

Anthony J. LaRocca
202 429 8119
alarocca@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com



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Office of Proceedings
July 20, 2021
Part of
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PUBLIC VERSION

July 20, 2021

CSXT/PAR-14

VIA E-FILING

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

Re: STB Docket No. FD 36472, CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company

Dear Ms. Brown:

In the Amended and Supplemented Application filed in the above-referenced proceeding on July 1, 2021, Applicants¹ attached in Volume II current versions of agreements relating to PAS governance and operations. Applicants noted that implementation of the NSR Settlement Agreement and the GWI Term Sheet would require revisions to certain of these agreements, and that Applicants would provide the Board with a copy of revised agreements once finalized.

Enclosed for e-filing is a public version of the Second Amendment to the Limited Liability Company Agreement of Pan Am Southern LLC, which modifies the PAS LLC Agreement, with appropriate redactions that the Board can place in its docket. We are concurrently filing under seal a highly confidential version of this document. CSX and NSR have agreed to execute the Second Amendment once CSX consummates the Proposed Transaction and assumes control of Boston & Maine.

¹ The acronyms and defined terms used in this letter are the same as those used in the Amended and Supplemented Application filed in the above-captioned proceeding on July 1, 2021.

Cynthia T. Brown

July 20, 2021

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Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca

Peter W. Denton

Sally Mordi

*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Enclosures

cc: Louis E. Gitomer
All parties of record

**SECOND AMENDMENT TO THE
LIMITED LIABILITY COMPANY AGREEMENT
OF
PAN AM SOUTHERN LLC**

This SECOND AMENDMENT (this “Amendment”) to the Limited Liability Company Agreement of Pan Am Southern LLC, a Delaware limited liability company (the “Company”), dated as of April 9, 2009 (as previously amended by an Omnibus Amendment dated as of January 17, 2011 by and among Norfolk Southern Railway Company, a Virginia corporation (the “NS Member”), Boston and Maine Corporation, a Delaware corporation (“B&M”), and Pam Am Railways, Inc., a Delaware corporation, the “LLC Agreement”), is entered into as of [____], 2022 (the “Execution Date”) by and between the NS Member and B&M, and amends the LLC Agreement.

WHEREAS, CSX Transportation, Inc. and the NS Member entered into that certain Settlement Agreement, dated as of February 23, 2021 (the “Settlement Agreement”), in connection with the proposed acquisition by CSX Corporation, 747 Merger Sub 1, Inc. and 747 Merger Sub 2, Inc. of the equity interests of Pan Am Systems, Inc., the ultimate parent of B&M (the “Acquisition”), pursuant to, and by means of the transactions described in, the Agreement and Plan of Merger dated as of November 30, 2020 (the “Merger Agreement”), which, if consummated, will result in CSX Corporation indirectly controlling the Membership Interests of the Company held by B&M;

WHEREAS, B&M and the NS Member desire to effect this Amendment pursuant to the Settlement Agreement and have proposed this Amendment to the Management Committee pursuant to Section 8.1 of the LLC Agreement;

WHEREAS, the Management Committee has (1) approved this Amendment pursuant to Section 5.6(i) of the LLC Agreement and (2) submitted and recommended this Amendment to the Members pursuant to Section 8.1 of the LLC Agreement; and

WHEREAS, the Members desire, pursuant to Section 6.3(f) and Section 8.1 of the LLC Agreement, to amend the LLC Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing facts and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Defined Terms

Capitalized terms used but not otherwise defined in this Amendment shall have the meaning ascribed to such terms in the LLC Agreement, as amended by this Amendment.

2. Amendment to the LLC Agreement

The following amendments are hereby made to the LLC Agreement:

(a) The definitions of the LLC Agreement shall be amended by adding the following definitions in alphabetical order:

“**Acquisition**” means the acquisition of the equity interests of Pan Am Systems, Inc. by CSX Corporation, 747 Merger Sub 1, Inc. and 747 Merger Sub 2, Inc. pursuant to, and by means of the transactions described in, the Merger Agreement.”

“**Additional Transactions**” means (i) all transactions included in the definition of “Proposed Transaction” in the STB Submission, including without limitation, (x) the contribution of Merger Sub 2 (then to be known as Pan Am Systems, Inc.) to CSXT, and (y) the merger of Springfield Terminal into CSXT; and (ii) all transactions included in the definition of “Related Transactions” in the STB Submission.”

“**Amendment Date**” means the date of the closing of the Acquisition pursuant to the terms and conditions of the Merger Agreement.”

“**Average Annual Capital Investment**” means { {

[REDACTED]

“**Average Annual EBITDA**” means {

[REDACTED]

“**B&E**” shall mean Pittsburg & Shawmut Railroad, LLC, d/b/a Berkshire & Eastern Railroad.”

“**B&E Railroad Operating Agreement**” means the Railroad Operating Agreement, dated as of [_____, 2021][the Amendment Date], between the Company and B&E, generally concerning the railroad operating and administrative services provided by B&E for the Company.”

“**Call Holder**” shall have the meaning set forth in Section 9.8(a).”

“**Call Notice**” shall have the meaning set forth in Section 9.8(a).”

“**Call Purchase Price**” shall have the meaning set forth in Section 9.8(b).”

“**Call Right**” shall have the meaning set forth in Section 9.8(a).”

“**CSX Change in Control**” shall mean: (1) the deposit of a controlling block of voting securities of the CSX Member, B&M, or any entity having direct or indirect control over any of the same, including but not limited to

the CSX Parent, into a voting trust established and as described in 49 C.F.R. Part 1013 - Guidelines for the Proper Use of Voting Trusts, or any subsequent regulation, with regard to the acquisition of such controlling block of voting securities; (2) the consummation of a transaction that was the subject of a submission to the STB (other than pursuant to 49 U.S.C. 11323(a)(4) where the only carriers involved are (a) one or more of the CSX Member, B&M, or any entity having direct or indirect control over any of the same, including but not limited to the CSX Parent, and (b) the Company) of any application, petition for exemption, or notice of exemption seeking approval, or exemption from approval, to effect a change in control of the CSX Member, B&M, or any entity having direct or indirect control over any of the same, including but not limited to the CSX Parent; (3) any Permitted Transfer as described in Section 9.2 clauses (f) or (g); or (4) not taking into account the CSX Member's membership interest in the Company, the sale, transfer or other distribution of all or substantially all of the assets of the CSX Member, B&M, or any entity having direct or indirect control over any of the same, including but not limited to the CSX Parent; *provided, however*, that none of the following shall be deemed a "CSX Change in Control" under this Agreement or the JV Transaction Agreements and each shall be deemed to have received all requisite approvals under this Agreement without the need to provide to, or receive from, the Company, the NS Member, or the Management Committee or any other committee, any notices, certifications, representations, agreements, other documents, or approvals: (i) the Acquisition, (ii) the Additional Transactions, and (iii) the STB Submission (or any voting trusts established, or other regulatory filings made in connection with the Acquisition or the Additional Transactions)."

“**CSXT Joint Use Agreement**” means the Amended and Restated Joint Use Agreement, dated as of the Amendment Date, among NSR, CSXT and the Company pursuant to which, among other things, the Company has agreed to modify certain trackage rights and haulage services previously granted to Springfield Terminal.”

“**CSX Member**” shall mean B&M together with any Permitted Transferee of B&M.”

“**CSX Parent**” shall mean CSX Corporation, a Virginia corporation, and the ultimate parent of B&M.”

“**CSX System Parties**” shall have the meaning set forth in the Recitals.”

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

“**EBITDA**” means, for any period, the consolidated net income of the Company before interest, taxes, Depreciation and amortization, and adjusted for extraordinary items (*e.g.*, land sales and labor protection), each as (1)

determined in accordance with GAAP applied on a consistent basis and (2) derived from the financial statements of the Company.”

“**Expiration Date**” shall have the meaning set forth in Section 9.9(d).”

“**FMV Objection Notice**” shall have the meaning set forth in Section 9.9(b).”

“**FMV Objection Period**” shall have the meaning set forth in Section 9.9(b).”

“**Merger Agreement**” means the Agreement and Plan of Merger dated as of November 30, 2020 by and among Pan Am Systems, Inc., Timothy Mellon, in his capacity as representative of the Shareholders (as defined therein), the CSX Parent, 747 Merger Sub 1, Inc., and 747 Merger Sub 2, Inc..”

“**Non-Cash Consideration**” shall have the meaning set forth in Section 9.9(a).”

“**Non-Renewal Notice**” shall have the meaning set forth in Section 5.6(xxiii).”

“**Offer Notice**” shall have the meaning set forth in Section 9.9(a).”

“**ROFR Holder**” shall have the meaning set forth in Section 9.9(a).”

“**ROFR Purchase Notice**” shall have the meaning set forth in Section 9.9(a).”

“**Settlement Agreement**” means the Settlement Agreement, dated as of February 23, 2021, between the NS Member and CSXT.”

“**ST Railroad Operating Agreement**” means the Railroad Operating Agreement, dated as of April 9, 2009, between the Company and Springfield Terminal, generally concerning the railroad operating and administrative services provided by Springfield Terminal for the Company

“**STB**” shall mean the U.S. Surface Transportation Board.”

“**STB Submissions**” means the Amended and Supplemented Application submitted by CSXT and the CSX Parent to the STB on July 1, 2021 with respect to, among other things, the Acquisition.”

“**Valuation**” shall have the meaning set forth in Section 9.8(b).”

“**Valuation Objection Notice**” shall have the meaning set forth in Section 9.8(b).”

“**Valuation Objection Period**” shall have the meaning set forth in Section 9.8(b).”

(b) The Preamble of the LLC Agreement shall be amended by deleting “and, together with any Permitted Transferee thereof, the “Pan Am Member”)”.

(c) The first recital of the LLC Agreement shall be amended by deleting “(“Pan Am”)”.

(d) The words “the Pan Am Member” appearing in paragraphs (a) and (b) of Section 2.1 are hereby deleted and replaced with “B&M”.

(e) The definition of “Assignment and Assumption Agreement Regarding Passenger Rail Operations” shall be deleted in its entirety.

(f) The definition of “CSX” shall be deleted in its entirety.

(g) The definition of “Depreciation” shall be amended by deleting the word “deprecation” and replacing it with the word “depreciation”.

(h) The definition of “Springfield Terminal Joint Use Agreement” is hereby deleted, and the remainder of the LLC Agreement shall be amended by replacing each instance of “Springfield Terminal Joint Use Agreement” with “CSXT Joint Use Agreement”.

(i) The definition of “JV Transaction Agreements” shall be deleted and replaced in its entirety with the following:

“**JV Transaction Agreements**” means, collectively and in each case as may be amended from time to time, (i) the Transaction Agreement (ii) this Agreement, (iii) the NSR Joint Use Agreement, (iv) the Bill of Sale, (v) the Transportation Agreement Assignment and Divisions Allocation Agreement, (vi) the Ayer Switching Agreement, (vii) the CSXT Joint Use Agreement, (viii) the Capital Projects and Facility Management Agreement, (ix) the ST Railroad Operating Agreement, and (x) the Option Agreement.”

(j) The definition of “NS Change in Control” shall be deleted and replaced in its entirety with the following:

“**NS Change in Control**” shall mean: (1) the establishment of a voting trust as described in 49 C.F.R. Part 1013 - Guidelines for the Proper Use of Voting Trusts, or any subsequent regulation, with regard to the acquisition by CN, or a subsidiary thereof, of a controlling block of voting securities of the NS Member or any entity having direct or indirect control over the NS Member, including but not limited to the NS Parent; (2) the submission to the STB by CN, or a subsidiary thereof, of any application, petition for exemption, or notice of exemption seeking approval, or exemption from approval, to effect a change in control of the NS Member or any entity having direct or indirect control over the NS Member; or (3) not taking into account the NS Member’s Membership Interest in the Company, the sale, transfer or other distribution of all or substantially all of the assets of NSR to CN, or a subsidiary thereof.”

(k) The definition of “Pan Am” shall be deleted and replaced in its entirety with the following:

“**Pan Am**” shall mean (i) prior to the Amendment Date, Pan Am Systems, Inc., a Florida corporation, and (ii) from and after the Amendment Date, Pan Am Systems, Inc., a Delaware corporation formerly known as 747 Merger Sub 2, Inc.”

(l) The definition of “Pan Am Change in Control” shall be deleted in its entirety, and the remainder of the LLC Agreement shall be amended by replacing every instance of “Pan Am Change in Control” with “CSX Change in Control”.

(m) The definition of “Pan Am Member” shall be deleted in its entirety, and the remainder of the LLC Agreement shall be amended by replacing each instance of “Pan Am Parent” with the “CSX Member”.

(n) The definition of “Pan Am Parent” shall be deleted in its entirety, and the remainder of the LLC Agreement shall be amended by replacing each instance of “Pan Am Parent” with “CSX Parent”.

(o) The definition of “Pan Am System Parties” shall be deleted in its entirety, and the remainder of the LLC Agreement shall be amended by replacing each instance of “Pam Am System Parties” with “CSX System Parties”.

(p) The definition of “Railroad Operating Agreement” shall be deleted and replaced in its entirety with the following:

“**Railroad Operating Agreement**” means (i) prior to the effectiveness of the B&E Railroad Operating Agreement, the ST Railroad Operating Agreement, or (ii) on and after the effectiveness of the B&E Railroad Operating Agreement, the B&E Railroad Operating Agreement.”

(q) The definition of “Railroad Operator” shall be deleted and replaced in its entirety with the following:

“**Railroad Operator**” means B&E, Springfield Terminal, or such other Person as the Management Committee may designate pursuant to this Agreement and the Railroad Operating Agreement, which shall be responsible for performing day-to-day railroad operations for the Company.”

(r) The definition of “Transfer” shall be deleted and replaced in its entirety with the following:

“**Transfer**” means, as a noun, any, direct or indirect, voluntary or involuntary transfer, distribution, sale, pledge, assignment or hypothecation or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, assign or hypothecate or otherwise dispose of.”

(s) Section 1.3(a)(ii) of the LLC Agreement shall be amended by adding “(i)” following “Section 1.3(a)”.

(t) Section 3.7 of the LLC Agreement shall be amended by deleting the words “and 2.3(a) and (b)”

(u) Section 5.4(d) of the LLC Agreement shall be deleted and replaced in its entirety with the following:

“(d) *Action of the Committee.* Except to the extent that this Agreement expressly requires otherwise (including as provided in Section 5.6), every action or resolution done or made by a majority of the number of Committee Representatives required to constitute the Management Committee pursuant to clause (i) or clause (ii), as applicable, of paragraph 5.2(b) at a duly noticed meeting at which a quorum is present is the action of the Management Committee.”

(v) Section 5.6 of the LLC Agreement shall be further amended by deleting from clause (xiv) thereof the words “other than as contemplated by Section 2.3”

(w) Section 5.6 of the LLC Agreement shall be further amended by (i) deleting the word “or” at the end of clause (xxi) thereof, (ii) replacing the period (“.”) at the end of clause (xxii) thereof with “; or” and adding the following language after clause (xxii) thereof:

“(xxiii) Repealing, modifying or amending the B&E Railroad Operating Agreement, or waiving compliance by the Company with any provision of the B&E Railroad Operating Agreement provided however that in the event the Management Committee (through deadlock, failure to vote, or otherwise) does not, prior to thirteen (13) months before the end of the initial ten (10) year term or any subsequent renewal period of the B&E Railroad Operating Agreement, vote to permit the automatic renewal thereof, then the Company, prior to one (1) year before the end of such initial term or any such renewal period, shall provide to B&E written notice of non-renewal in accordance with Section 11(b) (Term) of said B&E Railroad Operating Agreement (the “Non-Renewal Notice”), provided further however, the Management Committee, acting pursuant to this Section 5.6,

at any time may direct that the Company not provide such Non-Renewal Notice to B&E, and may rescind the Non-Renewal Notice after it has been provided to B&E.”

(x) Section 7.3 of the LLC Agreement shall be amended by adding after paragraph (d) of said Section 7.3, a new paragraph (e) as follows:

“(e) Opting Out. Notwithstanding anything herein to the contrary:

(i) In any year in which the Company has one hundred (100) or fewer Members during the year, all of whom are either individuals, C corporations, eligible foreign entities, S corporations, or estates of a deceased Partner, the Company shall make an election to elect out of the revised partnership audit rules contained in Section 63C of the Code, as amended by the Bipartisan Budget Act of 2015, P.L. 114-74, the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, and the Consolidated Appropriations Act, 2018, and as further amended from time to time (the “Revised Partnership Audit Procedures”), and such election to opt out being an “Opt-Out Election”). Any Opt-Out Election shall comply with the provisions of Section 6221(b) of the Code and any applicable regulations or guidance thereunder.

(ii) Absent the prior written consent of each other Member, no Member may make a transfer of its Membership Interest or take any action (or permit any owner of such Member to make a transfer or take any action) that, based solely on the facts and circumstances immediately after such transfer or action, would adversely affect the Company’s ability to make an Opt-Out Election. Any such attempted transfer or action without the prior written consent of each other Member is null and void *ab initio* and shall not bind the Company.”

(y) Section 9.1 of the LLC Agreement shall be amended by adding the following after “Section 9.2” in the first sentence of Section 9.1 of the LLC Agreement:

“or Section 9.8”

(z) Section 9.2 of the LLC Agreement shall be amended by adding the following after “Section 9.3” in the first sentence of Section 9.2 of the LLC Agreement:

“and Section 9.9 (if applicable)”

(aa) Section 9.2 of the LLC Agreement shall be amended by adding the following after the phrase “Transfer all or” in the first sentence of Section 9.2 of the LLC Agreement:

“,solely with respect to the NS Member,”

(bb) Section 9.3 of the LLC Agreement shall be amended by (i) deleting therefrom clauses (e) and (f) and (ii) adding the following paragraph, as clause (e), immediately after clause (d) in Section 9.3 of the LLC Agreement:

“(e) Prior to any such Transfer, the transferee shall deliver to each Member a written commitment from such transferee to be bound by the Settlement Agreement and to comply with the provisions therewith.”

(cc) The LLC Agreement shall be amended by adding to Section 9 of the LLC Agreement a new Section 9.8 after Section 9.7:

“9.8 Call Right

(a) At any time before the seventh (7th) anniversary of the Amendment Date, the NS Member or its assignee (the “Call Holder”) shall have the right (the “Call Right”), but not the obligation, to purchase all (but not less than all) of the CSX Member’s Membership Interest, and if the Call Right is exercised, the CSX Member shall sell such Membership Interest to the Call Holder free and clear of all liens in accordance with this Section 9.8. The NS Member shall be permitted to assign the Call Right to any Person. The Call Holder shall exercise the Call Right by providing written notice (the “Call Notice”) to the Company, the CSX Member and the NS Member (only if the NS Member is not the Call Holder) of its intention to exercise the Call Right.

(b) The purchase price to be paid by the Call Holder for the CSX Member’s Membership Interest shall be {

[REDACTED]

}} For the avoidance of doubt, the limitations on the Call Purchase Price described in the immediately preceding sentence shall not apply to any Transfer other than a Transfer pursuant to the exercise of the Call Right. {{

[REDACTED]

}} Any Call Notice shall set forth the NS Member’s (or its assignee’s) calculation of the Valuation, together with reasonable supporting detail therefor. Unless the CSX Member notifies the NS Member (and its assignee, as applicable) in writing (a “Valuation Objection Notice”) within {{ [REDACTED] }} Business Days after receipt by the CSX Member of the Call Notice (the “Valuation Objection Period”) of any good faith objection to the calculation of the Valuation set forth therein (which notice shall set forth in reasonable detail the CSX Member’s basis for the objections set forth therein), the Valuation set forth in the Call Notice shall become final and binding. If the CSX Member provides a Valuation Objection Notice within the Valuation Objection Period, the CSX Member and the NS Member (and its assignee, as applicable) shall engage in direct good faith discussions to arrive at a mutually agreeable determination of the Valuation. In

the event the CSX Member and the NS Member (and its assignee, as applicable) are unable to arrive at a mutually agreeable determination of the Valuation within {{[REDACTED]}} days of the delivery of the Valuation Objection Notice, an independent investment banking firm of national standing or a Qualified Appraiser of national standing, as the case may be, selected by unanimous agreement of the Members shall determine the Valuation (in accordance with the terms of this Agreement) and such determination shall be conclusive and binding on the CSX Member and the NS Member (and its assignee, as applicable). The determination of the Valuation by the investment banking firm or Qualified Appraiser, if not in accordance with the position of either the CSX Member or NS Member (or its assignee, if applicable), shall be between the highest and the lowest amounts advocated by the NS Member (or its assignee, if applicable) in the Call Notice and the CSX Member in the Valuation Objection Notice. The fees and expenses of the investment banking firm or Qualified Appraiser retained for such purpose shall be paid by the Company but in no event shall they be considered in the calculation of the Valuation.

(c) The Call Purchase Price shall be payable in cash at the closing of the purchase of the CSX Member's Membership Interest by wire transfer of immediately available funds to an account specified by the CSX Member. Buyer and Seller hereby agree to pay their own closing costs.

(d) The Call Holder and the CSX Member shall cooperate in good faith to negotiate, execute and deliver (and cause to be executed and delivered) such documents and instruments as may be necessary or appropriate to effect the purchase of the CSX Member's Membership Interest pursuant to this Section 9.8 as promptly as reasonably practicable, which date shall be no later than {{[REDACTED]}} days following the date on which the Call Notice is delivered to the CSX Member; provided that if such purchase would require the Call Holder or the CSX Member to obtain any governmental approval prior to consummating such purchase, the CSX Member shall provide, and the CSX Member and NS Member shall each use their respective commercially reasonable efforts to cause the Company to provide, cooperation and support, for the acquisition of such governmental approval, and provided further such {{[REDACTED]}} day period shall be extended to the date that is {{[REDACTED]}} Business Days after such governmental approval becomes effective and any necessary implementing agreements are in force. In the event that any required governmental approval is finally denied, the Call Notice shall be deemed void *ab initio* and the Call Right shall be deemed not to have been exercised.

(e) The CSX Member shall at the closing of any purchase consummated pursuant to this Section 9.8, represent and warrant to the Call Holder that (i) the CSX Member has full right, title and interest in and to the CSX Member's Membership Interest, (ii) the CSX Member has all the necessary power and authority and has taken all necessary action to sell the CSX Member's Membership Interest as contemplated by this Section 9.8 and (iii) the CSX Member's Membership Interest is free and clear of any and all mortgages,

pledges, security interests, options, rights of first offer, encumbrances or other restrictions or limitations of any nature whatsoever other than those arising as a result of or under the terms of this Agreement.”

(dd) The LLC Agreement shall be amended by adding to Section 9 of the LLC Agreement a new Section 9.9 after Section 9.8:

“9.9 Right of First Refusal

(a) If at any time while the CSX Parent or one of its Affiliates is the ultimate parent of the CSX Member and the CSX Member wishes to sell or otherwise transfer its Membership Interests to a third party pursuant to a *bona fide* written offer for the purchase or other transfer of all of such Membership Interests (other than pursuant to the Call Right), the CSX Member shall first give notice of the offer (an “Offer Notice”) to the NS Member or its assignee (the “ROFR Holder”), setting forth the name and address of the third party, the proposed purchase price and the other terms and conditions of the offer. The NS Member shall be permitted at any time to assign its right to purchase or otherwise acquire the CSX Member’s Membership Interests under this Section 9.9 to any Person. At any time within {{[REDACTED]}} days after the Offer Notice is received by the NS Member, the ROFR Holder may give notice (the “ROFR Purchase Notice”) to the CSX Member that it wishes to purchase its Membership Interests on the terms and conditions specified in the Offer Notice, except that (i) if such Offer Notice is received before the seventh (7th) anniversary of the Amendment Date, the ROFR Holder shall have the right to purchase all of the CSX Member’s Membership Interests for the Call Purchase Price determined in accordance with Section 9.8(b) (notwithstanding any higher proposed purchase price set forth in the Offer Notice) and (ii) if those terms and conditions include the delivery of consideration for the CSX Member’s Membership Interests other than cash or a promissory note (in each case payable in U.S. dollars, and herein referred to as “Non-Cash Consideration”) or the posting of collateral for any deferred consideration other than such Membership Interests, the ROFR Holder may duly accept the offer by offering in the ROFR Purchase Notice to pay cash (in U.S. dollars) in an amount equivalent to the fair market value of the consideration described in the Offer Notice, or to post collateral equivalent in value and quality to the collateral in the Offer Notice.

(b) Unless the CSX Member notifies the ROFR Holder in writing (a “FMV Objection Notice”) within {{[REDACTED]}} Business Days after the CSX Member’s receipt of the ROFR Purchase Notice (the “FMV Objection Period”) of any good faith objection to the fair market value of the Non-Cash Consideration or the value of the posted collateral, set forth in the ROFR Purchase Notice (which notice shall set forth in reasonable detail the CSX Member’s basis for the objections set forth therein), such values set forth in the ROFR Purchase Notice shall become final and binding. If the CSX Member provides a Value Objection Notice within the FMV Objection Period, the CSX Member and the ROFR Holder shall engage in direct good faith discussions to arrive at a mutually

agreeable determination of such values. In the event the CSX Member and the ROFR Holder are unable to arrive at a mutually agreeable determination of either such value within {{[REDACTED]}} Business Days of the delivery of the FMV Objection Notice, an independent investment banking firm of national standing or (in the case of any asset or other item not customarily valued by an investment banking firm) a Qualified Appraiser of national standing, as the case may be, selected by unanimous agreement of the Members shall determine the disputed values and such determination shall be conclusive and binding on the CSX Member and the ROFR Holder. The determination of such values by the investment banking firm or Qualified Appraiser, if not in accordance with the position of either the CSX Member or ROFR Holder, shall be between the highest and the lowest of the amounts advocated by the ROFR Holder in the ROFR Purchase Notice or the CSX Member in the FMV Objection Notice. The fees and expenses of the investment banking firm or Qualified Appraiser retained for such purpose shall be paid by the Company.

(c) The ROFR Holder shall not be obligated to acquire any asset other than the CSX Member's Membership Interests or to match any term unrelated to such Membership Interests and, if the CSX Member proposes to Transfer other assets to a third party, only the fair market value of the offer attributable to such Membership Interests may be included in the Offer Notice as a term to be matched by the ROFR Holder for acquisition of such Membership Interests. If the CSX Member receives a ROFR Purchase Notice from the ROFR Holder within such {{[REDACTED]}} day period for the CSX Member's Membership Interests, the CSX Member shall sell to the ROFR Holder such Membership Interests on terms equal to or not more favorable to the CSX Member than those set forth in the Offer Notice. Any sale of the CSX Member's Membership Interests to the ROFR Holder under this Section 9.9 also shall be subject to Section 9.3 and shall be consummated not later than {{[REDACTED]}} days after the expiration of the {{[REDACTED]}} day acceptance period; provided that if such sale would require the ROFR Holder or the CSX Member to obtain any governmental approval prior to consummating such sale, the CSX Member shall provide, and the CSX Member and the NS Member shall each use their respective commercially reasonable efforts to cause the Company to provide, cooperation and support, for the acquisition of such governmental approval, and provided further such {{[REDACTED]}} day period shall be extended to the date that is {{[REDACTED]}} Business Days after such governmental approval becomes effective and any necessary implementing agreements are in force. In the event that any required governmental approval is finally denied, the ROFR Notice shall be deemed void *ab initio*.

(d) Notwithstanding anything to the contrary in Section 9.9(a), if the CSX Member does not receive a ROFR Purchase Notice from the ROFR Holder with respect the CSX Member's Membership Interests within such {{[REDACTED]}} day period, or if the CSX Member receives a ROFR Purchase Notice within such {{[REDACTED]}} day period but the ROFR Holder does not purchase such Membership Interests in accordance with the terms

of this Agreement (other than due to a breach or default by the CSX Member) on or before the expiration of the {{[REDACTED]}} day period referred to in Section 9.9(c) above (as may be extended pursuant to Section 9.9(c), the “Expiration Date”), the CSX Member may, subject to Section 9.3, sell such Membership Interests to the third-party offeror on substantially the same terms and conditions specified in the Offer Notice if the CSX Member and such offeror have, not later than the later of {{[REDACTED]}} days after, as applicable, such {{[REDACTED]}}-day period or the Expiration Date, executed an agreement (the “Offeror Purchase Agreement”) to sell such Membership Interests; if, however, an Offeror Purchase Agreement is not entered into on or before the expiration of such {{[REDACTED]}} day period, such proposed Transfer shall again be subject to this Section 9.9 and no Transfer with respect to such Membership Interests may be made thereafter by the CSX Member without again offering the same to the ROFR Holder in accordance with this Section 9.9.

(e) Notwithstanding anything to the contrary in this Section 9.9, the rights provided in this Section 9.9 shall not apply to any Permitted Transfer under Sections 9.2(a), (f) or (g); provided that, for the avoidance of doubt, any transferee of a Permitted Transfer under Sections 9.2(a), (f) or (g) shall be subject to the rights provided in this Section 9.9 following the consummation of such Permitted Transfer.”

(ee) Section 12.1 of the LLC Agreement shall be amended by deleting “If to the Pan Am Member:” and all notice provisions thereafter, and replacing it in its entirety with the following:

“If to the CSX
Member:

CSX Corporation
500 Water Street
Jacksonville, FL 32202
Attention:

With a copy to:

CSX Corporation
500 Water Street
Jacksonville, FL 32202
Attention: Law Department”

(ff) Section 12.6 of the LLC Agreement shall be deleted and replaced in its entirety with the following:

“12.6 Prior Agreements. Unless otherwise provided by law, this Agreement and the JV Transaction Agreements supersede all agreements entered into prior to the Amendment Date among the parties hereto (or their respective Affiliates), written or oral, with respect to the subject matter hereof.”

3. Effectiveness

This Amendment shall become effective immediately upon its execution and delivery by the parties.

4. Miscellaneous

(a) Governing Law. The laws of the state of Delaware shall govern the validity of this Amendment, the construction of its terms and the interpretation of the rights and duties arising hereunder.

(b) Counterparts. This Amendment may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

(c) Force of the LLC Agreement

. Except to the extent amended hereby, the provisions of the LLC Agreement shall remain unmodified, and the LLC Agreement, as amended by this Amendment, shall remain in full force and effect in accordance with its terms.

(d) References to the Agreement. After giving effect to this Amendment, unless the context otherwise requires, each reference in the Agreement to “this Agreement”, “hereof”, “hereunder”, “herein”, or words of like import referring to the Agreement shall refer to the Agreement as amended by this Amendment, provided that references in the Agreement to “as of the date hereof” or words of like import shall continue to refer to April 9, 2009.

[Remainder of the page is intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the Execution Date.

**NORFOLK SOUTHERN RAILWAY
COMPANY**

By: _____
Name:
Title:

BOSTON AND MAINE CORPORATION

By: _____
Name:
Title:

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Letter in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
*Attorney for CSX Corporation and
CSX Transportation, Inc.*

July 20, 2021