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**SHARED ASSETS AREA
OPERATING AGREEMENT
FOR
NORTH JERSEY**

This SHARED ASSETS AREA OPERATING AGREEMENT ("Agreement") dated as of _____, 199_, is by and among Consolidated Rail Corporation ("CRC"), CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR").

WITNESSETH:

WHEREAS, all capitalized terms in this Agreement have the respective meanings set forth in *Section 1*; and

WHEREAS, CSX owns all of the common stock of and controls CSXT, NSC owns all of the common stock of and controls NSR, and CSX and NSC jointly control CRC; and

WHEREAS, CSXT, NSR and CRC desire that the Shared Assets shall be owned, operated and maintained by CRC and used by or for the exclusive benefit of CSXT and NSR, and that CSXT and NSR shall each have full and equal rights to use the Shared Assets to provide competitive railway freight transportation services to, from and between all places within the Shared Assets Area.

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, CRC, CSXT and NSR hereby agree as follows:

Section 1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

- (a) "AAR" means the Association of American Railroads.
- (b) "Accounting Plan" means the Plan of Accounting adopted pursuant to *Section 9(a)*.

(c) "Action" means any action, claim, suit, arbitration, inquiry, subpoena, discovery request, proceeding or investigation by or before any Governmental Entity.

(d) "Adjacent Improvement" means a capital improvement, such as a spur, which provides access to customers and local industries and which (i) is on property which is not part of the Shared Assets and (ii) will be directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets.

(e) "Bill" means a bill delivered by CRC to an Operator pursuant to *Section 9(e)*.

(f) "Billing Month" means the calendar month for which information is shown on a Usage Statement.

(g) "Board of Managers" means any Board of Managers which may be appointed by the CRC Board pursuant to *Section 2(a)(ii)*.

(h) "Budgeted Capital Expenditures" means capital expenditures included on a Capital Expenditure Budget which has been approved by the CRC Board.

(i) "Capital Expenditure Budget" means a written budget specifying proposed capital expenditures to be made by CRC with respect to Shared Assets for the periods of time specified in such budget, and the proposed sources of the capital required to make such expenditures.

(j) "Capital Expenditure Statement" means a statement delivered by CRC pursuant to *Section 9(d)*.

(k) "CRC Administrative Office" means the administrative office of CRC located at Philadelphia, Pennsylvania, or at such other place designated by CRC in a notice it delivers to CSXT and NSR.

(l) "CRC Area Business" means the business, switching and other operations conducted by CRC with the Shared Assets.

(m) "CRC Board" means the Board of Directors of CRC.

(n) "CRC Train" means a train operated by CRC and performing services pursuant to *Sections 3(c) or (d)*.

(o) "CRC Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total number of loaded Railcars in the account of such Operator in CRC Trains, by (ii) the total number of loaded Railcars in the accounts of both Operators in CRC Trains, during such time period in such Zone.

(p) "CSX" means CSX Corporation.

(q) "Damage" means all assessments, fines, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and attorneys' and consultants' fees.

(r) "Dispute Letter" means a letter delivered by an Operator pursuant to *Section 9(g)(i)*.

(s) "Excluded Taxes" means (i) all Taxes based, in whole or in part, on net income or gross income (including, without limitation, any minimum tax) of CRC or which are in substitution for, or relieve CRC from, any Tax based upon or measured by CRC's net income or gross income, together with any interest, penalties, additions to tax or additional amounts that may become payable in respect thereof, (ii) business and occupation Taxes, and gross receipts Taxes of CRC, and (iii) interest, fines and penalties to the extent due to the acts or omissions of CRC in connection with such Excluded Taxes.

(t) "Expense Statement" means a statement delivered by CRC pursuant to *Section 9(c)*.

(u) "GAAP" at any time means generally accepted accounting principles in effect at such time.

(v) "General Manager" means the General Manager appointed pursuant to *Section 2(b)*.

(w) "Governmental Entity" means any federal, state, local or foreign court, administrative agency or commission or other governmental or regulatory authority or commission or any arbitration tribunal.

(x) "Interest Rental" means an amount representing a fair periodic return on the Shared Asset Value as of the most recent preceding Valuation Date as determined by such appraiser as CSXT and NSR may select.

(y) "Jointly-Operated Facility" means a facility or yard which is operated by or for a rail carrier and one or more other rail carriers.

(z) "Liabilities" means any and all debts, liabilities and obligations of any kind whatsoever, whether or not accrued, contingent or reflected on a balance sheet, known or unknown, absolute, determined, determinable or otherwise, including, without limitation, those arising under any law, rule, regulation, action, order or consent decree of any Governmental Entity or any judgment in any Action of any kind or award of any arbitrator of any kind and those arising under any contract.

(aa) "Local Movement Guidelines" means the guidelines agreed to and modified by the parties pursuant to *Section 3(a)(v)* governing the Operators' handling, pick-up, set off, transfer and interchange of Railcars, blocks of Railcars or trains at local industries, Operator's Facilities or Jointly-Operated Facilities within the Shared Assets Area.

(bb) "Nonseverable Improvement" means a capital improvement which is integral to the operation of the Shared Assets and is not readily removable.

(cc) "NSC" means Norfolk Southern Corporation.

(dd) "Operating Budget" means a written budget specifying estimated operating revenues and expenses and working capital requirements of CRC with respect to the Shared Assets for the periods of time specified in such budget.

(ee) "Operator" means either CSXT or NSR.

(ff) "Operator Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to an Operator.

(gg) "Operator's Expense Percentage" means for an Operator the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by such Operator for a particular period, by (ii) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by both Operators for such period.

(hh) "Operator's Facility" means a present, expanded or new facility or yard which is owned or controlled exclusively by an Operator.

(ii) "Operator Train" means a train operated by an Operator and performing services in accordance with *Sections 3(a) and 3(c)*.

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

(kk) "Program Maintenance" means scheduled renewal of track, signals, structures and other fixed facilities performed by system or production gangs assembled to accomplish a specific task or tasks.

(ll) "Program Maintenance Proposal" means a written proposal prepared by CRC, CSXT or NSR which describes specific Program Maintenance which the preparer of such proposal believes is necessary or desirable to maintain the Shared Assets in a safe operating condition to permit or facilitate (i) the performance by CRC of its services pursuant to this Agreement, or (i) the use of Shared Assets by the Operators, and which specifies a budget for such Program Maintenance.

(mm) "Railcar" means, except as otherwise provided in the Accounting Plan, each railroad freight car, locomotive, caboose or other equipment (including RoadRailer® or comparable bimodal freight hauling equipment in the account of either Operator) furnished in substitution of railroad equipment, loaded or empty, which an Operator originates, terminates, switches or moves on or overhead to any Shared Assets, except that (i) a single standard flat car not exceeding 96 feet in length (excluding articulated flat cars) shall count as a single Railcar, (ii) freight rail cars consisting of articulated units bearing AAR Car Type Codes "Q" and "S" shall count as multiple Railcars based on the second (numeric) digit of the Car Type Code for such articulated units (by way of example, a car consisting of AAR Car Type Code "S566" would be counted as five Railcars) (or corresponding car type codes and digits if the AAR Car Type Codes should be modified at any time during the term of this Agreement), and (iii) a single unit of RoadRailer® equipment (or comparable bimodal freight hauling equipment in the account of either Operator) shall count as one-half (1/2) of a Railcar.

(nn) "Reimbursable Expenses" means the expenses shown on an Expense Statement, minus the revenues, if any, shown on such Expense Statement.

(oo) "RoadRailer®" means bimodal freight hauling equipment manufactured by or under license from "RoadRailer®", a division of Wabash National Corporation, and capable of movement over the highway when pulled by a tractor and on the rails using locomotive power.

(pp) "Routine Maintenance" means day-to-day repairs to track, signals, structures and other fixed facilities that are not part of Program Maintenance.

(qq) "Severable Improvement" means a capital improvement which is not a Nonseverable Improvement.

(rr) "Shared Asset Value" means at any date the value of the Shared Assets, except leases and other contract rights granted by either Operator to CRC, as of the most recent preceding Valuation Date as determined by such appraiser as CSXT and NSR may select.

(ss) "Shared Assets" means all tracks, lands, easements, rights of way, structures, facilities, appurtenances and rights related thereto, which CRC owns, leases or otherwise has the right to operate over (including those segments over which CRC or an Operator possesses operating rights pursuant to *Section 3(c)*), and which are used for railway purposes in the Shared Assets Area, including the properties, rights, equipment, inventory and supplies, whether owned or leased, described or referred to in Item 3A of Schedule 1 (including Attachments I and II) of the Transaction Agreement, but excluding Operator's Facilities.

(tt) "Shared Assets Area" means the geographical area comprising the Shared Assets and Operator Facilities and Jointly-Operated Facilities directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets, which is designated as the "North Jersey" Shared Assets Area.

(uu) "STB" means the Surface Transportation Board or, if there shall be no Surface Transportation Board, any federal agency which is charged with the function of approving combinations by rail carriers or persons controlling them, or of other arrangements between rail carriers, and granting exemptions from other laws with respect thereto or regulating other specific functions with respect to the context in which such term is employed or any successor entity thereof.

(vv) "Switching and Yard Services" means the service of classifying and assembling trains for the account of an Operator in Jointly-Operated Facilities; movement of loaded or empty Railcars between yards and local industries; and switching trains and Railcars at yards, terminals and local industries.

(ww) "Tax" or "Taxes" means taxes of any kind, levies or other similar assessments, customs, duties, imposts, charges or fees, including, without limitation, income taxes, gross receipts, ad valorem, excise, real or personal property, sales, use, payroll, withholding, unemployment, transfer and gains taxes or other governmental taxes imposed by

or payable to the United States, or any state, local or foreign government or subdivision thereof, and in each instance such term shall include any interest, penalties or additions to tax attributable to such Tax or Taxes.

(xx) "Temporary Services" means services provided by CSXT or NSR employees in the operation, maintenance or repair of any Shared Asset on an emergency basis with the prior approval of the General Manager or senior CRC employee who is directly responsible for the operation or maintenance of such Shared Asset.

(yy) "Total Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the sum of the total number of loaded Railcars in the account of such Operator in CRC Trains and the total number of loaded and empty Railcars in the account of such Operator in Operator Trains, by (ii) the sum of the total number of loaded Railcars in the accounts of both Operators in CRC Trains and the total number of loaded and empty Railcars in the accounts of both Operators in Operator Trains, during such period in such Zone.

(zz) "Transaction Agreement" means the Transaction Agreement dated as of June __, 1997, among CSX, CSXT, NSC, NSR, Conrail Inc., CRC and CRR Holdings LLC.

(aaa) "Usage Statement" means a statement delivered by CRC pursuant to Section 9(b).

(bbb) "USOA" means the uniform system of accounts prescribed for class I railroads by the STB or any successor federal agency that shall succeed to the functions of the STB in prescribing uniform systems of accounts for rail carriers; *provided*, that if there shall be no STB and no such federal agency, USOA shall mean such system of accounts as is generally maintained by rail carriers consistent with GAAP as applied in the rail industry.

(ccc) "Valuation Date" means the date of this Agreement and thereafter the first day of the seventh year following the prior Valuation Date.

(ddd) "Zone" means a designated geographic section, or designated facilities, of the Shared Assets Area as established and described in the Accounting Plan.

Section 2. Management.

(a) CRC Board.

- (i) The CRC Board shall manage the Shared Assets.
- (ii) The CRC Board may appoint a Board of Managers, a committee, a CRC officer or other persons to have such duties and authority with respect to the Shared Assets as may be assigned to them from time to time by the CRC Board.
- (iii) Any Board of Managers appointed by the CRC Board shall be comprised of an equal number of individuals (and their successors) nominated by CSXT and nominated by NSR.
- (iv) The CRC Board shall remove from any Board of Managers (A) at the direction of CSXT, any person who was nominated by CSXT, and (B) at the direction of NSR, any person who was nominated by NSR.

(b) General Manager.

- (i) The General Manager shall not at any time have been an employee of CSXT or NSR or any of their affiliates unless otherwise agreed to by both Operators, and shall be appointed by the CRC Board for a term of one year or such longer period as the CRC Board may determine.
- (ii) The General Manager shall manage and supervise the ownership, operation, maintenance and use of the Shared Assets in accordance with directives and policies of the CRC Board and this Agreement, subject to the authority of the CRC Board, and through such Shared Assets Area superintendents and other Shared Assets Area executives as are appointed by the General Manager with the approval of the CRC Board. The General Manager shall report to the CRC Board. The General Manager shall perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR.
- (iii) The General Manager may be removed from office prior to the expiration of his or her term at any time by a majority of the CRC Board for any reason or for no reason. Upon the written request of CSXT or NSR to the CRC Board, the General Manager shall also be removed from office prior to the expiration of his or her term for serious misconduct, which shall mean conduct that would make it unreasonable to retain the General Manager, including but not limited to conduct such as:

(A) violation of applicable alcohol or drug use policies, (B) fraud, (C) embezzlement or other act of dishonesty against CRC, CSXT or NSR or any of their customers or suppliers, (D) activities willfully undertaken by the General Manager which reflect adversely upon the reputation of CRC, CSXT or NSR, (E) refusal to perform or substantial neglect of the responsibilities assigned to the General Manager, (F) failure to perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR after 45 days' written notice from an Operator describing such failure, (G) any violation of any law or rule or regulation of any Governmental Entity which results in serious adverse consequences to CRC, CSXT or NSR, or (H) any material violation of any directive or policy of the CRC Board or any statutory or common law duty of loyalty to CRC. If a majority of the CRC Board in response to such a request of CSXT or NSR fails to direct the removal of the General Manager, the dispute may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13*, provided, however, that in any such arbitration to resolve a dispute under this *Section 2(b)(iii)*, the hearing shall commence no later than 30 days following the appointment of the arbitrator and the award shall be rendered no later than 30 days following the completion of the hearing.

(c) *Employees.* The General Manager and all persons who operate and maintain the Shared Assets shall be employees of CRC, except for CSXT or NSR employees who provide Temporary Services and employees of Operators or independent contractors which provide services pursuant to contracts or arrangements in accordance with *Section 2(f)*.

(d) *CRC Responsibilities.* CRC shall be responsible for safely and efficiently operating, controlling and managing the use of the Shared Assets, impartially as between CSXT and NSR in accordance with directives and policies of the CRC Board, and with responsible business practices which are consistent with those used by CSXT and NSR in the operation of their businesses, and are designed to achieve the lowest cost of the safe and efficient operation, use and maintenance of the Shared Assets.

(e) *Impartiality.* CRC shall perform all of its obligations pursuant to this Agreement on an impartial and non-discriminatory basis as between CSXT and NSR, giving no preference to either of them in providing Switching and Yard Services, in the control of train dispatching over the Shared Assets, or in any other way whatsoever.

(f) *Independent Contractors.* CRC may, at least to the extent it may do so immediately prior to the date of this Agreement, procure the use of equipment or facilities owned by independent contractors, or services provided by independent contractors (using their own employees), with respect to the operation, maintenance and use of Shared Assets, including, without limitation, accounting, computer and other administrative services, and the

furnishing of equipment and mechanical services. For purposes of this *Section 2(f)*, independent contractors may include CSXT or NSR.

Section 3. Operations.

(a) *Operator's Rights.* CRC hereby grants to each Operator full operating rights to operate its own trains (staffed by a road crew) and equipment, with its own crews and equipment and at its own expense, over any and all tracks included in the Shared Assets, and to use all of the Shared Assets in connection with the operation of such trains or equipment, for the following purposes:

(i) Movement by such Operator of trains (staffed by a road crew) through the Shared Assets Area between two geographical locations outside the Shared Assets Area;

(ii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and an Operator's Facility or a Jointly-Operated Facility which is within the Shared Assets Area;

(iii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and local industries which are within the Shared Assets Area;

(iv) Movement by such Operator of trains (staffed by a road crew) between Operator's Facilities or Jointly-Operated Facilities which are within the Shared Assets Area and local industries which are within the Shared Assets Area;

(v) Movement, handling, pick-up, set off, switching, transfer and interchange of Railcars, blocks of Railcars or trains (staffed by a road crew) to, from or at local industries, Operator's Facilities or Jointly-Operated Facilities, in connection with movements described in *Sections 3(a)(i) through (iv)*, to the extent provided for in the Local Movement Guidelines agreed to and modified by the parties from time to time (but not less frequently than annually); and

(vi) such other purposes as may be agreed upon by CRC, CSXT and NSR.

(b) *Use.* The crews of each train operated by an Operator on Shared Assets shall be qualified under and shall comply with applicable laws and regulations as well as the safety and operating rules of CRC.

(c) *Grant of Rights.* Subject to reasonable compensation and other terms established in the Accounting Plan, and in each case for the purpose of Switching and Yard Services performed by CRC pursuant to *Section 3(d)* and movement of Operator Trains pursuant to *Section 3(a)*:

(i) CSXT hereby grants to CRC and NSR overhead operating rights to operate CRC trains and NSR trains, respectively, with their own crews, over the following CSXT rail line segments:

(A) the current CRC River line between CP2 and the Ridgefield Heights Auto Facility (including the right to serve such Ridgefield Heights Auto Facility); and

(B) such other CSXT line segments access to and use of which by CRC and NSR are necessary to effectuate the train operations and services contemplated by this Agreement; and

(ii) NSR hereby grants to CRC and CSXT overhead operating rights to operate CRC trains and CSXT trains, with their own crews, over such NSR line segments access to and use of which by CRC and CSXT are necessary to effectuate the train operations and services contemplated by this Agreement; and

(iii) CSXT hereby grants to CRC and NSR the right to use Manville Yard for the purpose of basing local trains, classifying and assembling trains and switching Railcars, but not for the purpose of serving local industries located at such yard.

Notwithstanding any other provision of this Agreement, each rail line segment identified in this *Section 3(c)* shall be dispatched, maintained, operated and controlled by the Operator which granted the rights with respect to such segment, *provided* that such dispatching, maintenance, operation and control shall be performed on an impartial and non-discriminatory basis as between the Operators. Trains operated by an Operator pursuant to operating rights granted under this *Section 3(c)* shall be governed by and subject to the Local Movement Guidelines.

(d) *Switching and Yard Services.*

(i) At the request of and as agent for each Operator, CRC shall perform Switching and Yard Services required by such Operator within the Shared Assets Area, including without limitation any such services which such Operator may be responsible for performing or having performed for a shipper or other Person.

(ii) Except as otherwise provided in *Section 3(a)*, and other than within an Operator's Facility, neither Operator shall with its own equipment or with its own crews perform any Switching and Yard Service within the Shared Assets Area for itself or for any other Person.

(e) *Freight Traffic To Remain in Account of Each Operator.* Switching and Yard Services and other services performed by CRC for either Operator under this Agreement shall be performed as agent for, and for the account of, such Operator. All freight traffic and Railcars handled within the Shared Assets Area, including traffic and Railcars handled by CSXT or NSR pursuant to *Sections 3(a) and 3(c)*, and traffic and Railcars handled by CRC pursuant to *Sections 3(c) and 3(d)*, shall at all times remain in the waybill, car hire and revenue accounts of either CSXT or NSR.

(f) *Rates, Routes and Divisions.* Each Operator shall have exclusive and independent authority to establish all rates, charges, service terms, routes and divisions, and to collect all freight revenues, relating to freight traffic transported for its account to, from and within the Shared Assets Area (except those Shared Assets Area line segments over which such Operator possesses only overhead operating rights pursuant to *Section 3(c)*). CRC shall not participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and within the Shared Assets Area, and shall not be entitled to or responsible for any freight charges relating to such freight traffic. CRC shall not quote or establish any rate or service terms applicable to freight transportation services to, from and within the Shared Assets Area, enter into transportation contracts with any Person (other than an Operator) for freight transportation services to, from and within the Shared Assets Area, or undertake to perform any for-hire transportation services directly, in its own name or for its own account for any Person (other than an Operator). The transfer or exchange of freight traffic between CSXT and CRC, and between NSR and CRC, within the Shared Assets Area shall not constitute an interchange of freight traffic or freight rail cars for purposes of determining rates, routes, divisions or interline settlements relating to any such freight traffic.

(g) *Shipper Bills.* Neither Operator shall inform the other or CRC of any rates or charges to shippers to which such Operator provides freight transportation services in the Shared Assets Area, and no copies of any shipper bill of lading or waybill shall be given by such Operator to the other or to CRC except to the extent that such documents are exchanged between rail carriers in the usual course of interline shipments and documenting.

(h) *Service Responsibility.* Each Operator shall at all times be solely responsible for obtaining, supplying and routing Railcars other than locomotives, for all Railcar ownership costs (including per-diem charges and mileage allowances) and for providing all service to its shippers within the Shared Assets Area pursuant to its transportation contracts with its shippers, including interline accounting, and all car hire and

demurrage or detention charges associated with Railcars in its account within the Shared Assets Area.

(i) *Dispatching.* CRC shall, from local locations or a location agreed upon by CSXT and NSR, control the dispatching, scheduling and movement of, and Switching and Yard Services for, all trains (including Operator Trains and CRC Trains) over the Shared Assets (other than Operator's Facilities, unless requested to do so by the Operator thereof) without any discrimination at any time in favor of or against either Operator, but in accordance with written policies and priorities for categories of freight, type of Railcar, size of train and train destinations established from time to time by the General Manager and approved by the CRC Board to achieve the maximum efficiency and lowest aggregate Shared Asset costs of CRC and the Operators, *provided, however*, that CSXT and NSR from time to time shall consider, and in the sole discretion of each may adopt, mutually acceptable arrangements giving each Operator one controlled route through the Shared Assets Area to the extent practicable and, if the parties fail to adopt mutually acceptable arrangements giving either Operator such a controlled route, CRC shall control dispatching, scheduling and train movements over the affected Shared Assets as heretofore provided. CRC shall also control the dispatching, scheduling, movement and Switching and Yard Services for all CRC Trains and Operator Trains over the current CRC River Line between CP 2 and CP 5. Dispatching, scheduling and movement of trains performed by either Operator under this *Section 3(i)* shall conform to the same standards of non-discrimination, written policies and priorities applicable to the control of such functions by CRC at other locations included within the Shared Assets Area.

(j) *Railcar Weighing.* All Railcars for the account of an Operator which originate or terminate on Shared Assets and which require weighing shall be weighed by and at the expense of such Operator or its customer, and at no cost to CRC.

(k) *Freight Claims.* The Operators shall agree among themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Operator shall be responsible for losses occurring to lading either in its possession or in the possession of CRC for the account of such Operator, and (ii) the Operators 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 Operators.

(l) *Freight Car Repairs.* If any Railcars are bad ordered while on the Shared Assets and must be set out from a CRC Train or Operator Train, CRC shall promptly return such Railcars to the Operator in whose account such Railcars reside in accordance with such Operator's instructions. CRC shall furnish, at such Operator's expense, required labor and material to perform, and shall perform, light repairs on such bad ordered Railcars as

necessary to make such Railcars legal and safe for movement. CRC shall bill such Operator for the costs of such light repairs in accordance with the Field and Office Manuals of the AAR Interchange Rules in effect at the time such repairs are performed. CRC shall bill directly to and collect from the applicable Railcar owner charges for repair items that, under the AAR Interchange Rules, are the responsibility of the Railcar owner. CRC shall bill directly to and collect from such Operator charges for repair items that, under the AAR Interchange Rules, are the responsibility of the handling line carrier. CRC shall also bill directly to and collect from such Operator charges for repair items that, under the AAR Interchange Rules, are the responsibility of the Railcar owner, but as to which the applicable Railcar owner has refused or otherwise failed to make payment therefor. If any such bad ordered Railcar cannot be made legal and safe for movement by the performance of light repairs, CRC shall, at such Operator's expense, arrange for appropriate removal of the affected Railcar in accordance with such Operator's instructions.

(m) *Train Services.* Actual costs incurred by CRC to provide special services (other than services otherwise provided for in this Agreement) at the request of an Operator with respect to trains, locomotives and Railcars for the account of such Operator, shall be paid by such Operator to CRC, *provided* that the costs and terms of similar special services rendered to each Operator shall be without discrimination between Operators as to cost and terms, giving due allowance to any differences in the costs of providing such services.

(n) *Wrecking Service.* Wrecking service or wrecking train service required in connection with services contemplated by this Agreement shall be provided by CRC (or its designee) as promptly as possible.

(o) *Admission of Third Parties.* Notwithstanding any other provision in this Agreement, no party may permit any Person (other than a party hereto) to have access to, operate over or use any Shared Asset without the prior approval of all parties, which approval may be given or refused in the sole discretion of each party.

Section 4. Equipment and Properties.

(a) *Procurement.* CRC shall procure, operate and maintain all equipment, real property rights and improvements thereon which are reasonably required for (i) CRC to operate the Shared Assets, and (ii) the Operators to move trains over the Shared Assets, in each case in accordance with this Agreement.

(b) *Contribution of Locomotives by Operators.* Upon reasonable request by the General Manager, the Operators shall furnish to CRC, through full-service lease or other mutually satisfactory arrangements, locomotives reasonably required by CRC for the perfor-

mance of its obligations under this Agreement. The respective obligations of each Operator to furnish such locomotives shall be based, insofar as reasonably practicable, upon the Operator's CRC Train Usage Percentage during the calendar month preceding such request for the Shared Assets Area or Zone in which such locomotives are needed by CRC. It is the parties' intention that (i) the arrangements pursuant to which such locomotives are furnished by either Operator to CRC shall provide that heavy maintenance, repair and overhaul shall be the responsibility of such Operator, (ii) locomotives furnished by either Operator to CRC may, in order to permit maintenance, repair and overhaul of such locomotive units, be exchanged for other locomotive units furnished by such Operator, and (iii) the respective obligations of each Operator to furnish such locomotives upon request by the General Manager shall be adjusted on at least a monthly or more frequent basis.

(c) *Locomotive Service and Repairs.* At the request of an Operator, CRC shall furnish required labor and material to perform, and shall perform, fueling and servicing of any Operator's locomotive, as well as light repairs on any Operator's locomotive as necessary to make such locomotive legal and safe for movement. CRC shall bill such Operator (or other owner of such locomotive) for the costs of such fueling, servicing and light repairs in accordance with industry practice in effect at the time such fueling, services or repairs are performed. If any such locomotive cannot be made safe for movement by the performance of light repairs, CRC shall, at the expense of such Operator (or other owner of such locomotive), arrange for appropriate removal of such locomotive in accordance with such Operator's instructions.

Section 5. Maintenance.

(a) Routine Maintenance.

(i) CRC shall be responsible for Routine Maintenance when necessary or desirable to maintain the Shared Assets in a safe operating condition, and to permit and facilitate (A) the performance by CRC of its obligations pursuant to this Agreement, and (B) the use of Shared Assets by the Operators in accordance with this Agreement.

(ii) CSXT or NSR, directly or through their respective affiliates, may perform the work which CRC performed prior to the date of this Agreement when (A) CRC does not possess the skills needed for such work, (B) CRC lacks the necessary employees to do such work in a timely fashion, or (C) CRC does not possess the equipment needed to do such work. CRC, CSXT and NSR may agree to have additional work performed either by CSXT, NSR or their affiliates.

(b) *CRC Program Maintenance.*

(i) The General Manager shall prepare and submit to the CRC Board a Program Maintenance plan concurrently with the submission of an Operating Budget and the Capital Expenditure Budget to the CRC Board.

(ii) Any of CRC, CSXT or NSR may at any time deliver a Program Maintenance Proposal to the other two of them and to the General Manager and each member of the CRC Board.

(iii) The CRC Board shall either (A) approve any or all of such Program Maintenance Proposals and plan with such changes as it deems appropriate, include the costs thereof in a pending or amended Capital Expenditure Budget, and direct the General Manager to cause the maintenance described in approved Program Maintenance Proposals or plan to be performed in accordance with *Sections 5(b)(iv) and (v)*, or (B) disapprove any or all of such Program Maintenance Proposals or plan.

(iv) Program Maintenance shall be the responsibility of CSXT and NSR pursuant to contracts or arrangements with CRC, and CRC shall not perform Program Maintenance, except for Program Maintenance which can be provided by Persons other than CSXT or NSR at a lower cost to CRC than the CSXT or NSR cost thereof.

(v) CRC shall select to perform each Program Maintenance project or program, the Operator which CRC reasonably determines will perform such project or program at the least cost to CRC consistent with safe and efficient operations, and taking into account scheduling considerations, based on written proposals submitted by each Operator.

(c) *Maintenance Standards.* Unless otherwise authorized by the CRC Board, the General Manager shall prepare and submit to the CRC Board proposals (including the Program Maintenance plan submitted pursuant to *Section 5(b)*) for the performance of such Routine Maintenance and Program Maintenance as is reasonably necessary to keep and maintain the Shared Assets substantially in their condition as of the date of this Agreement. If the CRC Board fails either to approve or disapprove by majority vote any such proposal within 45 days after it was submitted to the CRC Board, the disagreement over the propriety or need for any of the Routine Maintenance or Program Maintenance included in such proposal may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13*.

Section 6. Capital Improvements. Except as provided in *Section 5*, all capital improvements involving Shared Assets shall be governed by the following provisions:

(a) *Proposed Projects.* Either Operator, CRC or the General Manager may propose to the CRC Board from time to time capital improvement projects. Each such project shall be reviewed by the CRC Board, which may approve or disapprove by majority vote, or fail to approve, such projects.

(b) *CRC Board Approved Projects.* Each Operator shall be responsible for an equal share of the initial funding of each capital improvement project which has been approved by the CRC Board and is included in an approved Capital Expenditure Budget, except as provided in *Section 6(c)*. Upon completion of each such project, the Total Train Usage Percentage for each Operator shall be calculated in the Zone in which such project was completed for the 12-month period commencing on the date such project was placed in service. A final accounting shall be made to adjust the initial funding to such Total Train Usage Percentages thereof.

(c) *Nonseverable Improvement Projects.*

(i) At the written request of an Operator delivered to the other, each Operator shall, within 45 days of the delivery of such request, submit to an arbitrator in accordance with *Section 13* a written proposal with respect to a Nonseverable Improvement project which was neither approved nor disapproved by majority vote by the CRC Board within 45 days after such project was proposed to the CRC Board (A) describing any changes which such Operator proposes be made to such project and specifying a schedule, budget and allocations between the Operators of initial capital costs of such Nonseverable Improvement, or (B) proposing that it not be made.

(ii) The arbitrator receiving the proposals referred to in *Section 6(c)(i)* (A) shall consider (1) the degree, if any, to which the construction, operation and use of such Nonseverable Improvement would impair or interfere with the use of Shared Assets by CRC or either Operator, or conflict with any pending capital improvements included in an approved Capital Expenditure Budget, and (2) the budget and allocations between the Operators of initial capital costs of such Nonseverable Improvement as proposed by each Operator, and (B) shall determine within 45 days of such receipt which of such proposals shall be implemented, or that such Nonseverable Improvement shall not be made, and the CRC Board shall approve any proposal which such arbitrator determines shall be implemented.

(d) *Severable Improvement Projects.*

(i) Each Operator shall have the unilateral right to construct and exclusively fund any Severable Improvement which was not approved by the CRC Board.

(ii) Each Severable Improvement funded exclusively by an Operator shall be used exclusively by that Operator, which shall be solely responsible for maintaining such Severable Improvement at its own expense, until such time that the other Operator gives written notice that it desires also to use such Severable Improvement, stating the amount which such other Operator is prepared to pay to the Operator which initially funded such Severable Improvement for the right to use such Severable Improvement.

(iii) If the Operators are unable to agree on the amount of such payment within 45 days after such notice was given, then at the written request of an Operator delivered to the other after 45 days but before 60 days after such notice was given, each Operator shall, within 15 days of the delivery of such request, submit to an arbitrator in accordance with *Section 13* a written statement setting forth the proposed payment by the second Operator, and the arbitrator shall within 45 days of such receipt determine which of such proposed amounts shall apply, which shall be binding on both Operators and paid promptly.

(iv) Such Severable Improvement shall become a Nonseverable Improvement at the time such second Operator pays the amount so determined and, thereafter, maintenance and other costs associated with the operation of such improvement shall be apportioned between the Operators as provided in this Agreement.

(e) *Capital Improvements as Shared Assets.* Upon completion, all capital improvements approved by the CRC Board and all Nonseverable Improvements shall become part of the Shared Assets owned by CRC subject to all provisions of this Agreement, free and clear of all Operator liens.

(f) *Title to Severable Improvements.* Each Operator shall retain title to all Severable Improvements exclusively funded by such Operator. At any time during the term of this Agreement, an Operator may remove (at its sole expense) any Severable Improvement which it exclusively funded, provided that such Operator has repaired (at its sole expense) any damage to a Shared Asset caused by such removal and has restored the related Shared Assets substantially to their condition at the time such Severable Improvements were made. In the event an Operator shall not have removed any Severable Improvement to which the Operator

shall have title prior to the expiration or termination of this Agreement, title to such Severable Improvement shall vest in CRC, free and clear of all Operator liens, upon such expiration or termination.

(g) *Noninterference.* The construction, operation and use of Severable Improvements by an Operator shall not impair or interfere with the use of Shared Assets by CRC or the other Operator, nor shall any Severable Improvement conflict with any pending capital improvements included in an approved Capital Expenditure Budget.

(h) *Switch Connections.* CRC shall, upon the written request of one or both Operators, provide for switch and turnout connections from Shared Asset tracks to a private sidetrack owned by a shipper or other Person, if such request:

(i) includes the commitment of the Operator or both Operators making such request, or

(ii) is accompanied by a written undertaking from such shipper or other Person,

in each case satisfactory to CRC, to pay to CRC all costs incurred from time to time by CRC to provide for such switch and turnout connections within 30 days after it delivers a bill for such costs to such Operator, Operators, shipper or other Person.

(i) *Adjacent Improvements.*

(i) In the event an Operator constructs, acquires or funds the cost of an Adjacent Improvement (whether or not such Adjacent Improvement is ultimately owned by such Operator), the other Operator shall be entitled to share usage of such Adjacent Improvement by giving written notice stating the amount which such other Operator is prepared to pay to the first Operator for such right. If the Operators are unable to agree on the amount of such payment within 45 days after such notice was given, then at the written request of an Operator delivered to the other after 45 days but before 60 days after such notice was given, the matter shall be submitted for resolution by binding arbitration pursuant to *Section 13* and the provisions of *Section 6(d)(iii)* shall apply to determine the amount of such payment.

(ii) After the second Operator pays the amount so determined, if the first Operator owns or has a property interest in the Adjacent Improvement, the provisions of this *Section 6* shall be applied as if such improvement were a Nonseverable Improvement. If a shipper or another Person unrelated to the first Operator owns such Adjacent Improvement, the second Operator shall be entitled to share fully

the rights of the first Operator in connection with such Adjacent Improvement in consideration of the initial payment.

(j) *Operator's Facilities.* The foregoing provisions of this *Section 6* shall not apply to any capital improvement (including, but not limited to, a transloading facility or automotive ramp) within an Operator's Facility or the current CRC developable property encompassing current CRC Elizabethport Yard (Trumbull Street Yard) or the CRC developable property east of current CRC's Chemical Coast Secondary and adjacent to the E-Rail intermodal facility (northern New Jersey).

Section 7. Accounting.

(a) *Books of Record and Account.* CRC shall keep proper books of record and account, which are separate from all other CRC books of record and account, in which full and correct entries shall be made of all, but only, the CRC transactions, costs, expenses and revenues with respect to the Shared Assets and only the CRC Area Business, in accordance with GAAP and the USOA, as modified by the Accounting Plan.

(b) *Financial Statements.* CRC shall deliver to each Operator (i) within 30 days after the end of each calendar month, a summary income statement and a summary balance sheet showing as of the last day of and for such calendar month, major categories of CRC revenue, expense, assets and liabilities attributable to the Shared Assets and the CRC Area Business, (ii) within 30 days after the last day of each CRC fiscal quarter, interim financial statements with respect to the Shared Assets and the CRC Area Business as of and for the fiscal quarter ended on such day, similar to statements described in Rule 10-01 of Regulation S-X under the Securities Exchange Act of 1934, as amended, as modified by the Accounting Plan, and (iii) within 30 days after the last day of each CRC fiscal year, statements of income and cash flow and a balance sheet with respect to the Shared Assets and the CRC Area Business as of and for the fiscal year ended on such day, prepared in accordance with GAAP and the USOA, as modified by the Accounting Plan.

Section 8. Costs and Budgets.

(a) *CRC Costs.* CRC shall pay (and, except for Excluded Taxes, CSXT and NSR shall, pursuant to *Section 9*, reimburse CRC for) all of the costs and expenses to maintain its ownership of the Shared Assets and to operate and maintain the Shared Assets, including but not limited to all Taxes and assessments, licenses, permits and any other governmental authorizations required to own, operate and maintain the Shared Assets, the principal of and interest and premium, if any, on, and all other costs of, its indebtedness and all other costs of its capital.

(b) *Employee Cost Reimbursement.* CRC shall reimburse CSXT and NSR for the wages, *pro rata* portion of fringe benefits, other direct employment costs (including additives) and other actual employee-related costs of any CSXT or NSR employee, respectively, who provides Temporary Services.

(c) *Capital Expenditure Budget.*

(i) The General Manager shall prepare and submit to each member of the CRC Board at least 30 days prior to the beginning of each CRC fiscal year, a Capital Expenditure Budget for the one-year period beginning with such fiscal year, specifying for such year the schedule of Program Maintenance and Shared Asset capital improvements to be performed and constructed for the benefit of both Operators during such fiscal year and the months therein during which such expenditures are proposed to be made, for approval, or modification and approval, by the CRC Board.

(ii) The General Manager shall not permit any capital expenditure to be made by CRC, CSXT or NSR except in accordance with the Capital Expenditure Budget in effect from time to time, Severable Improvements exclusively funded by an Operator and emergency capital expenditures made (A) to preserve, or to mitigate a serious diminution in, the value and usefulness of a Shared Asset to CRC, CSXT and NSR, or (B) to prevent or mitigate a serious disruption in the operation and use of the Shared Assets by or for CRC, CSXT or NSR.

(iii) Any Capital Expenditure Budget may be amended in writing at any time by the CRC Board.

(d) *Operating Budget.*

(i) The General Manager shall prepare and submit to each member of the CRC Board at least 30 days prior to the beginning of each fiscal year of CRC, an Operating Budget for such fiscal year showing the budget amounts of revenues and expenses for each month during such fiscal year, for approval, or modification and approval, by the CRC Board.

(ii) The General Manager shall use all reasonable efforts to prevent CRC expenses with respect to Shared Assets for a period from exceeding the amounts shown on the Operating Budget for such period.

(iii) The General Manager shall give prompt written notice to each member of the CRC Board of any actual or, in the judgment of the General Manager,

probable, material change in the revenues, expenses or working capital requirements shown on the Operating Budget for any period.

(iv) Any Operating Budget may be amended in writing at any time by the CRC Board.

Section 9. Cost Sharing.

(a) *Accounting Plan.* The parties shall develop and implement a written Plan of Accounting containing a detailed description, by category of cost and location, of the costs associated with the management and operation of the Shared Assets Area and the method by which such costs shall be fairly and properly apportioned among the parties. Such Plan of Accounting may include separate accounting and sharing of costs for particular Zones, and shall conform to the following general principles:

(i) Forty two percent (42%) of Interest Rental shall be apportioned to CSXT and fifty eight percent (58%) of Interest Rental shall be apportioned to NSR;

(ii) Locomotive ownership, lease, fueling, light repair and servicing costs incurred by CRC within the Shared Assets Area or each Zone (except costs incurred by CRC and charged directly to an Operator pursuant to *Section 4(c)*) shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(iii) Crew compensation and other crew costs incurred by CRC within the Shared Assets Area or each Zone with respect to CRC Trains shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(iv) General and administrative, supervisory and overhead expenses incurred by CRC within the Shared Assets Area or for functions related to the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(v) Dispatching and train control costs (including, without limitation, labor, equipment, materials and maintenance expenses) incurred by CRC with respect to the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(vi) Police and other costs incurred by CRC with respect to security within the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(vii) Damage paid by Conrail pursuant to *Section 11(c)* shall be apportioned between the Operators in accordance with *Section 11(b)*;

(viii) All other costs incurred by CRC with respect to the Shared Assets Area or each Zone (except Taxes and insurance) shall be apportioned between the Operators on the basis of the Total Train Usage Percentages;

(ix) Taxes (other than Excluded Taxes) incurred by CRC with respect to the Shared Assets Area or each Zone shall be apportioned between the Operators on the basis of the Operator's Expense Percentages for the period to which such Taxes relate; and

(x) Insurance costs incurred by CRC with respect to Shared Assets within the Shared Assets Area or each Zone shall be apportioned between the Operators on the basis of the Operator's Expense Percentages for the period to which such insurance costs relate;

If the parties are unable to agree on the terms and provisions of the Accounting Plan, such disagreement may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13*.

(b) *Usage Statement.* CRC shall deliver to each Operator prior to the last day of each calendar month, a written statement showing for the prior calendar month:

(i) the total number of loaded Railcars in the account of each Operator in CRC Trains which performed Switching and Yard Services or operated directly between customer facilities in each Zone;

(ii) the total number of loaded and empty Railcars moved by or for such Operator in Operator Trains which operated overhead or directly to Jointly-Operated Facilities, Operators' Facilities or customer facilities in each Zone;

(iii) the calculation of the CRC Train Usage Percentage and the Total Train Usage Percentage for each Operator for each Zone,

and (A) all Railcars in a train shall be deemed to be on Shared Assets when the first or last Railcar of such train is on Shared Assets and (B) each time that a Railcar is removed from or added to a train in the Shared Assets Area shall constitute a separate movement of such Railcar.

(c) *Expense Statement.* Concurrently with the delivery of each Usage Statement to the Operators, CRC shall deliver to the Operators a statement showing (i) the expenses incurred by CRC to own, operate and maintain the Shared Assets during the Billing Month, (ii) the revenues, if any, derived by CRC from the ownership and operation of the Shared Assets during such Billing Month, and (iii) the Reimbursable Expenses for such Billing Month, in each case computed in accordance with GAAP and the USOA, as modified by the Accounting Plan.

(d) *Capital Expenditure Statement.* Concurrently with the delivery of each Usage Statement to the Operators, CRC shall deliver to the Operators a statement showing the estimated Budgeted Capital Expenditures for the calendar month immediately succeeding the calendar month in which such statement is delivered.

(e) *Bills.* Concurrently with the delivery to the Operators of a Usage Statement for a Billing Month, CRC shall deliver to each Operator a bill showing for such Billing Month:

(i) the amount of each Reimbursable Expense payable by such Operator for such Billing Month calculated in accordance with the Accounting Plan; and

(ii) fifty percent (50%) of the amount of Budgeted Capital Expenditures approved by the CRC Board and shown on the Capital Expenditure Statement delivered with such Usage Statement.

(f) *Payment.* Each Operator shall pay to CRC the amount shown on each Bill as being payable by such Operator, on or before the 30th day after the date of such Bill regardless of whether or not such Operator disputes the accuracy of any amount or calculation shown on such Bill.

(g) *Disputed Bills.*

(i) Any dispute by an Operator of the accuracy of any amount or calculation shown on any Bill, shall be described and specified in reasonable detail in a Dispute Letter from such Operator to CRC and the other Operator within three years after the date of such Bill.

(ii) Any amounts or calculations shown on any Bill which are not disputed in accordance with *Section 9(g)(i)* shall conclusively be deemed to be accurate and shall be binding on each Operator and CRC.

(iii) CRC and both Operators shall promptly endeavor to resolve the disputes described in each Dispute Letter, and if they fail to agree to a resolution of such disputes within 60 days of the delivery of such Dispute Letter to CRC, then the firm of independent public accountants which has been engaged as auditors for CRC shall be engaged to resolve such disputes in accordance with GAAP and the USOA, as modified by the Accounting Plan, and the written resolution of such disputes signed by such accounting firm shall be binding on each Operator and CRC.

(iv) Any adjustments to Bills which result from the resolution of Dispute Letter disputes shall be reflected as charges or credits on the first Bills delivered by CRC to the Operators after such disputes have been resolved.

(v) The fees in connection with the resolution of any Dispute Letter disputes of the accounting firm which has been engaged as auditor for CRC shall be paid fifty percent (50%) by CSXT and fifty percent (50%) by NSR.

Section 10. Access. CRC shall give to each Operator during normal CRC Administrative Office business hours, access to inspect and make copies of any and all books of record and accounts relating to this Agreement, all of which shall be maintained by CRC at the CRC Administrative Office.

Section 11. Liability. Except as otherwise provided in *Section 3(k)* and this *Section 11*, the responsibility between and among CRC, CSXT and NSR for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned without consideration of fault or negligence of any kind or degree as follows:

(a) *Sole Responsibility.* Subject to *Section 11(f)*, each Operator shall assume and bear all responsibility for Damage to its own trains, locomotives and equipment, 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) *Operators' Responsibility.* Subject to *Section 11(f)*, the Operators shall jointly assume and bear all responsibility for all Damage, other than Damage which is subject to *Sections 11(a) and (c)*, in proportion to their respective Total Train Usage Percentages in the Zone in which the incident giving rise to such Damage occurred for the 12 calendar month period immediately preceding the incident giving rise to such Damage. In the event an incident giving rise to Damage for which the Operators are jointly responsible occurs during the 12-month period immediately following the date of this Agreement, responsibility for such Damage shall be borne by the Operators in proportion to their respective Total Train Usage Percentages in the Zone in which the incident giving rise to such Damages occurred for such 12-month period.

(c) *CRC Responsibility.* Damages for which CRC is liable shall be CRC expenses and included in Expense Statements.

(d) *Process.* Each Operator shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under *Section 11(a)*, and both Operators shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under *Sections 11(b) and (c)*. In assigning joint responsibility to both Operators, it is not the intent of this Agreement that the Operators will actually act jointly, but rather that the Operators 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.

(e) *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 attorneys' fees and expenses and other expenses of any court or regulatory proceeding, incurred by such other parties in defending any claim that they are liable for such payments, and (ii) defend such other parties against such claims with counsel selected by such party and reasonably acceptable to such other parties.

(f) *Limitation.* *Sections 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 exceed \$25 million shall be allocated to the extent of such excess to CRC, 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 Operator would otherwise be responsible under *Sections 11(a) and (b)* shall be determined, on a comparative percentage basis; (2) for each Operator, multiply \$25 million by the comparative percentage determined for that Operator in *Section 11(f)(1)*; (3) the Damage for which each Operator is responsible in excess of the amount determined in *Section 11(f)(2)* shall be allocated between or among CRC, CSXT and NSR in proportion to their respective fault or negligence in causing the Damage. As used in this *Section 11(f)* only, the term "Damage" shall exclude Operator Consequential Damages (which are always borne by the Operator 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 *Sections 11(a) and (b)* and NSR would be responsible for \$20 million under *Sections 11(a) and (b)*, then CSXT would be responsible for \$20 million and NSR would be responsible for \$5 million of such Damage under *Section 11(f)(1)*, and the remaining \$75 million of Damage would be apportioned between or among CRC, 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 *Section 13*. The \$25 million amount referred to in this *Section 11(f)* may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in the sole discretion of each party.

(g) *Exceptions.* Each Operator 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 *Sections 11(b) and (f)* shall not apply to any such Damage.

(h) *Transaction Agreement.* *Section 2.8* of the Transaction Agreement shall control any conflict between *Sections 11(b) and (c)* and said *Section 2.8*.

Section 12. No Partnership. Nothing in this Agreement shall be construed to establish a partnership or joint venture between or among CRC, CSXT or NSR or any of their affiliates or associates.

Section 13. Arbitration. Any dispute, controversy or claim (or any failure by the parties to agree on a matter as to which this Agreement expressly or implicitly contemplates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within 30 days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, and to require the cessation or nonperformance of acts found to be prohibited by this Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award, of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any other Person, except as required by law and

except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

Section 14. Term. This Agreement shall become effective as of the date first above written and shall remain in effect until the 25th anniversary of such date, subject to the right of CSXT or NSR to agree prior to the 23rd anniversary of such date to extend this Agreement until the earlier of (a) the date on which the remaining useful life of the Shared Assets becomes less than twenty percent (20%) of their remaining useful life on such 25th anniversary, or (b) the 35th anniversary of such date and, if so extended to such 35th anniversary, to agree prior to the 33rd anniversary of such date to further extend this Agreement until the earlier of (c) the date on which the remaining useful life of the Shared Assets becomes less than twenty percent (20%) of their remaining useful life on such 35th anniversary, or (d) the 45th anniversary of such date.

Section 15. Force Majeure. The obligations, other than payment obligations, of the parties to this Agreement shall be subject to force majeure (which shall include strikes, riots, floods, accidents, Acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 16. Entire Agreement. This Agreement and the Transaction Agreement, including the other Ancillary Agreements (as defined in the Transaction Agreement) constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, except the letter agreement dated April 8, 1997 between CSX and NSC to the extent such April 8, 1997 letter agreement covers matters not addressed or amended hereby or in the Transaction Agreement or the Ancillary Agreements (as defined in the Transaction Agreement); *provided* that it is the intent of the parties that this Agreement shall be an effectuation of such April 8, 1997 letter agreement consistent with its terms, and that the provisions of this Agreement shall be interpreted to give effect to such April 8, 1997 letter agreement; and *provided further* that, in the event of any inconsistency between the terms of this Agreement and such April 8, 1997 letter agreement, this Agreement shall prevail.

Section 17. Amendment and Waiver. Any amendment to this Agreement must be in writing and executed and delivered by CRC, CSXT and NSR, subject to any jurisdiction of the STB. Any waiver of any term or provision of this Agreement must be in writing and executed and delivered by the party entitled to enforcement of such term or provision.

Section 18. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, such provision is intended to be ineffective only to the most limited extent possible in such context and the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 19. Remedies.

(a) *Entitlement to Certain Remedies.* Each party acknowledges and agrees that the other parties would be irreparably damaged in the event any of the provisions of this Agreement were not performed by it in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to an injunction or injunctions to prevent breaches of such provisions and to specifically enforce such provisions, in addition to any other remedy to which such party may be entitled, at law or in equity.

(b) *Preclusion of Certain Remedies.* In no event shall any party be liable to the other parties for any consequential, indirect, incidental, punitive or other similar damages including, but not limited to, lost profits for any breach or default, or any act or omission arising out of or in any way relating to this Agreement, under any form or theory of action whatsoever, whether in contract, tort or otherwise. The foregoing is not intended to alter or limit the allocation of responsibility for Damage as provided in *Section 11*.

Section 20. Interpretation. This Agreement was drafted jointly by CSXT and NSR, each of which was advised by its own counsel and other advisors concerning all of the terms and provisions hereof; accordingly, any ambiguity herein should not be construed in favor of or against any of them.

Section 21. Headings. Headings of Sections and paragraphs in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of any term or provision of this Agreement.

Section 22. Parties. This Agreement shall inure to the benefit of and be binding upon CRC, CSXT and NSR and any successor of any of them by operation of law, and any assignee agreed to by them in accordance with *Section 23*, and nothing in this Agreement is intended or shall be construed to give any other Person any legal or equitable right, remedy or claim under or with respect to this Agreement or any term or provision hereof.

Section 23. Assignment.

(a) *Limitation.* Except as provided in *Section 23(b)*, 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), which consent may be given or refused in the sole discretion of each party.

(b) *Successor.* Any party without the consent of the other parties 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 (but only if such sale includes all routes and lines owned by such party to access the Shared Assets), if such assignee executes and delivers to the other parties 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.

Section 24. Notices. Any notice given by CRC, CSXT or NSR to the others under this Agreement shall be deemed delivered on the date sent by registered mail, or by such other means as they may agree, and shall be addressed to them as follows:

(A) If to CSXT:

Executive Vice President and Chief Operating Officer
CSX Transportation, Inc.
500 Water Street, J120
Jacksonville, Florida 32202

(B) If to NSR:

Vice President Transportation & Mechanical
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

(C) If to CRC:

Chief Executive Officer
Consolidated Rail Corporation
2001 Market Street
Two Commerce Square
Philadelphia, Pennsylvania 19101

and each of them may from time to time change its address in this *Section 24* by written notice delivered to the others.

Section 25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officials as of the day first above written.

CSX TRANSPORTATION, INC.

By: _____
Title

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Title

CONSOLIDATED RAIL CORPORATION

By: _____
Title

**SHARED ASSETS AREA
OPERATING AGREEMENT
FOR
SOUTH JERSEY/PHILADELPHIA**

Dated as of _____, 199__

By and Among

**CONSOLIDATED RAIL CORPORATION,
CSX TRANSPORTATION, INC. and
NORFOLK SOUTHERN RAILWAY COMPANY**

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**SHARED ASSETS AREA
OPERATING AGREEMENT
FOR
SOUTH JERSEY/PHILADELPHIA**

This SHARED ASSETS AREA OPERATING AGREEMENT ("Agreement") dated as of _____, 199_, is by and among Consolidated Rail Corporation ("CRC"), CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR").

WITNESSETH:

WHEREAS, all capitalized terms in this Agreement have the respective meanings set forth in *Section 1*; and

WHEREAS, CSX owns all of the common stock of and controls CSXT, NSC owns all of the common stock of and controls NSR, and CSX and NSC jointly control CRC; and

WHEREAS, CSXT, NSR and CRC desire that the Shared Assets shall be owned, operated and maintained by CRC and used by or for the exclusive benefit of CSXT and NSR, and that CSXT and NSR shall each have full and equal rights to use the Shared Assets to provide competitive railway freight transportation services to, from and between all places within the Shared Assets Area.

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, CRC, CSXT and NSR hereby agree as follows:

Section 1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

- (a) "AAR" means the Association of American Railroads.
- (b) "Accounting Plan" means the Plan of Accounting adopted pursuant to *Section 9(a)*.

(c) "Action" means any action, claim, suit, arbitration, inquiry, subpoena, discovery request, proceeding or investigation by or before any Governmental Entity.

(d) "Adjacent Improvement" means a capital improvement, such as a spur, which provides access to customers and local industries and which (i) is on property which is not part of the Shared Assets and (ii) will be directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets.

(e) "Bill" means a bill delivered by CRC to an Operator pursuant to *Section 9(e)*.

(f) "Billing Month" means the calendar month for which information is shown on a Usage Statement.

(g) "Board of Managers" means any Board of Managers which may be appointed by the CRC Board pursuant to *Section 2(a)(ii)*.

(h) "Budgeted Capital Expenditures" means capital expenditures included on a Capital Expenditure Budget which has been approved by the CRC Board.

(i) "Capital Expenditure Budget" means a written budget specifying proposed capital expenditures to be made by CRC with respect to Shared Assets for the periods of time specified in such budget, and the proposed sources of the capital required to make such expenditures.

(j) "Capital Expenditure Statement" means a statement delivered by CRC pursuant to *Section 9(d)*.

(k) "CRC Administrative Office" means the administrative office of CRC located at Philadelphia, Pennsylvania, or at such other place designated by CRC in a notice it delivers to CSXT and NSR.

(l) "CRC Area Business" means the business, switching and other operations conducted by CRC with the Shared Assets.

(m) "CRC Board" means the Board of Directors of CRC.

(n) "CRC Train" means a train operated by CRC and performing services pursuant to *Sections 3(c) or (d)*.

(o) "CRC Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total number of loaded Railcars in the account of such Operator in CRC

Trains, by (ii) the total number of loaded Railcars in the accounts of both Operators in CRC Trains, during such time period in such Zone.

(p) "CSX" means CSX Corporation.

(q) "Damage" means all assessments, fines, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and attorneys' and consultants' fees.

(r) "Dispute Letter" means a letter delivered by an Operator pursuant to *Section 9(g)(i)*.

(s) "Excluded Taxes" means (i) all Taxes based, in whole or in part, on net income or gross income (including, without limitation, any minimum tax) of CRC or which are in substitution for, or relieve CRC from, any Tax based upon or measured by CRC's net income or gross income, together with any interest, penalties, additions to tax or additional amounts that may become payable in respect thereof, (ii) business and occupation Taxes, and gross receipts Taxes of CRC, and (iii) interest, fines and penalties to the extent due to the acts or omissions of CRC in connection with such Excluded Taxes.

(t) "Expense Statement" means a statement delivered by CRC pursuant to *Section 9(c)*.

(u) "GAAP" at any time means generally accepted accounting principles in effect at such time.

(v) "General Manager" means the General Manager appointed pursuant to *Section 2(b)*.

(w) "Governmental Entity" means any federal, state, local or foreign court, administrative agency or commission or other governmental or regulatory authority or commission or any arbitration tribunal.

(x) "Interest Rental" means an amount representing a fair periodic return on the Shared Asset Value as of the most recent preceding Valuation Date as determined by such appraiser as CSXT and NSR may select.

(y) "Jointly-Operated Facility" means a facility or yard which is operated by or for a rail carrier and one or more other rail carriers.

(z) "Liabilities" means any and all debts, liabilities and obligations of any kind whatsoever, whether or not accrued, contingent or reflected on a balance sheet, known or

unknown, absolute, determined, determinable or otherwise, including, without limitation, those arising under any law, rule, regulation, action, order or consent decree of any Governmental Entity or any judgment in any Action of any kind or award of any arbitrator of any kind and those arising under any contract.

(za) "Local Movement Guidelines" means the guidelines agreed to and modified by the parties pursuant to *Section 3(a)(v)* governing the Operators' handling, pick-up, set off, transfer and interchange of Railcars, blocks of Railcars or trains at local industries, Operator's Facilities or Jointly-Operated Facilities within the Shared Assets Area.

(bb) "Nonseverable Improvement" means a capital improvement which is integral to the operation of the Shared Assets and is not readily removable.

(cc) "NSC" means Norfolk Southern Corporation.

(dd) "Operating Budget" means a written budget specifying estimated operating revenues and expenses and working capital requirements of CRC with respect to the Shared Assets for the periods of time specified in such budget.

(ee) "Operator" means either CSXT or NSR.

(ff) "Operator Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to an Operator.

(gg) "Operator's Expense Percentage" means for an Operator the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by such Operator for a particular period, by (ii) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by both Operators for such period.

(hh) "Operator's Facility" means a present, expanded or new facility or yard which is owned or controlled exclusively by an Operator.

(ii) "Operator Train" means a train operated by an Operator and performing services in accordance with *Sections 3(a)* and *3(c)*.

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

(kk) "Program Maintenance" means scheduled renewal of track, signals, structures and other fixed facilities performed by system or production gangs assembled to accomplish a specific task or tasks.

(ll) "Program Maintenance Proposal" means a written proposal prepared by CRC, CSXT or NSR which describes specific Program Maintenance which the preparer of such proposal believes is necessary or desirable to maintain the Shared Assets in a safe operating condition to permit or facilitate (i) the performance by CRC of its services pursuant to this Agreement, or (i) the use of Shared Assets by the Operators, and which specifies a budget for such Program Maintenance.

(mm) "Railcar" means, except as otherwise provided in the Accounting Plan, each railroad freight car, locomotive, caboose or other equipment (including RoadRailer® or comparable bimodal freight hauling equipment in the account of either Operator) furnished in substitution of railroad equipment, loaded or empty, which an Operator originates, terminates, switches or moves on or overhead to any Shared Assets, except that (i) a single standard flat car not exceeding 96 feet in length (excluding articulated flat cars) shall count as a single Railcar, (ii) freight rail cars consisting of articulated units bearing AAR Car Type Codes "Q" and "S" shall count as multiple Railcars based on the second (numeric) digit of the Car Type Code for such articulated units (by way of example, a car consisting of AAR Car Type Code "S566" would be counted as five Railcars) (or corresponding car type codes and digits if the AAR Car Type Codes should be modified at any time during the term of this Agreement), and (iii) a single unit of RoadRailer® equipment (or comparable bimodal freight hauling equipment in the account of either Operator) shall count as one-half (1/2) of a Railcar.

(nn) "Reimbursable Expenses" means the expenses shown on an Expense Statement, minus the revenues, if any, shown on such Expense Statement.

(oo) "RoadRailer®" means bimodal freight hauling equipment manufactured by or under license from "RoadRailer®", a division of Wabash National Corporation, and capable of movement over the highway when pulled by a tractor and on the rails using locomotive power.

(pp) "Routine Maintenance" means day-to-day repairs to track, signals, structures and other fixed facilities that are not part of Program Maintenance.

(qq) "Severable Improvement" means a capital improvement which is not a Nonseverable Improvement.

(rr) "Shared Asset Value" means at any date the value of the Shared Assets, except leases and other contract rights granted by either Operator to CRC, as of the most

recent preceding Valuation Date as determined by such appraiser as CSXT and NSR may select.

(ss) "Shared Assets" means all tracks, lands, easements, rights of way, structures, facilities, appurtenances and rights related thereto, which CRC owns, leases or otherwise has the right to operate over (including those segments over which CRC or an Operator possesses operating rights pursuant to *Section 3(c)*), and which are used for railway purposes in the Shared Assets Area, including the properties, rights, equipment, inventory and supplies, whether owned or leased, described or referred to in Item 3A of Schedule 1 (including Attachments I and II) of the Transaction Agreement, but excluding Operator's Facilities.

(tt) "Shared Assets Area" means the geographical area comprising the Shared Assets and Operator Facilities and Jointly-Operated Facilities directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets, which is designated as the "South Jersey/Philadelphia" Shared Assets Area.

(uu) "STB" means the Surface Transportation Board or, if there shall be no Surface Transportation Board, any federal agency which is charged with the function of approving combinations by rail carriers or persons controlling them, or of other arrangements between rail carriers, and granting exemptions from other laws with respect thereto or regulating other specific functions with respect to the context in which such term is employed or any successor entity thereof.

(vv) "Switching and Yard Services" means the service of classifying and assembling trains for the account of an Operator in Jointly-Operated Facilities; movement of loaded or empty Railcars between yards and local industries; and switching trains and Railcars at yards, terminals and local industries.

(ww) "Tax" or "Taxes" means taxes of any kind, levies or other similar assessments, customs, duties, imposts, charges or fees, including, without limitation, income taxes, gross receipts, ad valorem, excise, real or personal property, sales, use, payroll, withholding, unemployment, transfer and gains taxes or other governmental taxes imposed by or payable to the United States, or any state, local or foreign government or subdivision thereof, and in each instance such term shall include any interest, penalties or additions to tax attributable to such Tax or Taxes.

(xx) "Temporary Services" means services provided by CSXT or NSR employees in the operation, maintenance or repair of any Shared Asset on an emergency basis with the prior approval of the General Manager or senior CRC employee who is directly responsible for the operation or maintenance of such Shared Asset.

(yy) "Total Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the sum of the total number of loaded Railcars in the account of such Operator in CRC Trains and the total number of loaded and empty Railcars in the account of such Operator in Operator Trains, by (ii) the sum of the total number of loaded Railcars in the accounts of both Operators in CRC Trains and the total number of loaded and empty Railcars in the accounts of both Operators in Operator Trains, during such period in such Zone.

(zz) "Transaction Agreement" means the Transaction Agreement dated as of June __, 1997, among CSX, CSXT, NSC, NSR, Conrail Inc., CRC and CRR Holdings LLC.

(aaa) "Usage Statement" means a statement delivered by CRC pursuant to Section 9(b).

(bbb) "USOA" means the uniform system of accounts prescribed for class I railroads by the STB or any successor federal agency that shall succeed to the functions of the STB in prescribing uniform systems of accounts for rail carriers, *provided*, that if there shall be no STB and no such federal agency, USOA shall mean such system of accounts as is generally maintained by rail carriers consistent with GAAP as applied in the rail industry.

(ccc) "Valuation Date" means the date of this Agreement and thereafter the first day of the seventh year following the prior Valuation Date.

(ddd) "Zone" means a designated geographic section, or designated facilities, of the Shared Assets Area as established and described in the Accounting Plan.

Section 2. Management.

(a) CRC Board.

(i) The CRC Board shall manage the Shared Assets.

(ii) The CRC Board may appoint a Board of Managers, a committee, a CRC officer or other persons to have such duties and authority with respect to the Shared Assets as may be assigned to them from time to time by the CRC Board.

(iii) Any Board of Managers appointed by the CRC Board shall be comprised of an equal number of individuals (and their successors) nominated by CSXT and nominated by NSR.

(iv) The CRC Board shall remove from any Board of Managers (A) at the direction of CSXT, any person who was nominated by CSXT, and (B) at the direction of NSR, any person who was nominated by NSR.

(b) *General Manager.*

(i) The General Manager shall not at any time have been an employee of CSXT or NSR or any of their affiliates unless otherwise agreed to by both Operators, and shall be appointed by the CRC Board for a term of one year or such longer period as the CRC Board may determine.

(ii) The General Manager shall manage and supervise the ownership, operation, maintenance and use of the Shared Assets in accordance with directives and policies of the CRC Board and this Agreement, subject to the authority of the CRC Board, and through such Shared Assets Area superintendents and other Shared Assets Area executives as are appointed by the General Manager with the approval of the CRC Board. The General Manager shall report to the CRC Board. The General Manager shall perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR.

(iii) The General Manager may be removed from office prior to the expiration of his or her term at any time by a majority of the CRC Board for any reason or for no reason. Upon the written request of CSXT or NSR to the CRC Board, the General Manager shall also be removed from office prior to the expiration of his or her term for serious misconduct, which shall mean conduct that would make it unreasonable to retain the General Manager, including but not limited to conduct such as: (A) violation of applicable alcohol or drug use policies, (B) fraud, (C) embezzlement or other act of dishonesty against CRC, CSXT or NSR or any of their customers or suppliers, (D) activities willfully undertaken by the General Manager which reflect adversely upon the reputation of CRC, CSXT or NSR, (E) refusal to perform or substantial neglect of the responsibilities assigned to the General Manager, (F) failure to perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR after 45 days' written notice from an Operator describing such failure, (G) any violation of any law or rule or regulation of any Governmental Entity which results in serious adverse consequences to CRC, CSXT or NSR, or (H) any material violation of any directive or policy of the CRC Board or any statutory or common law duty of loyalty to CRC. If a majority of the CRC Board in response to such a request of CSXT or NSR fails to direct the removal of the General Manager, the dispute may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13, provided, however*, that in any such arbitration to resolve a dispute under this *Section 2(b)(iii)*, the hearing shall commence no later than 30 days

following the appointment of the arbitrator and the award shall be rendered no later than 30 days following the completion of the hearing.

(c) *Employees.* The General Manager and all persons who operate and maintain the Shared Assets shall be employees of CRC, except for CSXT or NSR employees who provide Temporary Services and employees of Operators or independent contractors which provide services pursuant to contracts or arrangements in accordance with *Section 2(f)*.

(d) *CRC Responsibilities.* CRC shall be responsible for safely and efficiently operating, controlling and managing the use of the Shared Assets, impartially as between CSXT and NSR in accordance with directives and policies of the CRC Board, and with responsible business practices which are consistent with those used by CSXT and NSR in the operation of their businesses, and are designed to achieve the lowest cost of the safe and efficient operation, use and maintenance of the Shared Assets.

(e) *Impartiality.* CRC shall perform all of its obligations pursuant to this Agreement on an impartial and non-discriminatory basis as between CSXT and NSR, giving no preference to either of them in providing Switching and Yard Services, in the control of train dispatching over the Shared Assets, or in any other way whatsoever.

(f) *Independent Contractors.* CRC may, at least to the extent it may do so immediately prior to the date of this Agreement, procure the use of equipment or facilities owned by independent contractors, or services provided by independent contractors (using their own employees), with respect to the operation, maintenance and use of Shared Assets, including, without limitation, accounting, computer and other administrative services, and the furnishing of equipment and mechanical services. For purposes of this *Section 2(f)*, independent contractors may include CSXT or NSR.

Section 3. Operations.

(a) *Operator's Rights.* CRC hereby grants to each Operator full operating rights to operate its own trains (staffed by a road crew) and equipment, with its own crews and equipment and at its own expense, over any and all tracks included in the Shared Assets, and to use all of the Shared Assets in connection with the operation of such trains or equipment, for the following purposes:

(i) Movement by such Operator of trains (staffed by a road crew) through the Shared Assets Area between two geographical locations outside the Shared Assets Area;

(ii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and an Operator's Facility or a Jointly-Operated Facility which is within the Shared Assets Area;

(iii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and local industries which are within the Shared Assets Area;

(iv) Movement by such Operator of trains (staffed by a road crew) between Operator's Facilities or Jointly-Operated Facilities which are within the Shared Assets Area and local industries which are within the Shared Assets Area;

(v) Movement, handling, pick-up, set off, switching, transfer and interchange of Railcars, blocks of Railcars or trains (staffed by a road crew) to, from or at local industries, Operator's Facilities or Jointly-Operated Facilities, in connection with movements described in *Sections 3(a)(i) through (iv)*, to the extent provided for in the Local Movement Guidelines agreed to and modified by the parties from time to time (but not less frequently than annually); and

(vi) such other purposes as may be agreed upon by CRC, CSXT and NSR.

(b) *Use.* The crews of each train operated by an Operator on Shared Assets shall be qualified under and shall comply with applicable laws and regulations as well as the safety and operating rules of CRC.

(c) *Grant of Rights.* Subject to reasonable compensation and other terms established in the Accounting Plan, and in each case for the purpose of Switching and Yard Services performed by CRC pursuant to *Section 3(d)* and movement of Operator Trains pursuant to *Section 3(a)*:

(i) CSXT hereby grants to CRC and NSR overhead operating rights to operate CRC trains and NSR trains, respectively, with their own crews, over the following CSXT rail line segments:

(A) the current CRC line between CP Phil and CP Field and between CP Phil and CP Gray; and

(B) such other CSXT line segments access to and use of which by CRC and NSR are necessary to effectuate the train operations and services contemplated by this Agreement; and

(ii) CSXT hereby grants to CRC and NSR full operating rights to operate CRC trains and NSR trains, respectively, with their own crews, over the following CSXT rail line segments:

(A) the current CRC Trenton line between Park Jct. and CP Newtown (at the approximate boundary of the Shared Assets Area);

(B) the current CRC line between Greenwich Yard and CP Belmont; and

(C) the Eastwick Connection to be constructed by CSXT on the current CRC right-of-way between Eastwick and the vicinity of CP Field; and

(iii) NSR hereby grants to CRC and CSXT overhead operating rights to operate CRC trains and CSXT trains, with their own crews, over such NSR line segments access to and use of which by CRC and CSXT are necessary to effectuate the train operations and services contemplated by this Agreement; and

(iv) NSR hereby grants to CRC and CSXT full operating rights to operate CRC trains and CSXT trains, respectively, with their own crews, over the current Amtrak Lancaster line between Zoo and 52nd Street; and

(v) NSR hereby grants to CRC and CSXT the right to use West Falls Yard for the purpose of basing local trains, classifying and assembling trains and switching Railcars, but not for the purpose of serving local industries located at such yard.

Notwithstanding any other provision of this Agreement, each rail line segment identified in this *Section 3(c)* shall be dispatched, maintained, operated and controlled by the Operator which granted the rights with respect to such segment, *provided* that such dispatching, maintenance, operation and control shall be performed on an impartial and non-discriminatory basis as between the Operators. Trains operated by an Operator pursuant to operating rights granted under this *Section 3(c)* shall be governed by and subject to the Local Movement Guidelines.

(d) Switching and Yard Services.

(i) At the request of and as agent for each Operator, CRC shall perform Switching and Yard Services required by such Operator within the Shared Assets Area, including without limitation any such services which such Operator may be responsible for performing or having performed for a shipper or other Person.

(ii) Except as otherwise provided in *Section 3(a)*, and other than within an Operator's Facility, neither Operator shall with its own equipment or with its own crews perform any Switching and Yard Service within the Shared Assets Area for itself or for any other Person.

(e) *Freight Traffic To Remain in Account of Each Operator.* Switching and Yard Services and other services performed by CRC for either Operator under this Agreement shall be performed as agent for, and for the account of, such Operator. All freight traffic and Railcars handled within the Shared Assets Area, including traffic and Railcars handled by CSXT or NSR pursuant to *Sections 3(a) and 3(c)*, and traffic and Railcars handled by CRC pursuant to *Sections 3(c) and 3(d)*, shall at all times remain in the waybill, car hire and revenue accounts of either CSXT or NSR.

(f) *Rates, Routes and Divisions.* Each Operator shall have exclusive and independent authority to establish all rates, charges, service terms, routes and divisions, and to collect all freight revenues, relating to freight traffic transported for its account to, from and within the Shared Assets Area (except those Shared Assets Area line segments over which such Operator possesses only overhead operating rights pursuant to *Section 3(c)*). CRC shall not participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and within the Shared Assets Area, and shall not be entitled to or responsible for any freight charges relating to such freight traffic. CRC shall not quote or establish any rate or service terms applicable to freight transportation services to, from and within the Shared Assets Area, enter into transportation contracts with any Person (other than an Operator) for freight transportation services to, from and within the Shared Assets Area, or undertake to perform any for-hire transportation services directly, in its own name or for its own account for any Person (other than an Operator). The transfer or exchange of freight traffic between CSXT and CRC, and between NSR and CRC, within the Shared Assets Area shall not constitute an interchange of freight traffic or freight rail cars for purposes of determining rates, routes, divisions or interline settlements relating to any such freight traffic.

(g) *Shipper Bills.* Neither Operator shall inform the other or CRC of any rates or charges to shippers to which such Operator provides freight transportation services in the Shared Assets Area, and no copies of any shipper bill of lading or waybill shall be given by such Operator to the other or to CRC except to the extent that such documents are exchanged between rail carriers in the usual course of interline shipments and documenting.

(h) *Service Responsibility.* Each Operator shall at all times be solely responsible for obtaining, supplying and routing Railcars other than locomotives, for all Railcar ownership costs (including per-diem charges and mileage allowances) and for providing all service to its shippers within the Shared Assets Area pursuant to its transportation contracts with its shippers, including interline accounting, and all car hire and

demurrage or detention charges associated with Railcars in its account within the Shared Assets Area.

(i) *Dispatching.* CRC shall, from local locations or a location agreed upon by CSXT and NSR, control the dispatching, scheduling and movement of, and Switching and Yard Services for, all trains (including Operator Trains and CRC Trains) over the Shared Assets (other than Operator's Facilities, unless requested to do so by the Operator thereof) without any discrimination at any time in favor of or against either Operator, but in accordance with written policies and priorities for categories of freight, type of Railcar, size of train and train destinations established from time to time by the General Manager and approved by the CRC Board to achieve the maximum efficiency and lowest aggregate Shared Asset costs of CRC and the Operators.

(j) *Railcar Weighing.* All Railcars for the account of an Operator which originate or terminate on Shared Assets and which require weighing shall be weighed by and at the expense of such Operator or its customer, and at no cost to CRC.

(k) *Freight Claims.* The Operators shall agree among themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Operator shall be responsible for losses occurring to lading either in its possession or in the possession of CRC for the account of such Operator, and (ii) the Operators 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 Operators.

(l) *Freight Car Repairs.* If any Railcars are bad ordered while on the Shared Assets and must be set out from a CRC Train or Operator Train, CRC shall promptly return such Railcars to the Operator in whose account such Railcars reside in accordance with such Operator's instructions. CRC shall furnish, at such Operator's expense, required labor and material to perform, and shall perform, light repairs on such bad ordered Railcars as necessary to make such Railcars legal and safe for movement. CRC shall bill such Operator for the costs of such light repairs in accordance with the Field and Office Manuals of the AAR Interchange Rules in effect at the time such repairs are performed. CRC shall bill directly to and collect from the applicable Railcar owner charges for repair items that, under the AAR Interchange Rules, are the responsibility of the Railcar owner. CRC shall bill directly to and collect from such Operator charges for repair items that, under the AAR Interchange Rules, are the responsibility of the handling line carrier. CRC shall also bill directly to and collect from such Operator charges for repair items that, under the AAR Interchange Rules, are the responsibility of the Railcar owner, but as to which the applicable Railcar owner has refused or otherwise failed to make payment therefor. If any such bad ordered Railcar cannot be made legal and safe for movement by the performance of light

repairs, CRC shall, at such Operator's expense, arrange for appropriate removal of the affected Railcar in accordance with such Operator's instructions.

(m) *Train Services.* Actual costs incurred by CRC to provide special services (other than services otherwise provided for in this Agreement) at the request of an Operator with respect to trains, locomotives and Railcars for the account of such Operator, shall be paid by such Operator to CRC, *provided* that the costs and terms of similar special services rendered to each Operator shall be without discrimination between Operators as to cost and terms, giving due allowance to any differences in the costs of providing such services.

(n) *Wrecking Service.* Wrecking service or wrecking train service required in connection with services contemplated by this Agreement shall be provided by CRC (or its designee) as promptly as possible.

(o) *Admission of Third Parties.* Notwithstanding any other provision in this Agreement, no party may permit any Person (other than a party hereto) to have access to, operate over or use any Shared Asset without the prior approval of all parties, which approval may be given or refused in the sole discretion of each party.

Section 4. Equipment and Properties.

(a) *Procurement.* CRC shall procure, operate and maintain all equipment, real property rights and improvements thereon which are reasonably required for (i) CRC to operate the Shared Assets, and (ii) the Operators to move trains over the Shared Assets, in each case in accordance with this Agreement.

(b) *Contribution of Locomotives by Operators.* Upon reasonable request by the General Manager, the Operators shall furnish to CRC, through full-service lease or other mutually satisfactory arrangements, locomotives reasonably required by CRC for the performance of its obligations under this Agreement. The respective obligations of each Operator to furnish such locomotives shall be based, insofar as reasonably practicable, upon the Operator's CRC Train Usage Percentage during the calendar month preceding such request for the Shared Assets Area or Zone in which such locomotives are needed by CRC. It is the parties' intention that: (i) the arrangements pursuant to which such locomotives are furnished by either Operator to CRC shall provide that heavy maintenance, repair and overhaul shall be the responsibility of such Operator, (ii) locomotives furnished by either Operator to CRC may, in order to permit maintenance, repair and overhaul of such locomotive units, be exchanged for other locomotive units furnished by such Operator, and (iii) the respective obligations of each Operator to furnish such locomotives upon request by the General Manager shall be adjusted on at least a monthly or more frequent basis.

(c) *Locomotive Service and Repairs.* At the request of an Operator, CRC shall furnish required labor and material to perform, and shall perform, fueling and servicing of any Operator's locomotive, as well as light repairs on any Operator's locomotive as necessary to make such locomotive legal and safe for movement. CRC shall bill such Operator (or other owner of such locomotive) for the costs of such fueling, servicing and light repairs in accordance with industry practice in effect at the time such fueling, services or repairs are performed. If any such locomotive cannot be made safe for movement by the performance of light repairs, CRC shall, at the expense of such Operator (or other owner of such locomotive), arrange for appropriate removal of such locomotive in accordance with such Operator's instructions.

Section 5. Maintenance.

(a) Routine Maintenance.

(i) CRC shall be responsible for Routine Maintenance when necessary or desirable to maintain the Shared Assets in a safe operating condition, and to permit and facilitate (A) the performance by CRC of its obligations pursuant to this Agreement, and (B) the use of Shared Assets by the Operators in accordance with this Agreement.

(ii) CSXT or NSR, directly or through their respective affiliates, shall perform the work which CRC performed prior to the date of this Agreement if (A) CRC does not possess the skills needed for such work, (B) CRC lacks employees to do such work in a timely fashion, or (C) CRC does not have the equipment needed to do such work. CRC, CSXT and NSR may agree to perform additional work performed either by CSXT, NSR or their affiliates.

(b) CRC Program Maintenance.

(i) The General Manager shall prepare and submit to the CRC Board a Program Maintenance plan concurrently with the submission of an Operating Budget and the Capital Expenditure Budget to the CRC Board.

(ii) Any of CRC, CSXT or NSR may at any time deliver a Program Maintenance Proposal to the other two of them and to the General Manager and each member of the CRC Board.

(iii) The CRC Board shall either (A) approve any or all of such Program Maintenance Proposals and plan with such changes as it deems appropriate, include the costs thereof in a pending or amended Capital Expenditure Budget, and direct the General Manager to cause the maintenance described in approved Program

Maintenance Proposals or plan to be performed in accordance with *Sections 5(b)(iv) and (v)*, or (B) disapprove any or all of such Program Maintenance Proposals or plan.

(iv) Program Maintenance shall be the responsibility of CSXT and NSR pursuant to contracts or arrangements with CRC, and CRC shall not perform Program Maintenance, except for Program Maintenance which can be provided by Persons other than CSXT or NSR at a lower cost to CRC than the CSXT or NSR cost thereof.

(v) CRC shall select to perform each Program Maintenance project or program, the Operator which CRC reasonably determines will perform such project or program at the least cost to CRC consistent with safe and efficient operations, and taking into account scheduling considerations, based on written proposals submitted by each Operator.

(c) *Maintenance Standards.* Unless otherwise authorized by the CRC Board, the General Manager shall prepare and submit to the CRC Board proposals (including the Program Maintenance plan submitted pursuant to *Section 5(b)*) for the performance of such Routine Maintenance and Program Maintenance as is reasonably necessary to keep and maintain the Shared Assets substantially in their condition as of the date of this Agreement. If the CRC Board fails either to approve or disapprove by majority vote any such proposal within 45 days after it was submitted to the CRC Board, the disagreement over the propriety or need for any of the Routine Maintenance or Program Maintenance included in such proposal may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13*.

Section 6. Capital Improvements. Except as provided in *Section 5*, all capital improvements involving Shared Assets shall be governed by the following provisions:

(a) *Proposed Projects.* Either Operator, CRC or the General Manager may propose to the CRC Board from time to time capital improvement projects. Each such project shall be reviewed by the CRC Board, which may approve or disapprove by majority vote, or fail to approve, such projects.

(b) *CRC Board Approved Projects.* Each Operator shall be responsible for an equal share of the initial funding of each capital improvement project which has been approved by the CRC Board and is included in an approved Capital Expenditure Budget, except as provided in *Section 6(c)*. Upon completion of each such project, the Total Train Usage Percentage for each Operator shall be calculated in the Zone in which such project was completed for the 12-month period commencing on the date such project was placed in service. A final accounting shall be made to adjust the initial funding to such Total Train Usage Percentages thereof.

(c) *Nonseverable Improvement Projects.*

(i) At the written request of an Operator delivered to the other, each Operator shall, within 45 days of the delivery of such request, submit to an arbitrator in accordance with *Section 13* a written proposal with respect to a Nonseverable Improvement project which was neither approved nor disapproved by majority vote by the CRC Board within 45 days after such project was proposed to the CRC Board (A) describing any changes which such Operator proposes be made to such project and specifying a schedule, budget and allocations between the Operators of initial capital costs of such Nonseverable Improvement, or (B) proposing that it not be made.

(ii) The arbitrator receiving the proposals referred to in *Section 6(c)(i)* (A) shall consider (1) the degree, if any, to which the construction, operation and use of such Nonseverable Improvement would impair or interfere with the use of Shared Assets by CRC or either Operator, or conflict with any pending capital improvements included in an approved Capital Expenditure Budget, and (2) the budget and allocations between the Operators of initial capital costs of such Nonseverable Improvement as proposed by each Operator, and (B) shall determine within 45 days of such receipt which of such proposals shall be implemented, or that such Nonseverable Improvement shall not be made, and the CRC Board shall approve any proposal which such arbitrator determines shall be implemented.

(d) *Severable Improvement Projects.*

(i) Each Operator shall have the unilateral right to construct and exclusively fund any Severable Improvement which was not approved by the CRC Board.

(ii) Each Severable Improvement funded exclusively by an Operator shall be used exclusively by that Operator, which shall be solely responsible for maintaining such Severable Improvement at its own expense, until such time that the other Operator gives written notice that it desires also to use such Severable Improvement, stating the amount which such other Operator is prepared to pay to the Operator which initially funded such Severable Improvement for the right to use such Severable Improvement.

(iii) If the Operators are unable to agree on the amount of such payment within 45 days after such notice was given, then at the written request of an Operator delivered to the other after 45 days but before 60 days after such notice was given, each Operator shall, within 15 days of the delivery of such request, submit to an arbitrator in accordance with *Section 13* a written statement setting forth the proposed

payment by the second Operator, and the arbitrator shall within 45 days of such receipt determine which of such proposed amounts shall apply, which shall be binding on both Operators and paid promptly.

(iv) Such Severable Improvement shall become a Nonseverable Improvement at the time such second Operator pays the amount so determined and, thereafter, maintenance and other costs associated with the operation of such improvement shall be apportioned between the Operators as provided in this Agreement.

(e) *Capital Improvements as Shared Assets.* Upon completion, all capital improvements approved by the CRC Board and all Nonseverable Improvements shall become part of the Shared Assets owned by CRC subject to all provisions of this Agreement, free and clear of all Operator liens.

(f) *Title to Severable Improvements.* Each Operator shall retain title to all Severable Improvements exclusively funded by such Operator. At any time during the term of this Agreement, an Operator may remove (at its sole expense) any Severable Improvement which it exclusively funded, provided that such Operator has repaired (at its sole expense) any damage to a Shared Asset caused by such removal and has restored the related Shared Assets substantially to their condition at the time such Severable Improvements were made. In the event an Operator shall not have removed any Severable Improvement to which the Operator shall have title prior to the expiration or termination of this Agreement, title to such Severable Improvement shall vest in CRC, free and clear of all Operator liens, upon such expiration or termination.

(g) *Noninterference.* The construction, operation and use of Severable Improvements by an Operator shall not impair or interfere with the use of Shared Assets by CRC or the other Operator, nor shall any Severable Improvement conflict with any pending capital improvements included in an approved Capital Expenditure Budget.

(h) *Switch Connections.* CRC shall, upon the written request of one or both Operators, provide for switch and turnout connections from Shared Asset tracks to a private sidetrack owned by a shipper or other Person, if such request:

(i) includes the commitment of the Operator or both Operators making such request, or

(ii) is accompanied by a written undertaking from such shipper or other Person,

in each case satisfactory to CRC, to pay to CRC all costs incurred from time to time by CRC to provide for such switch and turnout connections within 30 days after it delivers a bill for such costs to such Operator, Operators, shipper or other Person.

(i) *Adjacent Improvements.*

(i) In the event an Operator constructs, acquires or funds the cost of an Adjacent Improvement (whether or not such Adjacent Improvement is ultimately owned by such Operator), the other Operator shall be entitled to share usage of such Adjacent Improvement by giving written notice stating the amount which such other Operator is prepared to pay to the first Operator for such right. If the Operators are unable to agree on the amount of such payment within 45 days after such notice was given, then at the written request of an Operator delivered to the other after 45 days but before 60 days after such notice was given, the matter shall be submitted for resolution by binding arbitration pursuant to *Section 13* and the provisions of *Section 6(d)(iii)* shall apply to determine the amount of such payment.

(ii) After the second Operator pays the amount so determined, if the first Operator owns or has a property interest in the Adjacent Improvement, the provisions of this *Section 6* shall be applied as if such improvement were a Nonseverable Improvement. If a shipper or another Person unrelated to the first Operator owns such Adjacent Improvement, the second Operator shall be entitled to share fully the rights of the first Operator in connection with such Adjacent Improvement in consideration of the initial payment.

(j) *Operator's Facilities.* The foregoing provisions of this *Section 6* shall not apply to any capital improvement (including, but not limited to, a transloading facility or automotive ramp) within an Operator's Facility.

Section 7. Accounting.

(a) *Books of Record and Account.* CRC shall keep proper books of record and account, which are separate from all other CRC books of record and account, in which full and correct entries shall be made of all, but only, the CRC transactions, costs, expenses and revenues with respect to the Shared Assets and only the CRC Area Business, in accordance with GAAP and the USOA, as modified by the Accounting Plan.

(b) *Financial Statements.* CRC shall deliver to each Operator (i) within 30 days after the end of each calendar month, a summary income statement and a summary balance sheet showing as of the last day of and for such calendar month, major categories of CRC revenue, expense, assets and liabilities attributable to the Shared Assets and the CRC Area Business, (ii) within 30 days after the last day of each CRC fiscal quarter, interim

financial statements with respect to the Shared Assets and the CRC Area Business as of and for the fiscal quarter ended on such day, similar to statements described in Rule 10-01 of Regulation S-X under the Securities Exchange Act of 1934, as amended, as modified by the Accounting Plan, and (iii) within 30 days after the last day of each CRC fiscal year, statements of income and cash flow and a balance sheet with respect to the Shared Assets and the CRC Area Business as of and for the fiscal year ended on such day, prepared in accordance with GAAP and the USOA, as modified by the Accounting Plan.

Section 8. Costs and Budgets.

(a) *CRC Costs.* CRC shall pay (and, except for Excluded Taxes, CSXT and NSR shall, pursuant to *Section 9*, reimburse CRC for) all of the costs and expenses to maintain its ownership of the Shared Assets and to operate and maintain the Shared Assets, including but not limited to all Taxes and assessments, licenses, permits and any other governmental authorizations required to own, operate and maintain the Shared Assets, the principal of and interest and premium, if any, on, and all other costs of, its indebtedness and all other costs of its capital.

(b) *Employee Cost Reimbursement.* CRC shall reimburse CSXT and NSR for the wages, *pro rata* portion of fringe benefits, other direct employment costs (including additives) and other actual employee-related costs of any CSXT or NSR employee, respectively, who provides Temporary Services.

(c) Capital Expenditure Budget.

(i) The General Manager shall prepare and submit to each member of the CRC Board at least 30 days prior to the beginning of each CRC fiscal year, a Capital Expenditure Budget for the one-year period beginning with such fiscal year, specifying for such year the schedule of Program Maintenance and Shared Asset capital improvements to be performed and constructed for the benefit of both Operators during such fiscal year and the months therein during which such expenditures are proposed to be made, for approval, or modification and approval, by the CRC Board.

(ii) The General Manager shall not permit any capital expenditure to be made by CRC, CSXT or NSR except in accordance with the Capital Expenditure Budget in effect from time to time, Severable Improvements exclusively funded by an Operator and emergency capital expenditures made (A) to preserve, or to mitigate a serious diminution in, the value and usefulness of a Shared Asset to CRC, CSXT and NSR, or (B) to prevent or mitigate a serious disruption in the operation and use of the Shared Assets by or for CRC, CSXT or NSR.

(iii) Any Capital Expenditure Budget may be amended in writing at any time by the CRC Board.

(d) Operating Budget.

(i) The General Manager shall prepare and submit to each member of the CRC Board at least 30 days prior to the beginning of each fiscal year of CRC, an Operating Budget for such fiscal year showing the budget amounts of revenues and expenses for each month during such fiscal year, for approval, or modification and approval, by the CRC Board.

(ii) The General Manager shall use all reasonable efforts to prevent CRC expenses with respect to Shared Assets for a period from exceeding the amounts shown on the Operating Budget for such period.

(iii) The General Manager shall give prompt written notice to each member of the CRC Board of any actual or, in the judgment of the General Manager, probable, material change in the revenues, expenses or working capital requirements shown on the Operating Budget for any period.

(iv) Any Operating Budget may be amended in writing at any time by the CRC Board.

Section 9. Cost Sharing.

(a) Accounting Plan. The parties shall develop and implement a written Plan of Accounting containing a detailed description, by category of cost and location, of the costs associated with the management and operation of the Shared Assets Area and the method by which such costs shall be fairly and properly apportioned among the parties. Such Plan of Accounting may include separate accounting and sharing of costs for particular Zones, and shall conform to the following general principles:

(i) Forty two percent (42%) of Interest Rental shall be apportioned to CSXT and fifty eight percent (58%) of Interest Rental shall be apportioned to NSR;

(ii) Locomotive ownership, lease, fueling, light repair and servicing costs incurred by CRC within the Shared Assets Area or each Zone (except costs incurred by CRC and charged directly to an Operator pursuant to *Section 4(c)*) shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(iii) Crew compensation and other crew costs incurred by CRC within the Shared Assets Area or each Zone with respect to CRC Trains shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(iv) General and administrative, supervisory and overhead expenses incurred by CRC within the Shared Assets Area or for functions related to the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(v) Dispatching and train control costs (including, without limitation, labor, equipment, materials and maintenance expenses) incurred by CRC with respect to the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(vi) Police and other costs incurred by CRC with respect to security within the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;

(vii) Damage paid by Conrail pursuant to *Section 11(c)* shall be apportioned between the Operators in accordance with *Section 11(b)*;

(viii) All other costs incurred by CRC with respect to the Shared Assets Area or each Zone (except Taxes and insurance) shall be apportioned between the Operators on the basis of the Total Train Usage Percentages;

(ix) Taxes (other than Excluded Taxes) incurred by CRC with respect to the Shared Assets Area or each Zone shall be apportioned between the Operators on the basis of the Operator's Expense Percentages for the period to which such Taxes relate; and

(x) Insurance costs incurred by CRC with respect to Shared Assets within the Shared Assets Area or each Zone shall be apportioned between the Operators on the basis of the Operator's Expense Percentages for the period to which such insurance costs relate;

If the parties are unable to agree on the terms and provisions of the Accounting Plan, such disagreement may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13*.

(b) *Usage Statement.* CRC shall deliver to each Operator prior to the last day of each calendar month, a written statement showing for the prior calendar month:

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(i) the total number of loaded Railcars in the account of each Operator in CRC Trains which performed Switching and Yard Services or operated directly between customer facilities in each Zone;

(ii) the total number of loaded and empty Railcars moved by or for such Operator in Operator Trains which operated overhead or directly to Jointly-Operated Facilities, Operators' Facilities or customer facilities in each Zone;

(iii) the calculation of the CRC Train Usage Percentage and the Total Train Usage Percentage for each Operator for each Zone,

and (A) all Railcars in a train shall be deemed to be on Shared Assets when the first or last Railcar of such train is on Shared Assets and (B) each time that a Railcar is removed from or added to a train in the Shared Assets Area shall constitute a separate movement of such Railcar.

(c) *Expense Statement.* Concurrently with the delivery of each Usage Statement to the Operators, CRC shall deliver to the Operators a statement showing (i) the expenses incurred by CRC to own, operate and maintain the Shared Assets during the Billing Month, (ii) the revenues, if any, derived by CRC from the ownership and operation of the Shared Assets during such Billing Month, and (iii) the Reimbursable Expenses for such Billing Month, in each case computed in accordance with GAAP and the USOA, as modified by the Accounting Plan.

(d) *Capital Expenditure Statement.* Concurrently with the delivery of each Usage Statement to the Operators, CRC shall deliver to the Operators a statement showing the estimated Budgeted Capital Expenditures for the calendar month immediately succeeding the calendar month in which such statement is delivered.

(e) *Bills.* Concurrently with the delivery to the Operators of a Usage Statement for a Billing Month, CRC shall deliver to each Operator a bill showing for such Billing Month:

(i) the amount of each Reimbursable Expense payable by such Operator for such Billing Month calculated in accordance with the Accounting Plan; and

(ii) fifty percent (50%) of the amount of Budgeted Capital Expenditures approved by the CRC Board and shown on the Capital Expenditure Statement delivered with such Usage Statement.

(f) *Payment.* Each Operator shall pay to CRC the amount shown on each Bill as being payable by such Operator, on or before the 30th day after the date of such Bill regardless of whether or not such Operator disputes the accuracy of any amount or calculation shown on such Bill.

(g) *Disputed Bills.*

(i) Any dispute by an Operator of the accuracy of any amount or calculation shown on any Bill, shall be described and specified in reasonable detail in a Dispute Letter from such Operator to CRC and the other Operator within three years after the date of such Bill.

(ii) Any amounts or calculations shown on any Bill which are not disputed in accordance with *Section 9(g)(i)* shall conclusively be deemed to be accurate and shall be binding on each Operator and CRC.

(iii) CRC and both Operators shall promptly endeavor to resolve the disputes described in each Dispute Letter, and if they fail to agree to a resolution of such disputes within 60 days of the delivery of such Dispute Letter to CRC, then the firm of independent public accountants which has been engaged as auditors for CRC shall be engaged to resolve such disputes in accordance with GAAP and the USOA, as modified by the Accounting Plan, and the written resolution of such disputes signed by such accounting firm shall be binding on each Operator and CRC.

(iv) Any adjustments to Bills which result from the resolution of Dispute Letter disputes shall be reflected as charges or credits on the first Bills delivered by CRC to the Operators after such disputes have been resolved.

(v) The fees in connection with the resolution of any Dispute Letter disputes of the accounting firm which has been engaged as auditor for CRC shall be paid fifty percent (50%) by CSXT and fifty percent (50%) by NSR.

Section 10. Access. CRC shall give to each Operator during normal CRC Administrative Office business hours, access to inspect and make copies of any and all books of record and accounts relating to this Agreement, all of which shall be maintained by CRC at the CRC Administrative Office.

Section 11. Liability. Except as otherwise provided in *Section 3(k)* and this *Section 11*, the responsibility between and among CRC, CSXT and NSR for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned without consideration of fault or negligence of any kind or degree as follows:

(a) *Sole Responsibility.* Subject to *Section 11(f)*, each Operator shall assume and bear all responsibility for Damage to its own trains, locomotives and equipment, 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) *Operators' Responsibility.* Subject to *Section 11(f)*, the Operators shall jointly assume and bear all responsibility for all Damage, other than Damage which is subject to *Sections 11(a) and (c)*, in proportion to their respective Total Train Usage Percentages in the Zone in which the incident giving rise to such Damage occurred for the 12 calendar month period immediately preceding the incident giving rise to such Damage. In the event an incident giving rise to Damage for which the Operators are jointly responsible occurs during the 12-month period immediately following the date of this Agreement, responsibility for such Damage shall be borne by the Operators in proportion to their respective Total Train Usage Percentages in the Zone in which the incident giving rise to such Damages occurred for such 12-month period.

(c) *CRC Responsibility.* Damages for which CRC is liable shall be CRC expenses and included in Expense Statements.

(d) *Process.* Each Operator shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under *Section 11(a)*, and both Operators shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under *Sections 11(b) and (c)*. In assigning joint responsibility to both Operators, it is not the intent of this Agreement that the Operators will actually act jointly, but rather that the Operators 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.

(e) *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 attorneys' fees and expenses and other expenses of any court or regulatory proceeding, incurred by such other parties in defending any claim that they are liable for such payments, and (ii) defend such other parties against such claims with counsel selected by such party and reasonably acceptable to such other parties.

(f) *Limitation.* Sections 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 exceed \$25 million shall be allocated to the extent of such excess to CRC, 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 Operator would otherwise be responsible under Sections 11(a) and (b) shall be determined, on a comparative percentage basis; (2) for each Operator, multiply \$25 million by the comparative percentage determined for that Operator in Section 11(f)(1); (3) the Damage for which each Operator is responsible in excess of the amount determined in Section 11(f)(2) shall be allocated between or among CRC, CSXT and NSR in proportion to their respective fault or negligence in causing the Damage. As used in this Section 11(f) only, the term "Damage" shall exclude Operator Consequential Damages (which are always borne by the Operator 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 Sections 11(a) and (b) and NSR would be responsible for \$20 million under Sections 11(a) and (b), then CSXT would be responsible for \$20 million and NSR would be responsible for \$5 million of such Damage under Section 11(f)(1), and the remaining \$75 million of Damage would be apportioned between or among CRC, 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 Section 13. The \$25 million amount referred to in this Section 11(f) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in the sole discretion of each party.

(g) *Exceptions.* Each Operator 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 Sections 11(b) and (f) shall not apply to any such Damage.

(h) *Transaction Agreement.* Section 2.8 of the Transaction Agreement shall control any conflict between Sections 11(b) and (c) and said Section 2.8.

Section 12. No Partnership. Nothing in this Agreement shall be construed to establish a partnership or joint venture between or among CRC, CSXT or NSR or any of their affiliates or associates.

Section 13. 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 contem-

plates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within 30 days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, and to require the cessation or nonperformance of acts found to be prohibited by this Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award, of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any other Person, except as required by law and except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

Section 14. Term. This Agreement shall become effective as of the date first above written and shall remain in effect until the 25th anniversary of such date, subject to the right of CSXT or NSR to agree prior to the 23rd anniversary of such date to extend this Agreement until the earlier of (a) the date on which the remaining useful life of the Shared Assets becomes less than twenty percent (20%) of their remaining useful life on such 25th anniversary, or (b) the 35th anniversary of such date and, if so extended to such 35th anniversary, to agree prior to the 33rd anniversary of such date to further extend this Agreement until the earlier of (c) the date on which the remaining useful life of the Shared Assets becomes less than twenty percent (20%) of their remaining useful life on such 35th anniversary, or (d) the 45th anniversary of such date.

Section 15. Force Majeure. The obligations, other than payment obligations, of the parties to this Agreement shall be subject to force majeure (which shall include strikes, riots, floods, accidents, Acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 16. Entire Agreement. This Agreement and the Transaction Agreement, including the other Ancillary Agreements (as defined in the Transaction Agreement) constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, except the letter agreement dated April 8, 1997 between CSX and NSC to the extent such April 8, 1997 letter agreement covers matters not addressed or amended hereby or in the Transaction Agreement or the Ancillary Agreements (as defined in the Transaction Agreement); *provided* that it is the intent of the parties that this Agreement shall be an effectuation of such April 8, 1997 letter agreement consistent with its terms, and that the provisions of this Agreement shall be interpreted to give effect to such April 8, 1997 letter agreement; and *provided further* that, in the event of any inconsistency between the terms of this Agreement and such April 8, 1997 letter agreement, this Agreement shall prevail.

Section 17. Amendment and Waiver. Any amendment to this Agreement must be in writing and executed and delivered by CRC, CSXT and NSR, subject to any jurisdiction of the STB. Any waiver of any term or provision of this Agreement must be in writing and executed and delivered by the party entitled to enforcement of such term or provision.

Section 18. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, such provision is intended to be ineffective only to the most limited extent possible in such context and the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 19. Remedies.

(a) *Entitlement to Certain Remedies.* Each party acknowledges and agrees that the other parties would be irreparably damaged in the event any of the provisions of this Agreement were not performed by it in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to an injunction or injunctions to prevent breaches of such provisions and to specifically enforce such provisions, in addition to any other remedy to which such party may be entitled, at law or in equity.

(b) *Preclusion of Certain Remedies.* In no event shall any party be liable to the other parties for any consequential, indirect, incidental, punitive or other similar damages including, but not limited to, lost profits for any breach or default, or any act or omission arising out of or in any way relating to this Agreement, under any form or theory of action whatsoever, whether in contract, tort or otherwise. The foregoing is not intended to alter or limit the allocation of responsibility for Damage as provided in *Section 11*.

Section 20. Interpretation. This Agreement was drafted jointly by CSXT and NSR, each of which was advised by its own counsel and other advisors concerning all of the terms and provisions hereof, accordingly, any ambiguity herein should not be construed in favor of or against any of them.

Section 21. Headings. Headings of Sections and paragraphs in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of any term or provision of this Agreement.

Section 22. Parties. This Agreement shall inure to the benefit of and be binding upon CRC, CSXT and NSR and any successor of any of them by operation of law, and any assignee agreed to by them in accordance with *Section 23*, and nothing in this Agreement is intended or shall be construed to give any other Person any legal or equitable right, remedy or claim under or with respect to this Agreement or any term or provision hereof.

Section 23. Assignment.

(a) *Limitation.* Except as provided in *Section 23(b)*, 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), which consent may be given or refused in the sole discretion of each party.

(b) *Successor.* Any party without the consent of the other parties 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 (but only if such sale includes all routes and lines owned by such party to access the Shared Assets), if such assignee executes and delivers to the other parties 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.

Section 24. Notices. Any notice given by CRC, CSXT or NSR to the others under this Agreement shall be deemed delivered on the date sent by registered mail, or by such other means as they may agree, and shall be addressed to them as follows:

(A) If to CSXT:

Executive Vice President and Chief Operating Officer
CSX Transportation, Inc.
500 Water Street, J120
Jacksonville, Florida 32202

(B) If to NSR:

Vice President Transportation & Mechanical
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

(C) If to CRC:

Chief Executive Officer
Consolidated Rail Corporation
2001 Market Street
Two Commerce Square
Philadelphia, Pennsylvania 19101

and each of them may from time to time change its address in this *Section 24* by written notice delivered to the others.

Section 25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officials as of the day first above written.

CSX TRANSPORTATION, INC.

By: _____
Title

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Title

CONSOLIDATED RAIL CORPORATION

By: _____
Title

**SHARED ASSETS AREA
OPERATING AGREEMENT
FOR
DETROIT**

Dated as of _____, __, 199_

By and Among

**CONSOLIDATED RAIL CORPORATION,
CSX TRANSPORTATION, INC. and
NORFOLK SOUTHERN RAILWAY COMPANY**

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**SHARED ASSETS AREA
OPERATING AGREEMENT
FOR
DETROIT**

This SHARED ASSETS AREA OPERATING AGREEMENT ("Agreement") dated as of _____, 199_, is by and among Consolidated Rail Corporation ("CRC"), CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR").

WITNESSETH:

WHEREAS, all capitalized terms in this Agreement have the respective meanings set forth in *Section 1*; and

WHEREAS, CSX owns all of the common stock of and controls CSXT, NSC owns all of the common stock of and controls NSR, and CSX and NSC jointly control CRC; and

WHEREAS, CSXT, NSR and CRC desire that the Shared Assets shall be owned, operated and maintained by CRC and used by or for the exclusive benefit of CSXT and NSR, and that CSXT and NSR shall each have full and equal rights to use the Shared Assets to provide competitive railway freight transportation services to, from and between all places within the Shared Assets Area.

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, CRC, CSXT and NSR hereby agree as follows:

Section 1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

- (a) "AAR" means the Association of American Railroads.
- (b) "Accounting Plan" means the Plan of Accounting adopted pursuant to *Section 9(a)*.

(c) "Action" means any action, claim, suit, arbitration, inquiry, subpoena, discovery request, proceeding or investigation by or before any Governmental Entity.

(d) "Adjacent Improvement" means a capital improvement, such as a spur, which provides access to customers and local industries and which (i) is on property which is not part of the Shared Assets and (ii) will be directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets.

(e) "Bill" means a bill delivered by CRC to an Operator pursuant to *Section 9(e)*.

(f) "Billing Month" means the calendar month for which information is shown on a Usage Statement.

(g) "Board of Managers" means any Board of Managers which may be appointed by the CRC Board pursuant to *Section 2(a)(ii)*.

(h) "Budgeted Capital Expenditures" means capital expenditures included on a Capital Expenditure Budget which has been approved by the CRC Board.

(i) "Capital Expenditure Budget" means a written budget specifying proposed capital expenditures to be made by CRC with respect to Shared Assets for the periods of time specified in such budget, and the proposed sources of the capital required to make such expenditures.

(j) "Capital Expenditure Statement" means a statement delivered by CRC pursuant to *Section 9(d)*.

(k) "CRC Administrative Office" means the administrative office of CRC located at Philadelphia, Pennsylvania, or at such other place designated by CRC in a notice it delivers to CSXT and NSR.

(l) "CRC Area Business" means the business, switching and other operations conducted by CRC with the Shared Assets.

(m) "CRC Board" means the Board of Directors of CRC.

(n) "CRC Train" means a train operated by CRC and performing services pursuant to *Sections 3(c) or (d)*.

(o) "CRC Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total number of loaded Railcars in the account of such Operator in CRC Trains, by (ii) the total number of loaded Railcars in the accounts of both Operators in CRC Trains, during such time period in such Zone.

(p) "CSX" means CSX Corporation.

(q) "Damage" means all assessments, fines, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and attorneys' and consultants' fees.

(r) "Dispute Letter" means a letter delivered by an Operator pursuant to *Section 9(g)(i)*.

(s) "Excluded Taxes" means (i) all Taxes based, in whole or in part, on net income or gross income (including, without limitation, any minimum tax) of CRC or which are in substitution for, or relieve CRC from, any Tax based upon or measured by CRC's net income or gross income, together with any interest, penalties, additions to tax or additional amounts that may become payable in respect thereof, (ii) business and occupation Taxes, and gross receipts Taxes of CRC, and (iii) interest, fines and penalties to the extent due to the acts or omissions of CRC in connection with such Excluded Taxes.

(t) "Expense Statement" means a statement delivered by CRC pursuant to *Section 9(c)*.

(u) "GAAP" at any time means generally accepted accounting principles in effect at such time.

(v) "General Manager" means the General Manager appointed pursuant to *Section 2(b)*.

(w) "Governmental Entity" means any federal, state, local or foreign court, administrative agency or commission or other governmental or regulatory authority or commission or any arbitration tribunal.

(x) "Interest Rental" means an amount representing a fair periodic return on the Shared Asset Value as of the most recent preceding Valuation Date as determined by such appraiser as CSXT and NSR may select.

(y) "Jointly-Operated Facility" means a facility or yard which is operated by or for a rail carrier and one or more other rail carriers.

(z) "Liabilities" means any and all debts, liabilities and obligations of any kind whatsoever, whether or not accrued, contingent or reflected on a balance sheet, known or unknown, absolute, determined, determinable or otherwise, including, without limitation, those arising under any law, rule, regulation, action, order or consent decree of any Governmental Entity or any judgment in any Action of any kind or award of any arbitrator of any kind and those arising under any contract.

(aa) "Local Movement Guidelines" means the guidelines agreed to and modified by the parties pursuant to *Section 3(a)(v)* governing the Operators' handling, pick-up, set off, transfer and interchange of Railcars, blocks of Railcars or trains at local industries, Operator's Facilities or Jointly-Operated Facilities within the Shared Assets Area.

(bb) "Nonseverable Improvement" means a capital improvement which is integral to the operation of the Shared Assets and is not readily removable.

(cc) "NSC" means Norfolk Southern Corporation.

(dd) "Operating Budget" means a written budget specifying estimated operating revenues and expenses and working capital requirements of CRC with respect to the Shared Assets for the periods of time specified in such budget.

(ee) "Operator" means either CSXT or NSR.

(ff) "Operator Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to an Operator.

(gg) "Operator's Expense Percentage" means for an Operator the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by such Operator for a particular period, by (ii) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by both Operators for such period.

(hh) "Operator's Facility" means a present, expanded or new facility or yard which is owned or controlled exclusively by an Operator.

(ii) "Operator Train" means a train operated by an Operator and performing services in accordance with *Sections 3(a) and 3(c)*.

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

(kk) "Program Maintenance" means scheduled renewal of track, signals, structures and other fixed facilities performed by system or production gangs assembled to accomplish a specific task or tasks.

(ll) "Program Maintenance Proposal" means a written proposal prepared by CRC, CSXT or NSR which describes specific Program Maintenance which the preparer of such proposal believes is necessary or desirable to maintain the Shared Assets in a safe operating condition to permit or facilitate (i) the performance by CRC of its services pursuant to this Agreement, or (i) the use of Shared Assets by the Operators, and which specifies a budget for such Program Maintenance.

(mm) "Railcar" means, except as otherwise provided in the Accounting Plan, each railroad freight car, locomotive, caboose or other equipment (including RoadRailer® or comparable bimodal freight hauling equipment in the account of either Operator) furnished in substitution of railroad equipment, loaded or empty, which an Operator originates, terminates, switches or moves on or overhead to any Shared Assets, except that (i) a single standard flat car not exceeding 96 feet in length (excluding articulated flat cars) shall count as a single Railcar, (ii) freight rail cars consisting of articulated units bearing AAR Car Type Codes "Q" and "S" shall count as multiple Railcars based on the second (numer.c) digit of the Car Type Code for such articulated units (by way of example, a car consisting of AAR Car Type Code "S566" would be counted as five Railcars) (or corresponding car type codes and digits if the AAR Car Type Codes should be modified at any time during the term of this Agreement), and (iii) a single unit of RoadRailer® equipment (or comparable bimodal freight hauling equipment in the account of either Operator) shall count as one-half (1/2) of a Railcar.

(nn) "Reimbursable Expenses" means the expenses shown on an Expense Statement, minus the revenues, if any, shown on such Expense Statement.

(oo) "RoadRailer®" means bimodal freight hauling equipment manufactured by or under license from "RoadRailer®", a division of Wabash National Corporation, and capable of movement over the highway when pulled by a tractor and on the rails using locomotive power.

(pp) "Routine Maintenance" means day-to-day repairs to track, signals, structures and other fixed facilities that are not part of Program Maintenance.

(qq) "Severable Improvement" means a capital improvement which is not a Nonseverable Improvement.

(rr) "Shared Asset Value" means at any date the value of the Shared Assets, except leases and other contract rights granted by either Operator to CRC, as of the most recent preceding Valuation Date as determined by such appraiser as CSXT and NSR may select.

(ss) "Shared Assets" means all tracks, lands, easements, rights of way, structures, facilities, appurtenances and rights related thereto, which CRC owns, leases or otherwise has the right to operate over (including those segments over which CRC or an Operator possesses operating rights pursuant to *Section 3(c)*), and which are used for railway purposes in the Shared Assets Area, including the properties, rights, equipment, inventory and supplies, whether owned or leased, described or referred to in Item 3A of Schedule 1 (including Attachments I and II) of the Transaction Agreement, but excluding Operator's Facilities.

(tt) "Shared Assets Area" means the geographical area comprising the Shared Assets and Operator Facilities and Jointly-Operated Facilities directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets, which is designated as the "Detroit" Shared Assets Area.

(uu) "STB" means the Surface Transportation Board or, if there shall be no Surface Transportation Board, any federal agency which is charged with the function of approving combinations by rail carriers or persons controlling them, or of other arrangements between rail carriers, and granting exemptions from other laws with respect thereto or regulating other specific functions with respect to the context in which such term is employed or any successor entity thereof.

(vv) "Switching and Yard Services" means the service of classifying and assembling trains for the account of an Operator in Jointly-Operated Facilities; movement of loaded or empty Railcars between yards and local industries, and switching trains and Railcars at yards, terminals and local industries.

(ww) "Tax" or "Taxes" means taxes of any kind, levies or other similar assessments, customs, duties, imposts, charges or fees, including, without limitation, income taxes, gross receipts, ad valorem, excise, real or personal property, sales, use, payroll, withholding, unemployment, transfer and gains taxes or other governmental taxes imposed by

or payable to the United States, or any state, local or foreign government or subdivision thereof, and in each instance such term shall include any interest, penalties or additions to tax attributable to such Tax or Taxes.

(xx) "Temporary Services" means services provided by CSXT or NSR employees in the operation, maintenance or repair of any Shared Asset on an emergency basis with the prior approval of the General Manager or senior CRC employee who is directly responsible for the operation or maintenance of such Shared Asset.

(yy) "Total Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the sum of the total number of loaded Railcars in the account of such Operator in CRC Trains and the total number of loaded and empty Railcars in the account of such Operator in Operator Trains, by (ii) the sum of the total number of loaded Railcars in the accounts of both Operators in CRC Trains and the total number of loaded and empty Railcars in the accounts of both Operators in Operator Trains, during such period in such Zone.

(zz) "Transaction Agreement" means the Transaction Agreement dated as of June __, 1997, among CSX, CSXT, NSC, NSR, Conrail Inc., CRC and CRR Holdings LLC.

(aaa) "Usage Statement" means a statement delivered by CRC pursuant to Section 9(b).

(bbb) "USOA" means the uniform system of accounts prescribed for class I railroads by the STB or any successor federal agency that shall succeed to the functions of the STB in prescribing uniform systems of accounts for rail carriers, *provided*, that if there shall be no STB and no such federal agency, USOA shall mean such system of accounts as is generally maintained by rail carriers consistent with GAAP as applied in the rail industry.

(ccc) "Valuation Date" means the date of this Agreement and thereafter the first day of the seventh year following the prior Valuation Date.

(ddd) "Zone" means a designated geographic section, or designated facilities, of the Shared Assets Area as established and described in the Accounting Plan.

Section 2. Management.

(a) CRC Board.

- (i) The CRC Board shall manage the Shared Assets.
- (ii) The CRC Board may appoint a Board of Managers, a committee, a CRC officer or other persons to have such duties and authority with respect to the Shared Assets as may be assigned to them from time to time by the CRC Board.
- (iii) Any Board of Managers appointed by the CRC Board shall be comprised of an equal number of individuals (and their successors) nominated by CSXT and nominated by NSR.
- (iv) The CRC Board shall remove from any Board of Managers (A) at the direction of CSXT, any person who was nominated by CSXT, and (B) at the direction of NSR, any person who was nominated by NSR.

(b) General Manager.

- (i) The General Manager shall not at any time have been an employee of CSXT or NSR or any of their affiliates unless otherwise agreed to by both Operators, and shall be appointed by the CRC Board for a term of one year or such longer period as the CRC Board may determine.
- (ii) The General Manager shall manage and supervise the ownership, operation, maintenance and use of the Shared Assets in accordance with directives and policies of the CRC Board and this Agreement, subject to the authority of the CRC Board, and through such Shared Assets Area superintendents and other Shared Assets Area executives as are appointed by the General Manager with the approval of the CRC Board. The General Manager shall report to the CRC Board. The General Manager shall perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR.
- (iii) The General Manager may be removed from office prior to the expiration of his or her term at any time by a majority of the CRC Board for any reason or for no reason. Upon the written request of CSXT or NSR to the CRC Board, the General Manager shall also be removed from office prior to the expiration of his or her term for serious misconduct, which shall mean conduct that would make it unreasonable to retain the General Manager, including but not limited to conduct such as:

(A) violation of applicable alcohol or drug use policies, (B) fraud, (C) embezzlement or other act of dishonesty against CRC, CSXT or NSR or any of their customers or suppliers, (D) activities willfully undertaken by the General Manager which reflect adversely upon the reputation of CRC, CSXT or NSR, (E) refusal to perform or substantial neglect of the responsibilities assigned to the General Manager, (F) failure to perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR after 45 days' written notice from an Operator describing such failure, (G) any violation of any law or rule or regulation of any Governmental Entity which results in serious adverse consequences to CRC, CSXT or NSR, or (H) any material violation of any directive or policy of the CRC Board or any statutory or common law duty of loyalty to CRC. If a majority of the CRC Board in response to such a request of CSXT or NSR fails to direct the removal of the General Manager, the dispute may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13, provided, however*, that in any such arbitration to resolve a dispute under this *Section 2(b)(iii)*, the hearing shall commence no later than 30 days following the appointment of the arbitrator and the award shall be rendered no later than 30 days following the completion of the hearing.

(c) *Employees.* The General Manager and all persons who operate and maintain the Shared Assets shall be employees of CRC, except for CSXT or NSR employees who provide Temporary Services and employees of Operators or independent contractors which provide services pursuant to contracts or arrangements in accordance with *Section 2(f)*.

(d) *CRC Responsibilities.* CRC shall be responsible for safely and efficiently operating, controlling and managing the use of the Shared Assets, impartially as between CSXT and NSR in accordance with directives and policies of the CRC Board, and with responsible business practices which are consistent with those used by CSXT and NSR in the operation of their businesses, and are designed to achieve the lowest cost of the safe and efficient operation, use and maintenance of the Shared Assets.

(e) *Impartiality.* CRC shall perform all of its obligations pursuant to this Agreement on an impartial and non-discriminatory basis as between CSXT and NSR, giving no preference to either of them in providing Switching and Yard Services, in the control of train dispatching over the Shared Assets, or in any other way whatsoever.

(f) *Independent Contractors.* CRC may, at least to the extent it may do so immediately prior to the date of this Agreement, procure the use of equipment or facilities owned by independent contractors, or services provided by independent contractors (using their own employees), with respect to the operation, maintenance and use of Shared Assets, including, without limitation, accounting, computer and other administrative services, and the

furnishing of equipment and mechanical services. For purposes of this *Section 2(f)*, independent contractors may include CSXT or NSR.

Section 3. Operations.

(a) *Operator's Rights.* CRC hereby grants to each Operator full operating rights to operate its own trains (staffed by a road crew) and equipment, with its own crews and equipment and at its own expense, over any and all tracks included in the Shared Assets, and to use all of the Shared Assets in connection with the operation of such trains or equipment, for the following purposes:

(i) Movement by such Operator of trains (staffed by a road crew) through the Shared Assets Area between two geographical locations outside the Shared Assets Area;

(ii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and an Operator's Facility or a Jointly-Operated Facility which is within the Shared Assets Area;

(iii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and local industries which are within the Shared Assets Area;

(iv) Movement by such Operator of trains (staffed by a road crew) between Operator's Facilities or Jointly-Operated Facilities which are within the Shared Assets Area and local industries which are within the Shared Assets Area;

(v) Movement, handling, pick-up, set off, switching, transfer and interchange of Railcars, blocks of Railcars or trains (staffed by a road crew) to, from or at local industries, Operator's Facilities or Jointly-Operated Facilities, in connection with movements described in *Sections 3(a)(i) through (iv)*, to the extent provided for in the Local Movement Guidelines agreed to and modified by the parties from time to time (but not less frequently than annually); and

(vi) such other purposes as may be agreed upon by CRC, CSXT and NSR.

(b) *Use.* The crews of each train operated by an Operator on Shared Assets shall be qualified under and shall comply with applicable laws and regulations as well as the safety and operating rules of CRC.

(c) *Grant of Rights.* Subject to reasonable compensation and other terms established in the Accounting Plan, and in each case for the purpose of Switching and Yard Services performed by CRC pursuant to *Section 3(d)* and movement of Operator Trains pursuant to *Section 3(a)*:

(i) CSXT hereby grants to CRC and NSR overhead operating rights to operate CRC trains and NSR trains, respectively, with their own crews, over such CSXT line segments access to and use of which by CRC and NSR are necessary to effectuate the train operations and services contemplated by this Agreement, and

(ii) NSR hereby grants to CRC and CSXT overhead operating rights to operate CRC trains and CSXT trains, with their own crews, over such NSR line segments access to and use of which by CRC and CSXT are necessary to effectuate the train operations and services contemplated by this Agreement.

Notwithstanding any other provision of this Agreement, each rail line segment identified in this *Section 3(c)* shall be dispatched, maintained, operated and controlled by the Operator which granted the rights with respect to such segment, *provided* that such dispatching, maintenance, operation and control shall be performed on an impartial and non-discriminatory basis as between the Operators. Trains operated by an Operator pursuant to operating rights granted under this *Section 3(c)* shall be governed by and subject to the Local Movement Guidelines.

(d) *Switching and Yard Services.*

(i) At the request of and as agent for each Operator, CRC shall perform Switching and Yard Services required by such Operator within the Shared Assets Area, including without limitation any such services which such Operator may be responsible for performing or having performed for a shipper or other Person.

(ii) Except as otherwise provided in *Section 3(a)*, and other than within an Operator's Facility, neither Operator shall with its own equipment or with its own crews perform any Switching and Yard Service within the Shared Assets Area for itself or for any other Person.

(e) *Freight Traffic To Remain in Account of Each Operator.* Switching and Yard Services and other services performed by CRC for either Operator under this Agreement shall be performed as agent for, and for the account of, such Operator. All freight traffic and Railcars handled within the Shared Assets Area, including traffic and Railcars handled by CSXT or NSR pursuant to *Sections 3(a) and 3(c)*, and traffic and Railcars handled by CRC

pursuant to *Sections 3(c) and 3(d)*, shall at all times remain in the waybill, car hire and revenue accounts of either CSXT or NSR.

(f) *Rates, Routes and Divisions.* Each Operator shall have exclusive and independent authority to establish all rates, charges, service terms, routes and divisions, and to collect all freight revenues, relating to freight traffic transported for its account to, from and within the Shared Assets Area (except those Shared Assets Area line segments over which such Operator possesses only overhead operating rights pursuant to *Section 3(c)*). CRC shall not participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and within the Shared Assets Area, and shall not be entitled to or responsible for any freight charges relating to such freight traffic. CRC shall not quote or establish any rate or service terms applicable to freight transportation services to, from and within the Shared Assets Area, enter into transportation contracts with any Person (other than an Operator) for freight transportation services to, from and within the Shared Assets Area, or undertake to perform any for-hire transportation services directly, in its own name or for its own account for any Person (other than an Operator). The transfer or exchange of freight traffic between CSXT and CRC, and between NSR and CRC, within the Shared Assets Area shall not constitute an interchange of freight traffic or freight rail cars for purposes of determining rates, routes, divisions or interline settlements relating to any such freight traffic.

(g) *Shipper Bills.* Neither Operator shall inform the other or CRC of any rates or charges to shippers to which such Operator provides freight transportation services in the Shared Assets Area, and no copies of any shipper bill of lading or waybill shall be given by such Operator to the other or to CRC except to the extent that such documents are exchanged between rail carriers in the usual course of interline shipments and documenting.

(h) *Service Responsibility.* Each Operator shall at all times be solely responsible for obtaining, supplying and routing Railcars other than locomotives, for all Railcar ownership costs (including per-diem charges and mileage allowances) and for providing all service to its shippers within the Shared Assets Area pursuant to its transportation contracts with its shippers, including interline accounting, and all car hire and demurrage or detention charges associated with Railcars in its account within the Shared Assets Area.

(i) *Dispatching.* CRC shall, from local locations or a location agreed upon by CSXT and NSR, control the dispatching, scheduling and movement of, and Switching and Yard Services for, all trains (including Operator Trains and CRC Trains) over the Shared Assets (other than Operator's Facilities, unless requested to do so by the Operator thereof) without any discrimination at any time in favor of or against either Operator, but in accordance with written policies and priorities for categories of freight, type of Railcar, size of train and train destinations established from time to time by the General Manager and approved by

the CRC Board to achieve the maximum efficiency and lowest aggregate Shared Asset costs of CRC and the Operators, *provided*, however, that CSXT shall control the dispatching, scheduling, movement and Switching and Yard Services for all CRC Trains and Operator Trains over the following Shared Asset rail segments:

(A) the current CRC Lincoln Secondary between Carleton, MI and Hold Out Signal at Lincoln Yard;

and NSR shall control the dispatching, scheduling, movement and Switching and Yard Services for all CRC Trains and Operator Trains over the following Shared Asset rail segments:

(B) the current CRC Detroit Line between Trenton, MI and CP YD;

(C) the current CRC Junction Yard Secondary between CP YD and CP Townline, including New Wye Runner; and

(D) the current CRC Lincoln Running Track between Ecorse Jct. and the connection with NSR.

Dispatching, scheduling and movement of trains performed by either Operator under this *Section 3(i)* shall conform to the same standards of non-discrimination, written policies and priorities applicable to the control of such functions by CRC at other locations included within the Shared Assets Area.

(j) *Railcar Weighing.* All Railcars for the account of an Operator which originate or terminate on Shared Assets and which require weighing shall be weighed by and at the expense of such Operator or its customer, and at no cost to CRC.

(k) *Freight Claims.* The Operators shall agree among themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Operator shall be responsible for losses occurring to lading either in its possession or in the possession of CRC for the account of such Operator, and (ii) the Operators 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 Operators.

(l) *Freight Car Repairs.* If any Railcars are bad ordered while on the Shared Assets and must be set out from a CRC Train or Operator Train, CRC shall promptly return such Railcars to the Operator in whose account such Railcars reside in accordance with such Operator's instructions. CRC shall furnish, at such Operator's expense, required labor

and material to perform, and shall perform, light repairs on such bad ordered Railcars as necessary to make such Railcars legal and safe for movement. CRC shall bill such Operator for the costs of such light repairs in accordance with the Field and Office Manuals of the AAR Interchange Rules in effect at the time such repairs are performed. CRC shall bill directly to and collect from the applicable Railcar owner charges for repair items that, under the AAR Interchange Rules, are the responsibility of the Railcar owner. CRC shall bill directly to and collect from such Operator charges for repair items that, under the AAR Interchange Rules, are the responsibility of the handling line carrier. CRC shall also bill directly to and collect from such Operator charges for repair items that, under the AAR Interchange Rules, are the responsibility of the Railcar owner, but as to which the applicable Railcar owner has refused or otherwise failed to make payment therefor. If any such bad ordered Railcar cannot be made legal and safe for movement by the performance of light repairs, CRC shall, at such Operator's expense, arrange for appropriate removal of the affected Railcar in accordance with such Operator's instructions.

(m) *Train Services.* Actual costs incurred by CRC to provide special services (other than services otherwise provided for in this Agreement) at the request of an Operator with respect to trains, locomotives and Railcars for the account of such Operator, shall be paid by such Operator to CRC, *provided* that the costs and terms of similar special services rendered to each Operator shall be without discrimination between Operators as to cost and terms, giving due allowance to any differences in the costs of providing such services.

(n) *Wrecking Service.* Wrecking service or wrecking train service required in connection with services contemplated by this Agreement shall be provided by CRC (or its designee) as promptly as possible.

(o) *Admission of Third Parties.* Notwithstanding any other provision in this Agreement, no party may permit any Person (other than a party hereto) to have access to, operate over or use any Shared Asset without the prior approval of all parties, which approval may be given or refused in the sole discretion of each party.

Section 4. Equipment and Properties.

(a) *Procurement.* CRC shall procure, operate and maintain all equipment, real property rights and improvements thereon which are reasonably required for (i) CRC to operate the Shared Assets, and (ii) the Operators to move trains over the Shared Assets, in each case in accordance with this Agreement.

(b) *Contribution of Locomotives by Operators.* Upon reasonable request by the General Manager, the Operators shall furnish to CRC, through full-service lease or other

mutually satisfactory arrangements, locomotives reasonably required by CRC for the performance of its obligations under this Agreement. The respective obligations of each Operator to furnish such locomotives shall be based, insofar as reasonably practicable, upon the Operator's CRC Train Usage Percentage during the calendar month preceding such request for the Shared Assets Area or Zone in which such locomotives are needed by CRC. It is the parties' intention that (i) the arrangements pursuant to which such locomotives are furnished by either Operator to CRC shall provide that heavy maintenance, repair and overhaul shall be the responsibility of such Operator, (ii) locomotives furnished by either Operator to CRC may, in order to permit maintenance, repair and overhaul of such locomotive units, be exchanged for other locomotive units furnished by such Operator, and (iii) the respective obligations of each Operator to furnish such locomotives upon request by the General Manager shall be adjusted on at least a monthly or more frequent basis.

(c) *Locomotive Service and Repairs.* At the request of an Operator, CRC shall furnish required labor and material to perform, and shall perform, fueling and servicing of any Operator's locomotive, as well as light repairs on any Operator's locomotive as necessary to make such locomotive legal and safe for movement. CRC shall bill such Operator (or other owner of such locomotive) for the costs of such fueling, servicing and light repairs in accordance with industry practice in effect at the time such fueling, services or repairs are performed. If any such locomotive cannot be made safe for movement by the performance of light repairs, CRC shall, at the expense of such Operator (or other owner of such locomotive), arrange for appropriate removal of such locomotive in accordance with such Operator's instructions.

Section 5. Maintenance.

(a) Routine Maintenance.

(i) CRC shall be responsible for Routine Maintenance when necessary or desirable to maintain the Shared Assets in a safe operating condition, and to permit and facilitate (A) the performance by CRC of its obligations pursuant to this Agreement, and (B) the use of Shared Assets by the Operators in accordance with this Agreement.

(ii) CSXT or NSR, directly or through their respective affiliates, may perform the work which CRC performed prior to the date of this Agreement when (A) CRC does not possess the skills needed for such work, (B) CRC lacks the necessary employees to do such work in a timely fashion, or (C) CRC does not possess the equipment needed to do such work. CRC, CSXT and NSR may agree to have additional work performed either by CSXT, NSR or their affiliates.

(b) *CRC Program Maintenance.*

(i) The General Manager shall prepare and submit to the CRC Board a Program Maintenance plan concurrently with the submission of an Operating Budget and the Capital Expenditure Budget to the CRC Board.

(ii) Any of CRC, CSXT or NSR may at any time deliver a Program Maintenance Proposal to the other two of them and to the General Manager and each member of the CRC Board.

(iii) The CRC Board shall either (A) approve any or all of such Program Maintenance Proposals and plan with such changes as it deems appropriate, include the costs thereof in a pending or amended Capital Expenditure Budget, and direct the General Manager to cause the maintenance described in approved Program Maintenance Proposals or plan to be performed in accordance with *Sections 5(b)(iv) and (v)*, or (B) disapprove any or all of such Program Maintenance Proposals or plan.

(iv) Program Maintenance shall be the responsibility of CSXT and NSR pursuant to contracts or arrangements with CRC, and CRC shall not perform Program Maintenance, except for Program Maintenance which can be provided by Persons other than CSXT or NSR at a lower cost to CRC than the CSXT or NSR cost thereof.

(v) CRC shall select to perform each Program Maintenance project or program, the Operator which CRC reasonably determines will perform such project or program at the least cost to CRC consistent with safe and efficient operations, and taking into account scheduling considerations, based on written proposals submitted by each Operator.

(c) *Maintenance Standards.* Unless otherwise authorized by the CRC Board, the General Manager shall prepare and submit to the CRC Board proposals (including the Program Maintenance plan submitted pursuant to *Section 5(b)*) for the performance of such Routine Maintenance and Program Maintenance as is reasonably necessary to keep and maintain the Shared Assets substantially in their condition as of the date of this Agreement. If the CRC Board fails either to approve or disapprove by majority vote any such proposal within 45 days after it was submitted to the CRC Board, the disagreement over the propriety or need for any of the Routine Maintenance or Program Maintenance included in such proposal may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13*.

Section 6. Capital Improvements. Except as provided in *Section 5*, all capital improvements involving Shared Assets shall be governed by the following provisions:

(a) *Proposed Projects.* Either Operator, CRC or the General Manager may propose to the CRC Board from time to time capital improvement projects. Each such project shall be reviewed by the CRC Board, which may approve or disapprove by majority vote, or fail to approve, such projects.

(b) *CRC Board Approved Projects.* Each Operator shall be responsible for an equal share of the initial funding of each capital improvement project which has been approved by the CRC Board and is included in an approved Capital Expenditure Budget, except as provided in *Section 6(c)*. Upon completion of each such project, the Total Train Usage Percentage for each Operator shall be calculated in the Zone in which such project was completed for the 12-month period commencing on the date such project was placed in service. A final accounting shall be made to adjust the initial funding to such Total Train Usage Percentages thereof.

(c) *Nonseverable Improvement Projects.*

(i) At the written request of an Operator delivered to the other, each Operator shall, within 45 days of the delivery of such request, submit to an arbitrator in accordance with *Section 13* a written proposal with respect to a Nonseverable Improvement project which was neither approved nor disapproved by majority vote by the CRC Board within 45 days after such project was proposed to the CRC Board (A) describing any changes which such Operator proposes be made to such project and specifying a schedule, budget and allocations between the Operators of initial capital costs of such Nonseverable Improvement, or (B) proposing that it not be made.

(ii) The arbitrator receiving the proposals referred to in *Section 6(c)(i)* (A) shall consider (1) the degree, if any, to which the construction, operation and use of such Nonseverable Improvement would impair or interfere with the use of Shared Assets by CRC or either Operator, or conflict with any pending capital improvements included in an approved Capital Expenditure Budget, and (2) the budget and allocations between the Operators of initial capital costs of such Nonseverable Improvement as proposed by each Operator, and (B) shall determine within 45 days of such receipt which of such proposals shall be implemented, or that such Nonseverable Improvement shall not be made, and the CRC Board shall approve any proposal which such arbitrator determines shall be implemented.

(d) *Severable Improvement Projects.*

(i) Each Operator shall have the unilateral right to construct and exclusively fund any Severable Improvement which was not approved by the CRC Board.

(ii) Each Severable Improvement funded exclusively by an Operator shall be used exclusively by that Operator, which shall be solely responsible for maintaining such Severable Improvement at its own expense, until such time that the other Operator gives written notice that it desires also to use such Severable Improvement, stating the amount which such other Operator is prepared to pay to the Operator which initially funded such Severable Improvement for the right to use such Severable Improvement.

(iii) If the Operators are unable to agree on the amount of such payment within 45 days after such notice was given, then at the written request of an Operator delivered to the other after 45 days but before 60 days after such notice was given, each Operator shall, within 15 days of the delivery of such request, submit to an arbitrator in accordance with *Section 13* a written statement setting forth the proposed payment by the second Operator, and the arbitrator shall within 45 days of such receipt determine which of such proposed amounts shall apply, which shall be binding on both Operators and paid promptly.

(iv) Such Severable Improvement shall become a Nonseverable Improvement at the time such second Operator pays the amount so determined and, thereafter, maintenance and other costs associated with the operation of such improvement shall be apportioned between the Operators as provided in this Agreement.

(e) *Capital Improvements as Shared Assets.* Upon completion, all capital improvements approved by the CRC Board and all Nonseverable Improvements shall become part of the Shared Assets owned by CRC subject to all provisions of this Agreement, free and clear of all Operator liens.

(f) *Title to Severable Improvements.* Each Operator shall retain title to all Severable Improvements exclusively funded by such Operator. At any time during the term of this Agreement, an Operator may remove (at its sole expense) any Severable Improvement which it exclusively funded, provided that such Operator has repaired (at its sole expense) any damage to a Shared Asset caused by such removal and has restored the related Shared Assets substantially to their condition at the time such Severable Improvements were made. In the event an Operator shall not have removed any Severable Improvement to which the Operator

shall have title prior to the expiration or termination of this Agreement, title to such Severable Improvement shall vest in CRC, free and clear of all Operator liens, upon such expiration or termination.

(g) *Noninterference.* The construction, operation and use of Severable Improvements by an Operator shall not impair or interfere with the use of Shared Assets by CRC or the other Operator, nor shall any Severable Improvement conflict with any pending capital improvements included in an approved Capital Expenditure Budget.

(h) *Switch Connections.* CRC shall, upon the written request of one or both Operators, provide for switch and turnout connections from Shared Asset tracks to a private sidetrack owned by a shipper or other Person, if such request:

(i) includes the commitment of the Operator or both Operators making such request, or

(ii) is accompanied by a written undertaking from such shipper or other Person,

in each case satisfactory to CRC, to pay to CRC all costs incurred from time to time by CRC to provide for such switch and turnout connections within 30 days after it delivers a bill for such costs to such Operator, Operators, shipper or other Person.

(i) *Adjacent Improvements.*

(i) In the event an Operator constructs, acquires or funds the cost of an Adjacent Improvement (whether or not such Adjacent Improvement is ultimately owned by such Operator), the other Operator shall be entitled to share usage of such Adjacent Improvement by giving written notice stating the amount which such other Operator is prepared to pay to the first Operator for such right. If the Operators are unable to agree on the amount of such payment within 45 days after such notice was given, then at the written request of an Operator delivered to the other after 45 days but before 60 days after such notice was given, the matter shall be submitted for resolution by binding arbitration pursuant to *Section 13* and the provisions of *Section 6(d)(iii)* shall apply to determine the amount of such payment.

(ii) After the second Operator pays the amount so determined, if the first Operator owns or has a property interest in the Adjacent Improvement, the provisions of this *Section 6* shall be applied as if such improvement were a Nonseverable Improvement. If a shipper or another Person unrelated to the first Operator owns such Adjacent Improvement, the second Operator shall be entitled to share fully

the rights of the first Operator in connection with such Adjacent Improvement in consideration of the initial payment.

(j) *Operator's Facilities.* The foregoing provisions of this *Section 6* shall not apply to any capital improvement (including, but not limited to, a transloading facility or automotive ramp) within an Operator's Facility.

Section 7. Accounting.

(a) *Books of Record and Account.* CRC shall keep proper books of record and account, which are separate from all other CRC books of record and account, in which full and correct entries shall be made of all, but only, the CRC transactions, costs, expenses and revenues with respect to the Shared Assets and only the CRC Area Business, in accordance with GAAP and the USOA, as modified by the Accounting Plan.

(b) *Financial Statements.* CRC shall deliver to each Operator (i) within 30 days after the end of each calendar month, a summary income statement and a summary balance sheet showing as of the last day of and for such calendar month, major categories of CRC revenue, expense, assets and liabilities attributable to the Shared Assets and the CRC Area Business, (ii) within 30 days after the last day of each CRC fiscal quarter, interim financial statements with respect to the Shared Assets and the CRC Area Business as of and for the fiscal quarter ended on such day, similar to statements described in Rule 10-01 of Regulation S-X under the Securities Exchange Act of 1934, as amended, as modified by the Accounting Plan, and (iii) within 30 days after the last day of each CRC fiscal year, statements of income and cash flow and a balance sheet with respect to the Shared Assets and the CRC Area Business as of and for the fiscal year ended on such day, prepared in accordance with GAAP and the USOA, as modified by the Accounting Plan.

Section 8. Costs and Budgets.

(a) *CRC Costs.* CRC shall pay (and, except for Excluded Taxes, CSXT and NSR shall, pursuant to *Section 9*, reimburse CRC for) all of the costs and expenses to maintain its ownership of the Shared Assets and to operate and maintain the Shared Assets, including but not limited to all Taxes and assessments, licenses, permits and any other governmental authorizations required to own, operate and maintain the Shared Assets, the principal of and interest and premium, if any, on, and all other costs of, its indebtedness and all other costs of its capital.

(b) *Employee Cost Reimbursement.* CRC shall reimburse CSXT and NSR for the wages, *pro rata* portion of fringe benefits, other direct employment costs (including

additives) and other actual employee-related costs of any CSXT or NSR employee, respectively, who provides Temporary Services.

(c) *Capital Expenditure Budget.*

(i) The General Manager shall prepare and submit to each member of the CRC Board at least 30 days prior to the beginning of each CRC fiscal year, a Capital Expenditure Budget for the one-year period beginning with such fiscal year, specifying for such year the schedule of Program Maintenance and Shared Asset capital improvements to be performed and constructed for the benefit of both Operators during such fiscal year and the months therein during which such expenditures are proposed to be made, for approval, or modification and approval, by the CRC Board

(ii) The General Manager shall not permit any capital expenditure to be made by CRC, CSXT or NSR except in accordance with the Capital Expenditure Budget in effect from time to time, Severable Improvements exclusively funded by an Operator and emergency capital expenditures made (A) to preserve, or to mitigate a serious diminution in, the value and usefulness of a Shared Asset to CRC, CSXT and NSR, or (B) to prevent or mitigate a serious disruption in the operation and use of the Shared Assets by or for CRC, CSXT or NSR.

(iii) Any Capital Expenditure Budget may be amended in writing at any time by the CRC Board.

(d) *Operating Budget.*

(i) The General Manager shall prepare and submit to each member of the CRC Board at least 30 days prior to the beginning of each fiscal year of CRC, an Operating Budget for such fiscal year showing the budget amounts of revenues and expenses for each month during such fiscal year, for approval, or modification and approval, by the CRC Board.

(ii) The General Manager shall use all reasonable efforts to prevent CRC expenses with respect to Shared Assets for a period from exceeding the amounts shown on the Operating Budget for such period.

(iii) The General Manager shall give prompt written notice to each member of the CRC Board of any actual or, in the judgment of the General Manager, probable, material change in the revenues, expenses or working capital requirements shown on the Operating Budget for any period.

- (iv) Any Operating Budget may be amended in writing at any time by the CRC Board.

Section 9. Cost Sharing.

(a) *Accounting Plan.* The parties shall develop and implement a written Plan of Accounting containing a detailed description, by category of cost and location, of the costs associated with the management and operation of the Shared Assets Area and the method by which such costs shall be fairly and properly apportioned among the parties. Such Plan of Accounting may include separate accounting and sharing of costs for particular Zones, and shall conform to the following general principles:

- (i) Forty two percent (42%) of Interest Rental shall be apportioned to CSXT and fifty eight percent (58%) of Interest Rental shall be apportioned to NSR;
- (ii) Locomotive ownership, lease, fueling, light repair and servicing costs incurred by CRC within the Shared Assets Area or each Zone (except costs incurred by CRC and charged directly to an Operator pursuant to *Section 4(c)*) shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;
- (iii) Crew compensation and other crew costs incurred by CRC within the Shared Assets Area or each Zone with respect to CRC Trains shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;
- (iv) General and administrative, supervisory and overhead expenses incurred by CRC within the Shared Assets Area or for functions related to the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;
- (v) Dispatching and train control costs (including, without limitation, labor, equipment, materials and maintenance expenses) incurred by CRC with respect to the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;
- (vi) Police and other costs incurred by CRC with respect to security within the Shared Assets Area shall be apportioned between the Operators on the basis of the CRC Train Usage Percentages;
- (vii) Damage paid by Conrail pursuant to *Section 11(c)* shall be apportioned between the Operators in accordance with *Section 11(b)*;

(viii) All other costs incurred by CRC with respect to the Shared Assets Area or each Zone (except Taxes and insurance) shall be apportioned between the Operators on the basis of the Total Train Usage Percentages;

(ix) Taxes (other than Excluded Taxes) incurred by CRC with respect to the Shared Assets Area or each Zone shall be apportioned between the Operators on the basis of the Operator's Expense Percentages for the period to which such Taxes relate, and

(x) Insurance costs incurred by CRC with respect to Shared Assets within the Shared Assets Area or each Zone shall be apportioned between the Operators on the basis of the Operator's Expense Percentages for the period to which such insurance costs relate;

If the parties are unable to agree on the terms and provisions of the Accounting Plan, such disagreement may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13*.

(b) *Usage Statement.* CRC shall deliver to each Operator prior to the last day of each calendar month, a written statement showing for the prior calendar month:

(i) the total number of loaded Railcars in the account of each Operator in CRC Trains which performed Switching and Yard Services or operated directly between customer facilities in each Zone;

(ii) the total number of loaded and empty Railcars moved by or for such Operator in Operator Trains which operated overhead or directly to Jointly-Operated Facilities, Operators' Facilities or customer facilities in each Zone;

(iii) the calculation of the CRC Train Usage Percentage and the Total Train Usage Percentage for each Operator for each Zone,

and (A) all Railcars in a train shall be deemed to be on Shared Assets when the first or last Railcar of such train is on Shared Assets and (B) each time that a Railcar is removed from or added to a train in the Shared Assets Area shall constitute a separate movement of such Railcar.

(c) *Expense Statement.* Concurrently with the delivery of each Usage Statement to the Operators, CRC shall deliver to the Operators a statement showing (i) the expenses incurred by CRC to own, operate and maintain the Shared Assets during the Billing Month, (ii) the revenues, if any, derived by CRC from the ownership and operation of the

Shared Assets during such Billing Month, and (iii) the Reimbursable Expenses for such Billing Month, in each case computed in accordance with GAAP and the USOA, as modified by the Accounting Plan.

(d) *Capital Expenditure Statement.* Concurrently with the delivery of each Usage Statement to the Operators, CRC shall deliver to the Operators a statement showing the estimated Budgeted Capital Expenditures for the calendar month immediately succeeding the calendar month in which such statement is delivered.

(e) *Bills.* Concurrently with the delivery to the Operators of a Usage Statement for a Billing Month, CRC shall deliver to each Operator a bill showing for such Billing Month:

(i) the amount of each Reimbursable Expense payable by such Operator for such Billing Month calculated in accordance with the Accounting Plan; and

(ii) fifty percent (50%) of the amount of Budgeted Capital Expenditures approved by the CRC Board and shown on the Capital Expenditure Statement delivered with such Usage Statement.

(f) *Payment.* Each Operator shall pay to CRC the amount shown on each Bill as being payable by such Operator, on or before the 30th day after the date of such Bill regardless of whether or not such Operator disputes the accuracy of any amount or calculation shown on such Bill.

(g) *Disputed Bills.*

(i) Any dispute by an Operator of the accuracy of any amount or calculation shown on any Bill, shall be described and specified in reasonable detail in a Dispute Letter from such Operator to CRC and the other Operator within three years after the date of such Bill.

(ii) Any amounts or calculations shown on any Bill which are not disputed in accordance with *Section 2(g)(i)* shall conclusively be deemed to be accurate and shall be binding on each Operator and CRC.

(iii) CRC and both Operators shall promptly endeavor to resolve the disputes described in each Dispute Letter, and if they fail to agree to a resolution of such disputes within 60 days of the delivery of such Dispute Letter to CRC, then the firm of independent public accountants which has been engaged as auditors for CRC

shall be engaged to resolve such disputes in accordance with GAAP and the USOA, as modified by the Accounting Plan, and the written resolution of such disputes signed by such accounting firm shall be binding on each Operator and CRC.

(iv) Any adjustments to Bills which result from the resolution of Dispute Letter disputes shall be reflected as charges or credits on the first Bills delivered by CRC to the Operators after such disputes have been resolved.

(v) The fees in connection with the resolution of any Dispute Letter disputes of the accounting firm which has been engaged as auditor for CRC shall be paid fifty percent (50%) by CSXT and fifty percent (50%) by NSR.

Section 10. Access. CRC shall give to each Operator during normal CRC Administrative Office business hours, access to inspect and make copies of any and all books of record and accounts relating to this Agreement, all of which shall be maintained by CRC at the CRC Administrative Office.

Section 11. Liability. Except as otherwise provided in *Section 3(k)* and this *Section 11*, the responsibility between and among CRC, CSXT and NSR for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned without consideration of fault or negligence of any kind or degree as follows:

(a) *Sole Responsibility.* Subject to *Section 11(f)*, each Operator shall assume and bear all responsibility for Damage to its own trains, locomotives and equipment, 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) *Operators' Responsibility.* Subject to *Section 11(f)*, the Operators shall jointly assume and bear all responsibility for all Damage, other than Damage which is subject to *Sections 11(a) and (c)*, in proportion to their respective Total Train Usage Percentages in the Zone in which the incident giving rise to such Damage occurred for the 12 calendar month period immediately preceding the incident giving rise to such Damage. In the event an incident giving rise to Damage for which the Operators are jointly responsible occurs during the 12-month period immediately following the date of this Agreement, responsibility for such Damage shall be borne by the Operators in proportion to their respective Total Train Usage Percentages in the Zone in which the incident giving rise to such Damages occurred for such 12-month period.

(c) *CRC Responsibility.* Damages for which CRC is liable shall be CRC expenses and included in Expense Statements.

(d) *Process.* Each Operator shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under *Section 11(a)*, and both Operators shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under *Sections 11(b) and (c)*. In assigning joint responsibility to both Operators, it is not the intent of this Agreement that the Operators will actually act jointly, but rather that the Operators 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.

(e) *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 attorneys' fees and expenses and other expenses of any court or regulatory proceeding, incurred by such other parties in defending any claim that they are liable for such payments, and (ii) defend such other parties against such claims with counsel selected by such party and reasonably acceptable to such other parties.

(f) *Limitation.* *Sections 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 exceed \$25 million shall be allocated to the extent of such excess to CRC, 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 Operator would otherwise be responsible under *Sections 11(a) and (b)* shall be determined, on a comparative percentage basis; (2) for each Operator, multiply \$25 million by the comparative percentage determined for that Operator in *Section 11(f)(1)*; (3) the Damage for which each Operator is responsible in excess of the amount determined in *Section 11(f)(2)* shall be allocated between or among CRC, CSXT and NSR in proportion to their respective fault or negligence in causing the Damage. As used in this *Section 11(f)* only, the term "Damage" shall exclude Operator Consequential Damages (which are always borne by the Operator 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 *Sections 11(a) and (b)* and NSR would be responsible for \$20 million under *Sections 11(a) and (b)*, then CSXT would be responsible for \$20 million and NSR would be responsible for \$5 million of such Damage under *Section 11(f)(1)*, and the remaining \$75 million of Damage would be apportioned between or among CRC, 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 *Section 13*. The \$25 million amount referred to in this *Section 11(f)* may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in the sole discretion of each party.

(g) *Exceptions.* Each Operator 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 *Sections 11(b) and (f)* shall not apply to any such Damage.

(h) *Transaction Agreement.* *Section 2.8* of the Transaction Agreement shall control any conflict between *Sections 11(b) and (c)* and said *Section 2.8*.

Section 12. No Partnership. Nothing in this Agreement shall be construed to establish a partnership or joint venture between or among CRC, CSXT or NSR or any of their affiliates or associates.

Section 13. Arbitration. Any dispute, controversy or claim (or any failure by the parties to agree on a matter as to which this Agreement expressly or implicitly contemplates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within 30 days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, and to require the cessation or nonperformance of acts found to be prohibited by this Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award, of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any other Person, except as required by law and except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

Section 14. Term. This Agreement shall become effective as of the date first above written and shall remain in effect until the 25th anniversary of such date, subject to the right of CSXT or NSR to agree prior to the 23rd anniversary of such date to extend this Agreement until the earlier of (a) the date on which the remaining useful life of the Shared Assets becomes less than twenty percent (20%) of their remaining useful life on such 25th anniversary, or (b) the 35th anniversary of such date and, if so extended to such 35th anniversary, to agree prior to the 33rd anniversary of such date to further extend this Agreement until the earlier of (c) the date on which the remaining useful life of the Shared Assets becomes less than twenty percent (20%) of their remaining useful life on such 35th anniversary, or (d) the 45th anniversary of such date.

Section 15. Force Majeure. The obligations, other than payment obligations, of the parties to this Agreement shall be subject to force majeure (which shall include strikes, riots, floods, accidents, Acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 16. Entire Agreement. This Agreement and the Transaction Agreement, including the other Ancillary Agreements (as defined in the Transaction Agreement) constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, except the letter agreement dated April 8, 1997 between CSX and NSC to the extent such April 8, 1997 letter agreement covers matters not addressed or amended hereby or in the Transaction Agreement or the Ancillary Agreements (as defined in the Transaction Agreement); *provided* that it is the intent of the parties that this Agreement shall be an effectuation of such April 8, 1997 letter agreement consistent with its terms, and that the provisions of this Agreement shall be interpreted to give effect to such April 8, 1997 letter agreement; and *provided further* that, in the event of any inconsistency between the terms of this Agreement and such April 8, 1997 letter agreement, this Agreement shall prevail.

Section 17. Amendment and Waiver. Any amendment to this Agreement must be in writing and executed and delivered by CRC, CSXT and NSR, subject to any jurisdiction of the STB. Any waiver of any term or provision of this Agreement must be in writing and executed and delivered by the party entitled to enforcement of such term or provision.

Section 18. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, such provision is intended to be ineffective only to the most limited extent possible in such context and the remainder of the terms,

provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 19. Remedies.

(a) *Entitlement to Certain Remedies.* Each party acknowledges and agrees that the other parties would be irreparably damaged in the event any of the provisions of this Agreement were not performed by it in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to an injunction or injunctions to prevent breaches of such provisions and to specifically enforce such provisions, in addition to any other remedy to which such party may be entitled, at law or in equity.

(b) *Preclusion of Certain Remedies.* In no event shall any party be liable to the other parties for any consequential, indirect, incidental, punitive or other similar damages including, but not limited to, lost profits for any breach or default, or any act or omission arising out of or in any way relating to this Agreement, under any form or theory of action whatsoever, whether in contract, tort or otherwise. The foregoing is not intended to alter or limit the allocation of responsibility for Damage as provided in *Section 11*.

Section 20. Interpretation. This Agreement was drafted jointly by CSXT and NSR, each of which was advised by its own counsel and other advisors concerning all of the terms and provisions hereof, accordingly, any ambiguity herein should not be construed in favor of or against any of them.

Section 21. Headings. Headings of Sections and paragraphs in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of any term or provision of this Agreement.

Section 22. Parties. This Agreement shall inure to the benefit of and be binding upon CRC, CSXT and NSR and any successor of any of them by operation of law, and any assignee agreed to by them in accordance with *Section 23*, and nothing in this Agreement is intended or shall be construed to give any other Person any legal or equitable right, remedy or claim under or with respect to this Agreement or any term or provision hereof.

Section 23. Assignment.

(a) *Limitation.* Except as provided in *Section 23(b)*, 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), which consent may be given or refused in the sole discretion of each party.

(b) *Successor.* Any party without the consent of the other parties 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 (but only if such sale includes all routes and lines owned by such party to access the Shared Assets), if such assignee executes and delivers to the other parties 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.

Section 24. Notices. Any notice given by CRC, CSXT or NSR to the others under this Agreement shall be deemed delivered on the date sent by registered mail, or by such other means as they may agree, and shall be addressed to them as follows:

(A) If to CSXT:

Executive Vice President and Chief Operating Officer
CSX Transportation, Inc.
500 Water Street, J120
Jacksonville, Florida 32202

(B) If to NSR:

Vice President Transportation & Mechanical
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

(C) If to CRC:

Chief Executive Officer
Consolidated Rail Corporation
2001 Market Street
Two Commerce Square
Philadelphia, Pennsylvania 19101

and each of them may from time to time change its address in this *Section 24* by written notice delivered to the others.

Section 25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officials as of the day first above written.

CSX TRANSPORTATION, INC.

By: _____
Title

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Title

CONSOLIDATED RAIL CORPORATION

By: _____
Title

ASTEABULA, OHIOINTERLOCKING AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of _____ 19____, by and among NEW YORK CENTRAL LLC, (hereinafter referred to as "NYC"), CSX TRANSPORTATION, INC. (hereinafter referred to as "CSXT"), PENNSYLVANIA LINES LLL (hereinafter referred to as "PRR"), and NORFOLK SOUTHERN RAILWAY COMPANY, including its subsidiaries and affiliates (hereinafter referred to as "NSR");

WITNESSETH: That

WHEREAS, CSX Corporation ("CSX"), parent to CSXT, and Norfolk Southern Corporation ("NSC"), parent to NSR, have 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, this Agreement and the understandings as to NYC's and PRR's interests in the interlocking (as hereinafter defined) described herein are being entered into pursuant to the terms of the Transaction Agreement;

WHEREAS, CSXT and NSR each will operate under the CSXT Operating Agreement and the NSR Operating Agreement respectively a line of railroad that either connects or crosses the other at grade at Ashtabula, Ohio under the protection of an interlocking signal system; and

WHEREAS, NYC, CSXT, PRR and NSR desire to define their respective rights, duties and obligation with respect to the

ownership, maintenance and operation of said crossing and interlocking;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth, it is agreed between the parties hereto as follows:

ARTICLE 1. DEFINITION OF INTERLOCKING AND AAR UNITS

- (a) Whenever the word "interlocking" is hereinafter used, it shall be held and taken to include but not be limited to the field coding equipment, signals, housings, appliances, highway traffic control devices and appurtenances necessary for operation of the interlocking, substantially as shown on the plan to be marked Exhibit "A". Said Exhibit "A" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.
- (b) The limits of the interlocking shall, for the purpose of this Agreement, be within and include the home signals along the tracks of the parties to be shown on Exhibit "A". Units will be assigned in accordance with the Signal and Interlocking Unit Distribution to be effective the same date as the effective date of this Agreement and marked Exhibit "C". Said Exhibit "C" will be prepared and processed for approval by the parties and made a part hereof by supplement to this

Agreement.

- (c) The term "AAR Units" used herein refers to the units stated in the Table of Signal and Interlocking Units of the Signal Section, Association of American Railroads, as issued from time to time. At the time of this Agreement, said table dated 1993 shall apply, copy attached hereto, marked Exhibit "B" and made a part hereof.

ARTICLE 2. OPERATION

- (a) The parties acknowledge that (i) pursuant to the NYC Operating Agreement is assigning to CSXT all of its rights and obligations to operate NYC's assets including the interlocking control that is the subject of this Agreement and thus CSXT shall have all of the rights and obligations conferred by or imposed under this Agreement during the term of the CSXT Operating Agreement and (ii) pursuant to the NSR Operating Agreement, PRR is assigning to NSR all of its rights and obligations to operate PRR's assets, including the interlocking except as otherwise provided herein, that is the subject of this Agreement and thus NSR shall have all the rights and obligations conferred by or imposed under this Agreement during the term of the NSR Operating Agreement.

(b) Ownership of the railroad crossing frog(s) and/or turnouts within the interlocking limits shall be vested as follows and shall be defined on the plan to be marked Exhibit "D". Said Exhibit "D" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.

(i) Ownership of the existing crossing diamonds to be shown on Exhibit "D" will be vested 50% in NYC and 50% in PRR.

(ii) Ownership of the existing connecting trackage, including turnouts, to be shown on Exhibit "D" will be vested 100% in the party whose right-of-way such trackage is located thereon.

(c) Ownership of said interlocking shall be vested in each party in accordance with the AAR Units to be indicated on Exhibit "C".

(d) Any taxes or other charges assessed against said operation shall be borne by CSXT and NSR in proportion to the ownership percentage specified in subsections (b) and (c) above. The ownership of facilities installed by or for either NSR or CSXT at their sole expense shall be vested in

PRR and NYC, respectively and NSR (in the case of facilities invested in PRR) and CSXT (in the case of facilities vested in NYC) shall bear any taxes or other charges as may be assessed against said ownership.

ARTICLE 3. MAINTENANCE AND OPERATION OF CROSSING(S) AND INTERLOCKING

(a) Maintenance, inspection, repair and renewal of the rail crossing frog(s) and/or turnouts within the interlocking limits shall be performed as follows:

(i) CSXT shall maintain, inspect, repair and renew the existing crossing diamonds within the limits of the interlocking to be shown on Exhibit "D".

(ii) NSR and CSXT shall maintain, inspect, repair and renew its respective trackage under their control in accordance with the respective NSR or CSXT Operating Agreements including existing connecting trackage and road crossing surfaces, if any, located on the respective right-of-way within the limits of the interlocking to be shown on Exhibit "D".

(b) Signal maintenance, inspection, repair, and renewal and operation of the interlocking shall be under the sole charge

and control of CSXT, and it shall employ competent persons for such purposes. NSR and CSXT shall at their sole cost and expense maintain all signal facilities and appurtenances in and along the tracks it operates outside of the limits of said interlocking as may be necessary to accommodate said interlocking.

- (c) Operation and control of the interlocking shall be conducted in a manner as to afford each of the parties the most economical and efficient movement of its traffic through the facility.
- (d) NSR and CSXT shall, at their sole cost and expense, perform any and all track work on PRR lines (in the case of NSR) and NYC lines (in the case of CSXT) located outside of the interlocking limits, and make such changes in such tracks, and install, maintain and renew insulated joints and other appurtenances located in such tracks as may be required for the interlocking. NSR and CSXT will keep the premises and tracks operated by it free from interference and obstructions which may in any way affect the proper functioning of said interlocking.

ARTICLE 4. DIVISION OF CROSSING(S) AND INTERLOCKING MAINTENANCE COST

- (a) The expense of maintaining, inspecting, repairing and renewing the crossing frog(s) and/or crossing turnouts shall be allocated as follows:

- (i) The cost and expense of maintenance, inspection, repair and renewal of the existing crossing diamonds within the limits of the interlocking to be shown on Exhibit AD@ shall be equally divided between NSR and CSXT.
- (ii) The cost and expense of maintenance, inspection, repair and renewal of the existing connecting trackage, turnouts and road crossing surfaces to be shown on Exhibit AD@ within the interlocking limits, will be at the sole cost and expense of CSXT, if such trackage is located on NYC's right-of-way and NSR, if such trackage is located on PRR's right-of-way.
- (b) The expense of maintaining, inspecting, repairing, renewing and operating the interlocking, including cost of electrical current, shall be apportioned to each part in accordance with AAR unit values as shown on Exhibit "B" and apportioned between NSR and CSXT as will be indicated on Exhibit "C".
- (c) In the event future changes are made in the interlocking, Exhibit "C" shall be revised following each such change in accordance with the principles set forth herein. After approval by the respective signal officers of NSR and CSXT,

said revised Exhibit "C" shall be substituted for the then existing Exhibit "C" and shall be applicable from the effective date shown thereon.

ARTICLE 5. COMMUNICATION CHANGES

NSR and CSXT shall, at their sole cost and expense, make such changes in and adjustments to PRR (in the case of NSR) and NYC (in the case of CSXT) communication facilities as may be required for respective operations of the interlocking, and hereafter maintain said facilities at its sole expense.

ARTICLE 6. CHANGES TO INTERLOCKING

CSXT, with the consent of NYR, and NSR with the consent of PRR, hereto shall have the right to require track changes to tracks located within the interlocking limits and changes in the interlocking that do not impair the interlocking efficiency, provided that such changes shall be made in accordance with plans which shall have been approved by the respective officers NSR and CSXT. Such interlocking changes made in any existing track, or made to cover any future track or tracks within the interlocking limits, or which may be required by reason of any changes made in the standard appliances or practices of NSR or CSXT, or which may be ordered by a lawfully constituted public authority shall be made by CSXT. NSR shall make changes to track owned by PRR and CSXT shall make changes to track owned by NYC outside the interlocking limits provided such changes do not affect or impair the interlocking's efficiency. The cost of any track and interlocking changes shall be borne by the party requesting such changes or as agreed to as by the parties. In those cases where

the changes are mandated by any legally constituted public authority having jurisdiction over said interlocking, the cost of such changes shall be borne by the party or parties for whose benefit such changes are made.

ARTICLE 7. ELIMINATION OF RAIL CROSSING

Subject to Article VIII of the CSXT Operating Agreement and the NSR Operating Agreement, NSR or CSXT shall have the right to retire and eliminate existing or future crossings of PRR track or tracks with the track or tracks of NYC within the limits of the interlocking and CSXT shall have the right to retire and eliminate existing or future crossings and/or connections of NYC track or tracks with the track or tracks of PRR within the limits of the interlocking, and the cost and expense to eliminate such crossing or crossings shall be divided as follows:

- (a) Costs and expenses to effect a partial withdrawal shall be apportioned as provided in Article 6.
- (b) All costs, relating to removal of track, track appurtenances, signals and related facilities necessary to effect abandonment or complete withdrawal of either party from further use of this joint facility, shall be at the sole expense of the sponsoring party, and the salvage value derived therefrom shall be credited to NSR and CSXT in proportion to the ownership of the facility by PRR and NYC, respectively, subject to Article VIII of the NSR Operating Agreement and the CSXT Operating Agreement.
- (c) Costs and expenses necessary to rearrange the remaining facilities and provide necessary additional facilities for

the continued operation of the remaining party shall be at the sole expense of the withdrawing party.

ARTICLE 8. TEMPORARY MANUAL PROTECTION

In the event it shall become necessary to assign forces at the herein referred to crossing(s) for the protection of train movements while the interlocking may be temporarily out of service, CSXT shall do so, and the cost and expense of said forces and supplies furnished to them shall be divided and paid in the aforesaid division of maintenance cost. However, in case it is necessary to provide manual protection as a result of damage caused by any party hereto or at the request of any party for its sole benefit, such party shall exclusively bear the entire cost of the manual protection.

ARTICLE 9. ACCOUNTING

- (a) CSXT and NSR shall keep accurate accounts of all their costs incurred in installing, maintaining, repairing, renewing and operating the crossing(s) and the interlocking. Such records shall be open at all reasonable times for audit and inspection for a period of three (3) years from date of billing.
- (b) Either party may, at any time subsequent to the execution of this Agreement and upon mutual agreement, establish flat rate billing, subject to revision from time to time, to cover the cost of maintaining the crossing(s) and the

interlocking in lieu of rendering bills for the actual costs of such maintenance.

ARTICLE 10. BILLING AND PAYMENT

- (a) On or about the 15th day of each month, billing shall be rendered to cover the cost and expense of such accounts for the previous month. All payments called for under this Agreement shall be made within thirty (30) days of the date of the bills therefor.
- (b) Payment shall not be withheld for minor errors which may occasionally occur in railroad accounting; rather, an exception shall be noted and the overcharge or undercharge, as the case may be, shall be adjusted as promptly as possible in a subsequent monthly statement.
- (c) Bills for expenses incurred hereunder shall include direct labor and materials costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

ARTICLE 11. LIABILITY

- a) For the purposes of this Article it is agreed that:

- (i) All persons engaged in and all equipment and appliances used in the maintenance, repair, renewal, operation and removal of, or the making of changes, improvements or additions to the crossings, and the performance of any other work to be performed at the joint expense of the parties hereto shall be deemed to be the joint employees and the joint equipment of the parties.
- (ii) All persons engaged in and all equipment and appliances used in the performance of work which pursuant to the terms of this Agreement is to be at the sole cost and expense of one of the parties hereto shall be deemed to be sole employees and sole equipment of the party for whom said work is performed.
- (iii) Notwithstanding the provisions of Article 19(d) for the purpose of this Subarticle (a), 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 within the limits of the interlocking, and (iii) vehicles and machinery that, at the time of an occurrence, are within the limits of the interlocking or its right of way for the purpose of maintenance or repair thereof or the clearing

of wrecks thereon.

- (b) Except as provided for in Article 8 (c) below, the responsibility and liability between the parties for any personal injury or death of any person (including employees of the parties and third persons); any real or personal property damage of any person (including property of the parties and third persons); any damage or destruction to the environment (including land, air, water, wildlife and vegetation); and all cleanup and remedial expenses, court costs and litigation expenses resulting from, arising out of, incidental to, or occurring in connection with this Agreement; all of which are collectively referred to as a "Loss", will be divided as follows:

- (i) If a Loss occurs while the crossing is being used solely by the trains and locomotives of either CSXT or NSR, then the using party is solely responsible for the Loss, even if caused partially or completely by the other party.
- (ii) If a Loss occurs while the crossing is being used by the trains and locomotives of both CSXT and NSR, then each is solely responsible for any Loss to its own employees, locomotives and equipment in its own accounts (including lading); and the parties are

equally responsible for any Loss to all other property and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the Loss is solely responsible.

(iii) For purposes of assigning responsibility for a Loss as between the parties hereto under this Agreement, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.

(iv) 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 parent corporation, subsidiaries and affiliates, and all of their respective directors, 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, malfeasance or misfeasance of the indemnitee or its directors, officers, agents or

employees.

- (v) Notwithstanding the foregoing provisions, liability, costs and expenses for injury to or death of a joint employee and damages to or destruction of any joint equipment shall be borne equally by CSXT and NSR.
- (vi) If any suit or action shall be brought against either party hereto for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such and shall pay a proportionate part of the judgment and costs and expense incurred in such suit according to its liability assumed hereunder.
- (vii) In every case of death or injury suffered by an employee of either party hereto, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' 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

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installments over a period of time; then 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.

- (c) Article 12(b) shall apply only to the amount of Loss resulting from a single incident which is \$25 million or less. Responsibility for Losses resulting from a single incident which exceed \$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 Loss, subject to the following rules: (1) the total amount of Loss for which each party would otherwise be responsible under Article 12(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 12(c)(1); (3) the Loss for which each party is responsible in excess of the amount determined in Article 12(c)(2) shall be allocated between or among CSXT and NSR in proportion to their respective fault or negligence in causing the Loss. As used in this Article 12(c), the term "Loss" shall exclude consequential, indirect, incidental or other similar damage, injury or loss to either CSXT or NSR and claims for exemplary and punitive damages by any party hereto on its own behalf against another party

hereto. By way of example, if a Loss from a single incident were \$100 million, of which CSXT would be responsible for \$80 million under Article 12(b) and NSR would be responsible for \$20 million under Article 12(b), then CSXT would be responsible for \$20 million and NSR would be responsible for \$5 million of such Loss under Article 12(c)(1), and the remaining \$75 million of Loss would be apportioned between or among CSXT and NSR in proportion to their respective fault or negligence in causing the Loss. Any dispute between or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Loss or otherwise relating to their respective responsibilities for Loss arising out of, incidental to or occurring in connection with any such incident, including any Loss exceeding \$25 million, shall be submitted for resolution by binding arbitration pursuant to Article 14. The \$25 million amount referred to in this article 12(c) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in sole discretion of each party.

- (d) Exceptions. Each part shall assume and bear all responsibility for Loss caused by acts or omissions of any of its employees while under the influence of druge or alcohol or by the intentional and criminal misconduct of any such employee and Article 12(b) and (c) shall not apply to any such

Loss.

ARTICLE 12. CLAIMS

- (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 shall investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- (c) In the event a claim or suit is asserted against one of the parties hereto which is the other party'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 expense 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 herein, except that salaries or wages of full-time claim agents, full-time attorneys and full-time employees of either party engaged directly or indirectly in such work shall be borne by the employing party.
- (e) Excluding cargo related liability claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, 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 exceeds \$35,000.00.
- (f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 12.
- (g) Each party hereto will indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and

employees from and 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 on the 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 intention of the parties 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. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs

and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator.

ARTICLE 14. TERM AND TERMINATION

- (a) This agreement shall become effective as the date first above written and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by mutual consent of the parties.
- (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 (i) termination of the 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 Agreement shall not relieve or release either party hereto from any liability it may have incurred or any obligation which may have accrued under any provision of this Agreement prior to the effective date of termination.
- (d) This Agreement encompasses any and all understandings between the parties hereto as to the crossing(s) and interlocking at Ashtabula, Ohio, and makes null and void any previous agreements between the parties or their predecessors covering said crossing(s) and interlocking.

ARTICLE 15. GOVERNING LAWS

Each party hereto shall comply with all applicable laws, rules, regulations and orders promulgated by any government or governmental agency which affects this Agreement. If any fine, penalty, cost or charge is imposed or assessed on or against either party by reason of failure to so comply, the party so failing shall promptly reimburse and indemnify the other party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees for or on account of such fine, penalty, cost or charge and all expenses incurred in connection therewith, and shall defend any action free of cost, charge or expense to the other party.

ARTICLE 16. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm or corporation, other than a successor, assignee, purchaser or transferor of all or substantially all the rail properties of the transferring party, without obtaining the prior written consent of the other party.

ARTICLE 17. NOTICES

All notices required to be given by either party to the other shall be in writing and addressed as follows:

To NYC: (To be furnished)

To PRR: (To be furnished)

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

To NSR: Vice President Transportation
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

ARTICLE 18. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either 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 both 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 construction or interpretation of this Agreement.
- (f) As used in this Agreement, whenever reference is made to the trains, locomotives, car or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (g) This Agreement is the result of mutual negotiations of the

parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

- (h) Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

ARTICLE 19. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other party shall also extend to an 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 day and year first above written.

WITNESS:

NEW YORK CENTRAL LLC

By: _____
Title _____

WITNESS:

CSX TRANSPORTATION, INC.

By: _____

Title _____

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

Vice President Transportation and
Mechanical

WITNESS:

PENNSYLVANIA LINES LLC

By: _____

Title: _____

a:CRIL.1 (June 8, 1997)

CP MOUNDS, COLUMBUS, OHIO
INTERLOCKING AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of _____ 19__, by and among NEW YORK CENTRAL LLC (hereinafter referred to as "NYC"), CSX TRANSPORTATION, INC. (hereinafter referred to as "CSXT"), PENNSYLVANIA LINES LLC (hereinafter referred to as "PRR"), and NORFOLK SOUTHERN RAILWAY COMPANY, including its subsidiaries and affiliates (hereinafter referred to as "NSR");

WITNESSETH: That

WHEREAS, CSX Corporation ("CSX"), parent to CSXT, and Norfolk Southern Corporation ("NSC"), parent to NSR, have 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; and

WHEREAS, this Agreement and the understandings as to NYC's and PRR's interests in the interlocking (as hereinafter defined) described herein are being entered into pursuant to the terms of the Transaction Agreement; and

WHEREAS, CSXT and NSR each will operate under the CSXT Operating Agreement and the NSR Operating Agreement, respectively, a line of railroad that either connects or crosses the other at grade at CP Mounds, Columbus, Ohio under the protection of an interlocking signal system; and

WHEREAS, NYC, CSXT, PRR and NSR desire to define their respective rights, duties and obligation with respect to the ownership, maintenance and operation of said crossing and interlocking;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth, it is agreed between the parties hereto as follows:

ARTICLE 1. DEFINITION OF INTERLOCKING AND AAR UNITS

- (a) Whenever the word "interlocking" is hereinafter used, it shall be held and taken to include but not be limited to the field coding equipment, signals, housings, appliances, highway traffic control devices and appurtenances necessary for operation of the interlocking, substantially as shown on the plan to be marked Exhibit "A". Said Exhibit "A" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.
- (b) The limits of the interlocking shall, for the purpose of this Agreement, be within and include the home signals along the tracks of the parties to be shown on Exhibit "A". Units will be assigned in accordance with the Signal and Interlocking

Unit Distribution to be effective the same date as the effective date of this Agreement and marked Exhibit "C". Said Exhibit "C" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.

- (c) The term "AAR Units" used herein refers to the units stated in the Table of Signal and Interlocking Units of the Signal Section, Association of American Railroads, as issued from time to time. At the time of this Agreement, said table dated 1993 shall apply, copy attached hereto, marked Exhibit "B" and made a part hereof.

ARTICLE 2. OPERATION

- (a) The parties acknowledge that (i) pursuant to the NYC Operating Agreement NYC is assigning to CSXT all of its rights and obligations to operate NYC's assets including the interlocking control that is the subject of this Agreement and thus CSXT shall have all of the rights and obligations conferred by or imposed under this Agreement during the term of the CSXT Operating Agreement and (ii) pursuant to the NSR Operating Agreement, PRR is assigning to NSR all of its rights and obligations to operate PRR's assets, including

the interlocking except as otherwise provided herein that is the subject of this Agreement and thus NSR shall have all of the rights and obligations conferred by or imposed under this Agreement during the term of the NSR Operating Agreement.

(b) Ownership of the railroad crossing frog(s) and/or turnouts within the interlocking limits shall be vested 50% in NYC and 50% in PRR and shall be defined on the plan to be marked Exhibit "D". Said Exhibit "D" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.

(i) Ownership of the existing crossing diamond to be shown on Exhibit "D" will be vested 50% in NYC and 50% in PRR.

(ii) Ownership of the existing connecting trackage, including turnouts, to be shown on Exhibit "D" will be vested 100% in the party whose right-of-way such trackage is located thereon.

(c) Ownership of said interlocking shall be vested in each party in accordance with the AAR Units to be indicated on Exhibit "C".

- (d) Any taxes or other charges assessed against said ownership shall be borne by CSXT and NSR in proportion to the ownership percentage set forth in subsections (b) and (c). The ownership of facilities installed by or for either NSR or CSXT at their sole expense shall be vested in PRR and NYC, respectively, and NSR (in the case of facilities vested in PRR) and CSXT (in the case of facilities vested in NYC) shall bear any taxes or other charges as may be assessed against said ownership.

ARTICLE 3. MAINTENANCE AND OPERATION OF CROSSING(S) AND INTERLOCKING

- (a) Maintenance, inspection, repair and renewal of the rail crossing frog(s) and/or turnouts within the interlocking limits shall be performed as follows:
- (i) CSXT shall maintain, inspect, repair and renew the existing crossing diamond to be shown on Exhibit "D".
- (ii) NSR and CSXT shall maintain, inspect, repair and renew its respective trackage under their control in accordance with the respective NSR and CSXT Operating Agreements including existing connecting trackage and road crossing surfaces, if any, located on the respective rights-of-way

within the limits of the interlocking as shown on Exhibit "D".

- (b) Signal maintenance, inspection, repair, and renewal of the interlocking shall be under the sole charge of CSXT, and it shall employ competent persons for such purposes. NSR and CSXT shall at their sole cost and expense maintain all signal facilities and appurtenances in and along the tracks it operates outside of the limits of said interlocking as may be necessary to accommodate said interlocking.
- (c) Operation and control of the interlocking shall be under the sole charge and control of CSXT. Operation and control of the interlocking shall be conducted in a manner as to afford each of the parties the most economical and efficient movement of its traffic through the facility.
- (d) NSR and CSXT shall, at their sole cost and expense, perform any and all track work on PRR lines (in the case of NSR) and NYC lines (in the case of CSXT) located outside of the interlocking limits, and make such changes in such tracks, and install, maintain and renew insulated joints and other appurtenances located in such tracks as may be required for the interlocking. NSR and CSXT will keep the premises and tracks operated by them free from interference and

obstructions which may in any way affect the proper functioning of said interlocking.

ARTICLE 4. DIVISION OF CROSSING(S) AND INTERLOCKING MAINTENANCE COST

- (a) The expense of maintaining, inspecting, repairing and renewing the crossing frog(s) and/or crossing turnouts shall be allocated as follows:
 - (i) The cost and expense of maintenance, inspection, repair and renewal of the existing crossing diamonds to be shown on Exhibit "D" shall be equally divided between NSR and CSXT.
 - (ii) The cost and expense of maintenance, inspection, repair and renewal of the existing connecting trackage, turnouts and road crossing surfaces, to be shown on Exhibit "D" within the interlocking limits, will be at the sole cost and expense of CSXT, if such trackage is located on NYC's right-of-way, and NSR, if such trackage is located on PRR's right-of-way.
- (b) The expense of maintaining, inspecting, repairing, renewing and operating the interlocking, including cost of electrical current, shall be apportioned to each party in accordance with

AAR Unit Values as shown on Exhibit "B" and apportioned between NSR and CSXT as will be indicated on Exhibit "C".

- (c) In the event future changes are made in the interlocking, Exhibit "C" shall be revised following each such change in accordance with the principles set forth herein. After approval by the respective signal officers of NSR and CSXT, said revised Exhibit "C" shall be substituted for the then existing Exhibit "C" and shall be applicable from the effective date shown thereon.

ARTICLE 5. COMMUNICATION CHANGES

NSR and CSXT shall, at their sole cost and expense, make such changes in and adjustments to PRR (in the case of NSR) and NYC (in the case of CSXT) communication facilities as may be required for the respective operations of the interlocking, and hereafter maintain said facilities at their sole expense.

ARTICLE 6. CHANGES TO INTERLOCKING

CSXT, with the consent of NYC, and NSR, with the consent of PRR, shall have the right to require track changes to tracks located within the interlocking limits and changes in the

interlocking that do not impair the interlocking's efficiency, provided that such changes shall be made in accordance with plans which shall have been approved by the respective officers of NSR and CSXT. Such interlocking changes made in any existing track, or made to cover any future track or tracks within the interlocking limits, or which may be required by reason of any changes made in the standard appliances or practices of NSR or CSXT, or which may be ordered by a lawfully constituted public authority shall be made by CSXT. NSR shall make changes to track owned by PRR and CSXT shall make changes to track owned by NYC outside the interlocking limits provided such changes do not affect or impair the interlocking's efficiency. The cost of any track and interlocking changes shall be borne by the party requesting such changes or as agreed to by the parties. In those cases where the changes are mandated by any legally constituted public authority having jurisdiction over said interlocking, the cost of such changes shall be borne by the party or parties for whose benefit such changes are made.

ARTICLE 7. ELIMINATION OF RAIL CROSSING

Subject to Article VIII of the CSXT Operating Agreement and the NSR Operating Agreement, NSR or CSXT shall have the right to retire and eliminate existing or future crossings of PRR track or tracks with the track or tracks of NYC within the limits of the

interlocking, and CSXT shall have the right to retire and eliminate existing or future crossings and/or connections of NYC track or tracks with the track or tracks of PRR within the limits of the interlocking, and the cost and expense to eliminate such crossing or crossings shall be divided as follows:

- (a) Costs and expenses to effect a partial withdrawal shall be apportioned as provided in Article 6.
- (b) All costs, relating to removal of track, track appurtenances, signals and related facilities necessary to effect abandonment or complete withdrawal of either party from further use of this joint facility, shall be at the sole expense of the sponsoring party, and the salvage value derived therefrom shall be credited to NSR and CSXT in proportion to the ownership of the facility by PRR and NYC, respectively, subject to Article VIII of the NSR Operating Agreement and the CSXT Operating Agreement.
- (c) Costs and expenses necessary to rearrange the remaining facilities and provide necessary additional facilities for the continued operation of the remaining party shall be at the sole expense of the withdrawing party.

ARTICLE 8. TEMPORARY MANUAL PROTECTION

In the event it shall become necessary to assign forces at the herein referred to crossing(s) for the protection of train movements while the interlocking may be temporarily out of service, CSXT shall do so, and the cost and expense of said forces and supplies furnished to them shall be divided and paid in the aforesaid division of maintenance cost. However, in case it is necessary to provide manual protection as a result of damage caused by any party hereto or at the request of any party for its sole benefit, such party shall exclusively bear the entire cost of the manual protection.

ARTICLE 9. ACCOUNTING

- (a) CSXT and NSR shall keep accurate accounts of all their costs incurred in installing, maintaining, repairing, renewing and operating the crossing(s) and the interlocking. Such records shall be open at all reasonable times for audit and inspection for a period of three (3) years from date of billing.
- (b) Either party may, at any time subsequent to the execution of this Agreement and upon mutual agreement, establish flat rate billing, subject to revision from time to time, to cover the cost of maintaining the crossing(s) and the interlocking in lieu of rendering bills for the actual costs of such maintenance.

ARTICLE 10. BILLING AND PAYMENT

- (a) On or about the 15th day of each month, billing shall be rendered to cover the cost and expense of such accounts for the previous month. All payments called for under this Agreement shall be made within thirty (30) days of the date of the bills therefor.
- (b) Payment shall not be withheld for minor errors which may occasionally occur in railroad accounting; rather, an exception shall be noted and the overcharge or undercharge, as the case may be, shall be adjusted as promptly as possible in a subsequent monthly statement.
- (c) Bills for expenses incurred hereunder shall include direct labor and materials costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

ARTICLE 11. LIABILITY

- (a) For the purposes of this Article it is agreed that:
 - (i) All persons engaged in and all equipment and appliances used in the maintenance, repair, renewal, operation and removal of, or the making of changes, improvements or

additions to the crossings, and the performance of any other work to be performed at the joint expense of the parties hereto shall be deemed to be the joint employees and the joint equipment of the parties.

(ii) All persons engaged in and all equipment and appliances used in the performance of work which pursuant to the terms of this Agreement is to be at the sole cost and expense of one of the parties hereto shall be deemed to be sole employees and sole equipment of the party for whom said work is performed.

(iii) Notwithstanding the provisions of Article 19(d) for the purpose of this Subarticle (a), 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 within the limits of the interlocking, and (iii) vehicles and machinery that, at the time of an occurrence, are within the limits of the interlocking or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

(b) Except as provided for in Article 8 (c) below, the responsibility and liability between the parties for any personal injury or death of any person (including employees of the parties and third persons); any real or personal property damage of any person (including property of the parties and third persons); any damage or destruction to the environment (including land, air, water, wildlife and vegetation); and all cleanup and remedial expenses, court costs and litigation expenses resulting from, arising out of, incidental to, or occurring in connection with this Agreement; all of which are collectively referred to as a "Loss", will be divided as follows:

- (i) If a Loss occurs while the crossing is being used solely by the trains and locomotives of either CSXT or NSR, then the using party is solely responsible for the Loss, even if caused partially or completely by the other party.
- (ii) If a Loss occurs while the crossing is being used by the trains and locomotives of both CSXT and NSR, then each is solely responsible for any Loss to its own employees, locomotives and equipment in its own accounts (including lading); and the parties are equally responsible for any Loss to all other property and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss,

unless the Loss was caused solely by one party. In that event, the party causing the Loss is solely responsible.

- (iii) For purposes of assigning responsibility for a Loss as between the parties hereto under this Agreement, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- (iv) 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 parent corporation, subsidiaries and affiliates, and all of their respective directors, 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, malfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (v) Notwithstanding the foregoing provisions, liability, costs and expenses for injury to or death of a joint employee and damages to or destruction of any joint equipment shall be borne equally by CSXT and NSR.

- (vi) If any suit or action shall be brought against either party hereto for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such and shall pay a proportionate part of the judgment and costs and expense incurred in such suit according to its liability assumed hereunder.
- (vii) In every case of death or injury suffered by an employee of either party hereto, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' 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; then 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.

(c) Article 12(b) shall apply only to the amount of Loss resulting from a single incident which is \$25 million or less. Responsibility for Losses resulting from a single incident which exceed \$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 Loss, subject to the following rules: (1) the total amount of Loss for which each party would otherwise be responsible under Article 12(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 12(c)(1); (3) the Loss for which each party is responsible in excess of the amount determined in Article 12(c)(2) shall be allocated between or among CSXT and NSR in proportion to their respective fault or negligence in causing the Loss. As used in this Article 12(c), the term "Loss" shall exclude consequential, indirect, incidental or other similar damage, injury or loss to either CSXT or NSR and claims for exemplary and punitive damages by any party hereto on its own behalf against another party hereto. By way of example, if a Loss from a single incident were \$100 million, of which CSXT would be responsible for \$80 million under Article 12(b) and NSR would be responsible for \$20 million under Article 12(b), then CSXT would be responsible for \$20 million and NSR would be responsible for \$5 million of such Loss under Article 12(c)(1), and the remaining \$75 million of Loss would be apportioned between or

among CSXT and NSR in proportion to their respective fault or negligence in causing the Loss. Any dispute between or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Loss or otherwise relating to their respective responsibilities for Loss arising out of, incidental to or occurring in connection with any such incident, including any Loss exceeding \$25 million, shall be submitted for resolution by binding arbitration pursuant to Article 14. The \$25 million amount referred to in this article 12(c) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in sole discretion of each party.

- (d) Exceptions. Each part shall assume and bear all responsibility for Loss caused by acts or omissions of any of its employees while under the influence of drugs or alcohol or by the intentional and criminal misconduct of any such employee and Article 12(b) and (c) shall not apply to any such Loss.

ARTICLE 12. CLAIMS

- (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 shall investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- (c) In the event a claim or suit is asserted against one of the parties hereto which is the other party'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 expense 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 herein, except that salaries or wages of full-time claim agents, full-time attorneys and full-time employees of either party engaged directly or indirectly in such work shall be borne by the employing party.

- (e) Excluding cargo related liability claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, 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 exceeds \$35,000.00.
- (f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 11.
- (g) Each party hereto will indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and 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 on the 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 intention of the parties 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. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or

restitution shall be made as required by the decision or award of the arbitrator.

ARTICLE 14. TERM AND TERMINATION

- (a) This Agreement shall become effective as of the date first above written and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by mutual consent of the parties.
- (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 Agreement shall not relieve or release either party hereto from any liability it may have incurred or any obligation which may have accrued under any provision of this Agreement prior to the effective date of termination.
- (d) This Agreement encompasses any and all understandings between the parties hereto as to the crossing(s) and interlocking at CP Mounds, Columbus, Ohio, and makes null and void any previous agreements between the parties or their predecessors covering said crossing(s) and interlocking.

ARTICLE 15. GOVERNING LAWS

Each party hereto shall comply with all applicable laws, rules, regulations and orders promulgated by any government or governmental agency which affects this Agreement. If any fine, penalty, cost or charge is imposed or assessed on or against either party by reason of failure to so comply, the party so failing shall promptly reimburse and indemnify the other party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees for or on

account of such fine, penalty, cost or charge and all expenses incurred in connection therewith, and shall defend any action free of cost, charge or expense to the other party.

ARTICLE 16. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm or corporation, other than a successor, assignee, purchaser or transferor of all or substantially all the rail properties of the transferring party, without obtaining the prior written consent of the other party.

ARTICLE 17. NOTICES

All notices required to be given by either party to the other shall be in writing and addressed as follows:

To NYC: (To be furnished)

To PRR: (To be furnished)

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

To NSR: Vice President Transportation
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

ARTICLE 18. GENERAL PROVISIONS

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

party, except as otherwise required by law, regulation or ruling.

ARTICLE 19. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other party shall also extend to an 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 day and year first above written.

WITNESS:

NEW YORK CENTRAL LLC

By: _____
Title

WITNESS:

CSX TRANSPORTATION, INC.

By: _____
Title

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Vice President Transportation and
Mechanical

WITNESS:

PENNSYLVANIA LINES LLC

By: _____
Title

WARSAW, INDIANA
INTERLOCKING AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____ 19____, by and among NEW YORK CENTRAL LLC (hereinafter referred to as "NYC"), CSX TRANSPORTATION, INC. (hereinafter referred to as "CSXT"), PENNSYLVANIA LINES LLC (hereinafter referred to as "PRR"), and NORFOLK SOUTHERN RAILWAY COMPANY, including its subsidiaries and affiliates (hereinafter referred to as "NSR");

WITNESSETH: That

WHEREAS, CSX Corporation ("CSX"), parent to CSXT, and Norfolk Southern Corporation ("NSC"), parent to NSR, have 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, this Agreement and the understandings as to NYC's and PRR's interests in the interlocking (as hereinafter defined) described herein are being entered into pursuant to the terms of the Transaction Agreement;

WHEREAS, CSXT and NSR each will operate under the CSXT Operating Agreement and the NSR Operating Agreement, respectively, a line of railroad that either connects or crosses the other at grade at Warsaw, Indiana under the protection of an interlocking signal system; and

WHEREAS, NYC, CSXT, PRR and NSR desire to define their respective rights, duties and obligation with respect to the ownership, maintenance and operation of said crossing and interlocking;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth, it is agreed between the parties hereto as follows:

ARTICLE 1. DEFINITION OF INTERLOCKING AND AAR UNITS

- (a) Whenever the word "interlocking" is hereinafter used, it shall be held and taken to include but not be limited to the field coding equipment, signals, housings, appliances, highway traffic control devices and appurtenances necessary for operation of the interlocking, substantially as shown on the plan to be marked Exhibit "A". Said Exhibit "A" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.

- (b) The limits of the interlocking shall, for the purpose of this Agreement, be within and include the home signals along the tracks of the parties to be shown on Exhibit "A". Units will be assigned in accordance with the Signal and Interlocking Unit Distribution to be effective the same date as the effective date of this Agreement and marked Exhibit "C". Said Exhibit "C" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.

- (c) The term "AAR Units" used herein refers to the units stated in the Table of Signal and Interlocking Units of the Signal Section, Association of American Railroads, as issued from time to time. At the time of this Agreement, said table dated 1993 shall apply, copy attached hereto, marked Exhibit "B" and made a part hereof.

ARTICLE 2. OWNERSHIP

- a) The parties acknowledge that (i) pursuant to the NYC Operating Agreement NYC is assigning to CSXT all of its rights and obligations to operate NYC's assets including the interlocking control that is the subject of this Agreement and thus CSXT shall have all of the rights and obligations conferred by or imposed under this Agreement during the term of the CSXT Operating and (ii) pursuant to the NSR Operating Agreement, PRR is assigning to NSR all of its rights and obligations to operate PRR's assets, including the interlocking except as otherwise provided herein, that is the subject of this Agreement and thus NSR shall have all of the rights and obligations conferred by or imposed under this Agreement during the term of the NSR Operating Agreement.
- (b) Ownership of the existing railroad crossing diamond within the

interlocking limits shall be vested 50% in NYC and 50% in PRR and shall be defined on the plan to be marked Exhibit "D". Said Exhibit "D" will be prepared and processed for approval by the parties and made a part hereof by supplement to this Agreement.

- (c) Ownership of said interlocking shall be vested in each party in accordance with the AAR Units to be indicated on Exhibit "C".
- (d) Any taxes or other charges assessed against said ownership shall be borne by CSXT and NSR in proportion to said ownership as provided in subsections (b) and (c) above. The ownership of facilities installed by or for NSR (in the case of facilities vested in PRR) and CSXT (in the case of facilities vested in NYC) at their sole expense shall be vested in PRR and NYC, respectively, and NSR (in the case of facilities vested in PRR) and CSXT (in the case of facilities vested in NYC) shall bear any taxes or other charges as may be assessed against said ownership.

ARTICLE 3. MAINTENANCE AND OPERATION OF CROSSING(S) AND INTERLOCKING

- (a) Maintenance, inspection, repair and renewal of the existing railroad crossing diamond within the interlocking limits to be

shown on Exhibit "D" shall be performed by CSXT.

- (b) Signal maintenance, inspection, repair, and renewal and operation of the interlocking shall be under the sole charge and control of CSXT, and it shall employ competent persons for such purposes. NSR and CSXT shall at their sole cost and expense maintain all signal facilities and appurtenances in and along the tracks it operates outside of the limits of said interlocking as may be necessary to accommodate said interlocking.
- (c) Operation and control of the interlocking shall be conducted in a manner as to afford each of the parties the most economical and efficient movement of its traffic through the facility.
- (d) NSR and CSXT shall, at their sole cost and expense, perform any and all track work on PRR lines (in the case of NSR) and NYC lines (in the case of CSXT) located outside of the interlocking limits, and make such changes in such tracks, and install, maintain and renew insulated joints and other appurtenances located in such tracks as may be required for the interlocking. NSR and CSXT will keep the premises and tracks operated by it free from interference and obstructions which may in any way affect the proper functioning of said

interlocking.

ARTICLE 4. DIVISION OF CROSSING(S) AND INTERLOCKING MAINTENANCE COST

- (a) The expense of maintaining, inspecting, repairing and renewing the existing railroad crossing diamond within the interlocking limits to be shown on Exhibit "D" shall be equally divided between NSR and CSXT.
- (b) The expense of maintaining, inspecting, repairing, renewing and operating the interlocking, including cost of electrical current, shall be apportioned to each party in accordance with AAR Unit values as shown on Exhibit "B" and apportioned between NSR and CSXT as will be indicated on Exhibit "C".
- (c) In the event future changes are made in the interlocking, Exhibit "C" shall be revised following each such change in accordance with the principles set forth herein. After approval by the respective signal officers of NSR and CSXT, said revised Exhibit "C" shall be substituted for the then existing Exhibit "C" and shall be applicable from the effective date shown thereon.

ARTICLE 5. COMMUNICATION CHANGES

NSR and CSXT shall, at their sole cost and expense, make such changes in and adjustments to PRR (in the case of NSR) and NYC (in the case of CSXT) communication facilities as may be required for the respective operations of the interlocking, and hereafter maintain said facilities at its sole expense.

ARTICLE 6. CHANGES TO INTERLOCKING

CSXT, with the consent of NYC, and NSR, with the consent of PRR, shall have the right to require track changes to tracks located within the interlocking limits and changes in the interlocking that do not impair the interlocking's efficiency, provided that such changes shall be made in accordance with plans which shall have been approved by the respective officers of NSR and CSXT. Such interlocking changes made in any existing track, or made to cover any future track or tracks within the interlocking limits, or which may be required by reason of any changes made in the standard appliances or practices of NSR or CSXT, or which may be ordered by a lawfully constituted public authority shall be made by CSXT. NSR shall make changes to tracks owned by PRR and CSXT shall make changes to track owned by NYC outside the interlocking limits provided such changes do not affect or impair the interlocking's efficiency. The cost of any track and interlocking

changes shall be borne by the party requesting such changes or as agreed to by the parties. In those cases where the changes are mandated by any legally constituted public authority having jurisdiction over said interlocking, the cost of such changes shall be borne by the party or parties for whose benefit such changes are made.

ARTICLE 7. ELIMINATION OF RAIL CROSSING(S) AND/OR CONNECTION(S)

Subject to Article VIII of the CSXT Operating Agreement and the NSR Operating Agreement, NSR or CSXT shall have the right to retire and eliminate existing or future crossings and/or connections of PRR track or tracks with the track or tracks of NYC within the limits of the interlocking, and CSXT shall have the right to retire and eliminate existing or future crossings and/or connections of NYC track or tracks with the track or tracks of PRR within the limits of the interlocking, and the cost and expense to eliminate such crossing or crossings shall be divided as follows:

- (a) Costs and expenses to effect a partial withdrawal shall be apportioned as provided in Article 6.
- (b) All costs, relating to removal of track, track appurtenances, signals and related facilities necessary to effect abandonment or complete withdrawal of either party from further use of

this joint facility, shall be at the sole expense of the sponsoring party, and the salvage value derived therefrom shall be credited to NSR and CSXT in proportion to the ownership of the facility by PRR and NYC, respectively, subject to Article VIII of the NSR Operating Agreement and the CSXT Operating Agreement.

- (c) Costs and expenses necessary to rearrange the remaining facilities and provide necessary additional facilities for the continued operation of the remaining party shall be at the sole expense of the withdrawing party.

ARTICLE 8. ELIMINATION OF RAIL CROSSING

Each party shall have the right to retire and eliminate existing or future crossings of its track or tracks with the track or tracks of the other party within the limits of the interlocking, and the cost and expense to eliminate such crossing or crossings shall be divided as follows:

- (a) Costs and expenses to effect a partial withdrawal shall be apportioned as provided in Article 7.
- (b) All costs, relating to removal of track, track appurtenances,

signals and related facilities necessary to effect abandonment or complete withdrawal of either party from further use of this joint facility, shall be at the sole expense of the sponsoring party, and the salvage value derived therefrom shall be credited to each party in proportion to its ownership.

- (c) Costs and expenses necessary to rearrange the remaining facilities and provide necessary additional facilities for the continued operation of the remaining party shall be at the sole expense of the withdrawing party.

ARTICLE 9. TEMPORARY MANUAL PROTECTION

In the event it shall become necessary to assign forces at the herein referred to crossing(s) for the protection of train movements while the interlocking may be temporarily out of service, CSXT shall do so, and the cost and expense of said forces and supplies furnished to them shall be divided and paid in the aforesaid division of maintenance cost. However, in case it is necessary to provide manual protection as a result of damage caused by any party hereto or at the request of any party for its sole benefit, such party shall exclusively bear the entire cost of the manual protection.

ARTICLE 10. ACCOUNTING

- (a) CSXT and NSR shall keep accurate accounts of all their costs incurred in installing, maintaining, repairing, renewing and operating the crossing(s) and the interlocking. Such records shall be open at all reasonable times for audit and inspection for a period of three (3) years from date of billing.
- (b) Either party may, at any time subsequent to the execution of this Agreement and upon mutual agreement, establish flat rate billing, subject to revision from time to time, to cover the cost of maintaining the crossing(s) and the interlocking in lieu of rendering bills for the actual costs of such maintenance.

ARTICLE 11. BILLING AND PAYMENT

- (a) On or about the 15th day of each month, billing shall be rendered to cover the cost and expense of such accounts for the previous month. All payments called for under this Agreement shall be made within thirty (30) days of the date of the bills therefor.
- (b) Payment shall not be withheld for minor errors which may occasionally occur in railroad accounting; rather, an

exception shall be noted and the overcharge or undercharge, as the case may be, shall be adjusted as promptly as possible in a subsequent monthly statement.

- (c) Bills for expenses incurred hereunder shall include direct labor and materials costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

ARTICLE 12. LIABILITY

- (a) For the purposes of this Article it is agreed that:
 - (i) All persons engaged in and all equipment and appliances used in the maintenance, repair, renewal, operation and removal of, or the making of changes, improvements or additions to the crossings, and the performance of any other work to be performed at the joint expense of the parties hereto shall be deemed to be the joint employees and the joint equipment of the parties.
 - (ii) All persons engaged in and all equipment and appliances used in the performance of work which pursuant to the terms of this Agreement is to be at the sole cost and expense of one of the parties hereto shall be deemed to be sole employees and sole equipment of the party for whom said work is performed.

- (iii) Notwithstanding the provisions of Article 19(d) for the purpose of this Subarticle (a), 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 within the limits of the interlocking, and (iii) vehicles and machinery that, at the time of an occurrence, are within the limits of the interlocking or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.
- (b) Except as provided for in Article 8 (c) below, the responsibility and liability between the parties for any personal injury or death of any person (including employees of the parties and third persons); any real or personal property damage of any person (including property of the parties and third persons); any damage or destruction to the environment (including land, air, water, wildlife and vegetation); and all cleanup and remedial expenses, court costs and litigation expenses resulting from, arising out of, incidental to, or occurring in connection with this Agreement; all of which are collectively referred to as a "Loss", will be divided as follows:

- (i) If a Loss occurs while the crossing is being used solely by the trains and locomotives of either CSXT or NSR, then the using party is solely responsible for the Loss, even if caused partially or completely by the other party.
- (ii) If a Loss occurs while the crossing is being used by the trains and locomotives of both CSXT and NSR, then each is solely responsible for any Loss to its own employees, locomotives and equipment in its own accounts (including lading); and the parties are equally responsible for any Loss to all other property and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the Loss is solely responsible.
- (iii) For purposes of assigning responsibility for a Loss as between the parties hereto under this Agreement, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- (iv) 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 parent corporation, subsidiaries and affiliates, and all of their respective directors, 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, malfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

- (v) Notwithstanding the foregoing provisions, liability, costs and expenses for injury to or death of a joint employee and damages to or destruction of any joint equipment shall be borne equally by CSXT and NSR.
- (vi) If any suit or action shall be brought against either party hereto for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such and shall pay a proportionate part of the judgment and costs and expense incurred in such suit according to its liability assumed hereunder.
- (vii) In every case of death or injury suffered by an employee

of either party hereto, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' 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; then 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.

- (c) Article 12(b) shall apply only to amount of Loss resulting from a single incident which million or less. Responsibility for Losses resulting from a single incident which exceed \$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 Loss, subject to the following rules: (1) the total amount of Loss for which each party would otherwise be responsible under Article 12(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 12(c)(1); (3) the Loss for which each party is responsible in excess of the amount determined in Article 12(c)(2) shall be allocated between or

among CSXT and NSR in proportion to their respective fault or negligence in causing the Loss. As used in this Article 12(c), the term "Loss" shall exclude consequential, indirect, incidental or other similar damage, injury or loss to either CSXT or NSR and claims for exemplary and punitive damages by any party hereto on its own behalf against another party hereto. By way of example, if a Loss from a single incident were \$100 million, of which CSXT would be responsible for \$80 million under Article 12(b) and NSR would be responsible for \$20 million under Article 12(b), then CSXT would be responsible for \$20 million and NSR would be responsible for \$5 million of such Loss under Article 12(c)(1), and the remaining \$75 million of Loss would be apportioned between or among CSXT and NSR in proportion to their respective fault or negligence in causing the Loss. Any dispute between or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Loss or otherwise relating to their respective responsibilities for Loss arising out of, incidental to or occurring in connection with any such incident, including any Loss exceeding \$25 million, shall be submitted for resolution by binding arbitration pursuant to Article 14. The \$25 million amount referred to in this article 12(c) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in sole discretion of each party.

- (d) Exceptions. Each part shall assume and bear all responsibility for Loss caused by acts or omissions of any of its employees while under the influence of drugs or alcohol or by the intentional and criminal misconduct of any such employee and Article 12(b) and (c) shall not apply to any such Loss.

ARTICLE 13. CLAIMS

- (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 shall investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- (c) In the event a claim or suit is asserted against one of the parties hereto which is the other party'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 expense 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 herein, except that salaries or wages of full-time claim agents, full-time attorneys and full-time employees of either party engaged directly or indirectly in such work shall be borne by the employing party.
- (e) Excluding cargo related liability claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, 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 exceeds \$35,000.00.
- (f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 12.
- (g) Each party hereto will indemnify and hold harmless the other

party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and 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 on the 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 intention of the parties 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 14. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the

arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator.

ARTICLE 15. TERM AND TERMINATION

- (a) This Agreement shall become effective as of the date first above written and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by mutual consent of the parties.
- (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 Agreement shall not relieve or release either party hereto from any liability it may have incurred or any obligation which may have accrued under any provision of this Agreement prior to the effective date of termination.

(d) This Agreement encompasses any and all understandings between the parties hereto as to the crossing(s) and interlocking at Warsaw, Indiana, and makes null and void any previous agreements between the parties or their predecessors covering said crossing(s) and interlocking.

ARTICLE 16. GOVERNING LAWS

Each party hereto shall comply with all applicable laws, rules, regulations and orders promulgated by any government or governmental agency which affects this Agreement. If any fine, penalty, cost or charge is imposed or assessed on or against either party by reason of failure to so comply, the party so failing shall promptly reimburse and indemnify the other party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees for or on account of such fine, penalty, cost or charge and all expenses incurred in connection therewith, and shall defend any action free of cost, charge or expense to the other party.

ARTICLE 17. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm or corporation, other than a successor, assignee, purchaser or transferor of all or substantially all the rail properties of the transferring party, without obtaining the prior written consent of the other party.