy or claim under or in respect of such instrument or any covenants, conditions or provisions contained therein.

(f) Documentary Convention—Table of Contents; Headings. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of such instrument are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of such instrument. To the extent of any inconsistency between the headings and any text, such text shall govern.

(g) Documentary Convention—Entire Agreement; Amendment and Waiver.

The Agreement, the other Ancillary Agreements and the Transaction Agreement constitute the entire agreement of the parties thereto with respect to the subject matter thereof and supersede all prior written and oral agreements and understandings with respect to such subject matter. Neither the Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought and subject to any other limitations on amendments set forth in the Agreement, the other Ancillary Agreements and the Transaction Agreement. Any amendment, modification or supplement to the Agreement shall be subject to any applicable Governmental Action. No failure or delay of any party in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

(h) Documentary Convention—Severability. Any provision of such instrument that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the parties to such instrument waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

(i) Documentary Convention—Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms of such instrument to be given to any Person shall be in writing, and any such notice shall become effective five (5) Business Days after being deposited in the mails, certified or registered, with appropriate postage prepaid for first class mail or, if delivered by hand or courier service or in the form of a telecopy, when received, and shall be directed to the address or telecopy number of such Person set forth in Schedule I to the Agreement. From time to time any party to such instrument may designate a new address or telecopy number for purposes of notice thereunder by notice to each of the other parties thereto, effective when received.

(j) Documentary Convention—Payment on Business Days. If any payment under such instrument is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day without any additional interest for such extension period so long as payment is made on such Business Day.

"Dollars" or "\$" means dollars in the lawful currency of the United States of America..

"Event of Default" has the meaning set forth in Section 14.1 of the Agreement.



"Event of Loss" means, with respect to any Allocated Asset, the occurrence of any of the following events: (a) the loss or theft of such Allocated Asset to the extent that such Allocated Asset is not recovered within one hundred eighty (180) days of such event or, if earlier, the expiration of the Term, (b) the destruction of or damage to such Allocated Asset or any part thereof to such extent as shall render repair of such Allocated Asset uneconomical to the Operator or unfit or unsuitable for its intended use, which destruction or damage is an actual or constructive total loss, (c) the requisition of use of such Allocated Asset for an indefinite period or for a stated period in excess of one hundred eighty (180) days or, if earlier, which ends later than the expiration of the Term by any Governmental Authority under power of eminent domain or otherwise, (d) the condemnation, confiscation, seizure or requisition of title to such Allocated Asset by a Governmental Authority, (e) any damage to such Allocated Asset which results in an insurance settlement on the basis of an actual or constructive total loss, (f) the prohibition by Applicable Law of the use of such Allocated Asset by the Operator or any other Person for a period of one hundred eighty (180) consecutive days from the date of such prohibition or, if earlier, the end of the Term. The date of occurrence of an Event of Loss in respect of any Allocated Asset shall be deemed to be, (1) in the event of damage to such item, the date of such damage, (2) in the event of a condemnation or requisition of title by a Governmental Authority, the date thereof, and (3) in the event of an Event of Loss under clause (a), (c) or (f) of the first sentence of this definition, the date of expiration of the period referred to in said clause.

"Excluded Taxes" has the meaning set forth in Section 3.5 of the Agreement.

"Fair Market Rental Value" means, as to the Allocated Assets, the fair market rental value that would be obtained in an arm's length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, for the lease of the Allocated Assets, disregarding the fact (if applicable) that the Allocated Assets are subject to the Agreement and assuming that Article VII of the Agreement shall have been complied with in all respects. Subject to the foregoing, the Fair Market Rental Value as to the Allocated Assets shall be such value determined in accordance with the Appraisal Procedure.

"Fees and Expenses" means, with respect to any Person in connection with any transaction or occurrence, the reasonable fees and expenses of its legal counsel for such transaction or occurrence.

"Governmental Action" means all authorizations, consents, approvals, waivers, exceptions, variances, franchises, permissions, permits and licenses of, and filings and declarations with, Governmental Authorities.

"Governmental Authority" means any federal, state, municipal, county, local or foreign governmental Person, authority or agency, court, regulatory commission, stock exchange or other similar body.

"Income Tax Regulations" means the regulations promulgated by the U.S. Department of the Treasury pursuant to the Code.



"Indemnifying Party" means a Person who requires or requests indemnification under Article XI of the Agreement.

"Indemnified Party" means any Owner Indemnified Person or Operator Indemnified Person.

"Insolvency Proceeding" means any case or proceeding under bankruptcy, insolvency, reorganization, receivership, moratorium or other laws providing relief to debtors.

"Lien" means any lien, mortgage, encumbrance, pledge, charge, lease, easement, servitude or security interest or any interests similar to the foregoing, including those existing under any conditional sales or other title retention agreement or the filing of or agreement to deliver any financing statement under the UCC.

"Modification" means, with respect to any Allocated Asset, any modification, alteration, addition, upgrade or improvement to such Allocated Asset.

"Nonseverable Modification" means any Required Modification and any Modification which is not readily removable without impairing the fair market value, residual value, condition, remaining useful life or utility of the Allocated Asset to which such Modification relates immediately prior to such Modification.

"NSC" means Norfolk Southern Corporation, a Virginia corporation.

"NSR" means Norfolk Southern Railway Company, a Virginia corporation.

"NYC" means New York Central Lines LLC, a Delaware limited liability company.

"Obsolescence Termination Payment" has the meaning set forth in Section 8.2 of the Agreement.

"Operating Fee" means the operating fee agreed to from time to time by the Owner and Operator based on the Fair Market Rental Value of the Allocated Assets as set forth in a supplement to this Agreement.

"Operator" means CSXT or any permitted successor or assign.

"Operator Indemnified Person" has the meaning set forth in Section 11.2 of the Agreement.

"Optional Modification" has the meaning set forth in Section 7.2(a) of the Agreement.

"Organic Document" means, with respect to any Person, as applicable, the certificate or articles of incorporation, partnership agreement, limited liability company agreement, certificate of

formation, membership agreement, by-laws and all other organizational documents of such Person.

"Overdue Rate" means the rate equal to the lesser of (i) the prime rate set forth in *The Wall Street Journal* and (ii) the maximum rate allowed by Applicable Law.

"Owner" means NYC, a Delaware limited liability company.

"Owner Indemnified Person" has the meaning set forth in Section 11.1 of the Agreement.

"Owner Lien" means a Lien (i) which results from acts of, or any failure to act by, or as a result of claims against, the Owner, (ii) in favor of any taxing authority by reason of the non-payment by the Owner, or (iii) which results from acts of, or any failure to act by, the Owner in violation of its obligations under the Agreement.

"Payment Date" means each March 31, June 30, September 30 and December 31 or, if such day is not a Business Day, the next succeeding Business Day.

"Permitted Liens" means, with respect to any Allocated Asset,

(a) The respective rights and interests of the Operator and Owner under the Agreement,

(b) Owner Liens,

(c) Liens for Taxes which are not yet due or so long as no Event of Default shall have occurred and be continuing are being contested in good faith by appropriate proceedings which suspend the collection thereof, *provided*, that such proceedings shall not involve any material danger of the sale, forfeiture or loss of such Allocated Asset or any part thereof or interest therein or the reasonably foreseeable risk of imposition of any criminal liability on the Owner or any other material liability not indemnified against by the Operator,

(d) Liens of mechanics, materialmen, laborers, employees or suppliers and similar Liens arising by operation of law, in each case incurred by the Operator in the ordinary course of business for sums that are not overdue for more than sixty (60) days or so long as no Event of Default shall have occurred and be continuing are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof, *provided*, that such contest does not involve any material danger of the sale, forfeiture or loss of such Allocated Asset or any part thereof or interest therein or the reasonably foreseeable risk of imposition of any criminal liability on the Owner or any other material liability not indemnified against by the Operator,

(e) Liens arising out of any judgments or awards against the Operator with respect to which (i) at the time an appeal or proceeding for review is being prosecuted in good faith, (ii) there shall have been secured a stay of execution pending such appeal or proceeding for

review, (iii) during such proceeding there is not, and such proceeding does not involve, any material danger of the sale, forfeiture or loss of such Allocated Asset or any part thereof or any interest therein or the risk of imposition of any criminal liability on the Owner or any other liability not indemnified against by the Operator, and (iv) if such Liens have specifically attached to any Allocated Asset, the Operator has provided the Owner with security reasonably satisfactory to the Owner, in the amount of such claims,

(f) Liens, rights of way, easements and other rights to use the Allocated Assets (including licenses for private crossings) common in the railroad industry arising out of the ordinary course of business of the Operator,

(g) the rights and interests of any permitted Qualified Sub-Operator, and

(h) Liens consented to by the Owner.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"PRR" means Pennsylvania Lines LLC, a Delaware limited liability company.

"Renewal Notice" has the meaning set forth in Section 17.1(a) of the Agreement.

"Renewal Operating Fee" has the meaning set forth in Section 17.1(b) of the Agreement.

"Renewal Term" has the meaning set forth in Section 17.1(a) of the Agreement.

"Required Modification" has the meaning set forth in Section 7.2(a) of the Agreement.

"Reversion Assets" has the meaning set forth in Section 2.3 of the Agreement.

"Reversion Date" has the meaning set forth in Section 2.3 of the Agreement.

"Reversion Notice" has the meaning set forth in Section 2.3 of the Agreement.

"Settlement Account" has the meaning set forth in Section 6.1 of the Agreement.

"Settlement Account Payment Date" has the meaning set forth in Section 6.2 of the Agreement.

"Severable Modification" means any Modification which is not a Nonseverable Modification.

"Sub-Operating Agreement" has the meaning set forth in Section 12.1(a) of the Agreement.

"Substantial Allocated Asset" means (i) an Allocated Asset with a fair market value in excess of \$10 million or (ii) a group of Allocated Assets that (a) are sold, transferred or otherwise disposed of during any calendar year to the same Person (including Affiliates of such Person) or the same group of Persons (including Affiliates of such Persons) and (b) have an aggregate fair market value in excess of \$10 million.

"Supplemental Operating Fees" means all amounts payable by the Operator pursuant to the terms of the Agreement, including indemnities payable by the Operator pursuant to Section 11.1 hereof, other than the Operating Fee.

"Tax" means all taxes (including income, franchise, excise, real and personal property, sales, use, payroll and withholding and other taxes) imposed by any federal, state, local, foreign or international taxing authority or Governmental Authority, whether in the form of assessments, levies, imposts, duties, charges, assessments, withholdings or otherwise, now existing or hereafter created or adopted, together with all interest, penalties and additions imposed with respect to such amounts.

"Term" means the period commencing on the Closing Date and terminating on the 25th anniversary thereof.

"Termination Date" means the date on which the Term terminates.

"Third Party Claim" has the meaning set forth in Section 11.3(b) of the Agreement.

"Third Party Provider" has the meaning set forth in Section 4.2(a) of the Agreement.

"Transaction Agreement" means the Transaction agreement among CSX, CSXT, NSC, NSR, CRC, CRR and CRR Holdings LLC dated as of June 10, 1997.

"UCC" means the Uniform Commercial Code as enacted and in effect from time to time in any applicable jurisdiction.

"Valuation Date" means: (i) the Closing Date, (ii) the sixth (6th), twelfth (12th), eighteenth (18th), and twenty-fourth (24th) anniversaries of the Closing Date, (iii) the first day of each Renewal Term; (iv) the sixth (6th) anniversary of the first day of each Renewal Term, (v) a Settlement Account Payment Date (if not already a Valuation Date pursuant to other clauses of this definition), and (vi) such other dates as the parties hereto may agree.



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**OPERATING AGREEMENT**

dated as of [the Closing Date]

by and between

**PENNSYLVANIA LINES LLC**

as *Owner*,

and

**NORFOLK SOUTHERN RAILWAY COMPANY**

as *Operator*

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### **Appendix**

Appendix A: Definitions

## **OPERATING AGREEMENT**

This **OPERATING AGREEMENT** (this "Agreement") is entered into as of [Closing Date], by and between Pennsylvania Lines LLC, a Delaware limited liability company, as Owner and Norfolk Southern Railway Company, a Virginia Corporation, as Operator.

### **ARTICLE I**

#### Definitions and Usage

SECTION 1.1 Definitions and Usage. Unless the context otherwise requires, capitalized terms used herein shall have the respective meanings assigned to them in Appendix A to this Agreement. Terms used, but not defined, in this Agreement or in Appendix A shall have the respective meanings assigned to them in the Transaction Agreement.

### **ARTICLE II**

#### Operation of Allocated Assets

SECTION 2.1 Operation of Allocated Assets. (a) The Owner hereby agrees with the Operator, and the Operator hereby agrees with the Owner, that the Operator shall have the license, right and obligation to use and operate the Allocated Assets for the term referred to in Section 2.2 hereof on the terms and conditions set forth in this Agreement. Except as otherwise specifically provided in this Agreement, the Operator may use and operate the Allocated Assets in such manner and for such purposes as the Operator considers necessary or appropriate.

(b) The Owner hereby agrees that the Operator shall, effective as of the Closing Date, have the right to receive and retain for its own benefit and use and in its own name all revenues, tolls, rents, receipts, issues, profits and income of every character arising from or associated with the operation and use of the Allocated Assets.

SECTION 2.2 Term of Agreement. Immediately upon the execution hereof, without necessity of any further act or evidence by either party hereto, the Allocated Assets shall be deemed delivered by the Owner to the Operator for the Term and, if the Operator elects to exercise its renewal option pursuant to Article XVII hereof, for any Renewal Term, in either case, all pursuant to the terms of this Agreement, unless this Agreement shall have been earlier terminated in accordance with its terms.

SECTION 2.3 Reversion Assets. Within one (1) year after the Closing Date, the Owner may, with the consent of the Operator, deliver to the Operator a notice electing to terminate the application of this Agreement to certain Allocated Assets (the "Reversion Notice"). The Reversion Notice shall set forth (i) a list of those Allocated Assets selected by the Owner in its sole discretion which will no longer be subject to this Agreement (the "Reversion Assets"), and (ii) the date as of which such Reversion Assets shall no longer be subject to this Agreement,

which date shall be a Payment Date and shall not be less than sixty (60) calendar days after the date of the Reversion Notice (the "Reversion Date"); *provided*, that the fair market value of the Reversion Assets shall not exceed 25% of the aggregate fair market value of all Allocated Assets (including the Reversion Assets) as of the Reversion Date. All Allocated Assets other than the Reversion Assets shall continue after the Reversion Date to be subject to the terms and conditions of this Agreement.

### ARTICLE III

#### Operating Fee and Certain Expenses

SECTION 3.1 Operating Fee; Supplemental Operating Fees. The Operator shall pay to the Owner the Operating Fee commencing on the first Payment Date and on each Payment Date thereafter for the duration of the Term and any Renewal Term. Subject to any applicable Governmental Action, the Operating Fee shall be recalculated on each Valuation Date to reflect the Fair Market Rental Value of the Allocated Assets then subject to this Agreement. Supplemental Operating Fees shall be paid by the Operator when due under the terms of this Agreement.

SECTION 3.2 Method of Payment. All Operating Fees and Supplemental Operating Fees shall be paid by the Operator to the Owner at its office set forth in Schedule I hereto or at such other place in the U.S. as the Owner shall specify in a written notice to the Operator at least five (5) Business Days prior to the date such payment is due. Each payment of Operating Fees and Supplemental Operating Fees shall be made by the Operator in immediately available funds prior to 12:00 noon, New York time at the place of payment, on the date when such payment shall be due.

SECTION 3.3 Late Payment. In the event any Operating Fees or Supplemental Operating Fees shall not be paid on its due date to the Owner, the Operator shall pay to the Owner on written demand, interest (to the extent permitted by Applicable Law) on such overdue amount from the due date thereof (without regard to any grace period) to the date of payment thereof at the Overdue Rate.

SECTION 3.4 No Set-off, Counterclaims, etc. THIS AGREEMENT IS A NET AGREEMENT. THE OPERATOR'S OBLIGATION TO PAY ALL PAYMENTS OF OPERATING FEES AS AND WHEN THE SAME SHALL BECOME DUE AND PAYABLE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT SHALL BE ABSOLUTE AND UNCONDITIONAL AND SHALL NOT BE SUBJECT TO ANY ABATEMENT OR DIMINUTION BY SET-OFF, DEDUCTION, COUNTERCLAIM, RECOUPMENT, AGREEMENT, DEFENSE, SUSPENSION, DEFERMENT, INTERRUPTION OR OTHERWISE, AND UNTIL SUCH TIME AS ALL AMOUNTS REQUIRED TO BE PAID UNDER THIS AGREEMENT SHALL HAVE BEEN PAID, THE OPERATOR SHALL NOT

HAVE ANY RIGHT TO TERMINATE THIS AGREEMENT OR TO BE RELEASED, RELIEVED OR DISCHARGED FROM ITS OBLIGATION TO MAKE, AND SHALL NOT SUSPEND, REDUCE OR DISCONTINUE, ANY PAYMENT OF OPERATING FEES FOR ANY REASON WHATSOEVER (EXCEPT AS MAY BE EXPRESSLY PROVIDED HEREIN), including, without limitation:

(a) any default, misrepresentation, negligence, misconduct or other action or inaction of any kind by the Owner or any other Person, whether under or in connection with this Agreement or any other agreement relating to this Agreement or in connection with any unrelated transaction;

(b) the insolvency, bankruptcy, reorganization or cessation of existence, or discharge or forgiveness of indebtedness of any Person referred to in clause (a) above;

(c) the invalidity, unenforceability or impossibility of performance of this Agreement for any reason;

(d) any defect in the title, condition, design, operation or fitness for use of, or any Lien or other restriction of any kind upon, all or any part of any Allocated Asset, any loss or destruction of, or damage to, any Allocated Asset or any interruption in or cessation of the ownership, possession, operation or use of any Allocated Asset for any reason whatsoever;

(e) any restriction, prevention or curtailment of or interference with any Allocated Asset or the use thereof or any part thereof for any reason whatsoever, including, without limitation, by any Governmental Authority;

(f) any Applicable Law now or hereafter in force;

(g) any failure to obtain any required Governmental Action for a transfer of rights or title to the Owner, the Operator or any other Person;

(h) any amendment or other change of, or any assignment of any rights under, this Agreement, or any waiver or other action or inaction under or in respect of this Agreement, or any exercise or nonexercise of any right or remedy under or in respect of this Agreement; and

(i) any other cause, circumstance, happening or event whatsoever, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing.

The Operator hereby waives and hereby agrees to waive at any future time at the request of the Owner, to the extent now or then permitted by Applicable Law, any and all rights that the Operator may have or that at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to terminate, cancel, quit or surrender this Agreement other than in accordance with the express terms hereof. Each Operating Fee payment shall be final and the Operator agrees not



to seek to recover all or any part of any such payment (except for amounts paid to the Owner which the Owner in good faith agrees have been paid in error) from the Owner for any reason under any circumstance whatsoever.

**SECTION 3.5 Tax Provisions.** (a) During the Term and any Renewal Term, the Operator shall pay when due, all Taxes, other than Excluded Taxes (as hereinafter defined), imposed on the Owner, based upon the Allocated Assets or arising out of the use, lease, possession or operation of the Allocated Assets during that period. For purposes of this Section, (i) Owner shall mean the Owner and its Affiliates and (ii) Excluded Taxes shall mean (A) all Taxes based, in whole or in part, on net income or gross income (including, without limitation, any minimum tax) of the Owner or which are in substitution for, or relieve the Owner from, any Tax based upon or measured by the Owner's net income or gross income, together with any interest, penalties, additions to tax or additional amounts that may become payable in respect thereof; (B) business and occupation taxes, and gross receipts taxes of the Owner and Taxes based upon the equity interests of the Owner; and (C) interest, fines and penalties to the extent due to the acts or omissions of the Owner in connection with Excluded Taxes. The Operator shall not be required to pay any Tax it is obligated to pay under the provisions of this Section 3.5 during the time it shall reasonably and in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof.

(b) The Owner shall have the right and obligation, at its own expense, to prepare and file all Tax returns required to be filed by the Owner under Applicable Law. Prior to the Owner's filing of any Tax returns for Taxes required to be paid by the Operator under paragraph (a) of this Section 3.5, the Owner shall provide such returns to the Operator for its review and approval, which approval will not be unreasonably withheld or delayed.

(c) The Operator and its assignees and designees shall have the right (but only to the extent the Owner shall have such right, by contract or otherwise) to control at its expense any audit or examination by any Governmental Authority, or any judicial proceeding, relating to any Taxes required to be paid by it under paragraph (a) of this Section 3.5.

(d) During the Term and any Renewal Term, the Operator and any of its designees shall be entitled to claim federal, state and local tax benefits (including, without limitation, deductions and credits) arising out of Operator's expenditures in the use, possession or operation of the Allocated Assets by the Operator, or any of its respective assignees or designees, and the improvements thereto, that the Operator, or any of its designees is entitled to claim under federal, state and local laws and regulations. These tax benefits include but are not limited to: (i) deductions for depreciation or amortization attributable to property (both tangible and intangible) owned by the Operator, or any of its assignees or designees, including improvements made to any of the Allocated Assets by any of them, as well as expenditures made by any of them that are required to be capitalized under sections 263 or 263A or some other section of the Code; (ii) deductions for expenditures made by the Operator, or any of its assignees or designees, deductible as ordinary and necessary business expenses under section 162 of the Code; (iii)

deductions for losses attributable to property (both tangible and intangible) owned by the Operator, or any of its assignees or designees, deductible under section 165 of the Code; and (iv) any federal, state or local credits applicable to the use, lease, possession or operation of the Allocated Assets by the Operator, or any of its assignees or designees, and improvements thereto. The Owner is entitled to deductions for Taxes of the Owner paid by the Operator under paragraph (a) of this Section 3.5 and treated as rent paid by the Operator under this Agreement and taxable income received by the Owner under section 1.162-11(a) of the Income Tax Regulations.

## ARTICLE IV

### Representations, Warranties and Agreements

SECTION 4.1 Disclaimer of Warranties. AS BETWEEN THE OWNER AND THE OPERATOR, THE EXECUTION OF THIS AGREEMENT SHALL BE CONCLUSIVE PROOF OF ACCEPTANCE BY THE OPERATOR OF EACH ALLOCATED ASSET AS BEING IN COMPLIANCE WITH ALL REQUIREMENTS OF THIS AGREEMENT. THE OWNER AND THE OPERATOR TAKE EACH SUCH ALLOCATED ASSET "AS IS" AND "WHERE IS", AND THE OPERATOR ACKNOWLEDGES THAT THE OWNER HAS NOT MADE, NOR SHALL BE DEEMED TO HAVE MADE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, COMPLIANCE WITH SPECIFICATIONS, CONDITION, MERCHANTABILITY, DESIGN, QUALITY, DURABILITY, OPERATION OR FITNESS FOR USE OR PURPOSE OF EACH SUCH ALLOCATED ASSET OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO EACH SUCH ALLOCATED ASSET OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE, AS BETWEEN THE OWNER AND THE OPERATOR, BY THE OPERATOR IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY SUCH ALLOCATED ASSET, OF ANY NATURE WHETHER PATENT OR LATENT, AND THAT THE OWNER SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO, except that the Owner hereby represents, warrants and covenants that each such Allocated Asset shall be free of Owner Liens on the Closing Date and except as otherwise provided in the Transaction Agreement. The provisions of this Section 4.1 have been negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any other warranties made by the Owner, express or implied, with respect to any Allocated Asset, whether arising pursuant to Applicable Law now or hereafter in effect or otherwise. Nothing contained in this Section 4.1 shall in any way diminish or otherwise affect any right the Operator may have with respect to any Allocated Asset against any third Person. The Owner shall not at any time be required to inspect any Allocated Asset, and any actual inspection by the Owner shall not be deemed to affect or modify the provisions of this Section 4.1.

**SECTION 4.2 Operator To Exercise Certain Rights** (a) The Owner hereby authorizes the Operator, at the Operator's expense, to exercise in the name of and on behalf of the Owner and the Operator, as their interests may appear, the right and power to deal with any third party lessor, lessee, licensor, licensee, seller, manufacturer, shipper or any other Persons (including agents and consultants thereof) with respect to any Allocated Asset or who are party to any Assigned Rights (each a "Third Party Provider") and the right to enforce (by legal action or otherwise) against such Third Party Provider all rights, powers and privileges of the Owner and to receive all benefits of the Owner with respect to such Third Party Provider, under any Contract, express or implied warranty, indemnity or otherwise; *provided*, that if an Event of Default shall have occurred and be continuing (and until all Events of Default, then outstanding shall no longer be continuing) the Owner may terminate the authority of the Operator under this Section 4.2. Any amount paid to the Owner or Operator pursuant to the Operator's exercise of its authority under this Section 4.2 shall be paid to the Operator. After the end of the Term or any Renewal Term with respect to any Allocated Asset or after the termination of this Agreement with respect to such Allocated Asset pursuant to Article XIV, (a) the Operator shall have no further rights, powers, privileges or benefits under this Section 4.2 and (b) all amounts payable by any Third Party Provider paid with respect to periods arising thereafter shall be paid to, and retained by, the Owner or any other Person as shall then be the owner of the Allocated Asset as to which such payment is made.

(b) The Operator shall, with the Owner's prior consent, have the right and power to execute and deliver on behalf of the Owner, the extension, renewal, amendment or modification of any Assigned Rights or any other Contract in respect of the Allocated Assets.

(c) The Owner shall as expeditiously as possible use its reasonable efforts to obtain or transfer to the Operator any Governmental Action or the consent, authorization, or approval of any private Person required to be made, obtained or transferred to effectuate the purposes of this Agreement and the transactions contemplated herein, which actions shall include furnishing all information required under or in connection with such Governmental Action or the approvals of, or filing with such private Person.

(d) The Operator shall pay, perform and discharge fully all of the obligations of the Owner or its Affiliates under all Assigned Rights and Contracts that are Allocated Assets from and after the Closing Date. The Owner or its Affiliates shall, without further consideration therefor, pay, assign and remit promptly to the Operator, as appropriate, all monies, rights and other consideration received in respect of such performance. The Owner or its Affiliates shall exercise or exploit the rights and options under all such Contracts only as reasonably directed by the Operator.



SECTION 4.3 Representations and Warranties of the Operator. The Operator represents and warrants to the Owner as of the Closing Date as follows:

(a) Due Organization, etc. The Operator (i) is a corporation duly organized and validly existing under the laws of the Commonwealth of Virginia, (ii) has the power and authority to enter into and perform its obligations under this Agreement and (iii) has obtained all Governmental Action required to use or hold the Allocated Assets in accordance with this Agreement, and to enter into and perform its obligations under this Agreement.

(b) Due Authorization, Non-Contravention, etc. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of the Operator, do not and will not conflict with, result in any violation of, or constitute any default under, any provision of any Organic Document of the Operator or Applicable Law.

(c) Due Execution. This Agreement has been duly executed and delivered by the Operator, and constitutes the legal, valid and binding obligation of the Operator enforceable against the Operator in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights and except that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding therefor may be brought.

SECTION 4.4 Representations and Warranties of the Owner. The Owner represents and warrants to the Operator as of the Closing Date as follows:

(a) Due Organization, etc. The Owner (i) is a limited liability company duly organized and validly existing under the laws of the State of Delaware, (ii) has the power and authority to enter into and perform its obligations under this Agreement and (iii) has obtained all Governmental Action required to enter into and perform its obligations under this Agreement.

(b) Due Authorization, Non-Contravention, etc. The execution, delivery and performance of this Agreement have been duly authorized by all necessary company action on the part of the Owner, do not and will not conflict with, result in any violation of, or constitute any default under, any provision of any Organic Document of the Owner or Applicable Law.

(c) Due Execution. This Agreement has been duly executed and delivered by the Owner, and constitutes the legal, valid and binding obligation of the Owner enforceable against the Owner in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights and except that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding therefor may be brought.



## ARTICLE V

### Liens; Quiet Enjoyment

SECTION 5.1 Liens. The Operator shall not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on any Allocated Asset. The Operator will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien. The Operator's obligations under this Section 5.1 with respect to any such Lien on any Allocated Asset resulting from a claim arising prior to the termination of this Agreement with respect to such Allocated Asset shall survive such termination. The Operator agrees that, upon the termination of this Agreement, the Allocated Assets shall be returned to the Owner free and clear of Liens, other than Owner Liens.

SECTION 5.2 Quiet Enjoyment. Notwithstanding any other provision of this Agreement, so long as no Event of Default shall have occurred and be continuing, as between the Operator and Owner, the Operator shall have the exclusive rights to possession, control and use of all Allocated Assets and neither the Owner nor any Person acting or claiming through the Owner will take any action that shall interfere with the peaceful and quiet enjoyment or the possession and use or nonuse of any Allocated Asset by the Operator, and the Operator shall have the right to possess and use or not use such Allocated Asset in its sole discretion, subject always to the terms and conditions of this Agreement. The foregoing is not intended to limit the inspection rights of the Allocated Assets granted by the Operator pursuant to Section 12.1 hereof.

## ARTICLE VI

### Settlement Account

SECTION 6.1 Maintenance of Settlement Account. The Operator shall maintain a non-cash book account (the "Settlement Account") to reflect amounts owed by the Operator to the Owner as a result of transactions described in Sections 7.1(e), 8.1 and 10.1(a)(ii) hereof.

SECTION 6.2 Payment of Settlement Account Balance. The Operator shall pay to the Owner an amount equal to the then balance of the Settlement Account upon: (i) the sixth (6th), twelfth (12th), eighteenth (18th) and twenty-fourth (24th) anniversaries of the Closing Date, (ii) the expiration of the Term (or, if earlier, the termination of this Agreement), (iii) the sixth (6th) anniversary of the first day of each Renewal Term, (iv) the end of each Renewal Term (or, if earlier, the termination of this Agreement), (v) the Reversion Date (but only with respect to the Reversion Assets), and (vi) thirty (30) calendar days after the date on which a Substantial Allocated Asset (a) is not repaired or replaced under Section 7.1(e) hereof, (b) is abandoned, sold or otherwise disposed of under Section 8.1 hereof or (c) suffers an Event of Loss and is not replaced under Section 10.1(a)(i) hereof (each, a "Settlement Account Payment Date").

SECTION 6.3 Confirmation of Settlement Account. Within ten (10) days prior to a Settlement Account Payment Date, the Appraisal Procedure shall be used to confirm that credits to the Settlement Account were based on the fair market value of the relevant Allocated Assets consistent with the terms of this Agreement. The Settlement Account shall be adjusted consistent with the outcome of the Appraisal Procedure and the payments made pursuant to Section 6.2 hereof shall reflect any such adjustments.

## ARTICLE VII

### Operation; Maintenance

SECTION 7.1 Operation and Maintenance. The Operator shall at all times at its own expense during the Term:

- (a) use the Allocated Assets in such manner and for such purposes as the Operator considers necessary or appropriate in connection with the operation of its business;
- (b) keep and maintain such books, records and title documents relating to the Allocated Assets, and the acquisition, construction and installation of Modifications thereto and the payment of the purchase price of such Modifications, as the Operator considers appropriate consistent with the Operator's customary business practices;
- (c) maintain the Allocated Assets in accordance with the Operator's customary practice;
- (d) inspect, service, maintain, store, use, operate, repair, replace, modify and improve the Allocated Assets in compliance in all material respects with Applicable Law (including all applicable environmental and occupational safety laws), and in compliance in all material respects with all applicable licenses and permits relating to the Allocated Assets issued by any Governmental Authority; *provided*, the Operator may in good faith by appropriate proceedings contest the validity or application of any such Applicable Law in any reasonable manner which does not involve any risk of the imposition of criminal liability on the Owner, or any material danger of any fine, penalty, or other imposition upon the Owner for which the Operator has not acknowledged its obligation to indemnify the Owner pursuant to this Agreement; and
- (e) in case of any damage to any Allocated Asset, other than damage constituting an Event of Loss, at its election, in either case at its own expense, (i) repair such Allocated Asset so as to restore its utility consistent with the Operator's customary practice with respect to similar assets owned by the Operator (as determined solely by the Operator) or (ii) replace such Allocated Asset with an asset (which will become an Allocated Asset) having a fair market value (as determined solely by the Operator) equivalent to that of the damaged Allocated

Asset immediately prior to the damage (assuming, in either case, such Allocated Asset was then in the condition and state of repair required to be maintained by the terms of this Agreement), with such alterations and additions as may be made at the Operator's election pursuant to and subject to the conditions of Section 7.2 hereof, *provided, however*, that the Operator need not repair or replace any Allocated Asset to the extent that such Allocated Asset is not necessary to the operation of the Allocated Assets considered as a whole (as determined solely by the Operator), in which event the Operator shall credit to the Settlement Account the fair market value of such Allocated Asset as of the date immediately prior to the damage (assuming such Allocated Asset was then in the condition and state of repair required to be maintained by the terms of this Agreement). Upon the crediting of the Settlement Account with the fair market value of such Allocated Asset, such Allocated Asset shall no longer be subject to this Agreement and the Owner shall convey to the Operator or its designee, ownership of and title to such Allocated Asset. Notwithstanding the foregoing, until payment by the Operator to the Owner of the amount credited to the Settlement Account on the next succeeding Settlement Account Payment Date, such Allocated Asset shall be deemed to continue to be subject to this Agreement solely for the purpose of calculating the Operating Fee.

#### SECTION 7.2 Modification.

(a) The Operator shall at its expense make any Modification to any Allocated Asset required (i) by Applicable Law or in order to operate, maintain, service, store, or use such Allocated Asset in accordance with Applicable Law, as soon as practicable after any such requirement may arise or (ii) in order for the Operator to comply with the provisions of this Agreement (all such Modifications being referred to herein as "Required Modifications"); *provided*, that the Operator may, so long as no Event of Default shall have occurred and be continuing, in good faith by appropriate proceedings contest the validity or application of any Applicable Law in any reasonable manner which does not involve any reasonably foreseeable risk of the imposition of criminal liability on the Owner, or any material danger of any fine, penalty or other imposition upon the Owner for which the Operator has not acknowledged its obligation to indemnify the Owner pursuant to this Agreement. The Operator at its expense, from time to time, may make any Modification to any Allocated Asset that the Operator in its discretion may deem desirable in the proper conduct of the Operator's business (all such Modifications which are not Required Modifications being referred to herein as "Optional Modifications"); *provided* that any construction of new trackage or facilities appurtenant to but not located on such Allocated Assets shall, at Operator's election, be deemed not to be Modifications hereunder and not subject to this Agreement.

(b) Title to each Modification shall vest as follows:

(i) in the case of each (A) Required Modification or (B) other Nonseverable Modification, whether or not the Owner shall have financed or provided financing (in whole or in part) for such Modification, the Owner shall, without further act, effective on the



date such Modification shall have been incorporated into the modified Allocated Asset, acquire title to such Modification free and clear of all Liens other than Permitted Liens; or

(ii) in the case of each Severable Modification, the Operator shall retain title to such Modification and the Operator may (subject to Section 7.2(c) hereof) remove such Modification at its expense at any time so long as the modified Allocated Asset remains in or is restored by the Operator to the condition required by this Agreement.

Immediately upon title to a Modification vesting in the Owner pursuant to this Section 7.2(b), such Modification shall, without further act, become subject to this Agreement and be deemed part of the applicable Allocated Asset for all purposes.

(c) Subject to compliance with Applicable Law, the Operator may remove, at its expense, any Severable Modification; *provided*, that the Operator, at its expense shall repair any damage to the Allocated Asset from which a Severable Modification has been removed caused by such removal; *provided, further*, that in the event the Operator shall not have removed any Severable Modification to which the Operator shall have title as provided in Section 6.2(b)(ii) prior to the end of the Term, title to such Severable Modification shall vest in the Owner upon the expiration of such Term.

## ARTICLE VIII

### Obsolescence Termination; Abandonment

SECTION 8.1 Obsolescence Termination; Abandonment. Except as may otherwise be contemplated in this Agreement, the Operator may not dispose of, or otherwise convey or transfer any interest in the Allocated Assets to any Person. Unless an Event of Default shall have occurred and be continuing, if the Operator has determined that an Allocated Asset is uneconomic or surplus to, or no longer necessary for, the Operator's operating requirements as determined by the Operator in its sole judgment, the Operator shall have the right, with the Owner's consent, to terminate the application of this Agreement with respect to such Allocated Asset and, with the Owner's consent, to abandon or sell or otherwise dispose of such Allocated Asset (as agent for the Owner) in which event the Operator may retain the sale proceeds, if any, received for such Allocated Asset and shall credit to the Settlement Account the fair market value (as of the time of the abandonment, sale or other disposition) of such Allocated Asset (which, in no event, shall be less than the sale proceeds received for such Allocated Asset). Upon the crediting of the Settlement Account with the fair market value of such Allocated Asset, such Allocated Asset shall no longer be subject to this Agreement and the Owner shall convey to the Operator or its designee, ownership of and title to such Allocated Asset. Notwithstanding the foregoing, until payment by the Operator to the Owner of the amount credited to the Settlement Account on the next succeeding Settlement Account Payment Date, such Allocated Asset shall be deemed to continue to be subject to this Agreement solely for the purpose of calculating the Operating Fee.



SECTION 8.2 Conditions of Termination. As a condition to a termination, abandonment or other disposition pursuant to this Article VIII, any necessary Governmental Actions in connection therewith shall have been obtained by and at the expense of the Operator. Upon the Operator's request, the Owner shall cooperate fully with the Operator in seeking and obtaining all necessary Governmental Actions in connection with the termination or abandonment of any Allocated Asset.

## ARTICLE IX

### Termination

SECTION 9.1 Termination. (a) Unless the Operator exercises its renewal option under Article XVII, upon termination of this Agreement or return of any Reversion Asset pursuant to Section 2.3 hereof, the Operator shall, at its risk, cost and expense, cause the Allocated Assets subject to this Agreement at such time or the Reversion Assets to be (i) free and clear of all Liens other than Owner Liens, (ii) in compliance with the maintenance and operating provisions of this Agreement, and (iii) otherwise capable of being maintained, used and operated substantially in compliance with Applicable Law for the operation of a railroad appropriate to conditions existing at such time.

(b) Upon the termination of this Agreement or return of any Reversion Asset pursuant to Section 2.3 hereof, the Operator will, at the Operator's expense, promptly and duly execute and deliver to the Owner such documents and take such further actions as the Owner may reasonably request in order to effect the return of such Allocated Assets or Reversion Assets, including any Assigned Right, to the Owner or its designee.

SECTION 9.2 Owner Assignment, Lease or Sale of Allocated Asset. The Operator agrees that during the last year of the Term or any Renewal Term, it will cooperate in all reasonable respects with efforts of the Owner to lease, sell assign or otherwise transfer any Allocated Asset to any designee of the Owner.

SECTION 9.3 Governmental Approvals. The Operator shall cooperate and assist the Owner, at the expense of the Owner, in transferring or obtaining all Governmental Actions which may be necessary for the Owner or its designee, as the case may be, to operate, lease, purchase, assume or otherwise be a party to or beneficiary of any returned Allocated Asset and any Reversion Asset.

SECTION 9.4 Severable Modifications. At any time after the Operator has notified the Owner that it has determined not to renew this Agreement pursuant to Article XVII, or operational responsibility for the Allocated Assets or Reversion Assets reverts to the Owner, the Operator shall at the Owner's request, advise the Owner of the nature and condition of all Severable Modifications owned by the Operator pursuant to Section 7.2(b)(ii) hereof which the

Operator has removed or intends to remove from the Allocated Assets or Reversion Assets in accordance with Section 7.2(c) hereof. The Operator may (and shall, if so directed by Owner), at its sole cost, expense and risk, remove from any Allocated Asset or Reversion Asset any Severable Modification; *provided*, that any such Modification not removed pursuant to this Section 9.4 shall be deemed to be part of the Allocated Asset or Reversion Asset to which it relates for all purposes hereof and title to such Modification shall thereupon vest in the Owner free and clear of all Liens, other than Owner Liens.

## ARTICLE X

### Loss, Destruction, Condemnation, Damage, etc.

#### SECTION 10.1 Replacement; Payment.

(a) Upon the occurrence of an Event of Loss, or an event which with the passage of time would become an Event of Loss, with respect to any Allocated Asset, the Operator shall:

(i) replace the Allocated Asset which suffered the Event of Loss, with a replacement asset (which will become an Allocated Asset) which has a fair market value equivalent to that of the Allocated Asset which suffered the Event of Loss (as determined solely by the Operator) immediately prior to such Event of Loss (assuming such Allocated Asset was then in the condition and state of repair required by this Agreement); or

(ii) the Operator may retain the sale proceeds, if any, received for the Allocated Asset suffering the Event of Loss and shall credit to the Settlement Account the fair market value of such Allocated Asset immediately prior to such Event of Loss (assuming such Allocated Asset was then in the condition and state of repair required by this Agreement), which fair market value in no event shall be less than the sale proceeds received for such Allocated Asset. Upon the crediting of the Settlement Account with the fair market value of such Allocated Asset, such Allocated Asset shall no longer be subject to this Agreement and the Owner shall convey to the Operator or its designee, ownership of and title to such Allocated Asset. Notwithstanding the foregoing, until payment by the Operator to the Owner of the amount credited to the Settlement Account on the next succeeding Settlement Account Payment Date, the Allocated Asset suffering the Event of Loss shall be deemed to continue to be subject to this Agreement solely for the purpose of calculating the Operating Fee.

(b) Upon compliance by the Operator with Section 10.1(a)(i), (i) this Agreement shall continue with respect to any replacement Allocated Asset as though no Event of Loss had occurred, (ii) the Owner shall convey "as is" "where is", free and clear of all Owner Liens, without recourse or warranty (except as to the ability and authority of the Owner to transfer and convey such Allocated Asset free and clear of Owner Liens), to the Operator or its

designee all right, title and interest of the Owner in and to the Allocated Asset being replaced by executing and delivering to the Operator or its designee such bills of sales and other documents or instruments as the Operator or its designee may reasonably request to evidence such conveyance, and (iii) the Owner shall assign to the Operator all claims it may have against any other Person arising from the event which gave rise to the replacement.

(c) Upon compliance by the parties with Section 10.1(a)(ii), the Owner shall convey "as is" "where is", free and clear of all Owner Liens, without recourse or warranty (except as to the ability and authority of the Owner to transfer and convey such Allocated Asset free and clear of Owner Liens) to the Operator or its designee all right, title and interest of the Owner in and to such Allocated Asset by executing and delivering to the Operator or its designee such bills of sales and other documents or instruments as the Operator or its designee may reasonably request to evidence such conveyance.

**SECTION 10.2 Applications During Event of Default.** Any amount that shall be payable to the Operator pursuant to this Agreement arising out of any warranty, governmental award or otherwise received in respect of any Allocated Asset shall not be paid to the Operator or, if it shall have been previously paid to the Operator, shall not be retained by the Operator but shall be paid to the Owner, if at the time of such payment any Event of Default shall have occurred and be continuing. In such event, all such amounts shall be paid to and held by the Owner in trust as security for the obligations of the Operator to make payments under this Agreement or applied by the Owner toward payment of any of such obligations of the Operator at the time due hereunder. At such time as there shall not be continuing any Event of Default all such amounts at the time held by the Owner in excess of the amount, if any, that the Owner shall have elected to apply as above provided shall be paid to the Operator.

**SECTION 10.3 Application of Article VII.** Article VII shall not apply to any Allocated Asset after an Event of Loss has occurred with respect to such Allocated Asset; *provided*, that the foregoing shall not limit the obligations of the Operator under Article VII hereof with respect to any replacement Allocated Asset.

## **ARTICLE XI**

### **Indemnities**

**SECTION 11.1 Indemnity by Operator.** (a) The Operator assumes and shall be fully responsible for all liabilities attributable in any way to the Allocated Assets, or to operations on or over the Allocated Assets, except for (i) Retained Liabilities and any other liabilities with respect to which it is the responsibility of any Person other than the Operator under the terms of the Transaction Agreement and the Ancillary Agreements to indemnify the Owner, and (ii) liabilities that arise prior to the Closing Date referred to in Section 2.8(b)(ii) or Section 2.8(c) of the Transaction Agreement; *provided*, that for the purposes of this Section 11.1(a), the term



"Ancillary Agreements" as used in the parenthetical included in Sections 2.8(b) and 2.8(c) of the Transaction Agreement shall be deemed not to include this Agreement. To that end, the Operator agrees to and shall protect, indemnify and hold wholly harmless the Owner and its directors, officers, employees and agents (each an "Owner Indemnified Person") from and against any Damages arising from or attributable to the liabilities assumed by the Operator under the first sentence of this Section 11.1(a).

(b) Upon payment in full of any indemnity pursuant to this Section 11.1, the Operator shall, to the extent of such payment and so long as no Event of Default shall have occurred and be continuing, be subrogated to any rights of the Owner Indemnified Person in respect of the matter against which such indemnity was given (other than with respect to any insurance policies carried by such Owner Indemnified Person).

**SECTION 11.2 Indemnity by Owner.** (a) The Owner shall be fully responsible for all liabilities which arise prior to the Closing Date which are referred to in Section 2.8(b)(ii) or Section 2.8(c) of the Transaction Agreement. To that end, the Owner agrees to and shall protect, indemnify and hold wholly harmless the Operator and its directors, officers, employees and agents (each, an "Operator Indemnified Person") from and against any and all Damages arising from or attributable to (i) Retained Liabilities and any other liabilities with respect to which it is the responsibility of any Person other than the Operator under the terms of the Transaction Agreement and the Ancillary Agreements to indemnify the Owner, and (ii) liabilities that arise prior to the Closing Date referred to in Section 2.8(b)(ii) and Section 2.8(c) of the Transaction Agreement; *provided*, that for the purposes of this Section 11.2(a), the term "Ancillary Agreements" as used in the parenthetical included in Sections 2.8(b) and 2.8(c) of the Transaction Agreement shall be deemed not to include this Agreement.

(b) Upon payment in full of any indemnity pursuant to this Section 11.2, the Owner shall, to the extent of such payment, be subrogated to any rights of the Operator Indemnified Person in respect of the matter against which such indemnity was given (other than with respect to any insurance policies carried by such Operator Indemnified Person).

**SECTION 11.3 Indemnification Procedures.** (a) If any Action shall be threatened or instituted or any claim or demand shall be asserted against any Indemnified Party in respect of which indemnification may be sought under the provisions of this Agreement, the Indemnified Party shall promptly cause written notice of the assertion of any such claim, demand or Action of which it has knowledge to be forwarded to the Indemnifying Party. Such notice shall contain a reference to the provisions hereof or of such other agreement, instrument or certificate delivered pursuant hereto, in respect of which such claim is being made. The Indemnified Party's failure to give the Indemnifying Party prompt notice shall not preclude the Indemnified Party from obtaining indemnification from the Indemnifying Party under this Article XI unless the Indemnified Party's failure has materially prejudiced the Indemnifying Party's ability to defend the claim, demand or Action.



(b) If the Indemnified Party seeks indemnification from the Indemnifying Party as a result of a claim or demand being made by a third party (a "Third Party Claim"), the Indemnifying Party shall have the right promptly to assume the control of the defense of any Action with respect to such Third Party Claim, including, at its own expense, employment by it of counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party may, in its sole discretion and at its own expense, employ counsel to represent it in the defense of the Third Party Claim, and in such event counsel for the Indemnifying Party shall cooperate with counsel for the Indemnified Party in such defense, provided that the Indemnifying Party shall direct and control the defense of such Third Party Claim or proceeding. The Indemnifying Party shall not consent to the entry of any judgment, except with the written consent of the Indemnified Party, and shall not enter into any settlement of such Third Party Claim without the written consent of the Indemnified Party which does not include as an unconditional term thereof the release of the Indemnified Party from all Liability in respect of such Third Party Claim.

## ARTICLE XII

### Assignments: Sub-Operating Agreements

SECTION 12.1 Operator Assignments. Except as otherwise provided in this Agreement, the Operator may not, without the prior written consent of the Owner, and subject to any applicable Governmental Actions, assign, transfer, sublease or otherwise grant the right to use any Allocated Asset or its interest therein or rights with respect thereto, including any Assigned Right.

SECTION 12.2 Merger, Consolidation, Etc. The Operator, without the consent of the Owner, may assign all or any part of its rights and obligations under this Agreement to (i) any of its controlled Subsidiaries or (ii) any successor in the event of a merger, consolidation, sale of all or substantially all its assets, liquidation or dissolution, if such assignee executes and delivers to the Owner an agreement reasonably satisfactory in form and substance to the Owner under which such assignee assumes and agrees to perform and discharge all the obligations and liabilities of the Operator; *provided* that any such assignment shall not relieve the Operator from the performance and discharge of such obligations and liabilities.

SECTION 12.3 Owner Assignments. The Owner shall not transfer or assign any part of its right, title and interest in this Agreement or any Allocated Assets used hereunder without the prior written consent of the Operator.

## ARTICLE XIII

### Inspection; Markings

SECTION 13.1 Rights to Information. The Owner may at its own expense, upon reasonable prior notice to the Operator during the normal business hours of the Operator, no more frequently than once in any calendar year, inspect the Allocated Assets and the books and records of the Operator relating to the maintenance and performance of such Allocated Assets and make copies and extracts therefrom, and may discuss such matters with the Operator's officers. Upon the occurrence and during the continuance of an Event of Default, the Owner may inspect such books and records at any time, which inspections shall be at the expense of the Operator. The Owner also shall have the right to obtain information regarding the condition and state of repair of any Allocated Asset, compliance by the Operator with Article VII hereof and the absence of an Event of Default.

SECTION 13.2 Markings. The Operator shall affix to certain Allocated Assets agreed to by the Operator and Owner identifying labels, plates or tags each setting forth such information as the Operator and Owner may agree. The Operator covenants and agrees to replace any such label, plate or tag which may be removed or destroyed or become illegible, and the Operator shall indemnify each Owner Indemnified Person against any liability, loss or expense incurred by such Owner Indemnified Person as a result of the failure to maintain such markings.

## ARTICLE XIV

### Events of Default

SECTION 14.1 Events of Default. Each of the following events shall constitute an Event of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) the Operator shall fail to make any payment of (i) the Operating Fee when due and such failure shall continue unremedied for a period of thirty (30) Business Days and (ii) any Supplemental Operating Fees due under this Agreement and such failure shall continue unremedied for a period of thirty (30) Business Days; or

(b) the Operator shall fail to perform or observe any other material covenant, condition or agreement to be performed or observed by it under this Agreement and such failure shall continue unremedied for a period of one hundred twenty (120) Business Days after notice thereof shall have been given to the Operator by the Owner; *provided*, that the continuation of any such failure or breach (other than a failure or breach curable by payment of money) for a period longer than such one hundred twenty (120) Business Day period shall not constitute an

Event of Default if (i) such default is curable but cannot be cured within such one hundred twenty (120) Business Day period and (ii) the Operator is diligently pursuing the cure of such default; *provided, further*, that any such failure or breach (other than a failure or breach curable by payment of money) shall constitute an Event of Default if such failure is not cured within the earlier of the last Business Day of the Term and four hundred fifty (450) days from the date notice thereof has been given to the Operator; or

(c) The Operator (i) shall commence a voluntary Insolvency Proceeding, (ii) shall seek the appointment of a trustee, receiver, liquidator, sequestrator, custodian or other similar official of the Operator or any substantial part of the Operator's property, (iii) shall acquiesce in or consent to any such relief or to the appointment of or taking possession by any such official in an involuntary Insolvency Proceeding commenced against it, (iv) shall make a general assignment for the benefit of creditors, or (v) shall fail generally to pay its undisputed debts as they become due; or

(d) an involuntary Insolvency Proceeding shall be commenced against the Operator seeking liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, assignee, sequestrator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of one hundred twenty (120) consecutive Business Days.

## ARTICLE XV

### Remedies

SECTION 15.1 Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Owner may, at its option, declare by written notice to the Operator this Agreement to be in default; and at any time thereafter so long as such Event of Default shall not have been remedied, the Owner may do one or more of the following with respect to the Allocated Assets:

(a) sell the Allocated Assets at public or private sale, as the Owner may determine, or otherwise dispose of, hold, use, operate, lease to others or keep unused the Allocated Assets as the Owner, in its sole discretion, may determine, all free and clear of any rights of Operator;

(b) whether or not the Owner shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a) above, the Owner, by written notice to the Operator, may demand that the Operator pay to the Owner, and the Operator shall pay to the Owner, any accrued but unpaid Operating Fees (together with interest, if any, on such amount at

the Overdue Rate from such specified payment date until the date of actual payment of such amount);

(c) The Owner may terminate this Agreement and the rights of the Operator to use the Allocated Assets pursuant hereto.

The Owner may exercise one or more remedies in respect of certain Allocated Assets and one or more other remedies in respect of other Allocated Assets.

No termination of this Agreement, in whole or in part, or exercise of any remedy under this Article XV shall, except as specifically provided herein, relieve the Operator of any of its liabilities and obligations hereunder, all of which then outstanding shall survive such termination, repossession or exercise of remedy. In addition, the Operator shall be liable for any and all Fees and Expenses and other costs and expenses incurred by the Owner by reason of the occurrence of any Event of Default or the exercise of the remedies of the Owner with respect thereto. At any sale of any Allocated Assets or any part thereof pursuant to this Article XV, the Owner may bid for and purchase such property.

**SECTION 15.2 Owner Rights.** To the fullest extent permitted by Applicable Law, each and every right, power and remedy herein specifically given to the Owner or otherwise in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically given herein or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Owner, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Owner in the exercise of any right, power or remedy or in the pursuit of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Operator or to be an acquiescence therein. No express or implied waiver by the Owner of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

**SECTION 15.3 Exercise of Other Rights or Remedies.** In addition to all rights and remedies provided in this Article XV, the Owner may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

**SECTION 15.4 Subject to Governmental Action.** The exercise of any right or remedy provided for in this Article XV shall be subject to any applicable Governmental Action.



## ARTICLE XVI

### Right to Perform

SECTION 16.1 Right to Perform. If the Owner shall fail to make any payment or perform under, or comply with, any contract, lease, license or other agreement in respect of the Allocated Assets to which the Owner is a party, the Operator may (but shall have no duty to do so) make such payment or perform or comply with such agreement, and the Operating Fee shall be reduced in the amount of such payment and the amount of all expenses of the Operator (including Fees and Expenses) incurred in connection with such payment or the performance of or compliance with such agreement.

## ARTICLE XVII

### Renewal Options

#### SECTION 17.1 Renewal Notice

(a) The Operator shall have the option to renew this Agreement twice. Not less than one (1) year before expiration of the Term or the initial Renewal Term, the Operator may deliver to the Owner a notice (the "Renewal Notice") of the Operator's election to renew this Agreement in respect of all, but not less than all, Allocated Assets for a renewal period of ten (10) years (or, if there has already been a renewal period, an additional renewal period of ten (10) years), or such other period of time as the Owner and the Operator shall mutually agree (each such period, a "Renewal Term").

(b) All terms of this Agreement shall continue in full force and effect during each such Renewal Term.

(c) In the event the Operator elects to renew this Agreement, the Renewal Term will commence on the day immediately following the expiration of the Term or initial Renewal Term and continue until the end of such Renewal Term.

(d) The Renewal Notice, once given, shall be irrevocable and the option to renew this Agreement shall expire if the Operator does not deliver the Renewal Notice by the times provided in Section 17.1(a) hereof.

(e) Notwithstanding the foregoing, the Operator shall have no right to renew this Agreement if any Event of Default exists on the date of delivery of the Renewal Notice or the commencement of the Renewal Term.

## ARTICLE XVIII

### Certain Notices and Information

SECTION 18.1 Notice of Event of Default. Promptly after an executive officer of the Operator shall have actual knowledge of the occurrence or existence of any Event of Default or any event which, with the passing of time or giving of notice, would constitute an Event of Default, the Operator shall so notify the Owner and set forth in reasonable detail the circumstances surrounding such event or Event of Default and shall specify what actions the Operator has taken or intends to take to cure such event or Event of Default.

SECTION 18.2 Information Regarding Allocated Assets. The Operator shall promptly furnish the information at such times and in such format as is regularly produced by the Operator concerning the condition, maintenance and use of the Allocated Assets as the Owner may reasonably request.

## ARTICLE XIX

### Confidentiality

SECTION 19.1 Confidentiality. The parties hereto shall hold, and shall cause their respective officers, employees, agents, consultants and advisors to hold, in strict confidence, unless compelled to disclose by judicial or administrative process or, in the opinion of its independent legal counsel, by other requirements of law, all information furnished it by the other party hereto, or their respective representatives, pursuant to this Agreement (except to the extent that such information can be shown to have been (i) available to such Person on a non-confidential basis prior to its disclosure by the other Person, (ii) in the public domain through no fault of such Person or (iii) later lawfully acquired from other sources by the Person to which it was furnished), and no Person shall release or disclose such information to any other Person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors who shall be bound by the provisions of this Section 19.1. In the event that a subpoena, discovery or other request that arguably calls for production or disclosure of such confidential information is received, the Person receiving such request must promptly notify in writing the Person whose information has been requested. The Person receiving such request shall provide the Person whose confidential information has been requested, a reasonable opportunity to review such information and to assert any rights it may have with respect to the potential disclosure of such confidential information. Each party shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by the other party hereto, if it exercises the same care as it takes to preserve confidentiality for its own similar information.

## ARTICLE XX

### Miscellaneous

SECTION 20.1 Dispute Resolution. Except as otherwise specifically provided for herein, 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 or thereof, shall be settled in accordance with the provision of Section 11.12 of the Transaction Agreement.

SECTION 20.2 Documentary Conventions. This Agreement shall be governed by, and construed in accordance with, all the Documentary Conventions.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have each caused this Operating Agreement to be duly executed as of the date first above written.

PENNSYLVANIA LINES LLC,  
as OWNER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NORFOLK SOUTHERN RAILWAY COMPANY,  
as OPERATOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



SCHEDULE I  
to Operating Agreement

ADDRESSES AND PAYMENT INFORMATION

Owner

Pennsylvania Lines LLC

Operator

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, Virginia 23510  
Telecopy number: 757-629-[ ]  
Attention: [Name]

## DEFINITIONS AND RULES OF USAGE

### Rules of Usage

The terms defined below shall have the respective meanings set forth below for all purposes, and such meanings shall be equally applicable to both the singular and plural forms of the terms defined. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. "Writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form. Any instrument or Applicable Law defined or referred to below or in any instrument that recites it is to be construed in accordance with this Appendix means such instrument or Applicable Law as from time to time amended, modified or supplemented, including (in the case of instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of instruments) references to all attachments thereto and instruments incorporated therein, *provided*, that any reference to the Bankruptcy Code shall mean the Bankruptcy Code as in effect on the date of reference thereto and applicable to the relevant case. References to any Person are, unless the context otherwise requires, also to its successors and assigns. "Hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References to any gender include, unless the context otherwise requires, references to all genders, and references to the singular include, unless the context otherwise requires, references to the plural and vice versa. "Shall" and "will" have equal force and effect. References in an instrument to "Article", "Section" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section or subdivision of or an attachment to such instrument.

### Definitions

"Action" shall mean any action, claim, suit, arbitration, inquiry, subpoena, discovery request, proceeding or investigation by or before any Governmental Authority or forum or authority having jurisdiction over the matter involving or related to any Owner Indemnified Person, any Operator Indemnified Person or the Allocated Assets.

"Affiliate" means, with respect to a specified Person, any Person that directly or indirectly controls, is controlled by or is under common control with, the specified Person or any trust for the benefit of such Person or any entities controlled by such Person; *provided* that (a) NYC shall not be an Affiliate of CSX and its Subsidiaries or NSC and its Subsidiaries, (b) PRR shall not be an Affiliate of NSC and its Subsidiaries or CSX and its Subsidiaries and (c) CSX and NSC and their respective Subsidiaries shall not be Affiliates of CRR or CRR Parent and their respective Subsidiaries and vice versa.

"Agreement" means the Operating Agreement, dated as of the Closing Date, between the Owner and the Operator.

"Allocated Asset" means the assets identified in or pursuant to the Transaction Agreement as the PRR Allocated Assets other than, as of the Reversion Date, the Reversion Assets.

"Applicable Law" means, with respect to any Person or to any Allocated Asset, all laws, ordinances, judgments, decrees, injunctions, writs and orders of any Governmental Authority and any Governmental Actions applicable to or having jurisdiction over such Person or Allocated Asset.

"Appraisal Procedure" means a procedure whereby an independent third-party appraiser jointly by the Owner and the Operator determines the Fair Market Rental Value of the Allocated Assets or confirms the reasonableness of the fair market value of the Allocated Assets credited to the Settlement Account. The fees and expenses of the appraiser shall be divided equally between the Owner and the Operator.

"arises prior" means that the circumstances giving rise to the liability have transpired prior to the applicable date, whether or not such liability has been discovered, asserted or accrued prior to such date. If the circumstances giving rise to a liability bridge the Closing Date, the parties will apportion it to pre-Closing Date and post-Closing Date periods, with disagreement being subject to the dispute resolution provisions of Section 20.1 of the Agreement.

"Assigned Rights" means Contracts and rights included in the Allocated Assets.

"Bankruptcy Code" means the United States Bankruptcy Code of 1978, as amended from time to time, and the rules and regulations promulgated thereunder.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks are authorized or required to be closed in New York, New York and Richmond, Virginia.

"Closing Date" is the date of this Agreement.

"Contracts" means any contract, lease, loan agreement, deed, easement, license, reversion, mortgage, security agreement, trust indenture or other agreement or instrument to which the Owner is a party or by which it is bound or to which any of the Allocated Assets is subject.

"Contractual Obligation" means, with respect to any Person, any provision of any security issued by such Person or of any Contract to which such Person is a party or by which it or any of its property is bound.

"CRC" means Consolidated Rail Corporation, a Pennsylvania corporation.

"CRR" means Conrail Inc., a Pennsylvania corporation.

"CSX" means CSX Corporation, a Virginia corporation.

"CSXT" means CSX Transportation, Inc., a Virginia corporation.

"Documentary Conventions" means, with respect to an instrument that states in substance that it is governed thereby, that, except as otherwise expressly provided therein:

(a) Documentary Convention—Survival. The representations, warranties and agreements of the parties contained or provided for in such instrument and the parties' obligations under any and all thereof shall survive the execution and delivery of such instrument and the expiration or other termination of the Agreement and shall be and continue in effect notwithstanding the fact that any party may waive compliance with any other term, provision or condition of the Agreement.

(b) Documentary Convention—Governing Law. Such instrument shall become effective upon delivery and shall in all respects be governed by, and construed in accordance with, the laws (excluding principles of conflict of laws) of the Commonwealth of Virginia applicable to agreements made and to be performed entirely within such state, including all matters of construction, validity and performance.

(c) Documentary Convention—Counterparts. Except as otherwise specifically provided in the Agreement, such instrument may be executed by the parties thereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. To make proof of such instrument, it shall only be necessary to produce one such counterpart executed by each party thereto. All signatures need not be on the same counterpart.

(d) Documentary Convention—Method of Payment. All amounts required to be paid by any party to such instrument to any other party, either thereunder or under the Agreement shall be paid in such immediately available and freely transferable Dollars as at the time of payment shall be legal tender for the payment of public and private debts, by wire transfer, or other method of payment acceptable to the payee, of immediately available funds to the account of the payee set forth in Schedule I to the Agreement or to such other account located in the U.S. as such payee may specify by notice to the other parties.

(e) Documentary Convention—Parties in Interest; Limitation on Rights of Others. The terms of such instrument shall be binding upon, and inure to the benefit of, the parties thereto and their permitted successors and assigns. Nothing in such instrument shall be construed to give any Person (other than the parties thereto and their permitted successors and assigns and as expressly provided therein) any legal or equitable right, remedy or claim under or in respect of such instrument or any covenants, conditions or provisions contained therein.

(f) Documentary Convention—Table of Contents; Headings. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of such instrument are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of such instrument. To the extent of any inconsistency between the headings and any text, such text shall govern.



(g) Documentary Convention—Entire Agreement; Amendment and Waiver. The Agreement, the other Ancillary Agreements and the Transaction Agreement constitute the entire agreement of the parties thereto with respect to the subject matter thereof and supersede all prior written and oral agreements and understandings with respect to such subject matter. Neither the Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought and subject to any other limitations on amendments set forth in the Agreement, the other Ancillary Agreements and the Transaction Agreement. Any amendment, modification or supplement to the Agreement shall be subject to any applicable Governmental Action. No failure or delay of any party in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

(h) Documentary Convention—Severability. Any provision of such instrument that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the parties to such instrument waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

(i) Documentary Convention—Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms of such instrument to be given to any Person shall be in writing, and any such notice shall become effective five (5) Business Days after being deposited in the mails, certified or registered, with appropriate postage prepaid for first class mail or, if delivered by hand or courier service or in the form of a telecopy, when received, and shall be directed to the address or telecopy number of such Person set forth in Schedule I to the Agreement. From time to time any party to such instrument may designate a new address or telecopy number for purposes of notice thereunder by notice to each of the other parties thereto, effective when received.

(j) Documentary Convention—Payment on Business Days. If any payment under such instrument is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day without any additional interest for such extension period so long as payment is made on such Business Day.

"Dollars" or "\$" means dollars in the lawful currency of the United States of America.

"Event of Default" has the meaning set forth in Section 14.1 of the Agreement.

"Event of Loss" means, with respect to any Allocated Asset, the occurrence of any of the following events: (a) the loss or theft of such Allocated Asset to the extent that such Allocated Asset is not recovered within one hundred eighty (180) days of such event or, if earlier, the expiration of the Term, (b) the destruction of or damage to such Allocated Asset or any part thereof to such extent as shall render repair of such Allocated Asset uneconomical to the Operator or unfit or unsuitable for its intended use, which destruction or damage is an actual or constructive total loss, (c) the requisition of use of such Allocated Asset for an indefinite period or for a stated period in excess of one hundred eighty (180) days or, if earlier, which ends later than the expiration of the Term by any Governmental Authority under power of eminent domain or otherwise, (d) the condemnation, confiscation, seizure or requisition of title to such Allocated Asset by a Governmental Authority, (e) any damage to such Allocated Asset which results in an insurance settlement on the basis of an actual or constructive total loss, (f) the prohibition by Applicable Law of the use of such Allocated Asset by the Operator or any other Person for a period of one hundred eighty (180) consecutive days from the date of such prohibition or, if earlier, the end of the Term. The date of occurrence of an Event of Loss in respect of any Allocated Asset shall be deemed to be, (1) in the event of damage to such item, the date of such damage, (2) in the event of a condemnation or requisition of title by a Governmental Authority, the date thereof, and (3) in the event of an Event of Loss under clause (a), (c) or (f) of the first sentence of this definition, the date of expiration of the period referred to in said clause.

"Excluded Taxes" has the meaning set forth in Section 3.5 of the Agreement.

"Fair Market Rental Value" means, as to the Allocated Assets, the fair market rental value that would be obtained in an arm's length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, for the lease of the Allocated Assets, disregarding the fact (if applicable) that the Allocated Assets are subject to the Agreement and assuming that Article VII of the Agreement shall have been complied with in all respects. Subject to the foregoing, the Fair Market Rental Value as to the Allocated Assets shall be such value determined in accordance with the Appraisal Procedure.

"Fees and Expenses" means, with respect to any Person in connection with any transaction or occurrence, the reasonable fees and expenses of its legal counsel for such transaction or occurrence.

"Governmental Action" means all authorizations, consents, approvals, waivers, exceptions, variances, franchises, permissions, permits and licenses of, and filings and declarations with, Governmental Authorities.

"Governmental Authority" means any federal, state, municipal, county, local or foreign governmental Person, authority or agency, court, regulatory commission, stock exchange or other similar body.

"Income Tax Regulations" means the regulations promulgated by the U.S. Department of the Treasury pursuant to the Code.

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"Indemnifying Party" means a Person who requires or requests indemnification under Article XI of the Agreement.

"Indemnified Party" means any Owner Indemnified Person or Operator Indemnified Person.

"Insolvency Proceeding" means any case or proceeding under bankruptcy, insolvency, reorganization, receivership, moratorium or other laws providing relief to debtors.

"Lien" means any lien, mortgage, encumbrance, pledge, charge, lease, easement, servitude or security interest or any interests similar to the foregoing, including those existing under any conditional sales or other title retention agreement or the filing of or agreement to deliver any financing statement under the UCC.

"Modification" means, with respect to any Allocated Asset, any modification, alteration, addition, upgrade or improvement to such Allocated Asset.

"Nonseverable Modification" means any Required Modification and any Modification which is not readily removable without impairing the fair market value, residual value, condition, remaining useful life or utility of the Allocated Asset to which such Modification relates immediately prior to such Modification.

"NSC" means Norfolk Southern Corporation, a Virginia corporation.

"NSR" means Norfolk Southern Railway Company, a Virginia corporation.

"NYC" means New York Central Lines LLC, a Delaware limited liability company.

"Obsolescence Termination Payment" has the meaning set forth in Section 8.2 of the Agreement.

"Operating Fee" means the operating fee agreed to from time to time by the Owner and Operator based on the Fair Market Rental Value of the Allocated Assets as set forth in a supplement to this Agreement.

"Operator" means NSR or any permitted successor or assign.

"Operator Indemnified Person" has the meaning set forth in Section 11.2 of the Agreement.

"Optional Modification" has the meaning set forth in Section 7.2(a) of the Agreement.

"Organic Document" means, with respect to any Person, as applicable, the certificate or articles of incorporation, partnership agreement, limited liability company agreement, certificate of



formation, membership agreement, by-laws and all other organizational documents of such Person.

"Overdue Rate" means the rate equal to the lesser of (i) the prime rate set forth in *The Wall Street Journal* and (ii) the maximum rate allowed by Applicable Law.

"Owner" means PRR, a Delaware limited liability company.

"Owner Indemnified Person" has the meaning set forth in Section 11.1 of the Agreement.

"Owner Lien" means a Lien (i) which results from acts of, or any failure to act by, or as a result of claims against, the Owner, (ii) in favor of any taxing authority by reason of the non-payment by the Owner, or (iii) which results from acts of, or any failure to act by, the Owner in violation of its obligations under the Agreement.

"Payment Date" means each March 31, June 30, September 30 and December 31 or, if such day is not a Business Day, the next succeeding Business Day.

"Permitted Liens" means, with respect to any Allocated Asset,

(a) The respective rights and interests of the Operator and Owner under the Agreement,

(b) Owner Liens,

(c) Liens for Taxes which are not yet due or so long as no Event of Default shall have occurred and be continuing are being contested in good faith by appropriate proceedings which suspend the collection thereof; *provided*, that such proceedings shall not involve any material danger of the sale, forfeiture or loss of such Allocated Asset or any part thereof or interest therein or the reasonably foreseeable risk of imposition of any criminal liability on the Owner or any other material liability not indemnified against by the Operator,

(d) Liens of mechanics, materialmen, laborers, employees or suppliers and similar Liens arising by operation of law, in each case incurred by the Operator in the ordinary course of business for sums that are not overdue for more than sixty (60) days or so long as no Event of Default shall have occurred and be continuing are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof; *provided*, that such contest does not involve any material danger of the sale, forfeiture or loss of such Allocated Asset or any part thereof or interest therein or the reasonably foreseeable risk of imposition of any criminal liability on the Owner or any other material liability not indemnified against by the Operator,

(e) Liens arising out of any judgments or awards against the Operator with respect to which (i) at the time an appeal or proceeding for review is being prosecuted in good faith, (ii) there shall have been secured a stay of execution pending such appeal or proceeding for

review, (iii) during such proceeding there is not, and such proceeding does not involve, any material danger of the sale, forfeiture or loss of such Allocated Asset or any part thereof or any interest therein or the risk of imposition of any criminal liability on the Owner or any other liability not indemnified against by the Operator, and (iv) if such Liens have specifically attached to any Allocated Asset, the Operator has provided the Owner with security reasonably satisfactory to the Owner, in the amount of such claims,

(f) Liens, rights of way, easements and other rights to use the Allocated Assets (including licenses for private crossings) common in the railroad industry arising out of the ordinary course of business of the Operator,

(g) the rights and interests of any permitted Qualified Sub-Operator, and

(h) Liens consented to by the Owner.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"PRR" means Pennsylvania Lines LLC, a Delaware limited liability company.

"Renewal Notice" has the meaning set forth in Section 17.1(a) of the Agreement.

"Renewal Operating Fee" has the meaning set forth in Section 17.1(b) of the Agreement.

"Renewal Term" has the meaning set forth in Section 17.1(a) of the Agreement.

"Required Modification" has the meaning set forth in Section 7.2(a) of the Agreement.

"Reversion Assets" has the meaning set forth in Section 2.3 of the Agreement.

"Reversion Date" has the meaning set forth in Section 2.3 of the Agreement.

"Reversion Notice" has the meaning set forth in Section 2.3 of the Agreement.

"Settlement Account" has the meaning set forth in Section 6.1 of the Agreement.

"Settlement Account Payment Date" has the meaning set forth in Section 6.2 of the Agreement.

"Severable Modification" means any Modification which is not a Nonseverable Modification.

"Sub-Operating Agreement" has the meaning set forth in Section 12.1(a) of the Agreement.

"Substantial Allocated Asset" means (i) an Allocated Asset with a fair market value in excess of \$10 million or (ii) a group of Allocated Assets that (a) are sold, transferred or otherwise disposed of during any calendar year to the same Person (including Affiliates of such Person) or the same group of Persons (including Affiliates of such Persons) and (b) have an aggregate fair market value in excess of \$10 million.

"Supplemental Operating Fees" means all amounts payable by the Operator pursuant to the terms of the Agreement, including indemnities payable by the Operator pursuant to Section 11.1 hereof, other than the Operating Fee.

"Tax" means all taxes (including income, franchise, excise, real and personal property, sales, use, payroll and withholding and other taxes) imposed by any federal, state, local, foreign or international taxing authority or Governmental Authority, whether in the form of assessments, levies, imposts, duties, charges, assessments, withholdings or otherwise, now existing or hereafter created or adopted, together with all interest, penalties and additions imposed with respect to such amounts.

"Term" means the period commencing on the Closing Date and terminating on the 25th anniversary thereof.

"Termination Date" means the date on which the Term terminates.

"Third Party Claim" has the meaning set forth in Section 11.3(b) of the Agreement.

"Third Party Provider" has the meaning set forth in Section 4.2(a) of the Agreement.

"Transaction Agreement" means the Transaction agreement among CSX, CSXI, NSC, NSR, CRC, CRR and CRR Holdings LLC dated as of June 10, 1997.

"UCC" means the Uniform Commercial Code as enacted and in effect from time to time in any applicable jurisdiction.

"Valuation Date" means: (i) the Closing Date, (ii) the sixth (6th), twelfth (12th), eighteenth (18th), and twenty-fourth (24th) anniversaries of the Closing Date, (iii) the first day of each Renewal Term; (iv) the sixth (6th) anniversary of the first day of each Renewal Term, (v) a Settlement Account Payment Date (if not already a Valuation Date pursuant to other clauses of this definition), and (vi) such other dates as the parties hereto may agree.

EXHIBIT B

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LIMITED LIABILITY COMPANY AGREEMENT

OF

[NEW YORK CENTRAL LINES LLC/PENNSYLVANIA LINES LLC]

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LIMITED LIABILITY COMPANY AGREEMENT  
OF  
\_\_\_\_\_ LLC

This Limited Liability Company Agreement (this "Agreement") of [New York Central Lines LLC/Pennsylvania Lines LLC] (the "Company"), dated and effective as of \_\_\_\_\_, 1999 is entered into by Consolidated Rail Corporation, a Pennsylvania corporation ("CRC"), as the sole member (the "Member").

WHEREAS, CSX and NSC entered into a letter agreement dated as of April 8, 1997 (the "April 8 Agreement").

WHEREAS, pursuant to the April 8 Agreement, CSX and NSC have jointly acquired all of the outstanding capital stock of CRR through CRR Parent, in which CSX and NSC each owns a 50% voting interest.

WHEREAS, pursuant to the April 8 Agreement, CSX, CSXT, NSC, NSR, CRR Parent, CRR and CRC have entered into a Transaction Agreement dated as of June 10, 1997 (the "Transaction Agreement").

WHEREAS, CSX and NSC intend, through the Transaction Agreement and through the Ancillary Agreements (as defined in the Transaction Agreement), of which this Agreement shall be one, to effectuate certain of the terms of the April 8 Agreement and the Transaction Agreement.

NOW, THEREFORE, subject to filing the Certificate as provided in Section 2.3, the Member hereby forms a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.), as amended from time to time (the "Delaware Act"), as provided herein:

ARTICLE I

DEFINED TERMS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall, for the purposes of this Agreement, have the meanings herein specified.



"Affiliate" shall mean, with respect to a specified Person, any Person that directly or indirectly controls, is controlled by, or is under common control with, the specified Person or any trust for the benefit of such Person or any entities controlled by such Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, for the purposes of this Agreement, (a) neither CRR Parent nor any Subsidiary of CRR Parent, including the Company, shall be an Affiliate of any of CSX or NSC or any of their respective Affiliates (taking into account the effect of this sentence), (b) neither CSX nor NSC nor any of their respective Affiliates (including officers, directors or other employees of CSX and/or NSC who also serve as officers, directors or employees of CRR Parent or any Subsidiary of CRR Parent, including the Company) shall be an Affiliate of CRR Parent or any Subsidiary of CRR Parent, including the Company (taking into account the effect of this sentence), and (c) NYC and PRR shall each be an Affiliate of CRC and its Affiliates and of each other.

"Agreement" shall have the meaning set forth in the preamble hereof.

"April 8 Agreement" shall have the meaning set forth in the recitals hereof.

"Assign" and "Assignment" shall have the meanings set forth in Section 11.2 hereof.

"Capital Contribution" shall have the meaning set forth in Section 6.1 hereof.

"Certificate" shall mean the Certificate of Formation of the Company and any and all amendments thereto and restatements thereof filed on behalf of the Company with the office of the Secretary of State of the State of Delaware pursuant to the Delaware Act.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any corresponding United States federal tax statute enacted after the date of this Agreement. A reference to a specific section (§) of the Code refers not only to such specific section, but also to any

corresponding provision of any United States federal tax statute enacted after the date of this Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Agreement containing such reference.

"Company" shall have the meaning set forth in the preamble hereof.

"Covered Person" shall have the meaning set forth in Section 10.2 hereof.

"CRC" shall have the meaning set forth in the preamble hereof.

"CRR" shall mean Conrail Inc., a Pennsylvania corporation.

"CRR Parent" shall mean CRR Holdings LLC, a Delaware limited liability company.

"CSX" shall mean CSX Corporation, a Virginia corporation.

"CSXT" shall mean CSX Transportation, Inc., a Virginia corporation.

"Delaware Act" shall have the meaning set forth in the preamble hereof.

"Distributions" shall mean distributions of cash or other property made by the Company with respect to the Interest other than distributions of cash or other property to the Member for reasons other than its ownership of the Interest.

"Fiscal Year" shall mean (a) the period commencing upon the date of this Agreement and ending on December 31, 1998 and (b) any subsequent twelve-month period commencing on January 1 and ending on December 31.

"GAAP" means generally accepted accounting principles in the United States.

"Interest" shall mean the unit of limited liability company interest owned by the Member in the Company, which represents all of the rights in the Company to (a) receive

Distributions, (b) receive allocations of profits and losses of the Company and (c) vote.

"Manager" shall have the meaning set forth in Section 5.1 hereof.

"Member" shall mean the Person named as the member of the Company in the preamble hereof and on Schedule A hereto.

"NSC" shall mean Norfolk Southern Corporation, a Virginia corporation.

"NSR" shall mean Norfolk Southern Railway Company, a Virginia corporation.

"Person" includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company or other legal entity or organization.

"Related Party Transaction" shall mean any transaction (i) between the Company, on the one hand, and the Member or its Affiliates, on the other hand, or (ii) between the Company, on the one hand, and [CSX/NSC] or its Affiliates, on the other hand.

"Transaction Agreement" shall have the meaning set forth in the recitals hereof.

Section 1.2 Capitalized Terms. All capitalized terms not defined herein shall have the meanings ascribed to them in the Transaction Agreement.

Section 1.3 Headings. The headings and subheadings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

## ARTICLE II

### FORMATION AND TERM

Section 2.1 Formation. (a) Subject to the filing of the Certificate with the Office of the Secretary of State of the State of Delaware as provided in Section 2.3, the Member hereby forms the Company as a limited liability company under and pursuant to the provisions of the Delaware Act. The rights, duties and liabilities of the Member shall be as provided in the Delaware Act, except as otherwise provided herein.

(b) Upon the execution of this Agreement and the making of the Capital Contribution contemplated by Section 6.1, CRC shall be admitted as the sole Member of the Company and shall be issued the Interest.

(c) \_\_\_\_\_ is hereby designated an authorized person, within the meaning of the Delaware Act, to execute, deliver and file, or cause the execution, delivery and filing of the certificate of formation. The Secretary of the Company is hereby designated an authorized person, within the meaning of the Delaware Act, to execute, deliver and file, or cause the execution, delivery and filing of, all certificates, notices or other instruments (and any amendments and/or restatements thereof) required or permitted by the Delaware Act to be filed in the office of the Secretary of State of Delaware and any other certificates, notices or other instruments (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

Section 2.2 Name. The name of the Company shall be [New York Central Lines LLC/Pennsylvania Lines LLC].

Section 2.3 Term. The term of the Company shall commence on the date the Certificate is filed in the office of the Secretary of State of the State of Delaware, which shall be the date hereof, and shall continue perpetually unless the Company is dissolved pursuant to Section 12.2, which dissolution shall be carried out pursuant to the Delaware Act and the provisions of this Agreement.



Section 2.4 Registered Agent and Office. The Company's registered agent and office in Delaware shall be the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle.

Section 2.5 Principal Place of Business. The principal place of business of the Company shall be the principal place of business of [CSX/NSC] or such other location as the Manager may designate from time to time and embody in a writing to be filed with the records of the Company.

Section 2.6 Qualification in Other Jurisdictions. The Manager shall cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Company transacts business and such qualification, formation or registration is necessary or appropriate for the transaction of such business.

### ARTICLE III

#### PURPOSE AND POWERS OF THE COMPANY

Section 3.1 Purpose. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Delaware Act, and engaging in any and all activities which the Manager deems necessary, convenient, desirable or incidental to the foregoing.

Section 3.2 Powers of the Company. (a) The Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purpose set forth in Section 3.1. Notwithstanding the foregoing sentence, the Company shall not, without the requisite consent of the Member, have the power and authority to take any actions for which written consent of the Member is required pursuant to Section 5.2.

(b) Subject to Section 5.2, the Company may merge with or consolidate into, another corporation, partnership, limited liability company or other business entity (as defined in Section 18-209(a) of the Delaware Act) or convert pursuant

to Section 18-216 of the Delaware Act upon the approval of the Member.

## ARTICLE IV

### MEMBER

Section 4.1 Member. The name and mailing address of the Member shall be listed on Schedule A attached hereto. The Manager shall be required to update Schedule A from time to time as necessary to accurately reflect changes in address and/or the ownership of the Interest. Any amendment or revision to Schedule A made in accordance with this Agreement shall not be deemed an amendment to this Agreement. Any reference in this Agreement to Schedule A shall be deemed to be a reference to Schedule A as amended and in effect from time to time.

Section 4.2 Powers of Member. The Member shall not have the authority to bind the Company by virtue of its status as the Member.

Section 4.3 Member's Interest. The Member's Interest shall for all purposes be personal property. The Member shall have no interest in specific Company assets or property, including any assets or property contributed to the Company by the Member as part of any Capital Contribution.

## ARTICLE V

### MANAGEMENT

Section 5.1 Manager. In accordance with Section 18-402 of the Delaware Act, management of the Company shall be vested in whole in a manager (the "Manager"). The Manager may not be a Member. [NSC/CSX] is designated as the Manager under this Agreement and for purposes of the Delaware Act. The Manager shall receive no interest, salary or drawing for services rendered on behalf of the Company or otherwise in its capacity as a Manager, except as specifically approved by the Member. The Manager may appoint additional persons to be managers of the Company by a writing to such effect and, if such appointment is made, such additional persons shall be

Managers for all purposes hereunder and shall cease to be Managers when such appointment is validly revoked.

Section 5.2 Member Approval. The Company shall not, without the written approval of the Member (other than as is necessary or convenient in connection with a Restructuring):

(a) declare, make or pay any Distributions, including the return of any part of the Capital Contribution;

(b) conduct any business other than, or engage in any transaction not substantially related to and in the ordinary course of, the business of [NYC/PRR] as contemplated under the Transaction Agreement and the Ancillary Agreements or the freight transportation business generally;

(c) consolidate with or merge into any Person or otherwise engage in any business combination;

(d) issue, sell, adjust, split, combine, subdivide, reclassify, transfer, pledge, redeem or otherwise acquire the Interest or any other interest in the Company;

(e) sell, transfer, lease, sublease, license, exchange or otherwise dispose of all or substantially all of the Company's assets (including leasehold interests and intangible assets);

(f) dissolve, liquidate or wind up or commence a voluntary proceeding seeking reorganization or similar relief;

(g) enter into any agreement or arrangement with respect to, or engage in, any Related Party Transaction which is not on arm's length terms;

(h) transfer, provide trackage or operating rights or otherwise grant the right to use any railroad line (regardless of whether the grantor's rights depend on ownership or trackage rights or a combination thereof) which is part of any Main Line within the States of New Jersey or New York, or the area within twenty-five miles of the city of Philadelphia, PA (or consent to any such action by the "Operator" under the [CSXT/NSR] Operating Agreement). As used in the preceding sentence, "Main Line" means a line of railroad that has daily rail service, but does not include any branch line connecting

to a Main Line and does not include the Main Line that lies east of the Hudson River and south of Selkirk, NY; or

(i) amend any material provision of [CSXT/NSR Operating Agreement or the [CSXT/NSR] Equipment Lease.

## ARTICLE VI

### INTEREST AND CAPITAL CONTRIBUTIONS

Section 6.1 Capital Contribution. At the Closing, the Member shall contribute to the capital of the Company (the "Capital Contribution") the [NYC/PRR] Allocated Assets and the [NYC/PRR] Allocated Liabilities.

Section 6.2 Assumption of [NYC/PRR] Allocated Liabilities. At the Closing, the Company shall assume and agree to pay, perform and discharge as and when due all of the [NYC/PRR] Allocated Liabilities, and in furtherance of the foregoing shall enter into a Capital Contribution, Assignment and Assumption Agreement effective as of the Closing.

Section 6.3 Status of the Capital Contribution.

(a) Subject to Section 5.2, the Capital Contribution of the Member may be returned to it, in whole or in part, at any time, at the direction of the Member. Notwithstanding the foregoing, no return of Capital Contribution shall be made hereunder if such distribution would violate applicable state law.

(b) The Member shall receive no interest, salary or drawing with respect to the Capital Contribution or for services rendered on behalf of the Company or otherwise in its capacity as the Member, except as otherwise specifically provided in this Agreement with respect to allocations and distributions.

(c) Except as otherwise provided herein and by the Delaware Act, the Member shall be liable only to make its Capital Contribution pursuant to Section 6.1 hereof, and shall not be required to lend any funds to the Company or, after the Member's Capital Contribution has been made pursuant to Section 6.1 hereof, to make any additional capital contributions to the Company except as provided herein or therein.



## ARTICLE VII

### DISTRIBUTIONS

#### Section 7.1 Distributions: Special Distribution.

Subject to any provisions regarding Distributions which may be provided in the Transaction Agreement and subject to Section 5.2, the Member may declare and make Distributions of cash or property in such amounts and at such times as it deems appropriate, at its sole discretion, subject to the consent of the Manager.

#### Section 7.2 Limitations on Distribution.

Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any Distribution if such Distribution would violate Section 18-607 of the Delaware Act or other applicable law.

## ARTICLE VIII

### BOOKS AND RECORDS

#### Section 8.1 Books, Records and Financial State-

ments. (a) The Company shall at all times maintain, at its principal place of business, separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the Company in accordance with GAAP consistently applied. Such books of account, together with a copy of this Agreement and the Certificate, shall at all times be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times by the Member and its duly authorized representatives for any purpose reasonably related to the Member's interest in the Company.

(b) The Manager shall prepare and maintain, or cause to be prepared and maintained, the books of account of the Company. The following financial information, prepared in accordance with GAAP and applied on a basis consistent with prior periods, which shall be audited and certified to by an independent certified public accountant, shall be transmitted by the Company to the Member as soon as reasonably practicable

and in no event later than thirty days after the close of each Fiscal Year:

(c) balance sheet of the Company as of the beginning and close of such Fiscal Year;

(d) statement of profits and losses for such Fiscal Year;

(e) statement of the Company's cash flows during such Fiscal Year; and

(f) Within five days after the end of each fiscal quarter, the Company shall prepare and provide to the Member an unaudited balance sheet of the Company as of the end of such quarter, a statement of the profits and losses of the Company for such quarter and a statement of cash flows for the period from the beginning of the Fiscal Year to the end of such quarter, each of which shall be prepared in accordance with GAAP, applied on a basis consistent with prior periods, and certified by the Chief Financial Officer of the Company.

Section 8.2 Accounting Method. For both financial and tax reporting purposes and for purposes of determining profits and losses, the books and records of the Company shall be kept on the accrual method of accounting prepared in accordance with GAAP, respectively, applied on a basis consistent with prior periods, and shall reflect all Company transactions and be appropriate and adequate for the Company's business.

Section 8.3 Annual Audit. The financial statements of the Company shall be audited by an independent certified public accountant, selected by the Member, with such audit to be accompanied by a report of such accountant containing its opinion. The cost of such audit shall be an expense of the Company.

## ARTICLE IX

### TAX MATTERS

Section 9.1 Taxation as Branch or Division. To the maximum extent permitted by law, the Company shall be disregarded as an entity separate from the Member (i.e., shall be treated as a branch or division of the Member) for United States federal, state, local and foreign tax purposes and will make any necessary elections to achieve such status.

## ARTICLE X

### LIABILITY MATTERS

Section 10.1 Liability. Except as otherwise provided by the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and or the Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being the Member.

Section 10.2 Exculpation. (a) Neither the Manager, nor any Affiliate of the Manager, nor any officer, director, employee or agent of the Company, the Manager or any Affiliate of the Manager (a "Covered Person") shall be liable to the Company, the Member or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable to the Company for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence, fraud or willful misconduct.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses or any other facts

pertinent to the existence and amount of assets from which Distributions to the Member might properly be paid.

Section 10.3 Insurance. The Company may purchase and maintain insurance, to the extent and in such amounts as the Manager shall deem reasonable or appropriate, on behalf of such Persons as the Manager shall determine, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company or such indemnities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

Section 10.4 Outside Businesses. The Member or an Affiliate of the Member may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company, and the Company and the Member shall have no rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Company, shall not be deemed wrongful or improper. The Member or an Affiliate of the Member shall not be obligated to present any particular investment opportunity to the Company even if such opportunity is of a character that, if presented to the Company, could be taken by the Company, and the Member or an Affiliate of the Member shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment opportunity. The provisions of this Section 10.4 shall not in any way limit, modify or amend the terms of any noncompetition, license or employment agreement that may be entered into between the Company and the Member, which terms shall be binding on the parties thereto.

## **ARTICLE XI**

### **ADMISSION; ASSIGNMENTS**

Section 11.1 Admission. Other than in connection with a Restructuring, and subject to Section 5.2, the Company may not admit any new member and may not issue additional membership interests.



Section 11.2 Assignments of Interests Generally. Other than in connection with a Restructuring, and subject to Section 5.2, the Member, on the one hand, and the Manager, on the other hand, may not, directly or indirectly, sell, assign, transfer, pledge, hypothecate, mortgage or dispose of, by gift or otherwise, or in any way encumber ("Assign," and such act, an "Assignment") all or any part of the Member's Interest or the Manager's rights and duties hereunder, respectively.

Section 11.3 Recognition of Assignment by the Company. No Assignment of the Interest in violation of Sections 11.1 or 11.2 shall be valid or effective, and neither the Company nor the Member shall recognize the same for any purpose. Neither the Company nor the Member shall incur any liability as a result of refusing to make any allocations or Distributions to any Person to whom the Interest is purported to be Assigned in violation of Sections 11.1. or 11.2.

## ARTICLE XII

### DISSOLUTION, LIQUIDATION AND TERMINATION

Section 12.1 No Dissolution. The death, retirement, resignation, expulsion, bankruptcy or dissolution of the Member or the occurrence of any other event that terminates the continued membership of the Member in the Company shall not, in and of itself, cause the dissolution of the Company. In such event, the business of the Company shall be continued by the Member's successor by law or contract.

Section 12.2 Events Causing Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events:

- (a) the written consent of the Member; or
- (b) the entry of a decree of judicial dissolution under Section 18-802 of the Delaware Act.

Section 12.3 Liquidation. Upon dissolution of the Company, the Person or Persons approved by the Member to carry out the winding up of the Company shall immediately commence to wind up the Company's affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors so as to enable the Member to minimize the

normal losses attendant upon a liquidation. The proceeds of liquidation shall be distributed in the following order and priority:

(a) to secured creditors of the Company whether or not the Member, and to unsecured creditors other than the Member, to the extent otherwise permitted by law, in satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof); and

(b) the remainder, to the Member, first in satisfaction of any amounts due as unsecured credits and, thereafter, in respect of the Interest.

Section 12.4 Termination. The Company shall terminate when all of the assets of the Company, after payment, or due provision for all debts, liabilities and obligations, of the Company, shall have been distributed to the Member in the manner provided for in this Article XII and the Certificate shall have been canceled in the manner required by the Delaware Act.

Section 12.5 Claims of the Member. The Member shall look solely to the Company's assets for the return of the Capital Contributions, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contribution, the Member shall have no recourse against the Company.

## ARTICLE XIII

### MISCELLANEOUS

Section 13.1 Notices. All notices provided for in this Agreement shall be in writing, duly signed by the party giving such notice, and shall be hand delivered, faxed (with a confirming copy sent by first class mail) or mailed by registered or certified mail or overnight courier service, to the person and at the address (and, if applicable, fax number) set forth opposite its name on Schedule A attached hereto, or at such other address (and, if applicable, fax number) as the Member or the Company, as the case may be, may hereafter designate by written notice to the other. All such notices shall be deemed to have been given when received.

Section 13.2 Failure to Pursue Remedies. The failure of any Person to seek redress for violation of, or to insist upon the strict performance of, any provision of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 13.3 Cumulative Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Person shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 13.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Member and, to the extent permitted by this Agreement, its successors, legal representatives and assigns.

Section 13.5 Interpretation. All references herein to "Articles," "Sections" and "Paragraphs" shall refer to corresponding provisions of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent in writing and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. It is the intent of the parties hereto that this Agreement shall be an effectuation of certain terms of the April 8 Agreement and

Transaction Agreement consistent with such terms of the April 8 Agreement and Transaction Agreement and that the provisions of this Agreement should be interpreted as subject to and interpreted to give effect to the April 8 Agreement and Transaction Agreement.

Section 13.6 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 13.7 Integration. This Agreement constitutes the entire agreement pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto other than the April 8 Agreement, the Transaction Agreement and the Ancillary Agreements.

Section 13.8 Governing Law. This Agreement and the rights hereunder shall be interpreted in accordance with the laws of the State of Delaware, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws, provided that the arbitration provisions of the Transaction Agreement shall be applicable hereto.

Section 13.9 Amendments. Any amendment to this Agreement shall be adopted and be effective as an amendment hereto upon execution of a written amendment.

Section 13.10 Third Party Beneficiaries. Each of CSX and NSC shall be a third-party beneficiary of this Agreement.

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

MEMBER:

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Schedule A

Member: Consolidated Rail Corporation

Mailing Address:

Attention:

Fax Number:

Company: [New York Central Lines LLC/  
Pennsylvania Lines LLC]

Mailing Address:

Attention:

Fax Number:

**MASTER  
TRACKAGE RIGHTS  
AGREEMENT**

**THIS AGREEMENT**, entered into as of this \_\_\_\_ day of \_\_\_\_\_ 19\_\_, by and among NEW YORK CENTRAL LLC, a Delaware limited liability company (hereinafter referred to as "NYC"), CSX TRANSPORTATION, INC., a Virginia corporation (hereinafter referred to as "CSXT") and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, including its subsidiaries and affiliates (hereinafter referred to as "NSR");

**WITNESSETH:**

**WHEREAS**, CSX Corporation ("CSX"), parent to CSXT, and Norfolk Southern Corporation ("NSC"), parent to NSR, entered into a Transaction Agreement (the "Transaction Agreement") between themselves; CSXT, a wholly-owned subsidiary of CSX; NSR; Conrail, Inc. ("CRR"); Consolidated Railroad Corporation ("CRC"), a wholly-owned subsidiary of CRR; and CRR Holdings LLC; and

**WHEREAS**, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR; and

**WHEREAS**, pursuant to the Transaction Agreement, certain assets of CRC have been allocated to NYC, which is a wholly-owned subsidiary of CRC, to be operated by CSXT under the terms of an Allocated Assets Operating Agreement (the "CSXT Operating Agreement") between NYC and CSXT; and

**WHEREAS**, pursuant to the Transaction Agreement, certain assets of CRC have been allocated to PRR, which is a wholly-owned subsidiary of CRC, to be operated by NSR under the terms of an Allocated Assets Operating Agreement (the "NSR Operating Agreement") between PRR and NSR;

**WHEREAS**, under the terms and conditions of the Transaction Agreement, the parties hereto have agreed to grant to each other various trackage rights over the respective former CRC lines of railroad operated by each of the parties, and in the interest of economy and efficiency of operations, the parties hereto desire to enter into a master agreement to cover various trackage rights arrangements granted NSR over the lines of railroad operated by CSXT; and

**WHEREAS**, the parties hereto intend to enter into separate addendum to this Agreement, indentifying respective segments, specific conditon and/or restrictions; and

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

ARTICLE 1. GRANT OF TRACKAGE RIGHTS; OPERATING AGREEMENT

Subject to the terms and conditions herein provided, NYC, as owner, and CSXT, as operator, hereby grant to NSR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the lines of railroad owned by NYC and operated by CSXT, under the CSXT Operating Agreement hereinafter referred to as "Subject Trackage", upon execution of the "Form A - Trackage Rights Addendum" identifying specific trackage rights arrangements and relevant provisions to be attached hereto and made a part hereof.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- (a) NSR'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. NYC and CSXT, with the consent of NYC, 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 or provided under terms of a Form A - Trackage Rights Addendum to this Agreement, NSR 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 NSR of such auxiliary tracks as may be designated by CSXT for such purposes.
- (c) Except as may otherwise be provided in this Agreement or provided under the terms of Form A - Trackage Rights Addendum to this Agreement, NSR 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 NSR may make a connection with its existing railroad line and joint CSXT/NSR lines (any of the foregoing points being hereinafter referred to as a "Point of Permitted Entry or Exit").
- (d) CSXT shall have exclusive control of the management and operation of the Subject Trackage. NSR 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 NSR is interrupted or delayed at any time from any cause.

ARTICLE 3.      MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, NSR'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 his designee.
- (c) Before its locomotives enter onto CSXT's trackage, NSR shall request permission from CSXT's dispatcher (or other designated representative) at Jacksonville, Florida or such other location as CSXT may designate. Further, NSR shall ascertain that said trackage is clear and shall await confirmation from said representative that such permission has been issued to allow NSR's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, NSR will notify CSXT's

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

ARTICLE 4.      PAYMENT OF BILLS

- (a) All payments called for under this Agreement shall be made by NSR 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, other than those set forth in Section 3 of Form A - Trackage Rights Addendum, 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 NSR or shall include actual costs and expense, upon mutual agreement of the parties.

ARTICLE 5.      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 11, NSR 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 NSR resulting from any such failure or neglect.

- (b) CSXT shall perform, at the expense of NSR, such additional maintenance as NSR may reasonably require or request.

#### ARTICLE 6. 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 NSR, a new or upgraded connection is required at an existing terminal ("Point of Permitted Entry or Exit") other than the endpoints, or, if in the opinion of NSR, 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 NSR will be responsible for funding that construction/upgrading at actual cost or a

cost mutually agreed to by CSXT and NSR. Such construction/upgrading shall be progressed as follows:

- (i) NSR or others shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way of NSR 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 NSR. The salvage material removed shall be released to NSR or, as otherwise agreed upon, CSXT will credit NSR 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 NSR.

ARTICLE 7.      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 NSR's operations beyond that required by CSXT to accommodate its operations, CSXT shall construct the additional or altered facilities and NSR shall pay to CSXT the cost thereof, including the annual expense of

maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 8.      MANAGEMENT AND OPERATIONS

- (a) NSR 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. NSR shall indemnify, protect, defend, and save harmless CSXT and its parent corporation, 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 its parent corporation, 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 NSR to comply with its obligations in this regard.



(b) NSR 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 NSR'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. NSR'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) NSR 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 NSR shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of NSR, 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 NSR's employees while on the Subject Trackage, NSR shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by NSR, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to NSR's employee or employees required to attend such hearings.
- (e) CSXT shall have the right to exclude from the Subject Trackage any employee of NSR determined by the above, to be in violation of CSXT's rules, regulations, orders, practices, or instructions issued by CSXT's Timetable or otherwise. NSR shall release, indemnify, defend, and save harmless CSXT and its parent corporation, 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 NSR, CSXT, 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 NSR shall be forced to stop on the Subject Trackage, due to mechanical failure of NSR'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 NSR 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 NSR'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 NSR 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 NSR shall reimburse CSXT for the cost thereof.

- (i) In the event CSXT and NSR agree that CSXT should retain employees or provide additional employees for the sole benefit of NSR, the parties hereto shall enter into a separate agreement under which NSR 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 9. MILEAGE AND CAR HIRE

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

ARTICLE 10. CLEARING OF WRECKS

Whenever NSR's use of the Subject Trackage requires rerailing, 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 11 hereof. All locomotives, cars, 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 NSR at the time of such wreck, shall be promptly delivered to NSR.

#### ARTICLE 11. LIABILITY

For the purpose of this Article 11, 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 11, the term "Railroad Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to either NSR or CSXT. The responsibility between and among CSXT and NSR for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned as follows:

- (a) Sole Responsibility: Subject to Article 11(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) NSR and CSXT Responsibility: Subject to Article 11(e), the parties shall jointly and equally (50% NSR and 50% CSXT) assume and bear all responsibility for all Damage, other than Damage which is subject to Article 11(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 11(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 11(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, and (ii) defend such other parties against such claims with counsel selected by such party and reasonably acceptable to such other parties.
  
- (e) Limitation: Articles 11(a) and (b) shall apply only to the amount of Damage resulting from a single incident which is \$25 million or less. Responsibility for Damages resulting from a single incident which exceeds

\$25 million shall be allocated to the extent of such excess to CSXT and NSR 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 11 (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 11(e)(1); (3) the Damage for which each party is responsible in excess of the amount determined in Article 11(e)(2) shall be allocated between or among CSXT and NSR in proportion to their respective fault or negligence in causing the Damage. As used in this Article 11(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 CSXT would be responsible for \$80 million under Article (11)(a) and (b) and NSR would be responsible for \$20 million under Article 11(a) and (b), CSXT would be responsible for \$20 million and NSR



would be responsible for \$5 million of such Damage under Article 11(e) (1), and the remaining \$75 million of Damage would be apportioned between or among CSXT and NSR 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 16. The \$25 million amount referred to in this Article 11(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 at the 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 and Article 11(b) and (e) shall not apply to any such Damage.

ARTICLE 12. 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 13. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of NSR to perform its obligations provided under the terms of a Form A - Trackage Rights Addendum to 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 NSR's use of the Subject Trackage as granted by the respective Form A - Trackage Rights Addendum. 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 NSR for the recovery of damages. Upon termination of any particular Form A - Trackage Rights Addendum, this Agreement (Master Trackage Rights Agreement) and all remaining Form A - Track Rights Addenda shall remain in full force and effect.

ARTICLE 14. REGULATORY APPROVAL

Both parties agree that this Agreement will be jointly submitted to the Surface Transportation Board (STB) for approval as part of the Joint Application in Finance Docket No. 33388.

ARTICLE 15. ABANDONMENT OF SUBJECT TRACKAGE

- (a) Notwithstanding the provisions of Section 5 of Form A - Trackage Rights Addendum, CSXT shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, CSXT shall give NSR ninety (90) days' advance notice in writing of its intention to do so in order that NSR may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- (b) If NSR 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 NSR rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in



respect to NSR's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.

(c) In any one of the circumstances listed below NSR 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) NSR fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
- (ii) NSR, 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) NSR, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or

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

- (d) In the event any application filed by CSXT is granted but an application filed by NSR 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 NSR (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 NSR 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, NSR 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 15 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 16. 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 third party, 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 17. 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, or in the case of NYC, to CSXT or any affiliate of CSXT.
- (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 18.     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 NYC:           (To be furnished)

If to CSXT:       Assistant Vice President-Joint Facilities  
                  CSX Transportation, Inc. J200  
                  500 Water Street  
                  Jacksonville, FL 32202

If to NSR: Vice President Transportation & Mechanical  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510-2191

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

ARTICLE 19. 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 20.     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.

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

WITNESS

NEW YORK CENTRAL LLC.

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

WITNESS

CSX TRANSPORTATION, INC.

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

NYCMSTTR (June 16, 1997)  
TRCRME.2 (June 16, 1997)

FORM A  
TRACKAGE RIGHTS ADDENDUM

This Form A - Trackage Rights Addendum entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by and among NEW YORK CENTRAL LLC, a Delaware limited liability company (hereinafter referred to as "NYC"); CSX TRANSPORTATION, INC., a Virginia corporation (hereinafter referred to as "CSXT"), PENNSYLVANIA LINES LLC, a Delaware limited liability company (hereinafter referred to as "PRR"), and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia Corporation, including its subsidiaries and affiliates (hereinafter referred to as "NSR"), hereby incorporate by reference an addendum to the Master Trackage Rights Agreement among NYC, CSXT and NSR dated \_\_\_\_\_, 19\_\_\_\_ governing trackage rights between the parties.

SECTION 1.     DESCRIPTION:

NYC, as owner, and CSXT, as operator, hereby grant to NSR, subject to the terms and conditions of the referenced Master Trackage Rights Agreement, and as further governed hereinbelow, 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 NYC's railroad (hereinafter referred to as "Subject Trackage"):

NYC's railroad, between the connection of the parties at Junction, Fort Wayne, Indiana at or near Milepost 321.2, and connection of the parties to be constructed at Hadley, west of Fort Wayne at or near Milepost 324.8 approximately, a distance of approximately 3.6 miles, as marked on Drawing No. IN02 attached hereto and made a part hereof.

SECTION 2.     RESTRICTION ON USE:

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

(b) Should the parties agree during the term of this Agreement, that NYC's single main track between the terminals of Subject Trackage is insufficient to accommodate the combined volume of the parties, then a second main track shall be constructed on the north side of the existing main track between the terminals of Subject Trackage, and NSR and CSXT shall share equally in the cost of such construction. At the conclusion of construction, NYC shall assume ownership of the north track and



PRR shall assume ownership of the south track. This Agreement shall thereupon be terminated and superseded by a mutually acceptable joint facility agreement.

SECTION 3. COMPENSATION:

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

(b) NSR will pay CSXT a sum computed by multiplying (i) the Current Charge, as may be revised in Section 4 of this Addendum by (ii) the number of cars (loaded and empty), locomotive and caboose units moved by NSR 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 Addendum, 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 NSR's or CSXT's account) shall count as one-half (1/2) of a Railcar.

(c) CSXT shall on or about the tenth (10<sup>th</sup>) day of each month render billing to NSR for NSR's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Addendum.

#### 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 Addendum, 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 Article 16 of the Master Trackage Rights Agreement.

(d) At the option of either party hereto, the compensation provided for in this Addendum 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 of this Addendum, and the parties shall continue to be bound by the

terms of compensation provided in this Addendum until the matter is settled or submitted to binding arbitration.

SECTION 5. TERM AND TERMINATION:

(a) This Addendum shall become effective the latter of the date first above written, or when regulatory approval is received, the date of such approval and following the expiration of any time periods required by the issuance of labor notices by CSXT ("Effective Date") and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by NSR upon six (6) months written notice, or until termination of the Master Trackage Rights Agreement.

(b) The rights, benefits, duties and obligations running from or to NSR under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the earlier of (i) termination of this Agreement or (ii) termination of the NSR Operating Agreement (including any renewals thereof) and the rights, benefits, duties and obligations running from or to CSXT under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the earlier of (i) termination of this



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Agreement or (ii) termination of the CSXT Operating Agreement (including any renewals thereof); provided, however, that upon termination of the NSR Operating Agreement, the rights, benefits, duties and obligations running from or to NSR under this Agreement shall run from or to PRR and upon termination of the CSXT Operating Agreement, the rights, benefits, duties and obligations running from or to CSXT under this Agreement shall run from or to NYC.

(c) Termination of this Addendum shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Addendum prior to termination hereof.

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

WITNESS:

NEW YORK CENTRAL LLC

\_\_\_\_\_

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

WITNESS:

CSX TRANSPORTATION, INC.

\_\_\_\_\_

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

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

\_\_\_\_\_

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

WITNESS:

PENNSYLVANIA LINES LLC

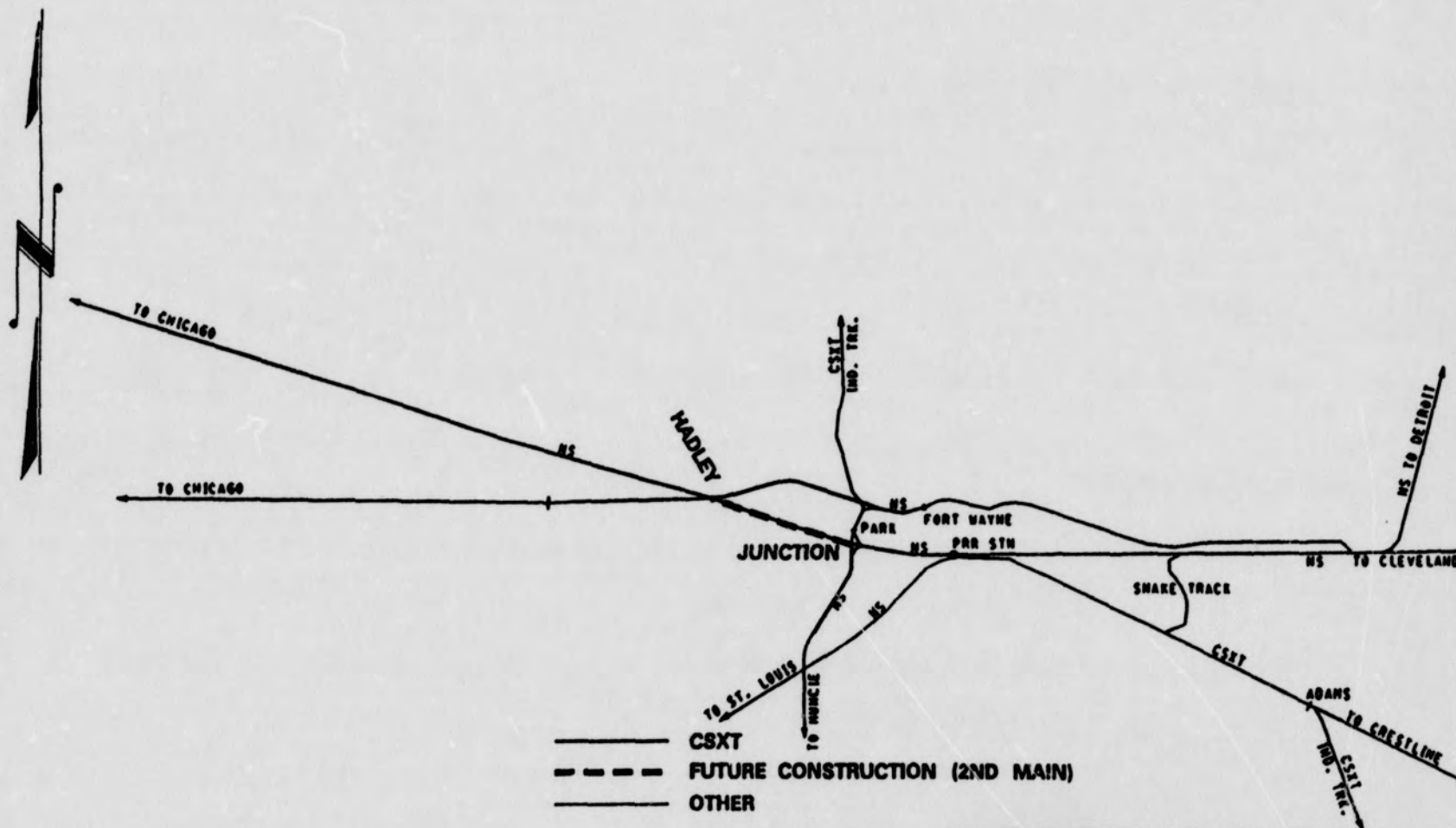
\_\_\_\_\_

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

TA03 (June 14, 1997)

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<b>CSX</b> TRANSPORTATION		ENGINEERING & MECHANICAL DEPARTMENT	
REVISIONS		FT. WAYNE, IN JUNCTION TO HADLEY PROPOSED CSXTNS JOINT OPERATION	
DIVISION		SUBDIVISION	
SCALE: NONE		VAL. SEC.	
DATE: 5/16/97		DRAWING NO. <b>IN02</b>	
DRAWN: REX/NEA		SHEET 1 OF 1	



## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and among CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail"), PENNSYLVANIA LINES LLC (hereinafter referred to as "PRR") and CSX TRANSPORTATION, INC. (hereinafter referred to as "CSXT", included as a signatory for purposes of acknowledgment and consent).

### WITNESSETH

WHEREAS, CSX Corporation ("CSX"), parent to CSXT, and Norfolk Southern Corporation ("NSC"), parent to Norfolk Southern Railway Company ("NSR"), have entered into a Transaction Agreement (the "Transaction Agreement") between themselves; CSXT, a wholly-owned subsidiary of CSX; NSR; Conrail, Inc. ("CRR"); Conrail, a wholly-owned subsidiary of CRR; and CRR Holdings LLC; and

WHEREAS, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR; and

WHEREAS, pursuant to the Transaction Agreement, certain assets of Conrail have been allocated to NYC, which is a wholly-owned subsidiary of Conrail, to be operated by CSXT under the terms of an Allocated Assets Operating Agreement (the "CSXT Operating Agreement") between NYC and CSXT; and

WHEREAS, pursuant to the Transaction Agreement, certain assets of Conrail have been allocated to PRR, which is a wholly-owned subsidiary of Conrail, to be operated by NSR under the terms of an Allocated Assets Operating Agreement (the "NSR Operating Agreement") between PRR and NSR; and

WHEREAS, PRR desires to assume and succeed to rights and obligations of Conrail to certain Trackage Rights Agreement dated December 20, 1984, as supplemented, by and between Conrail and CSXT related to Conrail trackage rights over the CSXT rail line between Crawfordsville, Indiana and Lafayette Junction, Indiana, a copy of which is attached hereto as Exhibit A (hereinafter "Trackage Rights Agreement"); and

WHEREAS, Conrail, PRR and CSXT desire to enter into a written agreement in order to effectuate such an assignment, succession and assumption;

NOW, THEREFORE, in terms of consideration of the Acquisition Agreement, the premises, the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto,

each intending to be legally bound, do hereby agree as follows:

1. CONSENT

In accordance with Article 15 of the General Conditions of the Trackage Rights Agreement, CSXT hereby acknowledges and consents to Conrail's assignment to PRR of all Conrail's rights and obligations in the Trackage Rights Agreement.

2. ASSIGNMENT, SUCCESSION AND ASSUMPTION

Conrail hereby gives and assigns to PRR all of Conrail's rights under and interests in the Trackage Rights Agreement, and appoints PRR as its successor thereto. PRR hereby accepts such assignment and succession, and assumes as duties, obligations and liabilities of Conrail under the Trackage Rights Agreement from and after the Effective Date as defined hereinafter. It is the intent of the parties hereto that PRR assume the entirety of Conrail's rights and obligations under the Trackage Rights Agreement for the term thereof, and that Conrail shall have no

further right, obligation or interest thereunder from and after the Effective Date of this Agreement.

3. INDEMNIFICATION

PRR hereby agrees to indemnify Conrail, and hold it harmless from any liability in connection with the obligations assumed by PRR under this Agreement, from and after the Effective Date hereof. Conrail hereby agrees to indemnify PRR, and hold PRR harmless from any liability in connection with such obligations prior to the effective date hereof. Conrail agrees to give or cause to be given to PRR prompt notice of any action, claim or proceeding asserted or commenced that might result in any loss, claim, damage, liability or expense which could be made the basis for indemnification, and PRR may participate in and assume the defense of any such action, claim or proceeding. No such action, claim or proceeding shall be settled without the prior written consent of PRR.

4. STB AUTHORITY

This Agreement will be jointly submitted to the Surface Transportation Board for approval as part of CSXT's and NSR's Joint Application in Finance Docket No. 33388.

5. CONDITION PRECEDENT

This Agreement and the assignment, succession and assumption evidenced hereby are expressly conditioned upon CSXT and NSR's acquisition of Conrail. In the event that such acquisition does not take place as anticipated, for any reason whatsoever, this Agreement and the assignment, succession and assumption evidenced hereby shall be null and void, and without force or effect.

6. GENERAL

- (a) This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.
- (b) This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement and all rights hereunder may not be assigned by either party except upon the prior written consent of the other party, which shall not unreasonably be withheld.
- (c) PRR, Conrail and CSXT do hereby warrant, each to the others, that (i) it is a corporation duly authorized and existing under the laws of the Commonwealth of

Virginia, State of Pennsylvania and Commonwealth of Virginia, respectively; (ii) it is legally capable of entering into and carrying out the terms of this Agreement; (iii) the person executing this Agreement on its behalf is duly authorized to legally bind the corporation hereunder; and (iv) neither the entering into nor performance of this Agreement shall result in a breach of any applicable law, regulation, judgment or order.

- (d) Except for obligations under the Trackage Rights Agreement specifically assumed by PRR herein, nothing contained in this Agreement is intended to nor shall it be construed to confer upon any party other than PRR, Conrail or CSXT and their respective successors and assigns, any right or benefit whatsoever under or by reason of this Agreement.
- (e) The Effective Date of this Agreement shall be the effective date of an STB decision authorizing the acquisition of Conrail by NSR and CSXT.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Assignment and Assumption Agreement as of the date first hereinabove written.

AS TO:  
CONSOLIDATED RAIL CORPORATION

AS TO:  
PENNSYLVANIA LINES LLC

By \_\_\_\_\_  
As its \_\_\_\_\_

By \_\_\_\_\_  
As its \_\_\_\_\_

TO ACKNOWLEDGE AND CONSENT:  
CSX TRANSPORTATION, INC.

By \_\_\_\_\_  
As its \_\_\_\_\_

A:\AS05 6-6-97  
Printed June 17, 1997



THIS SUPPLEMENTAL AGREEMENT, entered into as of this 15<sup>th</sup> day of July, 1994, by and between CSX TRANSPORTATION, INC. (hereinafter referred to as "CSXT" or "Owner") and CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail" or "User");

WHEREAS, Seaboard System Railroad, Inc., predecessor company of CSXT, and Conrail entered into an agreement dated December 20, 1984 (hereinafter referred to as the "Agreement") providing for Conrail's trackage rights over CSXT between Ames near Crawfordsville and Lafayette Junction, Indiana; and

WHEREAS, pursuant to the terms of the Agreement, CSXT constructed and maintained a connecting track for Conrail's access to Norfolk and Western Railway Company's (N&W) trackage at Lafayette Junction, Indiana; and

WHEREAS, under the so-called Lafayette Relocation Project, the above mentioned connecting track will be removed and a new CSXT/N&W connection will be installed near Smith Street at New Lafayette Junction, Indiana; and

WHEREAS, the parties hereto desire to amend the Agreement to provide for Conrail's use of the new CSXT/N&W connection and eliminate any reference to Conrail's maintenance obligations for use of the former connecting track;

NOW THEREFORE, the parties hereto mutually agree as follows:

1. Section 1 of the Agreement shall be replaced by the following:

"SECTION 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User 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 Owner's railroad shown on Drawing NO. 149-B-8 dated May 22, 1984, attached hereto, made a part hereof and marked "Exhibit I" (hereinafter referred to as the "Joint Trackage"):

Between the track connection of User and Owner at Ames near Crawfordsville, Indiana and the turnout of the new CSXT/N&W connection track to be constructed near Smith Street at New Lafayette Junction, Indiana, including necessary head and tail operating room, a distance of approximately 27.6 miles. The new CSXT/N&W connection track is shown on CSXT's Drawing No. 3-Z-014, dated June 19, 1989, last revised November 30, 1993, attached hereto and made a part hereof as Exhibit "A". The Joint Trackage shall include the main running tracks, passing tracks, crossovers and appurtenant facilities, but shall not include any terminal and/or yard tracks and related facilities, constituting Owner's main line of railroad between said stations."

2. The Agreement is hereby further amended to delete Section 4(a) in its entirety and any other reference to Conrail's maintenance obligations of the former connecting track between CSXT and N&W which located south of the crossing at Lafayette Junction, Indiana.

3. This Supplemental Agreement shall be effective upon the date the new CSXT/N&W connection track to be constructed near Smith Street at New Lafayette Junction, Indiana is placed in service.

4. Except as herein supplemented and amended, the Agreement is in all respects reaffirmed.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement in duplicate as of the day and year first above written.

WITNESS

A. W. Roth

CSX TRANSPORTATION, INC.

By M. L. Houchens  
Title: Assistant Vice President  
Joint Facilities

WITNESS






[Signature]

CONSOLIDATED RAIL CORPORATION

By [Signature]  
Title:

TRTRCRLJ 10/13/94

- LEGEND -

 CSXT MAIN TRACK  
 NORFOLK SOUTHERN (NS) TRACK  
 CSXT INTERCHANGE ACCESS  
OVER NS  
 CSXT OWNED INTERCHANGE TRACK  
 NS OWNED INTERCHANGE TRACK

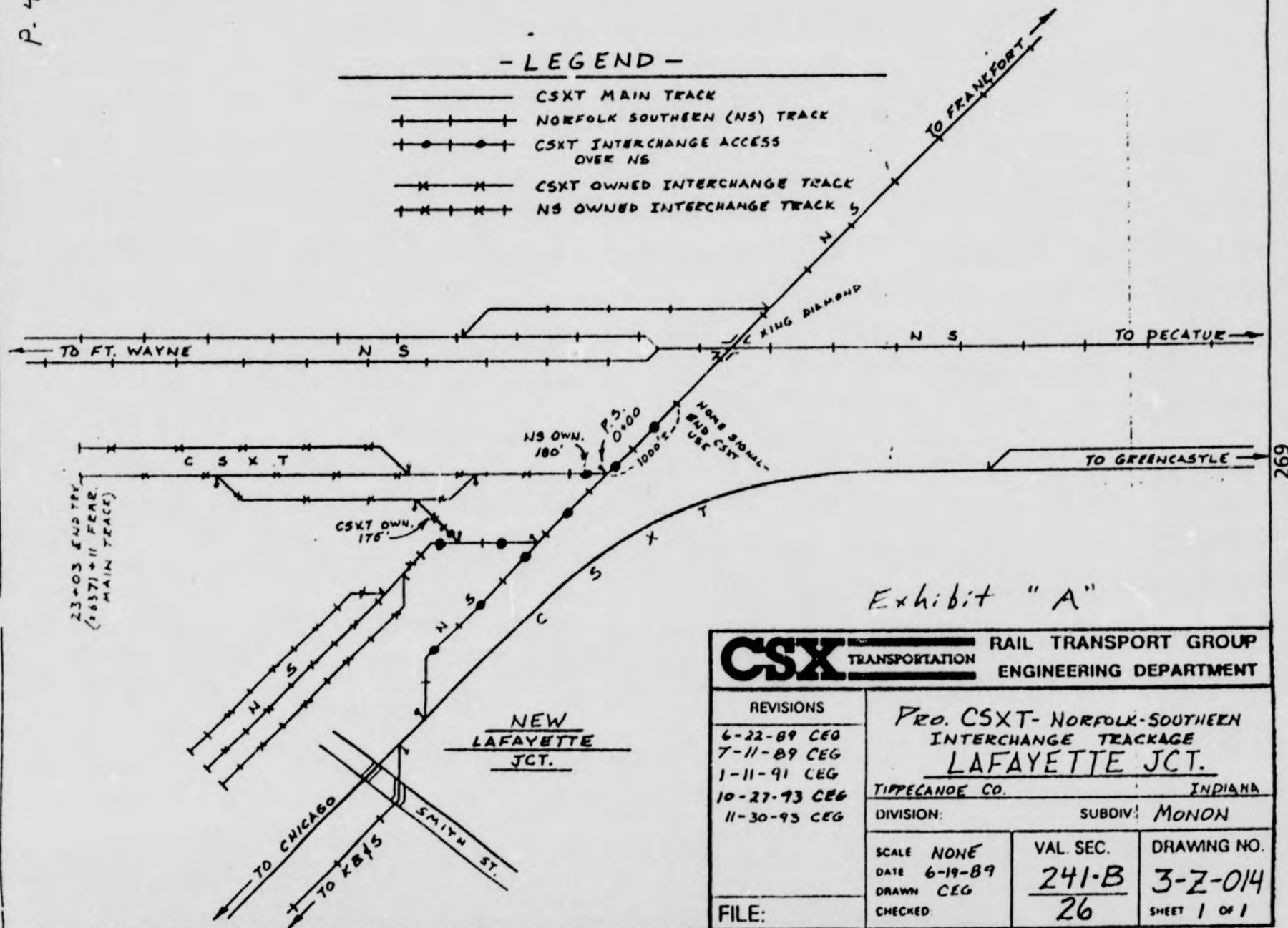



Exhibit "A"



**CSX** TRANSPORTATION

**RAIL TRANSPORT GROUP  
ENGINEERING DEPARTMENT**

## REVISIONS

6-22-89 CEG  
7-11-89 CEG  
1-11-91 CEG  
10-27-93 CEG  
11-30-93 CEG

PRO. CSXT- NORFOLK-SOUTHERN  
INTERCHANGE TRACKAGE  
LAFAYETTE JCT.

TIPPECANOE CO.

INDIANA

DIVISION:

SUBDIV: *MONON*

SCALE NONE  
DATE 6-19-89  
DRAWN CEG  
CHECKED:

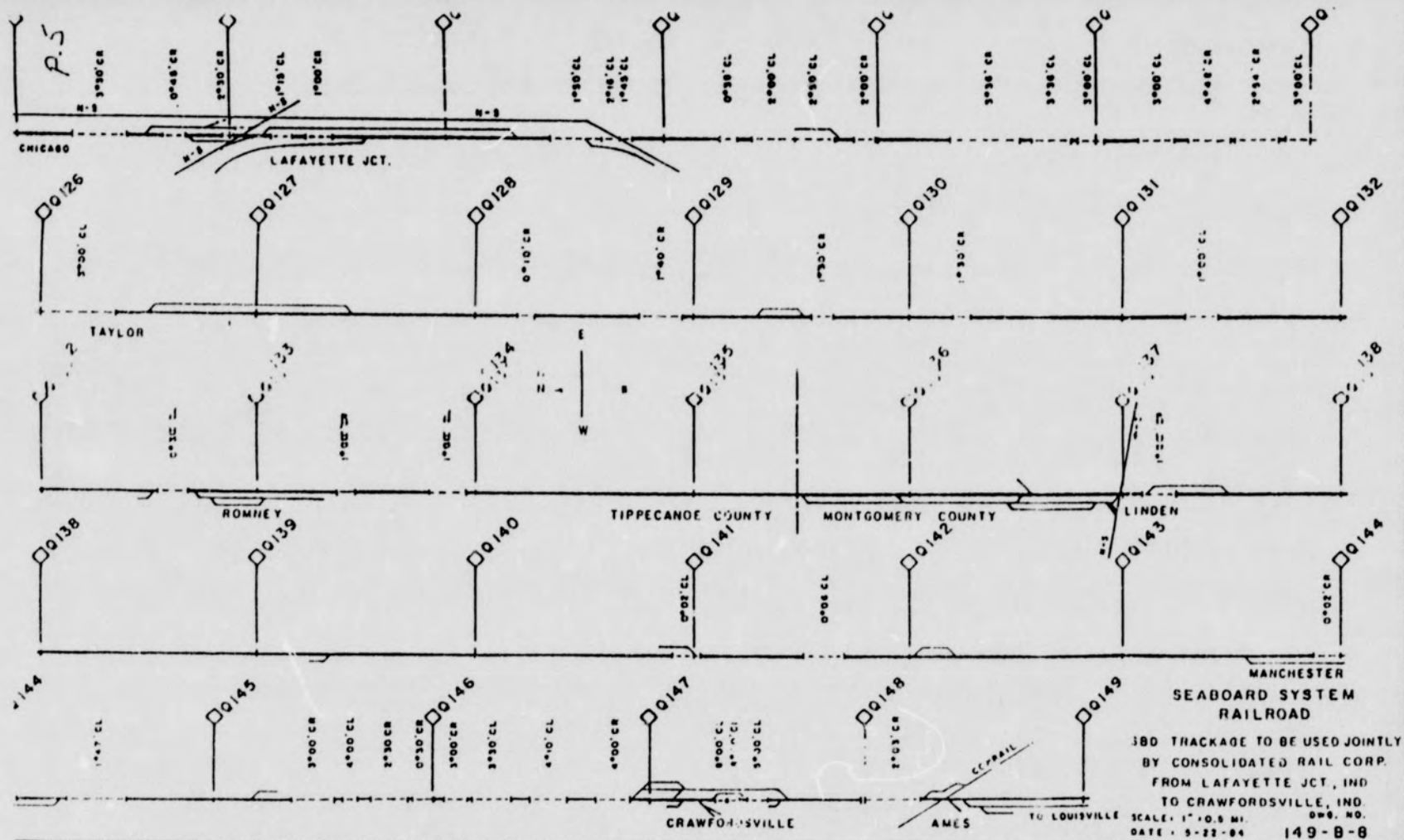
VAL. SEC.

241-B  
26

DRAWING NO.

3-Z-014  
SHEET 1 OF 1





THIS SUPPLEMENTAL AGREEMENT, made this 9th day of February, 1988, by and between CSX TRANSPORTATION, INC. (hereinafter referred to as "Owner"), and CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "User").

WHEREAS, pursuant to the terms of an Agreement dated December 20, 1984, between SEABOARD SYSTEM RAILROAD, INC. predecessor of Owner, and User, User enjoys trackage rights over trackage of Owner between Crawfordsville and Lafayette, IN; and

WHEREAS, User desires to be released from any obligations to participate in Owner's cost of additions and betterments required for operations of other than User on the Joint Trackage; and

WHEREAS, in the event of Owner's abandonment of a portion or all of the Joint Trackage, User desires that it possess a right to offer to acquire from Owner, the segment proposed for abandonment; and

WHEREAS, Owner is agreeable to the aforesaid modifications.

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

1. ARTICLE 3 of the General Conditions of said Agreement ..  
of December 20, 1984, is hereby amended in its entirety  
to read as follows:

**ARTICLE 3. ADDITIONS, RETIREMENTS AND**  
**ALTERATIONS**

- (a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, or retirements from the Joint 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 Joint Trackage and such retirements shall be excluded from the Joint Trackage.
- (b) If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its own operations, Owner shall construct the additional

or altered facilities and User shall pay to Owner. the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities.

2. ARTICLE 5 (b) of the General Conditions of said agreement of December 20, 1984, is hereby amended in its entirety to read as follows:

ARTICLE 5. MANAGEMENT AND OPERATION

(b). User in its use of the Joint Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner.

User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Joint 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 Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its officers, agents and employees from and against all liabilities when attributable solely to the failure of User to comply with the provisions of this subarticle.

3. ARTICLE 13 of the General Conditions of said Agreement of December 20, 1984, is hereby amended in its entirety to read as follows:

ARTICLE 13. ABANDONMENT OF JOINT TRackage

- (a) Notwithstanding the provisions of Section 8 of this Agreement, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Joint Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User 90 days' advance notice in writing of its intention to do so in order that User may

determine whether it desires to purchase the Joint Trackage (or portion thereof) or to discontinue its use thereof.

- (b) If User desires to purchase the Joint Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10905. In the event the offer meets the requirements of the aforesaid sections and Owner receives more than one such offer, Owner will exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Joint Trackage shall be governed by applicable provisions of the law.
  
- (c) In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Joint Trackage and that it desires to discontinue its use thereof:
  - (1) User fails to submit an offer of financial assistance to purchase the Joint Trackage within the time prescribed by statute and applicable regulations, or

- (2) User, having made an offer of financial assistance to purchase the Joint Trackage, but being unable to reach agreement with Owner 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
- (3) User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
- (4) User, 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 User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Joint Trackage.

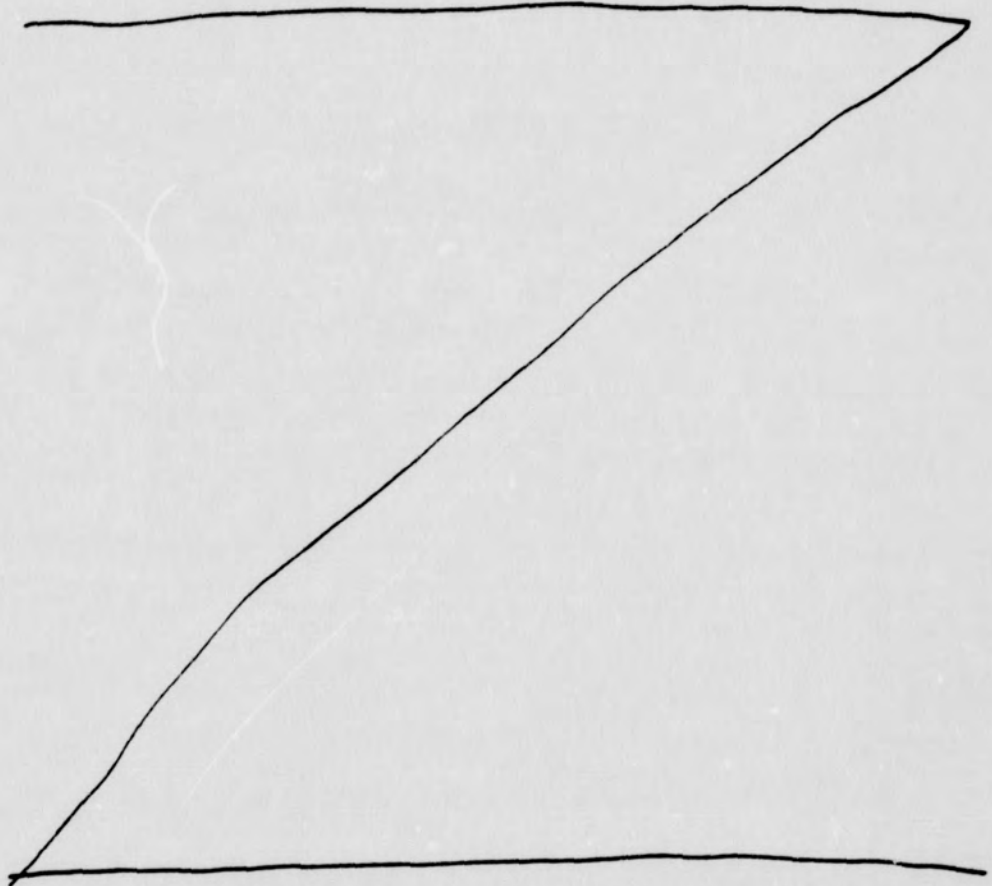
- (d) In the event any application filed by Owner is granted but an application filed by User under

subsection (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 Joint Trackage to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10905.

- (e) In the event Owner abandons any portion (or all) of the Joint Trackage 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 User 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 10905 as interpreted on the date of this Agreement.
- (f) In the event Owner's application for authority to abandon is denied, User will withdraw any application it has filed under subsection (c) above.



- (g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 13 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.



4. Except as specifically modified or amended herein, all -  
of the terms and conditions of the Agreement dated December 20,  
1984, shall be and remain in full force and effect.

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

Witness:

Molly English

CSX TRANSPORTATION, INC.

By: K. C. Dufford  
Senior Vice President -  
Transportation

Witness:

Kathleen D. Whitehead

CONSOLIDATED RAIL CORPORATION

By: C. E. Wogan  
General Manager - Contracts

AGREEMENT

Dated as of December 20, 1984

between

SEABOARD SYSTEM RAILROAD, INC. (Owner)

and

CONSOLIDATED RAIL CORPORATION (User)

Relating to Trackage Rights Over the Tracks  
of Seaboard System Railroad, Inc. (Owner)  
Between Crawfordsville, IN and Lafayette, IN

THIS AGREEMENT, entered into as of this 20th day of December, 1984, by and between SEABOARD SYSTEM RAILROAD, INC. (hereinafter referred to as "Owner") and CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "User").

WHEREAS, Seaboard owns and operates a line of railroad between Crawfordsville, Indiana, and Lafayette, Indiana; and

WHEREAS, Conrail desires to operate over Seaboard's track between the connection of its track with Seaboard at Ames near Crawfordsville, Indiana, and a new connection track to be built near the crossing of Norfolk and Western Railway Company's (hereinafter referred to as "NW") tracks and Seaboard's track at Lafayette Junction, near Lafayette, Indiana.

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

#### SECTION 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on Drawing No. 149-B-8 dated May 22, 1984, attached hereto, made a part hereof and marked "Exhibit I" (hereinafter referred to as the "Joint Trackage").

Between the track connection of User and Owner at Ames near Crawfordsville, Indiana, and the turnout of the connection track to be constructed in Owner's track for access to NW's track at Lafayette Junction, Indiana, a distance of approximately 27.3 miles. Said trackage to

include the main running tracks, passing tracks, crossovers and appurtenant facilities, not including any terminal and/or yard tracks and related facilities, constituting Owner's main line of railroad between said stations.

SECTION 2. GENERAL CONDITIONS - FORM A.

Except as otherwise may be provided below, this Agreement is subject to and shall be governed by the "General Conditions - Form A", of even date herewith attached hereto, made a part hereof and incorporated herein by reference with the same force and effect as if set forth at length herein.

SECTION 3. COMPENSATION.

(a) The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be twenty-two cents (\$0.22) (hereinafter referred to as the "Base Charge"). Irrespective of User's use of the Joint Trackage, and notwithstanding the provisions of this Section 3, the minimum total payments per annum to be made by User for the use of the Joint Trackage, and notwithstanding the provisions of this Section 3, the minimum total payments per annum to be made by User for the use of the Joint Trackage shall be \$18,000 (hereinafter referred to as the "Minimum Annual Charge"). The first annual period to which said Minimum Annual Charge shall be applicable shall commence on the First day of the month in which User agrees to operate over the Joint Trackage.



(b) User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Article 2 of the General Conditions - Form A by, (ii) the number of cars (loaded or empty), locomotive, and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. Each locomotive unit and each caboose, for the purpose of this Agreement, shall be counted as one car.

(c) At the end of each month, User will furnish to Owner a statement of the number of cars, locomotives, cabooses, and total car miles operated by User over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 3, for User's use of the Joint Trackage.

#### SECTION 4. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS.

(a) User agrees that a proposed new connection track between Owner and NW south of the crossing at Lafayette Junction, IN, shall be constructed and maintained at User's sole expense. User agrees that Owner may at its option charge User a flat annual fee, subject to escalation, for the maintenance of the connection track on Owner's right-of-way which shall be Owner's system average cost for similar track. Owner agrees that it will, at User's request, commence construction of that portion on the connection located on Owner's right-of-way after

appropriate deposit has been made by User. Said proposed connection is shown on the plan attached hereto, made a part hereof and marked "Exhibit II".

(b) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices 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 or practices.

SECTION 5. TRAIN ORDERS-RADIOS.

(a) Conrail trains will not be permitted to enter upon the Joint Trackage until permission has been received from the proper authority of Seaboard's operations at Crawfordville and Lafayette or such other point as may be designated by Seaboard's Superintendent. Conrail shall bear the cost and expense of any communication or written authority deemed necessary by Seaboard for Conrail to obtain such permission.

(b) Conrail locomotives shall be equipped by Conrail with radios set to Seaboard frequencies.

SECTION 6. 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 mutually agree, and shall be addressed as follows:

(a) If to Owner:

C/O Vice President-Transportation  
Seaboard System Railroad, Inc.  
500 Water Street  
Jacksonville, FL 32202

(b) If to User:

C/O Senior Vice President-Operations  
Consolidated Rail Corporation  
Six Penn Center Plaza  
Philadelphia, PA 19104

(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 7. RESTRICTION ON USE.

The Trackage Rights herein granted are granted for the sole purpose of User using same only for the operation of through freight trains that originate or terminate in the Altamont Yard at Lafayette, IN, and (i) User is not permitted to inter- change freight traffic with any other railroad that connects to Joint Trackage or to transfer freight traffic between its trains operated on Joint Trackage and any lines of railroad controlled by User that connect to Joint Facilities,

and (ii) User is not permitted to perform any switching on or from the Joint Trackage nor (iii) accept or deliver freight from or to any industry located on Joint Trackage or served therefrom.

SECTION 8. TERM.

(a) This Agreement shall continue in full force and effect for a period of thirty (30) years from the Commencement Date, as hereinafter defined; provided, however, that User shall have the right to terminate this Agreement upon giving twelve (12) months' advance written notice to Owner. Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

(b) User shall have the right to renew this Agreement for one (1) additional thirty (30) year term, subject to User's above-stated right to terminate, by giving written notice thereof to Owner not more than twelve (12) months and not less than six (6) months prior to expiration of the initial term of this Agreement.

(c) Upon the giving by User of the notice referred to in Paragraph (b) above, the parties shall, in good faith, renegotiate the terms and conditions as may be reasonable and equitable in light of any changed circumstances during the

initial term of this Agreement. In the event the parties fail to reach agreement upon such renegotiation, then such failure shall not constitute a breach of this Agreement and the terms and conditions of this Agreement shall remain in full force and effect for the remainder of the initial term and for the renewed term of this Agreement.

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

WITNESS:

SEABOARD SYSTEM RAILROAD, INC.

Barbara A. Carter

By: K. Dufford  
Vice President-Transportation

WITNESS:

CONSOLIDATED RAIL CORPORATION

Kathleen M. Whitehead

By: C. E. Morgan



GENERAL CONDITIONS FORM ADATED: December 29, 1984

TO Trackage Rights Agreement dated as of Dec.  
29, 1984 between Seaboard System Railroad, Inc. ("Owner") and Consolidated Rail Corporation ("User") relating to trackage rights between Ames near Crawfordsville and Lafayette, Indiana.

ARTICLE 1. USE OF JOINT TRACKAGE.

(a) User's use of the Joint Trackage shall be in common with Owner and any other user of the Joint Trackage, and Owner's right to use the Joint Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Joint Trackage.

(b) User shall not use any part of the Joint Trackage for the purpose of switching, storage of cars, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

(c) Owner shall have exclusive control of the management and operation of the Joint Trackage.

(d) Unless otherwise stated in the Agreement to which these conditions pertain, User shall have the right to operate in either direction over the Joint Trackage.

ARTICLE 2. REVISION OF BASE CHARGE.

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

(b) The Base Charge set forth in Section 3 of this Agreement shall be revised effective July 1 of each year, beginning July 1, 1985, to compensate for 75% of the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Recovery Index" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel)" index for the Eastern District shall be used and the final index figure for the calendar year 1983, hereinafter referred to as the "Base Calendar Year" shall be taken as the base. The Base Charge shall be revised by calculating the percentage of increase, or decrease, in the index of the year to be escalated as related to

the Base Calendar Year; then multiplying this percentage of increase or decrease by 75%, and applying that percentage to the Base Charge.

(c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the Base Calendar Year; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the calendar year to be escalated; "C" to be the Base Charge; "D" to be the percentage of increase or decrease; and "E" to be the adjusted revised percentage of increase or decrease, the revised Base Charge would be determined by the following formula:

$$(1) \quad \frac{B - A}{A} = D$$

$$(2) \quad D \times 75\% = E$$

$$(3) \quad (C \times E) + C = \text{revised Base Charge rounded to the nearest cent (5 mills or more up to the next cent), effective July 1 of the year being escalated.}$$

(d) In the event the base for the annual Indices of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the Base Calendar Year. If the Association of American Railroads or any successor

organization discontinues publication of the Annual Indices 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 matter will be referred to the Interstate Commerce Commission for determination. In the event said Commission is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator shall be borne equally by such parties.

(e) At the option of either party hereto the compensation provided for in Section 3 and Article 2 of this Agreement shall be open to renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement and the parties shall continue to be bound by the terms of compensation provided in said Section and Article for the remainder of the term of this Agreement.

ARTICLE 3. ADDITIONS, RETIREMENTS AND ALTERATIONS.

(a) Owner, from time to time, may make such changes in, improvements, additions and betterments to, or retirements from the Joint 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. The gross cost of any such improvements, additions, and betterments shall be divided between Owner and User on the basis of use of the Joint Trackage by each during the twelve (12) months immediately preceding the date that Owner notifies User of the intent to make the changes with the gross cost of any changes made during the first twelve (12) months after the effective date of this agreement to be divided on the basis of estimated use by Owner and User during that initial twelve (12) month period. Such additions and betterments shall become a part of the Joint Trackage and such retirements shall be excluded from the Joint Trackage.

(b) If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its own operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof,



including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 4.            MAINTENANCE OF JOINT TRACKAGE.

(a) Owner shall maintain, repair and renew the Joint Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 8 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Joint Trackage, have or make any claim or demand against Owner or its officers, agents or employees for any injury 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 User resulting from any such failure or neglect.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may require.

ARTICLE 5.

MANAGEMENT AND OPERATION.

(a) User shall comply with the provisions of the Federal Boiler 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 Joint Trackage. User shall indemnify, protect, defend, and save harmless Owner and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its 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 User to comply with its obligations in this regard.

(b) User in its use of the Joint Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the

Joint Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees of User, User shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(e) Owner shall have the right to exclude from the Joint Trackage any employee of User, except officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Timetable or otherwise. User shall release, indemnify, defend and save harmless Owner and its 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 User, Owner, and any other present or future User of the Joint 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 manner of movement of all traffic.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner 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 Joint Trackage, and User shall reimburse Owner 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 Joint Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

(i) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

ARTICLE 6. MILEAGE AND CAR HIRE.

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

ARTICLE 7. CLEARING OF WRECKS.

Whenever User's use of the Joint Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform 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 resulting therefrom, shall be apportioned in accordance with the provisions of Article 8 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 8.            LIABILITY.

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with this Agreement, shall be apportioned as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only User being involved, User shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify and save harmless Owner and its officers, agents, and employees from and against any such liability, cost, and expense, regardless of

whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only Owner being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify, and save harmless User and its officers, agents and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and

for injury to and death of their officers, agents and employees and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Joint Trackage) so occurring, shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Article 7 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its officers, agents and employees.

(d) Except as provided in paragraph (e) below, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, both User and any other user of the Joint Trackage being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User, or any

other user of the Joint Trackage or their officers, agents or employees, then such other user shall be jointly considered as Owner for the purpose of determining between the parties to this Agreement User's assumption and apportionment of liability, cost and expense under Paragraph (c) above.

(e) Whenever any such loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, Owner, User and any other user being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User, or any other user of the Joint Trackage or their officers, agents or employees, then Owner and such other user shall be jointly considered as Owner and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost, and expense between the parties to this Agreement under paragraph (c) above.

(f) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, both parties to this Agreement being so involved, without the trains, locomotives,

cars or equipment of, or in the account of, any other user being involved, and in the event such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s), of only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury and death so occurring, including without limitation all cost and expense referred to in Article 7 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its officers, agents, and employees from and against any such liability, cost, and expense.

(g) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to



any of the respective dates upon which any such future installments are to be paid.

(h) For purposes of this Article 8, pilots furnished by Owner to User pursuant to Article 5(c) of this Agreement shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

(i) Notwithstanding the provisions of Article 14(f) of this Agreement, for the purpose of this Article 8 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Joint Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Joint Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

ARTICLE 9. INVESTIGATION.

(a) Except as provided in Subarticle (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with Section 11707 of the Interstate Commerce Act.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims in accordance with Section 11707 of the Interstate Commerce Act, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 8 hereof.

ARTICLE 10. PAYMENT OF BILLS.

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of 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 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.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 3 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 11. DEFAULT AND TERMINATION.

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Joint Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 12. REGULATORY APPROVAL.

Should this Agreement require the prior approval of the Interstate Commerce Commission, User at its own cost and expense will initiate and thereafter diligently prosecute an appropriate application or petition to secure such approval and this Agreement shall take effect after such approval has been secured on the date User commences operations over the Joint Trackage (herein referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event Interstate Commerce Commission

approval is not required, the Commencement Date shall be the date agreed upon by the parties hereto as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to secure Interstate Commerce Commission approval of this Agreement.

ARTICLE 13.        ABANDONMENT OF JOINT TRACKAGE.

Notwithstanding the provisions of Section 7 of this Agreement, Owner may abandon the Joint Trackage during the term of this Agreement or any renewals, thereof, upon giving User not less than one hundred twenty (120) days notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Joint Trackage, User will seek and exercise such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Joint Trackage. Owner and User will exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority. Upon the date established by Owner for abandonment of the Joint Trackage by its aforesaid notice to User or upon the above-specified date of exercise of the regulatory authority to abandon and discontinue operations, whichever is later, this



Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the parties hereto notwithstanding the provisions of 49 U.S.C. Sections 10905-10906 or any other provisions of law, and User hereby expressly waives any rights it may possess to subsidize operations on the Joint Trackage or to acquire the Joint Trackage pursuant to said provisions of law. As used herein, Joint Trackage means the entire Joint Trackage or any portion or portions thereof.

ARTICLE 14. 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 in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties hereto.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

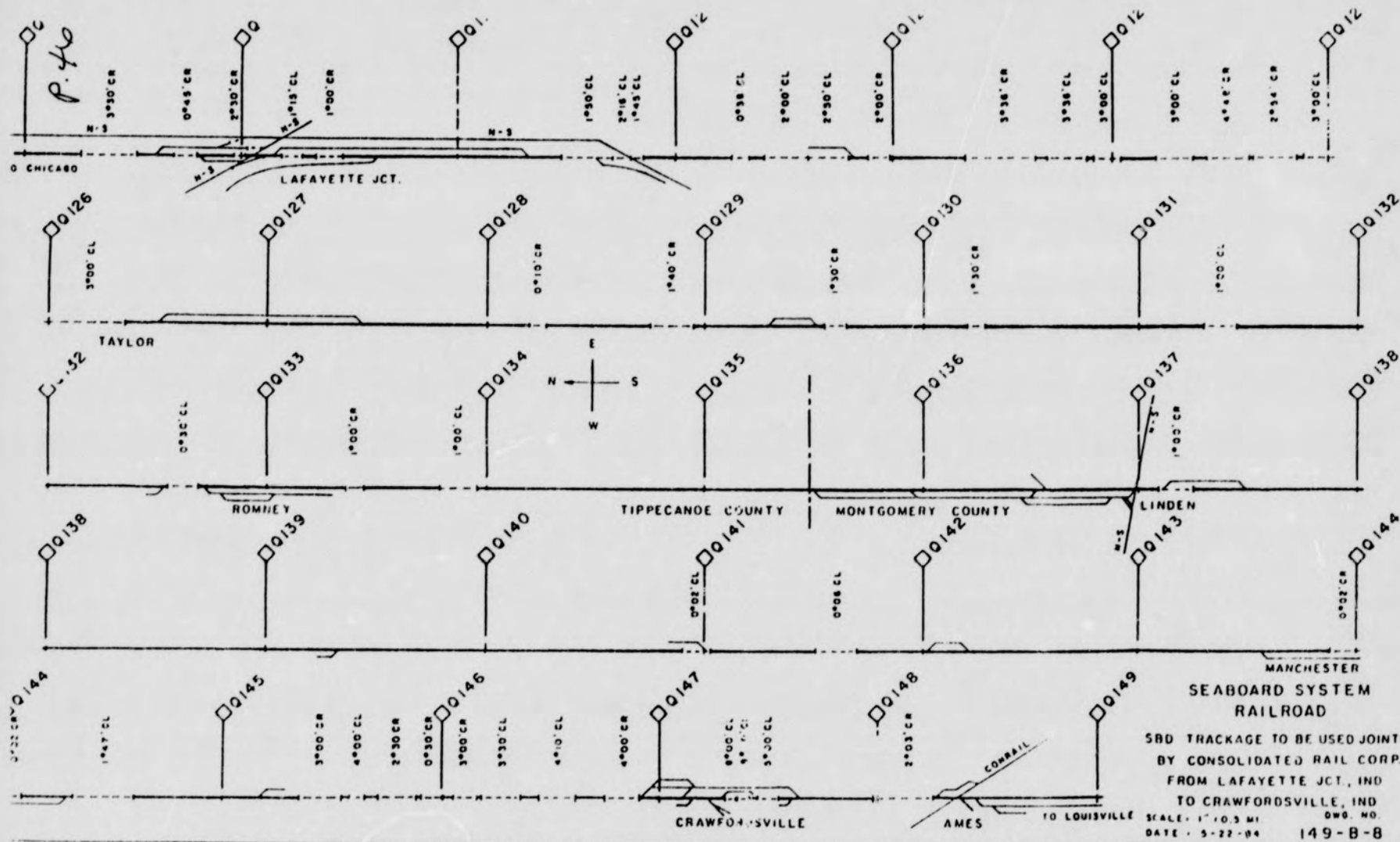
(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, and equipment in the possession of or operated by one of the parties and includes such trains, 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.

(f) 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.

ARTICLE 15.        SUCCESSORS AND ASSIGNS.

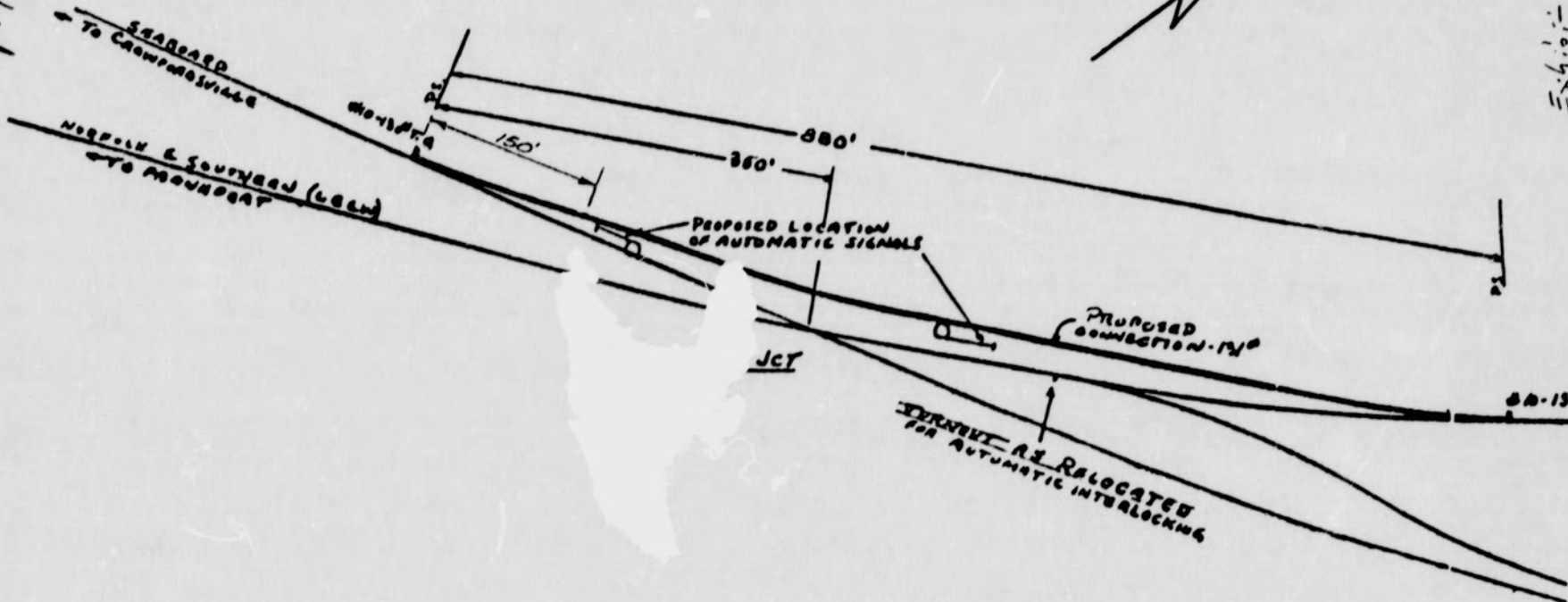
This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, including, without limitation, the successors and assigns of Owner's interest in the Joint Trackage or any portion thereof. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement; provided, however, that such consent shall not be necessary if such transfer or assignment is to a purchaser, successor or assign of all or substantially all of the rail properties of one of the parties hereto or to a purchaser, successor, or assign of Owner's interest in the Joint Trackage or any portion thereof.

\*   \*   \*   \*   \*   \*   \*   \*   \*   \*



P. 47 X

Exhibit II



PROPOSED  
TRACK CONNECTION  
LAFAYETTE JUNCTION  
FOR  
CONRAIL - SEABOARD TO  
R.S.E. INDIANAPOLIS IN. 3/4  
SCALE 1 IN. = 100 FT. 6



FORM A

TRACKAGE RIGHTS ADDENDUM

This Form A - Trackage Rights Addendum entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by and among NEW YORK CENTRAL LLC, a Delaware limited liability company (hereinafter referred to as "NYC"); CSX TRANSPORTATION, INC., a Virginia corporation (hereinafter referred to as "CSXT"), PENNSYLVANIA LINES LLC, a Delaware limited liability company (hereinafter referred to as "PRR"), and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia Corporation, including its subsidiaries and affiliates (hereinafter referred to as "NSR"), hereby incorporate by reference an addendum to the Master Trackage Rights Agreement among NYC, CSXT and NSR dated \_\_\_\_\_, 19\_\_\_\_ governing trackage rights between the parties.

SECTION 1. DESCRIPTION:

NYC, as owner, and CSXT, as operator, hereby grant to NSR, subject to the terms and conditions of the referenced Master Trackage Rights Agreement, and as further governed hereinbelow, 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 NYC and operated by CSXT (hereinafter referred to as "Subject Trackage"):

(i) The Crawfordsville Branch owned by NYC and operated by CSXT between the connection with the Indianapolis belt Secondary in Indianapolis, Indiana at CP Woods at or near Milepost 1.6 and

connection with the Indianapolis Line at Milepost 0.0 (approximately 1.6 miles); (ii) the Indianapolis Line operated by CSXT between the connection with the Crawsfordville Branch at Milepost 283.9 and connection with CSXT's line near Washington Street at or near Milepost 282.8 (approximately 1.1 miles); (iii) CSXT's line between the connections at Washington Street and the Indianapolis Belt Secondary at Pine (note: this segment is covered by a separate trackage rights agreement); and (iv) the Indianapolis Belt Secondary operated by CSXT between the connection with CSXT's line at Pine at or near Milepost 9.4 and the entrance to Hawthorne Yard at or near Milepost 8.8 (approximately 0.6 miles), for a total distance of approximately 3.3 miles excluding CSXT's line between Washington Street and Pine, as marked on Drawing No. IN09B attached hereto and made a part hereof.

SECTION 2. RESTRICTION ON USE:

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

(b) CSXT, at its discretion, shall have the right to route NSR's trains between CP Woods and Hawthorne Yard over the Indianapolis Belt Secondary route as covered by separate agreement between the parties.

SECTION 3. COMPENSATION:

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

(b) NSR will pay CSXT a sum computed by multiplying (i) the Current Charge, as may be revised in Section 4 of this Addendum by (ii) the number of cars (loaded and empty), locomotive and caboose units moved by NSR 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 Addendum, 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 NSR's or CSXT's account) shall count as one-half (1/2) of a Railcar.

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

Addendum.

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 Addendum, 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 Article 16 of the Master Trackage Rights Agreement.

(d) At the option of either party hereto, the compensation provided for in this Addendum 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 of this Addendum, and the parties shall continue to be bound by the terms of compensation provided in this Addendum until the matter is settled or submitted to binding arbitration.

SECTION 5. TERM AND TERMINATION:

(a) This Addendum shall become effective the latter of the date first above written, or when regulatory approval is received, the date of such approval following the expiration of any time periods required by the issuance of labor notices by CSXT ("Effective Date") and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by NSR upon six (6) months written notice, or until termination of the Master Trackage Rights Agreement.



(b) The rights, benefits, duties and obligations running from or to NSR under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the earlier of (i) termination of this Agreement or (ii) termination of the NSR Operating Agreement (including any renewals thereof) and the rights, benefits, duties and obligations running from or to CSXT under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the earlier of (i) termination of this Agreement or (ii) termination of the CSXT Operating Agreement (including any renewals thereof); provided, however, that upon termination of the NSR Operating Agreement, the rights, benefits, duties and obligations running from or to NSR under this Agreement shall run from or to PRR and upon termination of the CSXT Operating Agreement, the rights, benefits, duties and obligations running from or to CSXT under this Agreement shall run from or to NYC.

(c) Termination of this Addendum shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Addendum prior to termination hereof.

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