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May 30, 2023
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May 30, 2023

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *New Jersey Transit Corporation – Acquisition Exemption – Norfolk Southern Railway Company, In the Counties of Morris and Warren, NJ*, STB Docket No. FD 36676

Dear Ms. Brown:

I am attaching for e-filing the following documents to initiate the above-captioned proceeding:

- New Jersey Transit Corporation's (NJ TRANSIT) Notice of Exemption for the acquisition from Norfolk Southern Railway Company of real property underlying active track; and
- NJ Transit's Motion to Dismiss the Exemption.

With respect to the filing fee, NJ TRANSIT, an instrumentality of the State of New Jersey, is seeking a waiver of the filing fee based on the fact that it is a state government entity filing the Notice of Exemption and Motion to Dismiss on behalf of the general public. *a See 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement (Served December 6, 2000).* Specifically, 49 C.F.R. § 1002.2(e)(1) states that "filing fees are waived for application and other proceedings which is filed by... a state or local government agency." NJ TRANSIT is a state government agency filing the request on behalf of the general public. Accordingly, NJ TRANSIT requests that the filing fee submitted with the Notice of Exemption be waived.

Sincerely,



Ayelet Hirschhorn
Counsel for New Jersey Transit Corporation

FILED
May 30, 2023
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CONTAINS COLOR MAPS

**Before the
Surface Transportation Board**

Finance Docket No. FD 36676

**NEW JERSEY TRANSIT CORPORATION
- ACQUISITION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY
IN THE COUNTIES OF MORRIS AND WARREN, NEW JERSEY**

VERIFIED NOTICE OF EXEMPTION

Communications with respect to this document
should be addressed to:

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(646) 883-5110
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Counsel for New Jersey Transit Corporation

Dated: May 30, 2023

**Before the
Surface Transportation Board**

Finance Docket No. 36676

**NEW JERSEY TRANSIT CORPORATION
- ACQUISITION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY
IN THE COUNTIES OF MORRIS AND WARREN, NEW JERSEY**

VERIFIED NOTICE OF EXEMPTION

The New Jersey Transit Corporation (“NJ TRANSIT”), an instrumentality of the State of New Jersey pursuant to New Jersey Statutes Annotated 27:25-1 *et seq.*, hereby submits this Notice that it intends to acquire from the Norfolk Southern Railway Company (“NSR”) a portion of the property commonly known as the “Washington Secondary Track” to ensure continued access to NJ TRANSIT’s Morristown Line as part of its transit operation. On or about June 30, 2023, NJ TRANSIT will acquire ownership of that track and NSR will retain an exclusive freight easement thereon. Specifically, NJ TRANSIT has completed the negotiations with NSR to acquire that 9.15 mile-long portion of the Washington Secondary Track from M.P. 48.1 to M.P. 57.25, in the Counties of Morris and Warren, New Jersey (the “Line”).¹ The Line is shown on the map that is attached as **Exhibit 1** hereto.

NSR will retain an exclusive freight easement for the trackage on the Line preserving NSR’s exclusive right to operate freight service on the entire Washington Secondary Track. NJ TRANSIT will acquire no right or obligation to provide freight service on the Line and is acquiring

¹ While the entire Washington Secondary Track runs westward to Phillipsburg, New Jersey, the portion currently used by NJ TRANSIT only extends from M.P. 48.1 to M.P. 58.0. NJ TRANSIT is not purchasing the portion of the Washington Secondary Track from M.P. 57.25 to M.P. 58.0. NSR will continue to own this remaining .75 mile segment of track.

the property for the purpose of ensuring access to its Morristown Line to support its commuter rail operations. NJ TRANSIT is an instrumentality of the State of New Jersey with legal authority only to operate mass transportation services pursuant to New Jersey Statutes Annotated 27:25-1 *et seq.* Usage of the Line will continue to be governed by the Trackage Rights Agreement between NJ TRANSIT and the Consolidated Rail Corporation (“Conrail”), NSR’s predecessor, effective as of October 1, 1984. Relevant portions of the Trackage Rights Agreement are attached as **Exhibit 2**. A copy of the First Operating Agreement that amends the Trackage Rights Agreement for the purposes of this transfer is attached in **Exhibit 3**.

Among other things, the Trackage Rights Agreement allowed Conrail to provide freight services over tracks jointly used with NJ TRANSIT, including the Line, for many years. NSR succeeded to Conrail’s rights and interests in the Trackage Rights Agreement when NSR acquired Conrail’s operations in New Jersey. *CSX Corp.—Control and Operating Leases/Agreements*

Conrail Inc., 3 S.T.B. 196, 282-83 (1998). NJ TRANSIT’s acquisition will not affect or impair NSR’s ability to provide freight service over the Line or the remainder of the Washington Secondary Track. As set forth in detail below, NJ TRANSIT will not acquire sufficient control over the operation of freight services on the Line to interfere with NSR’s freight operations.

On March 1, 2019, NSR, NJ TRANSIT and the Dover and Delaware River Railroad (“DDRR”) signed a trackage rights agreement granting DDRR certain trackage rights over the Line (“DDRR TRA”). The DDRR TRA permitted DDRR to operate freight service over the NJ TRANSIT Rail Properties in lieu of NSR but did not change NSR’s common carrier obligations to provide service over the Line. Furthermore, Section 1.3 of the DDRR TRA prevents NJ TRANSIT from exercising its rights “in a manner which would unreasonably interfere with DDRR’s [t]rackage [r]ights.” Relevant portions of the DDRR TRA are attached as **Exhibit 4**. As

set forth in detail below, NJ TRANSIT will not acquire sufficient control over train operations on the Line to interfere with DDDR's trackage rights.

This Notice of Exemption is filed under 49 C.F.R. § 1150.31(1) *et seq.* because NJ TRANSIT is a non-carrier. *See New Jersey Transit Corporation — Acquisition Exemption — Certain Assets of Consolidated Rail Corporation*, STB Finance Docket No. 33786 (Service Date Feb. 15, 2000) (Dismissing Notice of Exemption for acquisition by NJ TRANSIT of the 31.83 mile Bordentown Secondary Track from Conrail). Because NJ TRANSIT will not acquire either rights or obligations that implicate in any way the existing freight common carrier operations on the Line, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, NJ TRANSIT is also simultaneously filing a Motion to Dismiss this Notice of Exemption.

In accordance with the requirements of 49 C.F.R. § 1150.33, NJ TRANSIT submits the following information:

- (a) *The full name and address of the applicant*, 49 C.F.R. § 1150.33(a)
New Jersey Transit Corporation
One Penn Plaza East
Newark, New Jersey 07105
- (b) *The name, address and telephone number of the representative of the applicant who should receive correspondence*, 49 C.F.R. § 1150.33(b)
Charles A. Spitulnik
Ayelet Hirschhorn
Kaplan Kirsch & Rockwell LLP
450 7th Avenue
Suite 1401
New York, NY 10123
(646) 883-5110
cspitulnik@kaplankirsch.com
ahirschhorn@kaplankirsch.com
- (c) *A statement that an agreement has been reached or detail about when an agreement will be reached*, 49 C.F.R. § 1150.33(c) NJ TRANSIT and NSR have completed the negotiations for several agreements related to NJ TRANSIT's acquisition of the Line and will execute the documents relating to this transaction following

completion of the proceedings at this Board related to the Notice of Exemption and related Motion to Dismiss:

First, the parties will execute the Purchase and Sale Agreement,² which sets forth their agreement for NSR to transfer the Line to NJ TRANSIT. A draft copy of the Purchase and Sale Agreement³ is attached hereto as **Exhibit 5**.

Second, NSR will execute a Deed for the Line in favor of NJ TRANSIT, which includes a reservation for NSR of an exclusive, perpetual railroad easement for the purpose of permitting NSR to continue providing freight service on the Line. A copy of Deed is attached hereto as **Exhibit 6**.

Third, the parties will execute the First Operating Agreement for the Washington Secondary Track, which, along with the Trackage Rights Agreement, will govern the operations, rights and obligations of NSR and NJ TRANSIT on the Line and the remainder of the Washington Secondary Track following the consummation of the transaction. A copy of the First Operating Agreement for the Washington Secondary Track is attached hereto as **Exhibit 3**.

As set forth at Section 2 of the First Operating Agreement (**Exhibit 3** hereto), the Line will be classified as “Category NFP Rail Property” and be included with other “NJ TRANSIT Rail Properties”, as described at Sec. 3.01 of the Trackage Rights Agreement, attached hereto as **Exhibit 2**. The “Category NFP Rail Property” designation refers to property owned by NJ TRANSIT over which NSR has retained a freight operating easement.

Finally, NJ TRANSIT, NSR and DDDR will amend the DDDR TRA to reflect this transaction. A copy of the Amendment to the DDDR TRA is attached hereto as **Exhibit 7**. The Amendment to the DDDR TRA will provide that this transaction will not interfere with NSR’s common carrier obligations to provide freight service over the Line or DDDR’s trackage rights over the Line.

- (d) *The operator of the property*, 49 C.F.R. § 1150.33(d)
The Deed transfers to NJ TRANSIT legal title of the Line, *provided however* that NSR retains “the exclusive, perpetual, transferable, assignable and irrevocable retained rail freight rights” on the entire rail line. *See* Deed (**Exhibit 6** to this Notice). NSR, therefore, will retain the ongoing exclusive obligation to provide freight service on the Line and NJ TRANSIT will not acquire any such rights or obligations.
- (e) *A brief summary of the proposed transaction*, 49 C.F.R. § 1150.33(e).

² The Parties continue to negotiate the assignment of certain utility agreements to NJ TRANSIT. The terms and conditions of such assignments will not affect NSR or DDDR’s ability to operate freight service over the Line.

³ The purchase price and cost of outstanding rent for the Line has been redacted from Exhibits 5 and 6. NJ TRANSIT will submit an unredacted version of Exhibits 5 and 6 after NJ TRANSIT has purchased the Line from NSR.

- (1) *The name and address of the railroad transferring the subject property, 49 C.F.R. § 1150.33(e)(1):*

Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, Georgia 30308

- (2) *The proposed time schedule for the consummation of the transaction, 49 C.F.R. § 1150.33(e)(2).*

The transaction between NJ TRANSIT and NSR is expected to occur on or about June 30, 2023, following completion of the proceedings at this Board related to this Notice of Exemption and related Motion to Dismiss.

- (3) *The mile posts of the subject property, including any branch lines, 49 C.F.R. § 1150.33(e)(3).*

The portion of the Washington Secondary Track acquired by NJ TRANSIT from M.P. 48.1 to M.P. 57.25 in Morris and Warren Counties, New Jersey.

- (4) *The total route miles being acquired, 49 C.F.R. § 1150.33(e)(4).*

The total mileage of the lines to be acquired is approximately 9.15 miles.

- (f) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states.*

See **Exhibit 1.**

- (g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier*

NJ TRANSIT would not conduct any freight operations and therefore the projected freight carrier revenues of NJ TRANSIT would not exceed those that would qualify NJ TRANSIT as a Class III rail carrier. *See* NJ TRANSIT's Verification and Certification, attached.

- (h) *Transactions Imposing Interchange Commitments*

The proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

Pursuant to 49 C.F.R. § 1105.6(c)(2), NJ TRANSIT's proposed acquisition of the Line is exempt from environmental reporting requirements because the railroad operations on the line

segment that is subject to the Board's jurisdiction will not be affected by the acquisition by NJ TRANSIT. *See* 49 C.F.R. § 1105.6(c)(2).

Similarly, under 49 C.F.R. § 1105.8(b)(1), NJ TRANSIT's proposed acquisition of the Line is exempt from historic preservation reporting requirements. The proposed acquisition and operating agreement are for the purpose of continuing the status quo. Further Board approval would be required for NSR to discontinue or abandon any freight service that NSR currently offers or is able to offer on the Line. No changes to any existing facilities are proposed as the result of or in connection with the transaction. Therefore, the acquisition will not have any effect on properties subject to Board jurisdiction that are fifty years old or older.

A proposed caption summary for publication in the Federal Register is attached hereto as

Exhibit 8.

Respectfully Submitted,



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New York, NY 10123
Tel: (646) 883-5110
Email: cspitulnik@kaplankirsch.com
ahirschorn@kaplankirsch.com

Counsel for New Jersey Transit Corporation

Dated: May 30, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Notice of Exemption of the New Jersey Transit Corporation to be served by first class mail, properly addressed and with postage prepaid, upon the following parties of record to this proceeding:

Norfolk Southern Corporation
Vice President, Strategic Planning
650 W. Peachtree Street NW
Atlanta, Georgia 30308

Dover and Delaware River Railroad, LLC
Kean Burenga, President
20 Toad Lane
Ringoos, NJ 08551



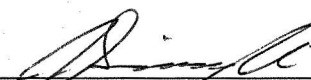
Ayelet Hirschorn
Kaplan Kirsch & Rockwell LLP
450 7th Avenue
Suite 1401
New York, NY 10123
(646) 883-5110

Dated: May 30, 2023

VERIFICATION AND CERTIFICATION

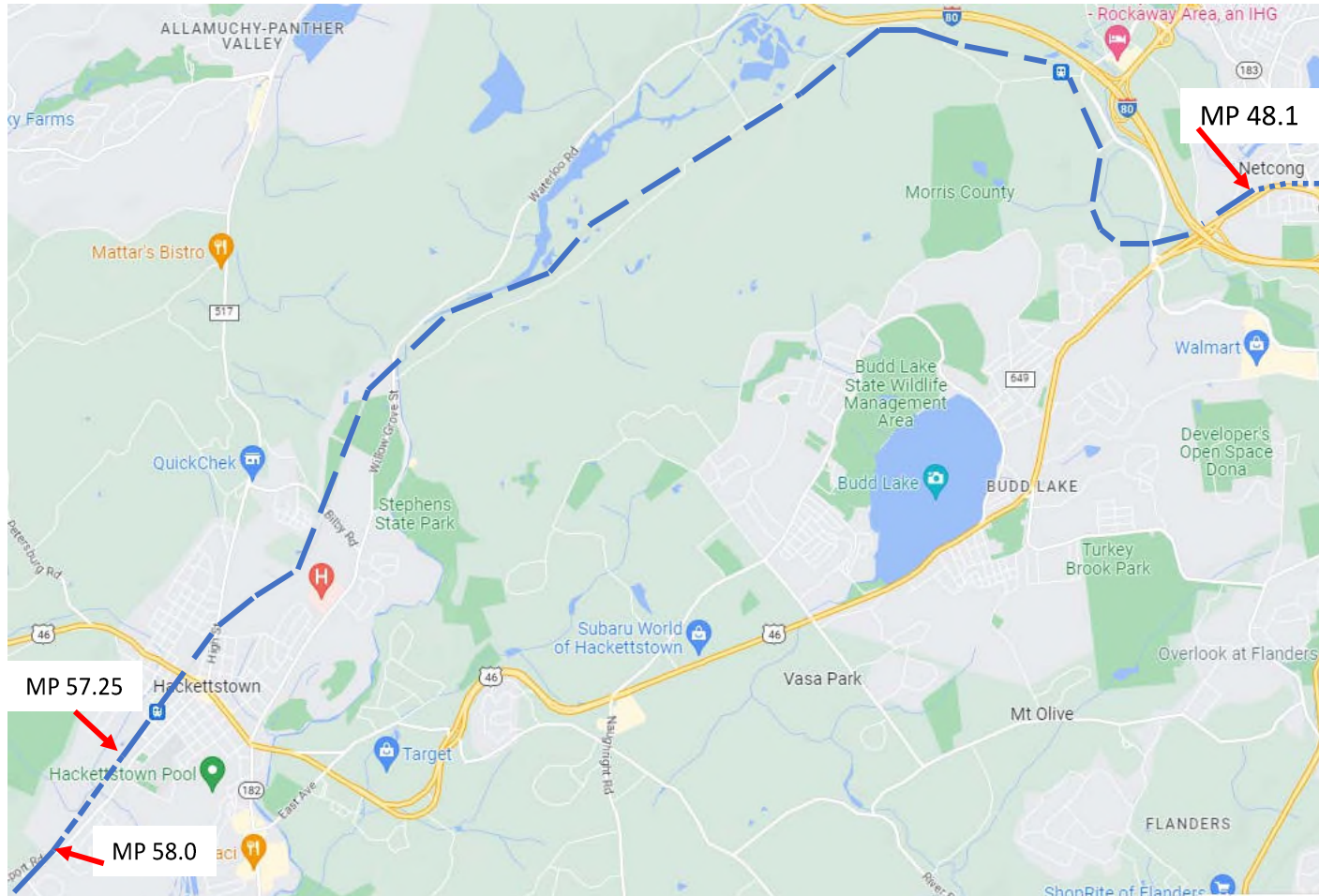
I, James A. Sincaglia, Senior Vice President and General Manager of New Jersey Transit Rail Operations, Inc., a wholly-owned and controlled operating subsidiary of New Jersey Transit Corporation (collectively "NJ TRANSIT"), verify under penalty of perjury that the facts recited in the foregoing Notice of Exemption are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. § 1150.43(g) that NJ TRANSIT will conduct no freight operations on the line segments being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.



James A. Sincaglia
Senior Vice President and General Manager
New Jersey Transit Rail Operations, Inc.

Washington Secondary Rail Line



Key

— Washington Secondary to be acquired by NJ TRANSIT

..... NJ TRANSIT Morristown Line

--- Washington Secondary formerly leased by NJ TRANSIT to be returned to solely NS use

— NS Washington Secondary (continues west to Phillipsburg)

Excerpts

TRACKAGE RIGHTS AGREEMENT

BETWEEN

NEW JERSEY TRANSIT CORPORATION,
NEW JERSEY TRANSIT RAIL OPERATIONS, INC.

AND

CONSOLIDATED RAIL CORPORATION,

EFFECTIVE OCTOBER 1, 1984

ARTICLE III

MANAGEMENT AND OPERATIONS

Section 3.01 NJTRANSIT Rail Properties

(a) NJTRANSIT retains the right to establish the overall policies governing the management and operational control of NJTRANSIT Rail Properties, including, but not limited to the dispatching and control of all trains. NJTRANSIT's right shall not be exercised in a manner which would unreasonably interfere with Conrail's Trackage Rights.

(b) The scheduling and movement of passenger trains and equipment shall take preference over all other train scheduling and movements. NJTRANSIT shall provide thirty (30) days written notice of changes in passenger train schedules of more than 10 minutes from origin or destination or changes by way of additional train service.

(c) Conrail's freight operating rights described in this Agreement are for the sole purpose of permitting Conrail to operate its road and local freight trains, as identified in Exhibit No. 3, as well as emergency trains, special trains, locomotives, switching movements, and other on-track equipment.

(d) Subject to thirty (30) days written notice to NJTRANSIT, Conrail shall have the right to amend the level of its freight service described in Exhibit No. 3 (Conrail's Classification and Schedule of Freight Service dated 10/1/84); provided, however, that the character, scheduling or extent of the amended freight service to be rendered under this Agreement shall not unreasonably interfere with existing or planned uses of NJTRANSIT Rail Properties.

(e) NJTRANSIT reserves the right to operate special or emergency trains and other on-track equipment over NJTRANSIT Category NP Rail Properties.

ARTICLE IV

MAINTENANCE AND CONSTRUCTION ON RAIL PROPERTIES

Section 4.01 Responsibility For Maintenance, Replacement,
Construction, Reconstruction, and Alteration
of NJTRANSIT Rail Properties

(a) NJTRANSIT Rail Properties

(1) NJTRANSIT has the right to establish the overall policies governing, and the implementation thereof, routine and non-routine maintenance, replacement, construction, reconstruction, alteration and removal of all NJTRANSIT Rail Properties.

(b) NFP Property - NJTRANSIT Responsibility

(1) NJTRANSIT or designee shall perform routine and non-routine track maintenance together with the maintenance of signal appliances and derails, if any, for the portion of solely freight sidings located between the point of switch and the clearance point and any solely freight crossover out of the main track.

All routine and non-routine maintenance expenses incurred by NJTRANSIT related to these facilities are not included in car-mile reimbursement in Section 5.02 (a) hereto. The expenses will be billed to Conrail. Such facilities are listed on Exhibit No. 5. For turnouts designated by Note 1 on Exhibit No. 5, NJTRANSIT shall perform the routine maintenance at its sole cost and expense and Conrail shall be responsible only for non-routine maintenance expenses only.

For purposes of this Agreement, routine maintenance shall be that work performed by section forces generally limited to inspections, switch stand and rod adjustments, lubricating, welding, respiking, spot surfacing and tamping, signal department tests and inspection, and programmed turnout surfacing by either section or program forces. The cost of such work shall be charged to Conrail in accordance with Section 5.05(d). Non-routine maintenance shall be that work generally performed and programmed on a cycle, on a project or emergency basis, consisting of partial or entire replacement of switch timbers, ties, metal materials, ballast, switch stands, signal apparatus, and details, if any. This may be performed by program gang or section forces. The cost of such work shall be charged to Conrail in accordance with Section 5.06.'

Whenever in the sole opinion of NJTRANSIT, any existing solely freight facility located between the point of switch and the clearance point and any solely freight crossover out of the main track requires non-routine maintenance, NJTRANSIT shall prepare and provide to Conrail an estimate of the costs based on the provisions set forth in Section 5.06 for the work required. Within sixty (60) days after receipt of the aforesaid estimate Conrail shall advise NJTRANSIT whether the solely freight facility is required for the performance of Conrail's freight service. In the event that Conrail advises that said solely freight facility is required for the performance of Conrail's freight service, NJTRANSIT, shall perform or arrange to have performed the aforesaid non-routine maintenance, Conrail shall pay NJTRANSIT in accordance with the provisions of Section 5.06. In the event that Conrail advises that said solely freight facility is not required for the performance of Conrail's

freight service, as provided for in this Agreement, the provisions of Section 4.03 shall apply. In the event that Conrail fails to reply to the estimate prepared by NJTRANSIT, NJTRANSIT shall submit a second notice to Conrail. If Conrail has not replied within forty-five (45) days to the second notice, NJTRANSIT shall have the right to remove such facility. In the event an emergency situation occurs which requires the total or partial replacement of a solely freight facility, NJTRANSIT shall proceed with the work and bill Conrail in accordance with the provisions of Section 5.06 or 5.07 as applicable.

(2) With respect to certain solely freight facilities located beyond the clearance point as identified in Exhibit No. 6, NJTRANSIT or designee agrees to perform routine and non-routine maintenance as defined herein at Conrail's sole cost and expense. Conrail agrees that the level of maintenance to be performed by NJTRANSIT shall be at PRA Class I.

For purposes of this Agreement, routine maintenance of the facilities shall be that work performed by section forces generally limited to inspection, lubricating, welding, respiking, spot surfacing and tamping. The cost of such work shall be charged to Conrail in accordance with Section 5.05(e).

For purposes of this Agreement, nonroutine maintenance of the facilities shall be that work generally performed and programmed on a cycle or project basis, consisting of partial or entire replacement of ties, metal materials, ballast, switch stands, signal apparatus and derails, if any. This work may be performed by program or section forces. Replacement, construction, reconstruction, and alteration are also considered as non-routine maintenance. Whenever

in the sole opinion of NJTRANSIT, any existing solely freight facility requires non-routine maintenance, NJTRANSIT shall prepare and provide to Conrail an estimate of the cost based on the provisions set forth in Section 5.07 for the work required. Within sixty (60) days after receipt of the aforesaid estimate Conrail shall advise NJTRANSIT whether the solely freight facility is required for the performance of Conrail's freight service. In the event that Conrail advises that said solely freight facility is required for the performance of Conrail's freight service, NJTRANSIT shall perform or arrange to have performed the aforesaid non-routine maintenance, and Conrail shall pay NJTRANSIT in accordance with the provisions of Section 5.07. In the event that Conrail notifies NJTRANSIT that it does not wish to have the work performed, NJTRANSIT's maintenance responsibility shall terminate. In the event Conrail fails to reply to the estimate prepared by NJTRANSIT, NJTRANSIT shall submit a second notice to Conrail. If Conrail has not replied within forty-five (45) days to the second notice, NJTRANSIT's maintenance responsibility shall terminate. In the event a derailment or other event occurs which destroys a solely freight facility and requires the total or partial replacement, NJTRANSIT shall proceed with the work and bill Conrail in accordance with the provisions of Section 5.07.

(c) NPP Rail Properties - Solely Freight Facilities -- Conrail Responsibility

(1) Except for those facilities maintained by NJTRANSIT pursuant to Section 4.01(b)(2) and Exhibit No. 6 of this Agreement, NJTRANSIT, for the sum of one dollar, hereby leases to Conrail those

portions of NJTRANSIT Category NPP Rail Properties not now maintained by or leased to third parties beyond the clearance point of each main track freight turnout for the purpose of Conrail's maintenance obligations included but not limited to utilities, brush control, etc., set forth in this Agreement.

(2) This lease shall commence on the execution of this Agreement and shall automatically terminate for each portion of NJTRANSIT Category NPP Properties when Conrail abandons service on that portion pursuant to Section 9 of this Agreement. Conrail may enter into a sublease for such properties.

(3) In the event that any replacement, construction or alteration will result in a change in weight of rail, grade, alignment or location, as well as removal, Conrail shall obtain the written approval of NJTRANSIT prior to undertaking any work whose approval shall not be unreasonably withheld.

(4) Conrail shall be responsible for compliance with the provisions of applicable regulations of the Federal Railroad Administration including, but not limited to, a petition to the FRA for the assignment of maintenance responsibilities pursuant to 49 C.F.R. 213.5 and other entities with regulatory authority over the rail industry as well as federal, state and municipal laws regarding the condition of the solely freight facilities on NPP Rail Properties. Conrail shall also indemnify, protect, and defend against all fines, penalties, and liabilities imposed under such laws and regulations.

(d) NP Rail Properties - Conrail Responsibility

(1) Maintenance of right of way and maintenance of facilities located on NP Rail Properties shall be performed by Conrail or its designee at its sole cost and expense.

(2) Conrail, subject to Section 3.03(a)(3), shall determine the level of and requirements for maintenance as long as no NJTRANSIT use is scheduled for these facilities or until freight service thereon is abandoned by Conrail. If NJTRANSIT intends to institute passenger service over Category NP lines, Conrail shall have one hundred twenty (120) days after NJTRANSIT's written notice to restore the track to the level of maintenance as of January 1, 1983. In the event that NJTRANSIT initiates passenger service or Conrail discontinues freight service on any of these properties, and it is then determined that Conrail has not maintained these properties at or brought them to, the level of maintenance as of January 1, 1983, NJTRANSIT shall have the right to perform the necessary work within one (1) year from the date of the Conrail's abandonment of service and Conrail shall reimburse NJTRANSIT for the cost thereof pursuant to Section 5.07.

(3) In the event that any such replacement, construction or alteration will result in a change in weight of rail, grade, alignment or location, as well as removal, Conrail shall obtain the written approval of NJTRANSIT prior to undertaking any work. NJTRANSIT's approvals shall not be unreasonably withheld.

(4) Conrail shall also be responsible for compliance with the provisions of applicable regulations of the Federal Railroad Administration including, but not limited to, a petition to the FRA for the assignment of maintenance responsibilities pursuant to 49 C.F.R. 213.5 and other entities with regulatory authority over the rail industry as well as federal, state and municipal laws regarding the condition of Rail Properties. Conrail shall also indemnify, protect, and defend against all fines, penalties, and liabilities imposed under such regulations.

(5) Conrail shall also be responsible for all costs associated with the operation of the facilities including but not limited to utilities, brush control, etc.

SECOND SUPPLEMENTAL AGREEMENT

THIS SECOND SUPPLEMENTAL AGREEMENT, to be effective as of May 1, 1994, by and between CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail") and NEW JERSEY TRANSIT CORPORATION (hereinafter referred as "NJ TRANSIT").

WHEREAS, Conrail and NJ TRANSIT entered into a certain **Trackage Rights Agreement** which became effective as of **October 1, 1984** (hereinafter referred to as ("**Trackage Rights Agreement**")), in order to establish appropriate operating rights, maintenance responsibilities, and financial arrangements between **Conrail** and **NJ TRANSIT** for continued operation of passenger and freight service over **NJ TRANSIT** and **Conrail Rail Properties**; and

WHEREAS, Conrail and NJ TRANSIT subsequently entered into a Supplemental Agreement, which became effective as of January 1, 1990 in order to establish the terms of use for categories of property not recognized in the Trackage Rights Agreement; and

WHEREAS, NJ TRANSIT desires to extend the passenger service which now originates and terminates at Netcong, New Jersey to originate and terminate at Hackettstown, NJ; and

WHEREAS, such extended service will require the use by NJ TRANSIT of a portion of Conrail's Washington Secondary Track; and

WHEREAS, Conrail and NJ TRANSIT have entered into a separate Lease Agreement ("**Lease Agreement**") for the Washington Secondary Track between Mile Post 48.10 in Netcong, NJ connecting to Lessee's Morristown Line and continuing westerly through Waterloo to Mile Post 58.00 in Hackettstown, New Jersey the term of which is set forth in Section 2 of said Lease Agreement; and

WHEREAS, NJ TRANSIT intends to upgrade the leased portion of the Washington Secondary Track to passenger-train standards, install a signal system, erect stations and related structures and to maintain the foregoing to passenger-train standards, all for the sole benefit of NJ TRANSIT; and

WHEREAS, Conrail and NJ TRANSIT recognize that the provisions of the Trackage Rights Agreement need to be further supplemented in order to accommodate the operational changes of both parties as provided for in the Lease Agreement.

NOW, THEREFORE, Conrail and NJ TRANSIT, intending to be legally bound, agree to supplement the Trackage Rights Agreements as follows:

1. DEFINITIONS

- (a) During the term of this Second Supplemental Agreement that portion of the Washington Secondary Track between Mile Post 48.1 and Mile Post 58 ("WASS") shall be designated as a "Category NFP Rail Property."
- (b) Exhibit 1, Page 2 of 2, to the Trackage Rights Agreement is amended to reflect certain changes in the status of the Morristown Line as indicated on Exhibit No. 1 attached hereto and made a part of hereof.

2. ACCESS TO CATEGORY NFP RAIL PROPERTIES

- (a) During the term of this Second Supplemental Agreement, Conrail shall retain an exclusive, permanent, irrevocable, freight easement over the WASS. Except as otherwise provided herein, said easement shall be exercised at no cost to Conrail. The provisions of Section 2.01 (b) of the Trackage Rights Agreement shall not apply to the WASS.
- (b) Section 2.02 of the Trackage Rights Agreement shall not apply to the WASS as described herein.

3. MANAGEMENT AND OPERATIONS. Consistent with the provisions of Section 3.01 (a) of the Trackage Rights Agreement, NJ TRANSIT will dispatch and control the operation of all trains on the WASS.

4. MAINTENANCE AND CONSTRUCTION ON RAIL PROPERTIES

- (a) With respect to solely freight facilities located on the WASS and shown on Exhibit A hereto, it is understood and agreed that said facilities shall be maintained at the sole cost and expense of NJ TRANSIT. In the event said facilities are no longer required by Conrail and sidetrack agreements are cancelled by either Conrail or industry, then upon notification by Conrail to NJ TRANSIT, NJ TRANSIT, at its sole cost and expense, will remove said sidetracks and the salvageable material delivered to a location specified by Conrail. This Section 4 (a) applies only for a period of two years from the start of passenger service on the WASS by NJ TRANSIT.
- (b) Consistent with the provisions of the Trackage Rights Agreement, in the event said solely freight facilities require non-routine maintenance as specified by Section 4.01 (b) (1) of the Trackage Rights Agreement said non-routine maintenance will be performed by NJ TRANSIT at its initial cost and expense, and Conrail shall reimburse NJ TRANSIT for said work in accordance with the Trackage Rights Agreement.
- (c) Consistent with the provisions of the Trackage Rights Agreement, Section 4.02 (a) and (c) of the Trackage Rights Agreement shall govern the construction of new industrial sidetracks or other solely freight facilities on the WASS and Section 4.03 (a), (b) and (d) shall govern the removal of same.

5. COMPENSATION. Neither the provisions of Section 5.01 (a) nor that portion of Section 5.01 (b) referring to payment for routine maintenance costs shall apply to Conrail freight operations over the WASS. This Section 5 shall apply only for a period of two years from the start of passenger service on the WASS by NJ TRANSIT.
6. TERM. The term of this Second Supplemental Agreement shall run concurrently with the Lease Agreement dated April 28, 1994, and shall terminate at the time said Lease Agreement terminates.

Except as otherwise specifically provided in this **SECOND SUPPLEMENTAL AGREEMENT** and/or the **Lease Agreement**, all provisions of the **Trackage Rights Agreement and Supplemental Agreement** remain in full force and effect.

IN WITNESS WHEREOF, Conrail and NJ TRANSIT, by their authorized representatives, hereby cause this SECOND SUPPLEMENTAL AGREEMENT to be executed this 29th day of April, 1994.

WITNESS:

R. Paul Carey

CONSOLIDATED RAIL CORP.

R. Paul Carey
R. Paul Carey
General Manager
Contracts and Asset Utilization

WITNESS:

Joseph S. Crawford, Jr.

NEW JERSEY TRANSIT CORP.

BY: Joseph S. Crawford, Jr.
Joseph S. Crawford, Jr.
Vice President and General Manager

This Agreement has been reviewed and approved as to form only

DEBORAH T. PORITZ
Attorney General of New Jersey

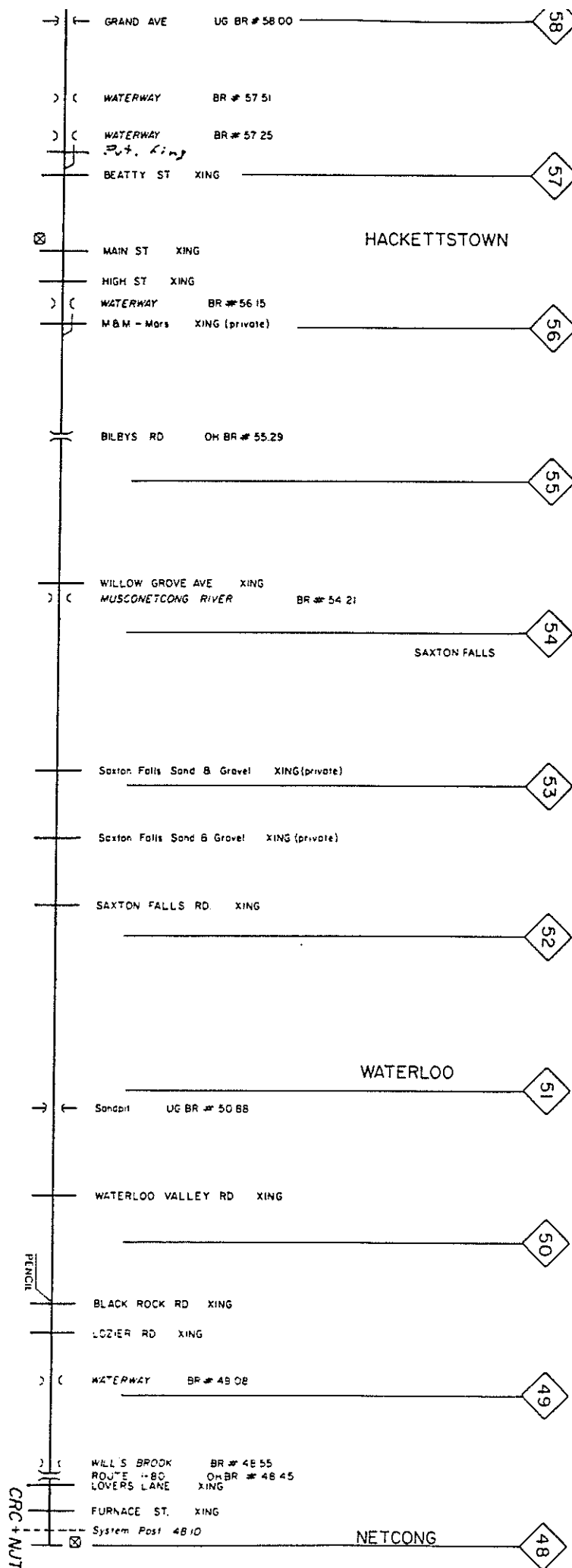
BY: Barbara S. Goldsmith
Deputy Attorney General

NJ TRANSIT RAIL PROPERTIES

Category NFP
Conrail Freight and NJT Passenger Service

<u>Line Segment</u>	<u>M. P. to M. P.</u>	
(1)	(2)	
<u>North Jersey Coast Line</u>		
Union Tower to CP Beach	0.0	7.4
CP Beach to Bradley Beach	0.0	29.2
<u>Raritan Valley Line</u>		
Aldene to High Bridge	15.7	52.2
<u>Morristown Line</u>		
West End of Bergen Tunnel to Denville	1.9	36.3
Netcong to Hackettstown* (WASS)	48.1	58.0
<u>Gladstone Branch</u>		
Summit to Berkeley Heights	20.1	25.7
<u>Montclair Branch</u>		
Roseville Avenue to Montclair	9.0	12.8
<u>Boonton Line</u>		
Greenwood Lake Jct. to Kearny*	2.7	4.79
North Newark to Montclair*	8.39	11.5
Montclair to Netcong	11.5	48.1
<u>Pascack Valley Line</u>		
Pascack Jct. to Spring Valley	7.6	30.7
<u>Erie Main Line</u>		
West End to West End of Suffern Coach Yard (incl.)	1.9	31.5
<u>Bergen County Line</u>		
Bergen Jct. to Ridgewood Jct.	2.8	19.4

*Leased by NJ TRANSIT from Conrail.



**FIRST OPERATING AGREEMENT FOR THE
WASHINGTON SECONDARY TRACK**

Between Norfolk Southern Railway Company
and
New Jersey Transit Corporation

THIS OPERATING AGREEMENT made this ___ day of _____, 2023, by and between NORFOLK SOUTHERN RAILWAY COMPANY (“NS”) and NEW JERSEY TRANSIT CORPORATION (“NJ TRANSIT”).

WHEREAS, NS owns the Washington Secondary Track, a line of rail located between Milepost 48.1 in Netcong, New Jersey and Milepost 58.0 in Hackettstown, New Jersey; and

WHEREAS, since 1994, NJ TRANSIT has operated commuter rail service between Milepost 48.1 and Milepost 58.0 on the Washington Secondary Track pursuant to the terms of a Trackage Rights Agreement between the Consolidated Rail Corporation (“Conrail”) and NJ TRANSIT, effected as of October 1, 1984, as amended (“Trackage Rights Agreement”); and

WHEREAS, pursuant to *CSX Corp.-Control and Operating Leases/Agreements_Conrail Inc.*, 3 S.T.B. 196, 282-83 (1998), NS succeeded to Conrail’s rights and interests in the Trackage Rights Agreement and assumed common carrier operating rights of the Washington Secondary Track when NS acquired Conrail’s operations in New Jersey; and

WHEREAS, NJ TRANSIT and NS are entering into a Purchase and Sale Agreement of even date, by which NS is conveying to NJ TRANSIT its rights, title and interest in and to the real estate which constitutes the portion of the Washington Secondary Track between Milepost 48.1 and Milepost 57.25 (“Rail Property”); and

WHEREAS, after purchase of the Rail Property by NJ TRANSIT, NS will retain an exclusive, perpetual and irrevocable easement in the Rail Property for the provision of freight rail service; and

WHEREAS, NS will retain ownership of the remaining portions of the Washington Secondary Track; and

WHEREAS, the Dover and Delaware River Railroad (“DD”) maintains freight operating rights over the Washington Secondary Track pursuant to a separate Agreement by and between NJ TRANSIT, NS, and DD dated March 1, 2019 (“2019 Agreement”); and

WHEREAS, NJ TRANSIT, NS and DD will amend the 2019 Agreement to acknowledge NJ TRANSIT’s purchase of the Rail Property and to amend the Subject Trackage; and

WHEREAS, NS and NJ TRANSIT recognize that the provisions of the Trackage Rights Agreement need to be further supplemented in order to accommodate NJ TRANSIT's purchase of the Rail Property pursuant to the Purchase and Sale Agreement.

NOW THEREFORE, NS and NJ TRANSIT, intending to be legally bound, as follows:

1. The above recitals are hereby incorporated into this Agreement as if set forth in their entirety.
2. Except as otherwise provided herein, all terms, covenants and conditions of the Trackage Rights Agreement are hereby incorporated by reference and made a part of this Agreement. During the term of this First Operating Agreement, the Rail Property shall be designated as a "Category NFP Rail Property" in accordance with the provisions of the Trackage Rights Agreement.
3. The term of this First Operating Agreement shall commence upon closing of title to the Rail Property (the "Effective Date") and shall continue until NS abandons all freight operations on the Rail Property.
4. The Parties acknowledge that a portion of NJ TRANSIT's Positive Train Control system ("PTC") remains active and in service on a portion of the Washington Secondary owned by NS between MP 57.25 and MP 58.0 (the "Remainder"). The Parties agree that upon the Effective Date of this Agreement, NJ TRANSIT will use commercially reasonable efforts to remove all PTC equipment on the Remainder (including approval of same by the Federal Railroad Administration). The Parties agree that NJ TRANSIT will continue to provide dispatching and PTC services for the Remainder until such time as the PTC equipment is fully removed from the Remainder. At such time, the Parties will confer to arrange for the orderly transfer of dispatching (consistent with current practice) of the Remainder from NJ TRANSIT to NS or its designee. NJ TRANSIT shall solely bear all costs and expenses associated with the removal of all PTC equipment and transfer of dispatching.

NJ TRANSIT will not interfere with or in any way impair NS' or its designee's ability to provide freight rail service or fulfill NS' or its designee's common carrier obligations on the Remainder.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, NS and NJ TRANSIT, by their authorized representatives, hereby cause this First Operating Agreement to be executed as of the date first set forth above.

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

Jacob R. Ellum
Vice President

WITNESS:

NEW JERSEY TRANSIT CORPORATION
through its subsidiary New Jersey Transit Rail
Operations, Inc.

James A. Sincaglia
Senior Vice President and General Manager
NJ TRANSIT Rail Operations, Inc.

This Agreement has been Approved as to legal form only
For NJ TRANSIT CORPORATION

By:

Suzanne L. Silverman, Esq.
Kaplan Kirsch & Rockwell L.L.P.

TRACKAGE RIGHTS AGREEMENT

Among

DOVER AND DELAWARE RIVER RAILROAD, LLC

And

NEW JERSEY TRANSIT CORPORATION

And

NORFOLK SOUTHERN RAILWAY COMPANY

THIS TRACKAGE RIGHTS AGREEMENT, (“2019 Agreement”), entered into as of this 1st day of March, 2019 (the “Effective Date”), is by and among DOVER AND DELAWARE RIVER RAILROAD, LLC, (hereinafter referred to as “DDRR”), NEW JERSEY TRANSIT CORPORATION, an instrumentality of the State of New Jersey (hereinafter referred to as “NJ TRANSIT”) and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter referred to as “NSR”) which joins this 2019 Agreement solely with respect to Articles 1.1, 1.2, 2.4, 4.3, 4.5, 6.1, 9, 11, 12, and 13 hereof.

WHEREAS, NJ TRANSIT and Consolidated Rail Corporation (“Conrail”) entered into a Trackage Rights Agreement effective October 1, 1984, as supplemented on January 1, 1990, May 1, 1994, December 11, 1995, and subsequently amended and further supplemented from time to time (collectively, the “1984 Agreement”) with respect to NJ TRANSIT-owned Rail Properties and Conrail-owned Rail Properties, as further defined in the Trackage Rights Agreement (all capitalized terms not otherwise defined herein shall have the same meaning as in the 1984 Agreement); and

WHEREAS, among other things, the 1984 Agreement provided the terms and conditions for Conrail’s provision of freight service over the NJ TRANSIT Rail Properties over which Conrail retained an exclusive freight easement; and

WHEREAS, on June 1, 1999, certain freight rights held by Conrail on NJ TRANSIT were assumed by NSR as part of NSR and CSXT’s purchase of Conrail (the “Conrail Transaction”); and

WHEREAS, NSR succeeded to Conrail’s freight operating easement and rights and obligations under the 1984 Agreement as part of the Conrail Transaction; and

WHEREAS, DDRR now desires to provide freight service over NJ TRANSIT Rail Properties in lieu of NSR, subject to the terms and conditions set forth herein; and

WHEREAS, NSR and DDRR are concurrently entering a lease agreement under which DDRR will lease NSR’s connecting line between the stations of Phillipsburg, New Jersey, and Bill (NS Division Post), New Jersey, along with other related trackage (the “NSR-DDRR Lease”); and

WHEREAS, in conjunction with the NSR-DDRR Lease, DDRR and NSR now desire for DDRR to provide freight service over certain NJ TRANSIT Rail Properties in lieu of NSR; and

WHEREAS, NJ TRANSIT is willing to grant DDRR trackage rights and NSR is willing to consent to such trackage rights to effectuate such an arrangement, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants, agreements, representations, and warranties contained herein, intending to be legally bound, DDRR and NJ TRANSIT, along with NSR with respect to Articles 1,1, 1.2, 2.4, 4.3, 4.5, 6.1, 9, 11, 12, and 13 hereof only, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS TO DDRR FOR THE
PROVISION OF FREIGHT SERVICE OVER CERTAIN NJ TRANSIT RAIL
PROPERTIES

- 1.1 Subject to the terms and conditions herein provided, NJ TRANSIT hereby grants DDRR the right to enter upon NJ TRANSIT Rail Properties and operate trains, locomotives, cars, and equipment with DDRR's own crews for the purpose of performing freight service and securing its property and equipment ("Trackage Rights") over the existing tracks and related operating facilities located on the segments of NJ TRANSIT's railroad ("Subject Trackage") listed on Exhibit "A", attached hereto and made a part hereof. The Subject Trackage is Category NFP Subject Trackage as designated on Exhibit A. NJ TRANSIT'S grant of the above Trackage Rights to DDRR is in addition to and does not replace NSR's common carrier obligations under the 1984 Agreement to provide freight service over the Subject Trackage; NSR's obligations in the event of expiration or termination of this 2019 Agreement are addressed in Articles 9 and 13.
- 1.2 NJ TRANSIT, upon thirty (30) days written notice to DDRR and NSR, reserves the right to redesignate individual rail properties listed in Exhibit A from one category to another to reflect changes, or planned changes, in the nature of services operated over such properties; provided, however, that this Section 1.2 does not apply to the Washington Secondary ("WASS") as described in Exhibit A.
- 1.3 NJ TRANSIT retains the right to establish the overall policies governing the management and operational control of the Subject Trackage, including but not limited to, the dispatching and control of all trains. NJ TRANSIT's right shall not be exercised in a manner which would unreasonably interfere with DDRR's Trackage Rights.
- 1.4 The scheduling and movement of passenger trains and equipment shall take preference over all other train scheduling and movements. NJ TRANSIT shall provide ten (10) days written notice of changes in passenger train schedules of more than 10 minutes from origin or destination or changes which increase passenger train services.

- 1.5 DDRR's Trackage Rights described in this 2019 Agreement are for the sole purpose of permitting DDRR to operate its road and local freight trains, as well as emergency trains, special trains, locomotives, switching movements, and other on-track equipment, and for no other purpose.
- 1.6 NJ TRANSIT reserves the right to operate special or emergency trains and other on-track equipment over all portions of the Subject Trackage.

ARTICLE 2. GENERAL PROVISIONS

- 2.1 As used in this 2019 Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the control of, DDRR or NJ TRANSIT, such expression means the trains, locomotives, cars or equipment in the possession of or operated by either DDRR or NJ TRANSIT and includes such trains, locomotives, cars or equipment which are owned by, leased to, or the responsibility of such party. Whenever such locomotives, cars or equipment are owned or leased by DDRR or NJ TRANSIT and are in the possession or control of the other party, such locomotives, cars or equipment shall be considered those of the other party under this 2019 Agreement.
- 2.2 DDRR shall comply with all applicable federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage. DDRR shall indemnify, protect, defend, and save NJ TRANSIT and its officers, agents, and employees harmless from all fines, penalties, and liabilities imposed upon NJ TRANSIT under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of DDRR to comply with its obligations in this regard.
- 2.3 NJ TRANSIT shall be responsible for compliance with the provisions of applicable regulations of the Federal Railroad Administration ("FRA") and other entities with regulatory authority over the rail industry as well as federal, state, and municipal laws regarding the condition of the Subject Trackage, except that DDRR shall be responsible for solely freight properties connected to or on Category NFP Subject Trackage beyond derails or insulated joints, where present, including those properties for which NJ TRANSIT has the maintenance responsibility under Section 4.2(b). The responsible party shall also indemnify, protect, and defend the other party against all fines, penalties, and liabilities imposed under such laws and regulations.
- 2.4 As the party responsible for the maintenance, NJ TRANSIT shall also be responsible for furnishing main track height and width clearances of the Subject Trackage and maintain appropriate records. In the event any clearances in effect on the effective date of this 2019 Agreement are amended, either increased or reduced, the responsible party shall notify the other party either prior to the occurrence or as soon as possible thereafter. It is understood and agreed that clearances shall not be reduced without mutual consent of DDRR, NSR, and NJ TRANSIT.

- 2.5 DDRR acknowledges that it will be required to operate with NJ TRANSIT's Positive Train Control ("PTC") system as of the date that NJ TRANSIT places its PTC system into revenue service on the Subject Trackage.

ARTICLE 3. CATEGORY NFP SUBJECT TRACKAGE PROVISIONS

- 3.1 DDRR in its use of the Subject Trackage will comply in all respects with the operating rules and regulations of NJ TRANSIT, and the movement of DDRR's trains, locomotives, cars and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of NJ TRANSIT.
- 3.2 DDRR shall make such arrangements with NJ TRANSIT as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover.
- 3.3 In the event NJ TRANSIT conducts an investigation or hearing concerning the violation of any operating rule or practice of NJ TRANSIT by an employee of DDRR, DDRR shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by DDRR and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees. Nothing contained in this section shall obligate NJ TRANSIT to conduct any investigation or hearing.
- 3.4 NJ TRANSIT shall have the right to exclude from the Subject Trackage, any employee of DDRR as determined by NJ TRANSIT, as the result of such investigation or hearing described above, to be in violation of NJ TRANSIT's rules, regulations, orders, practices or instructions issued by timetable or otherwise. DDRR shall release, indemnify, defend and save harmless NJ TRANSIT and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- 3.5 If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of DDRR becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by NJ TRANSIT on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of DDRR's trains on the Subject Trackage, NJ TRANSIT shall have the option of allowing DDRR to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to promptly move the disabled equipment off the Subject Trackage, or NJ TRANSIT may perform the necessary functions. DDRR shall reimburse NJ TRANSIT for the cost of rendering any such assistance in accordance with the provisions of Section 5.5.
- 3.6 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall at the option of the NJ TRANSIT be done by DDRR or NJ TRANSIT. DDRR shall reimburse

NJ TRANSIT for the cost of rendering any such assistance in accordance with the provisions of Section 5.5.

ARTICLE 4. MAINTENANCE AND CONSTRUCTION ON SUBJECT TRACKAGE

4.1 NJ TRANSIT has the right to establish the overall policies governing, and the implementation thereof, routine and non-routine maintenance, replacement, construction, reconstruction, alteration and removal of all Subject Trackage.

4.2 Category NFP Subject Trackage – NJ TRANSIT Responsibility

- (a) NJ TRANSIT or its designee shall perform routine and non-routine track maintenance together with the maintenance of signal appliances and derails, if any, for the portion of solely freight sidings located between the point of switch and the derail and any solely freight crossover out of the main track.

All routine and non-routine maintenance expenses incurred by NJ TRANSIT related to these facilities are not included in car-mile reimbursement in Section 5.1(a) hereto. The expenses will be billed to DDRR. Such facilities are listed on Exhibit B, attached hereto and made a part hereof.

For purposes of this 2019 Agreement, routine maintenance shall be that work performed by section forces generally limited to inspections, switch stand and rod adjustments, lubricating, welding, respiking, spot surfacing and tamping, signal department tests and inspection, and programmed turnout surfacing by either section or program forces. The cost of such work shall be charged to DDRR in accordance with Section 5.3(b). Non-routine maintenance shall be that work generally performed and programmed on a cycle, on a project or emergency basis, consisting of partial or entire replacement of switch timbers, ties, metal materials, ballast, switch stands, signal apparatus, and derails, if any. This may be performed by program gang or section forces. The cost of such work shall be charged to DDRR in accordance with Section 5.4.

Whenever in the sole opinion of NJ TRANSIT, any existing solely freight facility located between the point of switch and the derail or insulated joint, where present, and any solely freight crossover out of the main track requires non-routine maintenance, NJ TRANSIT shall prepare and provide to DDRR an estimate of the costs based on the provisions set forth in Section 5.4 for the work required. Within sixty (60) days after receipt of the aforesaid estimate DDRR shall advise NJ TRANSIT whether the solely freight facility is required for the performance of DDRR's freight service. In the event that DDRR advises that said solely freight facility is required for the performance of DDRR's freight service, NJ TRANSIT shall perform or arrange to have performed the aforesaid non-routine maintenance, and DDRR shall pay NJ TRANSIT in accordance with the provisions of Section 5.4. In the event that DDRR advises that said solely freight

facility is not required for the performance of DDRR's freight service, as provided for in Section 9.7(b) of this 2019 Agreement, the provisions of Section 4.5 shall apply. In the event that DDRR fails to reply to the estimate prepared by NJ TRANSIT, NJ TRANSIT shall submit a second notice to DDRR. If DDRR has not replied within forty-five (45) days to the second notice, NJ TRANSIT shall have the right to remove such facility. In the event an emergency situation occurs which requires the total or partial replacement of a solely freight facility, NJ TRANSIT shall proceed with the work and bill DDRR in accordance with the provisions of Section 5.4 or 5.5, as applicable.

- (b) With respect to certain solely freight facilities located beyond the derail or insulated joint, where present, as identified in Exhibit C, attached hereto and made a part hereof, NJ TRANSIT or designee agrees to perform routine and non-routine maintenance as defined herein at DDRR's sole cost and expense. DDRR agrees that the level of maintenance to be performed by NJ TRANSIT shall be at FRA Class I.

For purposes of this 2019 Agreement, routine maintenance of the facilities shall be that work performed by section forces generally limited to inspection, lubricating, welding, respiking, spot surfacing and tamping. The cost of such work shall be charged to DDRR in accordance with Section 5.3(c).

For purposes of this 2019 Agreement, nonroutine maintenance of the facilities shall be that work generally performed and programmed on a cycle or project basis, consisting of partial or entire replacement of ties, metal materials, ballast, switch stands, signal apparatus and derails, if any. This work may be performed by program or section forces. Replacement, construction, reconstruction, and alteration are also considered as non-routine maintenance. Whenever in the sole opinion of NJ TRANSIT, any existing solely freight facility requires non-routine maintenance, NJ TRANSIT shall prepare and provide to DDRR an estimate of the cost based on the provisions set forth in Section 5.5 for the work required. Within sixty (60) days after receipt of the aforesaid estimate DDRR shall advise NJ TRANSIT whether the solely freight facility is required for the performance of DDRR's freight service. In the event that DDRR advises that said solely freight facility is required for the performance of DDRR's freight service, NJ TRANSIT shall perform or arrange to have performed the aforesaid non-routine maintenance, and DDRR shall pay NJ TRANSIT in accordance with the provisions of Section 5.5. In the event that DDRR notifies NJ TRANSIT that it does not wish to have the work performed, NJ TRANSIT's maintenance responsibility shall terminate. In the event DDRR fails to reply to the estimate prepared by NJ TRANSIT, NJ TRANSIT shall submit a second notice to DDRR. If DDRR has not replied within forty-five (45) days to the second notice, NJ TRANSIT's maintenance responsibility shall terminate. In the event a derailment or other event occurs which destroys a solely freight facility and requires the total or partial replacement, NJ TRANSIT shall proceed with the work and bill DDRR in accordance with the provisions of Section 5.5.

4.3 Category NFP Subject Trackage - Solely Freight Facilities – DDRR Responsibility

- (a) Except for those facilities maintained by NJ TRANSIT pursuant to Section 4.2(b) and Exhibit C of this 2019 Agreement, NSR, in consideration of the payment of the sum of one dollar and of the promise of DDRR to maintain the Subject Trackage for the duration of the term of this 2019 Agreement, hereby subleases to DDRR those portions of Category NFP Subject Trackage that NSR currently leases from NJ TRANSIT under the 1984 Agreement beyond the clearance point of each main track freight turnout for the purpose of DDRR's maintenance obligations, included but not limited to utilities, brush control, etc., set forth in this 2019 Agreement.
- (b) This lease shall commence on the Effective Date of this 2019 Agreement and shall automatically terminate for each portion of Category NFP Subject Trackage when DDRR discontinues service on that portion pursuant to Section 9 of this 2019 Agreement. DDRR is prohibited from entering into a sublease for such properties.
- (c) In the event that any replacement, construction or alteration will result in a change in weight of rail, grade, alignment or location, as well as removal, DDRR shall obtain the written approval of NJ TRANSIT and NSR prior to undertaking any work, provided that such approval shall not be unreasonably withheld.
- (d) DDRR shall be responsible for compliance with the provisions of applicable regulations of the Federal Railroad Administration ("FRA") including, but not limited to, a petition to the FRA for the assignment of maintenance responsibilities pursuant to 49 C.F.R. 213.5 and other entities with regulatory authority over the rail industry as well as federal, state and municipal laws regarding the condition of the solely freight facilities connected to or on Category NFP Subject Trackage. DDRR shall also indemnify, protect, and defend against all fines, penalties, and liabilities imposed under such laws and regulations.

4.4 Construction of New Industrial Sidetracks or Other Solely Freight Facilities on Subject Trackage

- (a) Subject Trackage.
 - (i) NJ TRANSIT authorizes DDRR to negotiate with industries located along the Subject Trackage and to contract with those industries for the installation, construction, maintenance, alteration and removal of industrial sidetracks which will be on or connected to the Subject Trackage. DDRR's contract with such industries shall allocate as between them the responsibility for the cost of such installation, construction, maintenance, alternation and/or removal, and NJ TRANSIT shall not bear any such costs. In the event DDRR wishes to have installed such

industrial sidetrack, DDRR shall arrange for the industry to negotiate a suitable permit arrangement with NJ TRANSIT. For industrial sidetracks and solely freight facilities for DDRR's use, DDRR shall obtain a permit from NJ TRANSIT. Said permit shall define the purposes to which the Subject Trackage shall be used. NJ TRANSIT shall establish a rental rate for the use of NJ TRANSIT property and establish any other terms and conditions as necessary.

- (ii) Whenever DDRR proposes a new industrial sidetrack which will be constructed on the Subject Trackage, DDRR shall submit to NJ TRANSIT for NJ TRANSIT's review and approval, engineering plans and drawings showing the location, dimension, grade and alignment as well as material specifications of such sidetrack together with plans and drawings for any construction adjacent to or in support thereof. Said engineering plans and drawings shall be submitted in quadruplicate.
 - (iii) For work other than new industrial sidetracks, DDRR and NJ TRANSIT shall enter into a separate agreement covering the scope of work to be performed, submission and approval of plans and drawings, schedule of payments as well as other terms and conditions.
 - (iv) Approval of plans for sidetrack or other solely freight facility installation which are consistent with NJ TRANSIT's operating requirements and general installations and material specifications will not be unreasonably withheld or delayed.
- (b) Category NFP Subject Trackage - Construction by NJ TRANSIT.
- (i) Within thirty (30) days following the approval of the aforesaid sidetrack plans and drawings for construction on Category NFP Subject Trackage, NJ TRANSIT shall submit to DDRR a cost estimate for the labor portion of the proposed construction from the point of main track switch to and including the derail or insulated joint, where present, therefrom, including related signals and signal appliances, together with a time schedule for constructing that portion of the sidetrack.
 - (ii) All materials which are identified by NJ TRANSIT for the construction of approved sidetracks from the point of main track switch to and including the derail or insulated joint, related signals and signal appliances therefrom shall be supplied by NJ TRANSIT at a location to be agreed upon by DDRR and NJ TRANSIT at DDRR's sole cost.
 - (iii) Upon delivery of the required materials by DDRR and receipt of payment from DDRR of the estimated labor expense, NJ TRANSIT shall perform or arrange to have performed the construction of said sidetrack from the point of main train switch to and including the derail or insulated joint,

where present, including signals and signal appliances on the Subject Trackage. DDDR shall pay to NJ TRANSIT any additional amounts based on the actual costs, within thirty (30) days of receipt of an invoice therefor. To the extent the actual costs are lower than the estimate, NJ TRANSIT shall refund that amount within thirty (30) days after the determination of actual costs.

- (c) Category NFP Subject Trackage - Construction by DDDR.
Except as provided for by Section 4.3, other sidetrack or other solely freight facility construction including the cost thereof shall be the responsibility of DDDR and/or the involved third party.

4.5 Removal of Solely Freight Facilities

- (a) DDDR shall not remove any solely freight facility without first obtaining NJ TRANSIT's and NSR's written permission whose approval shall not be unreasonably withheld.
- (b) Main Tracks Turnouts and Crossovers – Category NFP Subject Trackage. As to the solely freight main track turnouts and crossovers set forth on Exhibit B, it is agreed and understood that if it is determined, as provided by this 2019 Agreement, that a main track turnout or crossover is subsequently no longer required for DDDR's freight service, it may be removed by NJ TRANSIT at DDDR's sole cost and expense. The salvage therefrom shall accrue as follows:
 - (i) Salvage from main track turnouts or crossovers constructed prior to 10/1/1984 shall accrue to NJ TRANSIT.
 - (ii) Salvage from main track turnouts or crossovers constructed after 10/1/1984 and prior to the Effective Date as provided by the 1984 Agreement shall accrue to NSR.
 - (iii) Salvage from main track turnouts or crossovers constructed after the Effective Date as provided by Section 4.4 of this 2019 Agreement shall accrue to DDDR.

At NJ TRANSIT's option, it may require that a facility remain in place and NJ TRANSIT shall pay NSR or DDDR, as specified in subsections (ii) and (iii), the salvage value for the material which could have been released, less the estimated cost of removal, i.e. NSR or DDDR shall receive the net salvage value.

- (c) Other Solely Freight Facilities – Category NFP Subject Trackage.
 - (i) For those facilities in existence on the effective date of this 2019 Agreement, if it is determined, as provided by this 2019 Agreement, that other solely freight facilities are no longer required for DDDR's freight

service they may be abandoned in place, or removed by NJ TRANSIT at NJ TRANSIT's cost and expense.

- (ii) For track and appurtenances constructed by DDRR on NJ TRANSIT's property as provided by Section 4.4 of this 2019 Agreement, if it is determined as provided by this 2019 Agreement that such track and appurtenances are no longer required for DDRR's freight service DDRR shall be entitled to the materials released and shall promptly remove same at DDRR's sole cost and expense. At NJ TRANSIT's option, it may require that the facility remain in place and NJ TRANSIT shall pay DDRR the salvage value for the material which could have been released less the estimated cost of removal, i.e. DDRR shall receive the net salvage value.
- (iii) With regard to solely freight facilities other than track and appurtenances, constructed by DDRR on NJ TRANSIT's property in accordance with Section 4.4(c) of this 2019 Agreement, it is agreed and understood that if it is determined that the solely freight facility is no longer required for DDRR's freight service, DDRR shall remove same at its sole cost and expense. At NJ TRANSIT's option, it may require that the facility remain in place, and pay to DDRR the then market value of the facility less the cost of removal and property restoration, both of which shall be determined by NJ TRANSIT.
- (iv) In regard to Category NFP Subject trackage, the classification of salvage, whether secondhand or scrap, and the estimated cost of removal shall be determined by NJ TRANSIT.
- (v) In regard to solely freight facilities constructed in accordance with Section 4.4(b) and (c) of this 2019 Agreement, in the event that both DDRR's use of a line or portion thereof has expired under the provisions of this 2019 Agreement and NSR's easement for a line or portion thereof has expired under the provisions of the 1984 Agreement, ownership of the facilities shall accrue to NJ TRANSIT. However, in no way shall this provision be interpreted to require NJ TRANSIT to provide freight service in any capacity.
- (vi) The cost of removal and restoration shall be determined in accordance with Section 5.5.

ARTICLE 5. COMPENSATION

5.1 Category NFP Subject Trackage

- (a) DDRR shall pay NJ TRANSIT on a Billable Car-Mile basis for freight service operated over the Category NFP Subject Trackage. Effective January 1, 2017, the Billable Car-Mile rate is:

<u>Car Mile:</u>	<u>Rate</u>
1st one million annually	\$0.636
Over one million annually	\$0.479

- (b) As set forth in Section 4.2(a), DDRR shall pay for routine and non-routine maintenance costs as defined herein incurred by NJ TRANSIT relating to each turnout as defined and identified in Exhibit B together with related signals, signal appliances, derails and other apparatus. NJ TRANSIT shall bill DDRR in accordance with Sections 5.3(b) and 5.4.
- (c) As set forth in Section 4.2(b), DDRR shall pay for routine and non-routine maintenance expenses as defined herein incurred by NJ TRANSIT relating to each solely freight facility located beyond the clearance point as set forth in Exhibit C. NJ TRANSIT shall bill DDRR in accordance with Sections 5.3(c) and 5.5.

5.2 Revision of the Billable Car-Mile Rate. Beginning in July 1, 2019, and each July 1 thereafter, the Billable Car-Mile rate identified in Section 5.1(a) shall be increased or decreased effective as of the previous January on a cumulative basis by the same percentage by which the cost of material prices, wage rates, and supplements combined, excluding fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, Table A East, included in "AAR Railroad Cost Recovery Index" and supplements thereto, issued by the AAR (or other generally recognized index if such index ceases to be published), has increased or decreased in the preceding calendar year. Car-mile rates calculated in accordance with the provision shall be stated to nearest one-tenth (1/10) of a cent.

5.3 Billing Procedures - Monthly Charges

- (a) Billable Car-Mile Reimbursement - Within sixty (60) days of the close of the month, DDRR shall furnish to NJ TRANSIT a statement showing by line segment the freight service Billable Car-Miles operated over Category NFP Subject Trackage. DDRR shall pay NJ TRANSIT's invoice within forty-five (45) days of its receipt.
- (b) For routine maintenance costs related to each turnout as defined and identified in Exhibit B, DDRR shall pay NJ TRANSIT one-twelfth (1/12th) of the annual maintenance amount of \$2562.18 in effect January 1, 2018, or \$213.50 per month. This rate shall be adjusted effective July 1 of each calendar year in accordance with the provisions of Section 5.2.
- (c) For routine maintenance costs as defined in Sections 4.2(b) and 5.1(c), DDRR shall pay NJ TRANSIT one-twelfth (1/12th) of the annual maintenance amount. The amount is based on a flat rate charge of \$1.90 track per foot per year times

the involved footage. The flat rate for the facilities listed in Exhibit C shall be \$0.16 per foot monthly commencing January 1, 2018. This rate shall be adjusted effective July 1 of each calendar year in accordance with the provisions of Section 5.2.

- 5.4 Non-Routine Turnout Maintenance. When non-routine maintenance between the point of switch and the clearance point is performed by NJ TRANSIT, costs assignable to DDRR shall be computed in accordance with the provisions of Exhibit D, attached hereto and made apart hereof. NJ TRANSIT shall establish an identification number to identify work performed. Payment by DDRR is due within forty-five (45) days of receipt of an invoice which shall be sent upon completion of the work. The flat rate labor and other costs set forth in Exhibit D shall be adjusted effective July 1 of each year in accordance with provision of Section 5.2.
- 5.5 Billing Procedures – As Incurred Costs. Whenever DDRR or NJ TRANSIT incurs costs, other than those incurred under Sections 5.3(b) and (c) and 5.4, billable to the other party in accordance with the provisions of this 2019 Agreement, costs shall be accumulated by work order. The billing details shall include: For labor - the craft, man hours of direct labor separated between straight time and overtime, and the current hourly rate of pay. For direct material - a description and cost of material consumed less a credit for the scrap and second-hand value of materials released as determined by the party performing the work. For miscellaneous expenses - description and cost of items such as personal expenses, equipment rental, and for services or equipment provided by others a copy of the invoice. Overheads applicable to the above shall be those as set forth in Exhibit E, attached hereto and made a part hereof. Payment is due within forty-five (45) days of receipt of invoice.
- 5.6 Late Payment. There shall be an interest charge based on the prime interest rate of the Citibank, N.A., plus two percent in effect as of the due date of the invoice. Such interest shall be compounded monthly until such time as the invoice is paid.
- (a) Should DDRR owe NJ TRANSIT monies for the Billable Car-Mile reimbursement pursuant to Section 5.3(a), interest charges shall commence forty-five (45) days after DDRR's receipt of NJ TRANSIT's invoice.
 - (b) Interest charges for amounts payable by DDRR for return on investment shall commence forty-five (45) days after DDRR's receipt of NJ TRANSIT's invoice.
 - (c) Interest charges for all other amounts payable by either NJ TRANSIT or DDRR pursuant to this 2019 Agreement shall commence forty-five (45) days after the receipt of the invoice from the billing party.
- 5.7 Billing Addresses. Billing information including invoices shall be directed via both first class mail and email to:

If to DDRR:

President
Dover and Delaware River Railroad, LLC
20 Toad Lane
Ringoos, NJ 08551

With copies to:
sharris@chesapeakeanddelaware.com
and
cbanks@chesapeakeanddelaware.com

If to NJ TRANSIT:

Director, Rail Inter-Carrier Agreements
One Penn Plaza East
Newark, NJ 07105
With a copy to rwisneski@NJTRANSIT.com

5.8 Disputed Payments.

- (a) In the event that there is a dispute as to the amount to be paid, the undisputed portion of the invoice amount shall be remitted. Within forty-five (45) days after the due date of payment, the billed party shall fully explain in writing to the other party the reason or reasons for withholding full payment of invoice as rendered. If a mutual agreement cannot be reached within thirty (30) days after billing party's receipt of the written exception, the matter may be referred by either DDDR or NJ TRANSIT to arbitration as set forth in Section 10.1.
- (b) If it is determined through arbitration that there are monies due to the billing party, there shall be an interest charge levied in accordance with Section 5.6. Interest shall be computed based on the period of time between the original due date of the payment and the date the amount due is remitted.
- (c) Neither DDDR nor NJ TRANSIT shall have the right to offset payments due under one provision against amounts owed under another provision of this 2019 Agreement.

5.9 Maintenance and Inspection of Records. Unless otherwise agreed, each of the parties shall keep and maintain its books, records, accounts, and supporting workpapers which relate to operations, maintenance, and costs of the Subject Trackage for a period of three (3) years from the date of billing. During normal business hours, each of the parties shall have the right to inspect, examine, audit, and reproduce all books, records, accounts, and

supporting workpapers of the other party, which relate to the operations, maintenance and costs of the Subject Trackage in support of billings as rendered.

ARTICLE 6. LIABILITY AND INSURANCE

- 6.1 General. Financial responsibility for liability for personal injury or property damage which may result from activities conducted hereunder shall be allocated between DDRR and NJ TRANSIT as follows in this Article 6, provided, however, that this Article 6 shall not apply to any such liability which may arise out of activities or events which occurred prior to the Effective Date of this 2019 Agreement. In no case will any party seek to recover loss of revenues from another party. The following provisions regarding liabilities and insurance shall apply regardless of negligence or fault. For purposes of this Article 6, NSR shall be considered a third party, and neither DDRR nor NJ TRANSIT shall have any claim against NSR for financial responsibility for liability for personal injury or property damage that may result from activities conducted hereunder by reason of NSR's agreement to the arrangement set forth in this 2019 Agreement; provided, however, that nothing in this 2019 Agreement shall preclude DDRR and/or NJ TRANSIT from bringing an action or making a claim against NSR for financial responsibility for liability for personal injury or property damage that may result from actions or inactions of NSR other than NSR's agreement to the arrangement set forth in this 2019 Agreement.
- 6.2 NJ TRANSIT Employees. NJ TRANSIT shall bear full responsibility for injury to or death of any NJ TRANSIT Employee, or for loss of, damage to, or destruction of any property of any such NJ TRANSIT Employee, howsoever the same shall occur or be caused. Except as provided for in Section 8.1, "NJ TRANSIT Employee" means a person who, while on duty, is an employee of NJ TRANSIT or of any agent or contractor of NJ TRANSIT (other than DDRR).
- 6.3 DDRR Employees. DDRR shall bear full responsibility for injury to or death of any DDRR Employee, or for loss of, damage to, or destruction of any property of such DDRR Employee, howsoever the same shall occur or be caused. "DDRR Employee" means a person who, while on duty, is an employee of DDRR or of any agent or contractor of DDRR (other than NJ TRANSIT). DDRR Employees who are involved in DDRR's provision of services to NJ TRANSIT under this 2019 Agreement shall be regarded as employees of DDRR, and not of NJ TRANSIT. DDRR Employees who are also NJ TRANSIT revenue passengers at the time in question shall be treated as NJ TRANSIT revenue passengers and not DDRR Employees, for purposes of this 2019 Agreement.
- 6.4 Liability Provisions for Portions of Category NFP Subject Trackage Located Beyond the Derail. With respect to the portions of Category NFP Subject Trackage located beyond the derail used solely by DDRR freight operations which are subleased to DDRR pursuant to Section 4.3(a), the liability provisions of Sections 6.2 and 6.3 shall apply including, but not limited to, injuries to or death of third parties.
- 6.5 Liability Provisions for Category NFP Rail Subject Trackage.

- (a) With respect to Category NFP Subject Trackage, whenever any loss of, or damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, except DDDR or NJ TRANSIT Employees (as defined in Sections 6.2 and 6.3), occurs with the trains, locomotives, cars or on track equipment of, or in the account of, only either DDDR or NJ TRANSIT being involved, that party so involved shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to Article 6 hereof.
- (b) Except for the provisions of Section 6.2, DDDR shall release, indemnify, defend, protect and same harmless NJ TRANSIT, its successors, assigns, agents, officials and employees from all costs or expenses resulting from any loss of life or property, or injury or damage to the person or property of any person including officers, and agents of NJ TRANSIT or the property of any firm or corporation, and from and against any and all claims, demands, liabilities, or actions for such loss, injury or damage caused by, or growing out of the use of the Subject Trackage by DDDR under this 2019 Agreement, whether or not attributable to the fault, failure, negligence or otherwise of NJ TRANSIT, its officers, agents or employees, except that DDDR shall not indemnify NJ TRANSIT for any liability arising from the gross negligence of NJ TRANSIT, its officers, agents or employees.
- (c) Except for the provisions of Sections 6.4 and 6.5 (b), NJ TRANSIT shall be responsible for any injury to or death of third parties including, but not limited to, trespassers. Notwithstanding the foregoing sentence, if any loss of life or property or any injury to person or property or death of any such third parties would not have occurred but for DDDR's occupancy and/or use of the Subject Trackage then DDDR shall bear full responsibility for such injury or death and shall release, indemnify defend, protect and same harmless NJ TRANSIT, its successors, assigns, agents, officials and employees from all costs or expenses resulting from any such loss of life or property, or injury or damage to the person or property of any such third party , including all claims, demands, liabilities, or actions for such loss, injury or damage.
- (d) In its use of the Subject Trackage, DDDR shall, at its sole cost and expense, comply with all applicable Federal, state and local laws, rules and regulations applicable to its operation designed to prevent or control the discharge of substances into the land, water and air, and shall hold harmless and defend NJ TRANSIT from and against any and all suits, actions, proceedings, fines and claims arising from or alleged to have arisen from a violation of any such environmental law, rule or regulation by user during its operation whenever such suits, actions, claims or proceedings shall be commenced.

6.6 Liabilities Arising from Hazardous Substances and Electric Traction Facilities. Any other provision of this Article 6 to the contrary notwithstanding:

- (a) DDRR shall indemnify and save NJ TRANSIT harmless irrespective of any negligence or fault of NJ TRANSIT or NJ TRANSIT Employees, or howsoever the same shall occur or be caused from any and all liability for injury to or death of any person, including NJ TRANSIT passengers and employees, or for loss of, damage to, or destruction of any property, including NJ TRANSIT property, resulting from the transportation in DDRR trains or equipment or DDRR's use of hazardous, toxic or explosive materials as set forth in applicable federal or state laws or regulations.
- (b) NJ TRANSIT shall indemnify and save harmless DDRR from any and all liability to third parties resulting from contact with NJ TRANSIT electric traction facilities, except where such contact is made possible by, and results from, the unauthorized presence of third parties on DDRR freight equipment on the Subject Trackage. In the latter event, DDRR shall assume defense of any such claim. DDRR and NJ TRANSIT shall each bear one-half of any resulting liability to third parties; provided that if settlement is reached by DDRR and NJ TRANSIT refuses to accept one-half of the settlement cost agreed upon, DDRR's responsibility thereafter shall be limited to one-half of such settlement cost.

6.7 Insurance.

- (a) DDRR shall procure and maintain in effect during the life of this 2019 Agreement a policy or policies of insurance covering the liability to which it is or may be subject under this 2019 Agreement. Such insurance shall provide minimum limits of Twenty-Five Million Dollars (\$25,000,000) per occurrence but may be subject to an annual aggregate limit of Fifty Million Dollars (\$50,000,000) and a per occurrence deductible not in excess of One Hundred Thousand Dollars (\$100,000).
- (b) The insurance provided under this Section 6.7 shall be in the form of a Claims Made Policy. DDRR agrees to purchase whatever supplemental or replacement coverage may be necessary to provide continuous coverage of its potential liability under this 2019 Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this 2019 Agreement. DDRR further agrees to give written notice to NJ TRANSIT, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.
- (c) On or before any anniversary date of this 2019 Agreement which occurs more than one (1) year after the Commencement Date (as defined herein), NJ TRANSIT may require an increase in the amount of insurance coverage required

by this Section 6.7, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year that this 2019 Agreement has been in effect.

- (d) Every policy of insurance obtained by DDDR pursuant to the requirements of this Section 6.7 shall contain provisions requiring that the insurance carriers give NJ TRANSIT at least thirty (30) days' notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. In addition, said policy or policies shall be endorsed to name NJ TRANSIT as an additional insured and shall include a severability of interests provision. The terms and conditions of each policy of insurance obtained by DDDR to satisfy the requirements of this Section 6.7 will be subject to the approval of NJ TRANSIT.
- (e) Within thirty (30) days of execution of this 2019 Agreement, DDDR will furnish to NJ TRANSIT an accurate copy of insurance obtained pursuant to the requirements of this 2019 Agreement. Compliance with this requirement will not relieve DDDR of any other obligation under this 2019 Agreement and will in no way limit or modify DDDR's obligation to provide the specific insurance coverage required by this 2019 Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to NJ TRANSIT.

ARTICLE 7. CLEARING WRECKS

7.1 With respect to incidents on Category NFP Subject Trackage, the following provisions shall apply:

- (a) When, as a result of DDDR's sole use of Category NFP Subject Trackage, rerailling, wrecking service or wrecking train service is required, NJ TRANSIT, with the cooperation and assistance of DDDR, shall have the option of having DDDR promptly perform such service, or performing such service itself or by its contractor at DDDR's sole expense including but not limited to, removal of damaged equipment, repair damaged equipment, repair and restoration of roadbed, track, signals, communication systems and all other right-of-way structures. Such repair and restoration shall be to a condition immediately preceding the wreck.
- (b) When, as a result of NJ TRANSIT's and DDDR's joint use of Category NFP Subject Trackage, rerailling, wrecking service or wrecking train service is required, the provisions of Section 7.1(a) will apply, except that all expenses, including but not limited to liability costs, will be apportioned in accordance with the provisions of Article 6.
- (c) DDDR, to the extent requested by NJ TRANSIT, will furnish manpower, equipment, tools, and supplies required to rerail and/or remove any and all locomotives, cars, and equipment.

- 7.2 All DDRR locomotives, cars, equipment, lading (including loss thereof) and salvage from any such wreck or derailment shall remain the property and responsibility of DDRR. Any NJ TRANSIT locomotives, cars, equipment, lading (including loss thereof) and salvage involved in such wreck or derailment shall remain the property and responsibility of NJ TRANSIT.
- 7.3 All billing for work under this Article 7 shall be in accordance with Section 5.5.

ARTICLE 8. EMERGENCY LOCOMOTIVE USE

- 8.1 NJ TRANSIT and DDRR hereto recognize that from time to time emergency conditions will arise requiring the use of a locomotive and/or crew of one of the parties hereto for a period of less than twenty-four (24) hours in order to aid a locomotive and/or train of the other party. In that event and with the mutual agreement of DDRR and NJ TRANSIT, emergency use of locomotives and/or crews will be made available by one party to the other party requiring said locomotives and crews at hourly rates as agreed to by the parties. Within forty-five (45) days of receipt of an invoice therefore, the using party shall pay to the owning party charges for the emergency use of said locomotive and/or crews. Any and all liability for the emergency use of said locomotives and/or crews shall be the responsibility of the party using the locomotive and/or crew.

ARTICLE 9. TERM, TERMINATION, DEFAULT, DISCONTINUANCE

- 9.1 Term. This 2019 Agreement shall be for a term of ten (10) years from the Commencement Date, unless sooner terminated under applicable provisions of this 2019 Agreement. Thereafter, this 2019 Agreement shall continue from year to year unless NJ TRANSIT, DDRR, or NSR has given written notice under the applicable provisions of this 2019 Agreement to the other parties that it has elected to terminate this 2019 Agreement.
- 9.2 Termination. This 2019 Agreement shall continue in full force and effect as set forth in Section 9.1 unless terminated as follows:
- (a) NJ TRANSIT, DDRR, or NSR may elect to terminate this 2019 Agreement immediately upon notice to the other two in writing should there be a transfer of NJ TRANSIT's rights, commuter passenger service, or control or ownership to an entity or party other than an instrumentality of the State of New Jersey. NJ TRANSIT may elect to terminate this 2019 Agreement immediately upon notice to the other two Parties in the event of: (i) acquisition by a third party of all of the stock or assets of the Dover and Delaware River Railroad, LLC or any parent corporation of DDRR. Any party exercising its right to terminate this 2019 Agreement under this Section 9.2(a) must do so within ninety (90) days of the date of any triggering transfer or acquisition, and notification to NJ TRANSIT

and NSR must be made no less than 60 days prior to the consummation of the triggering transfer or acquisition.

- (b) NJ TRANSIT reserves the right to terminate this 2019 Agreement upon 270 days notice. In such event, NJTTRANSIT shall: (1) if NSR will resume service, provide commercially reasonable assistance to NSR in locating locomotive power and qualifying crews; (2) if NSR identifies a replacement operator, approve or disapprove of the operator within 45 days of NSR's written request, such consent not to be unreasonably conditioned or withheld; or (3) if NSR seeks to discontinue or abandon its common carrier obligation, refrain from objecting to such a discontinuance or abandonment.
- (c) NJ TRANSIT or DDDR may elect to terminate this 2019 Agreement if an Event of Default is not cured or satisfied within sixty (60) days of NJ TRANSIT's issuance of a Declaration of Default pursuant to Section 9.4 and 9.5.
- (d) Upon termination or expiration of the NSR-DDRR Lease for any reason, NSR or NJ TRANSIT may elect to terminate this 2019 Agreement upon written notice to the other and DDDR.
- (e) Upon termination of this 2019 Agreement, DDDR shall promptly initiate proceedings at the Surface Transportation Board to discontinue its right and obligation to provide common carrier rail freight service on the Subject Trackage. DDDR grants to NJ TRANSIT an irrevocable power of attorney for purposes of consenting to and making any Surface Transportation Board filing with respect to any termination of this 2019 Agreement in accordance with its terms, should DDDR not make such a filing. If NJ TRANSIT is required seek abandonment or discontinuance of DDDR's rights and obligations at the STB, NSR shall share equally in the costs (filing fees, attorneys' fees and all other costs associated with preparation, submission and completion of any proceeding at the STB) incurred by NJ TRANSIT in such proceeding, and DDDR further agrees to reimburse NJ TRANSIT and NSR for all such costs incurred.

9.3 Effect of Termination. Without waiving any of NJ TRANSIT's rights or remedies under law and equity, upon Termination of this 2019 Agreement, DDDR shall immediately surrender use and occupancy of the Subject Trackage and NSR shall immediately resume the exercise of its freight common carrier obligations in accordance with the obligations of Article 13 of this 2019 Agreement pursuant to all the terms and obligations of its 1984 Agreement with NJ TRANSIT. In no case will NJ TRANSIT assume or be subject to a freight common carrier obligation with respect to the Subject Trackage.

9.4 Default. Each of the following shall constitute an event of default (an "Event of Default") under this 2019 Agreement:

- (a) The failure to pay monies owing pursuant to Article 5 when due; or
- (b) DDDR's failure to comply with the insurance obligations set forth in Section 6.7 of this 2019 Agreement.
- (c) DDDR's failure to fulfill the freight common carrier obligation over the Subject Trackage as determined by the Surface Transportation Board ("STB") or other regulatory body having jurisdiction; or
- (d) The failure to observe any other covenant or obligation contained in this 2019 Agreement, which failure continues for more than thirty (30) days after a non-breaching party gives written notice demanding performance thereof; or
- (e) Any proceeding shall be commenced by or against a party which might result in any modification of the obligations of such party hereunder under any bankruptcy, insolvency or similar law, unless all of the obligations of such party under this 2019 Agreement shall have been duly assumed by a trustee or successor to such party within sixty (60) days after such proceeding shall have commenced; or
- (f) The appropriate governmental entities shall have failed to renew, extend or fulfill commitments to or agreements with NJ TRANSIT for the availability of funds requisite to NJ TRANSIT's performance of this 2019 Agreement.

9.5 Declaration of Default. In the event an Event of Default shall have occurred and be continuing hereunder, a party not in default, upon written notice to the defaulting party along with all other parties to this 2019 Agreement, may make a declaration of default (a "Declaration of Default") hereunder and exercise any or all of the following remedies:

- (a) Terminate this 2019 Agreement by and upon sixty (60) days written notice to the party in default along with all other parties to this 2019 Agreement; and
- (b) Pursue any other remedy at law or in equity in any court of competent jurisdiction.

9.6 Failure of a party to make a Declaration of Default shall not be considered a waiver of any remedies available to it under this 2019 Agreement or otherwise. Nor shall an Event of Default be considered wiped out or satisfied by failure of a party to make a Declaration of Default with respect thereto.

9.7 Discontinuance and Abandonment of Freight Service over NJ TRANSIT Subject Trackage.

- (a) Notwithstanding the provisions of this 2019 Agreement, DDDR, with the prior consent of NSR, which may be withheld for any reason or no reason, may seek regulatory authority to discontinue its freight operations wholly or in part over the

Subject Trackage during the term of the 2019 Agreement. If DDRR only seeks regulatory authority to discontinue its freight operations in part over the Subject Trackage, NSR shall seek authority to abandon its own right to any future freight operations over the same portion of the Subject Trackage. If DDRR seeks regulatory authority to discontinue its freight operations wholly, this 2019 Agreement will terminate and NSR shall either (i) resume conduct of freight operations as described in Section 9.3 of this 2019 Agreement; or (ii) seek authority to abandon its own right to any future freight operations over the Subject Trackage. Abandonment shall include, in addition to any required regulatory authorization, assurances that DDRR and NSR have taken all steps necessary to permit the removal of the lines or portions thereof. DDRR and NSR shall provide NJ TRANSIT with ninety (90) days' joint written notice of their intent to do so and the following terms and conditions shall apply:

- (i) After 90 days or as of the effective date of any required discontinuance authority for DDRR and abandonment authority for NSR, respectively, DDRR's Trackage Rights under this 2019 Agreement, NSR's Trackage Rights under the 1984 Agreement, and NSR's easement shall be terminated with respect to the discontinued and/or abandoned segment.
- (b) On January 1 and July 1 of each year, DDRR, with the prior written concurrence as to the inclusion of any properties from NSR, which may be withheld for any reason or no reason, shall notify NJ TRANSIT of those solely freight facilities located on NJ TRANSIT owned property which have been abandoned or are no longer in use. This notification shall specify entire lines or portions thereof, including industrial sidetracks, sidings, yard tracks, interchange tracks, excess parcels of land, buildings, signal and communications systems. In the event that NJ TRANSIT finds that this notification list does not include facilities which NJ TRANSIT believes have been abandoned or are not in use, NJ TRANSIT reserves the right to direct DDRR to add these facilities to the notification list or in the alternative to direct DDRR to show that it does in fact use the facilities. If the parties cannot agree on the notification list, the arbitration provisions of Section 10.1 shall apply, and DDRR and NJ TRANSIT will notify NSR. For those facilities on the agreed upon notification list the provisions of Article 4 shall apply.
- (c) Upon notification to NJ TRANSIT, DDRR shall be relieved of the obligation to pay NJ TRANSIT in accordance with Section 5.1, as applicable, effective the first full month after NJ TRANSIT's receipt of the notification.

ARTICLE 10. DISPUTE RESOLUTION

- 10.1 Either DDRR or NJ TRANSIT shall have the right to submit a disputed matter under Sections 5.8 or 9.7(b) for dispute resolution pursuant to this 2019 Agreement. Except as

otherwise provided herein, the following procedure shall be implemented to resolve such a dispute between the parties:

- (1) The dissatisfied party shall provide the other party with written notification describing its dissatisfaction;
 - (2) The parties shall meet within ten days after the receipt of said written notification to resolve such dissatisfaction;
- a) If the parties are unable to resolve the Dispute then the Vice President and General Manager of NJ TRANSIT and the President and/or Vice President of DDDR shall meet within thirty days thereafter to resolve such dissatisfaction;
 - b) Lacking resolution of such dissatisfaction, the matter may be litigated in the U.S. District Court for the District of New Jersey and shall be heard by a judge sitting without a jury.

ARTICLE 11. REGULATORY APPROVAL

- 11.1 DDDR, NJ TRANSIT, and NSR shall each have the obligation to obtain any respective necessary regulatory or other approvals for its entering into this 2019 Agreement, any modification or amendment of this 2019 Agreement, or to comply with any of the provisions of this 2019 Agreement.
- 11.2 NJ TRANSIT shall be under no obligation to comply with any requested modification or amendment of this 2019 Agreement or to comply with any provision of this 2019 Agreement if it determines that such modification or amendment or proposed action under this 2019 Agreement requires the approval of any regulatory body unless and until the DDDR provides to NJ TRANSIT sufficient evidence that such approval has been obtained or is not required.
- 11.3 DDDR shall, within sixty (60) days of the date of termination or expiration of this 2019 Agreement or the date that the obligation to discontinue the Trackage Rights arises for any other reason under the terms of this 2019 Agreement, initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If DDDR fails to file within (60) days, DDDR hereby expressly grants to NJ TRANSIT an irrevocable power of attorney for purposes of consenting to and making any STB filing with respect to any termination of this 2019 Agreement in accordance with its terms. NSR agrees to support such a filing, and if NJ TRANSIT is required seek abandonment or discontinuance of DDDR's rights and obligations at the STB, NSR shall share equally in the costs (filing fees, attorneys' fees and all other costs associated with preparation, submission and completion of any proceeding at the STB) incurred by NJ TRANSIT in such proceeding, and DDDR further agrees to reimburse NJ TRANSIT and NSR for all such costs incurred.

11.3

ARTICLE 12. GENERAL PROVISIONS

12.1 Labor Rights.

- (a) DDRR agrees that its entrance upon and use of the Subject Trackage is for its corporate purpose of providing service pursuant to appropriate authority and that such use does not create or continue any rights on the part of the DDRR's employees or its contractors with respect to any other current or future use of the Subject Trackage, including but not limited to, maintenance, operation, rehabilitation, and improvement thereof by NJ TRANSIT or NJ TRANSIT's contractors. DDRR shall indemnify, defend, and hold harmless NJ TRANSIT and NJ TRANSIT's contractors against any liability to DDRR's employees arising from any labor claims or employment rights, employment protection, including but not limited to rights or labor claims arising from the performance of any work for the DDRR on the NJ TRANSIT's properties by NJ TRANSIT or NJ TRANSIT's contractors under this 2019 Agreement.
- (b) Nothing contained in this 2019 Agreement shall require any party to perform any service or take any action which would violate any term or condition of any then current labor agreement between the respective parties and any organization representing any of their respective employees or applicable to the respective parties by reason of operation of law.

12.2 Successors and Assigns. Subject to the provisions of this 2019 Agreement, this 2019 Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto except that DDRR, NJ TRANSIT, and NSR shall not assign or transfer this 2019 Agreement or any of its rights hereunder to any person, firm, or corporation without obtaining the prior written consent of the other two parties. In addition, NJ TRANSIT shall have the right at its sole discretion to terminate this 2019 Agreement pursuant to Section 9.2(b)

12.3 Force Majeure.

- (a) NJ TRANSIT and DDRR shall be excused from any obligation under this 2019 Agreement to provide, operate, or maintain the Subject Trackage where non-performance is occasioned by any event beyond its control including, but not limited to, an order, rule, or regulation of any federal, state, or local government body, agent, or instrumentality, work stoppage, accident, act of terrorism, environmental or natural disaster. Performance shall be excused only so long as and to the extent that any such event shall reasonably prevent performance.

12.4 Availability of Funds. Pursuant to N.J.S.A. 27:25-17, all expenses incurred by NJ TRANSIT shall be payable from funds available to NJ TRANSIT therefor and no liability or obligation shall be incurred by it beyond the extent to which monies are available. Furthermore, no debt or liability of NJ TRANSIT shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit of the State of New Jersey. In accordance with N.J.S.A. 27:25-17, all obligations of NJ TRANSIT established by this 2019 Agreement which require expenditure of funds are subject to the availability of funds; provided, however, that in the event NJ TRANSIT funds are not available to fund an obligation arising under a section of this 2019 Agreement, DDDR may be relieved at its discretion of any contractual obligation which would have arisen under that section.

12.5 Amendment and Approvals.

- (a) No term or provision in this 2019 Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by all of the parties to this 2019 Agreement.
- (b) All approvals and consents required under this 2019 Agreement shall be in writing, signed by a person designated in writing for such purpose unless otherwise provided in this 2019 Agreement or agreed to in writing by all of the parties. Any oral notices shall be promptly confirmed in writing.
- (c) The exhibits to this 2019 Agreement hereto shall be changed from time to time as required in writing as provided for in Section 12.5(a).

12.6 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this 2019 Agreement to be made upon, given or furnished to, or filed with a party by another party shall be in writing and shall be delivered by hand or by deposit in the registered mails of the United States, postage paid, in an envelope addressed as follows:

If to NJ TRANSIT:

Vice President and General Manager
NJ TRANSIT Rail Operations, Inc.
1 Penn Plaza East
Newark, New Jersey 07105

If to DDDR:

President
Dover and Delaware River Railroad, LLC
20 Toad Lane
Ringo, NJ 08551

With a copy to: sharris@chesapeakeanddelaware.com
AND
cbanks@chesapeakeanddelaware.com

If to NSR:

Vice President Strategic Planning
Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510

Any party to the 2019 Agreement may redesignate the recipient or change the address of the recipient of notifications hereunder by notifying the other parties to this 2019 Agreement of such change.

- 12.7 Effect of Execution and Performance. The parties do not, by reason of their execution of and the performance of their obligations under this 2019 Agreement, assume any other obligations or liabilities not imposed upon them by law.
- 12.8 No Representations and Waivers. Except as expressly provided herein, the parties make no representations or warranties and waive no rights or remedies. Waiver by a party or the parties of one section or paragraph of this 2019 Agreement shall not be considered a waiver of the remainder of the provisions of this 2019 Agreement.
- 12.9 Change of Circumstance. Each party shall promptly notify the others of any legal impediment, change of circumstances, or any other event or conditions which may adversely affect such party's ability to carry out any of its obligations under this 2019 Agreement.
- 12.10 Non-Discrimination. The parties to this 2019 Agreement do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq., as amended and supplemented, dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereto, are hereby made a part of this 2019 Agreement as set forth in Exhibit F, attached hereto and made a part hereof, and are binding upon them.
- 12.11 Applicable Law. This 2019 Agreement shall be governed by the laws of the State of New Jersey.
- 12.12 Survival of Obligations and Indemnification. All obligations and indemnification which arise and are not satisfied during the term of this 2019 Agreement shall survive termination of this 2019 Agreement.
- 12.13 Revenues. Except for revenues attributable to freight (including tariff, transportation, per diem, demurrage, and switching revenues or charges) or passenger operations, all other

revenues related to the use and occupancy of the Subject Trackage shall accrue to NJ TRANSIT. In addition to receiving rental payments for new industrial sidetracks constructed on the Subject Trackage pursuant to Section 4.4, NJ TRANSIT shall receive any rental paid for use and occupancy of the existing sidetracks situated in all or in part on the Subject Trackage. In the event a new agreement must be entered into covering an existing sidetrack, DDRR shall arrange for the industry to negotiate a suitable permit arrangement for the use and occupancy of the Subject Trackage with NJ TRANSIT. NJ TRANSIT reserves the right to negotiate or renegotiate the terms and conditions related to the use and occupancy of the Subject Trackage on all existing sidetracks.

- 12.14 Cooperation. While the parties have specific responsibilities under this 2019 Agreement, the parties shall also make every effort to cooperate and exchange information to minimize disruption to operations over the Subject Trackage.
- 12.15 Effective Date. The Effective Date for purposes of this 2019 Agreement shall be the date first above written. However, DDRR's operations over the Subject Trackage shall not commence until a date (the "Commencement Date") is mutually agreed to in writing between DDRR and NJ TRANSIT, which date shall not occur until the effective date of any required Surface Transportation Board ("STB") authorization or exemption of DDRR's trackage rights granted by this 2019 Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption). All prior discussions and understandings concerning such scope and subject matter are superseded by this 2019 Agreement.
- 12.16 Entire Agreement. This 2019 Agreement embodies the entire agreement between the parties as to the subject matter thereof. It may not be modified or terminated except as provided herein. If any provision is held to be invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.
- 12.17 Cross Default. DDRR agrees that a default by a person or entity which is an "Affiliate" of DDRR under any agreement with NJ TRANSIT shall be deemed to be a default under this 2019 Agreement. An Affiliate shall mean a person or entity which is controlled by, controlling, or under common control with DDRR, or a successor of DDRR.
- 12.18 Authority to Sign. The parties represent that the individual executing this 2019 Agreement on behalf of the respective party is fully authorized to do so and that the execution of this 2019 Agreement on the part of such individual shall bind that party to its obligations set forth in this 2019 Agreement.

**ARTICLE 13. NSR's CONSENT AND EFFECT ON NSR'S OBLIGATIONS
UNDER 1984 AGREEMENT**

- 13.1 NSR hereby consents to NJ TRANSIT granting the Trackage Rights to DDRR, and DDRR only, under the terms and conditions specified in this 2019 Agreement and will

refrain from asserting its claim to exclusive freight trackage rights over the Subject Trackage during the term of this 2019 Agreement.

- 13.2 Beginning on the Commencement Date, as that term is defined in Section 12.15 and continuing until this 2019 Agreement is terminated in accordance with Article 9 hereof, the rights and obligations of NSR to provide freight service and to fulfill its common carrier obligation on the Subject Trackage shall be held in abeyance, and the obligations of NSR and NJ TRANSIT to each other under the 1984 Agreement with respect to the Subject Trackage specified in Exhibit A will be suspended for so long as this 2019 Agreement is in effect. For purpose of clarity, such suspended obligations include, but are not limited to:
- (a) NSR's obligation to perform freight service over the Subject Trackage pursuant to Section 2.01;
 - (b) NSR's maintenance responsibilities related to the Subject Trackage pursuant to Article IV;
 - (c) NSR's obligation to pay NJ TRANSIT compensation and maintenance expenses related to the Subject Trackage pursuant to Article V; and
 - (d) Obligations related to clearing wrecks on the Subject Trackage pursuant to Article VII.

Further, NJ TRANSIT agrees that in no case will DDDR's operations be deemed NSR operations for purposes of liability under Section Article VI thereof. DDDR and NSR will conduct their own independent and separate operations over their own respective lines of railroad to provide transportation services to customers.

- 13.3 After the Commencement Date, Billable Car-Miles incurred by DDDR to NJ TRANSIT pursuant to this 2019 Agreement shall count towards NSR's Billable Car-Mile minimum charge under Section 5.05(b) of the 1984 Agreement.
- 13.4 After the Commencement Date, payments made by DDDR to NJ TRANSIT pursuant to Section 5.4 of this 2019 Agreement shall count towards NSR's maximum annual payment for work performed each year under Section 5.06 of the 1984 Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have caused this 2019 Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

NEW JERSEY TRANSIT CORPORATION

By: [Signature]

Title: SENIOR VICE PRESIDENT AND GENERAL MANAGER

This 2019 Agreement has been reviewed and approved as to form.

GURBIR S. GREWAL

ATTORNEY GENERAL of NEW JERSEY

By: [Signature]

Charles A. Spjutnik

Kaplan Kirsch Rockwell LLP

**DOVER AND DELAWARE RIVER RAILROAD,
LLC**

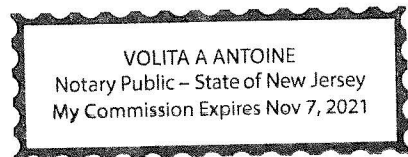
By: [Signature]

Title: PRESIDENT

Witness: [Signature]

(Print name): Volita Antoine

~~Attorney-at-law~~



NORFOLK SOUTHERN RAILWAY COMPANY

**With Respect to Articles 1.1, 1.2, 2.4, 4.3, 4.5, 6.1,
9, 11, 12, and 13**

By: [Signature]

Title: VICE PRESIDENT

EXHIBIT A
SUBJECT TRACKAGE

Category NFP
DDRR Freight and NJ TRANSIT Passenger Service

<u>Line Segment</u>	<u>M.P. to M.P.</u>
<u>MORRISTOWN LINE</u>	
Newark Broad Street to Netcong	7.8 – 48.1
Netcong to Hackettstown* (WASS)	48.1 - 58.0
<u>GLADSTONE BRANCH</u>	
Summit to Berkeley Heights	20.1 - 25.7
<u>MONTCLAIR LINE</u>	
Roseville Avenue to Denville	9.0 – 33.9

Category NF
DDRR Freight Service Only

None as of Effective Date.

* Leased by NJ TRANSIT from NSR.

EXHIBIT B

LIST OF TURNOUTS AND CROSSOVER – CATEGORY NFP SUBJECT TRACKAGE

Section 4.2(a) - All routine and non-routine maintenance expenses incurred by NJ TRANSIT related to these facilities are not included in car-mile reimbursement in Section 5.1(a) hereto. The expenses will be billed to DDDR. Such facilities are listed on Exhibit B, attached hereto and made a part hereof. For turnouts designed by Note 1 on Exhibit B, NJ TRANSIT shall perform the routine maintenance at its sole cost and expense and DDDR shall be responsible only for non-routine maintenance expenses.

NJT No.	Line	Milepost	Station Name	Switch or Industry
EF039	Montclair Line	21.8	Mountain View	Pompton Industrial
EF075	Montclair Line	33.4	Denville	Georgia Pacific
GF096	Morristown Line	37.6	Dover	Crown Extruders
	Morristown Line	39.8	Wharton	D&R Junction
GF108	Morristown Line	41.3	Chester Jct.	High Bridge Branch
GF112	Morristown Line	41.4	Chester Jct.	EE Cross-over
GF065	Morristown Line	41.4	Chester Jct.	WE Cross-over
GF116	Morristown Line	41.7	Chester Jct. (West)	Chester Industrial
EF079	Morristown Line	49.4	Mt. Olive	Macy's
EF080	Morristown Line	55.8	Hackettstown	M&M

EXHIBIT C

SOLELY FREIGHT FACILITIES LOCATED BEYOND THE CLEARANCE POINT TO BE MAINTAINED BY NJ TRANSIT

4.2(b) With respect to certain solely freight facilities located beyond the clearance point as identified in Exhibit C, attached hereto and made a part hereof, NJ TRANSIT or designee agrees to perform routine and non-routine maintenance as defined herein at DDDR's sole cost and expense. DDDR agrees that the level of maintenance to be performed by NJ TRANSIT shall be at FRA Class I.

There are no Exhibit C tracks. NJ TRANSIT will maintain tracks up to derail or insulated joint where present. DDDR will maintain trackage beyond the derail.

EXHIBIT D

NON ROUTINE TURNOUT AND CROSSOVER MAINTENANCE COSTS

Section 5.4 When non-routine maintenance between the point of switch and the clearance point is performed by NJ TRANSIT, costs assignable to DDDR shall be computed in accordance with the provisions of Exhibit D, attached hereto and made apart hereof.

EFFECTIVE YEAR ==>>		2018
INDEX YEAR ==>>		2017
AAR INDEX ==>>		526.0
FACTOR ==>>		3.0143
Item	Unit	Current Year
Billable Car Mile Rate - Section 5.01(a)		
A ≤1,000,000 car miles annually	car mile	\$0.636
B >1,000,000 car miles annually	car mile	\$0.479
Routine Maintenance - Section 5.01(b)		
A Turnouts, Crossovers		
1 Annually	each	\$2,562.18
2 Monthly	each	\$213.50
Routine Maintenance - Section 5.01(c)		
A Sidings		
1 Annually	foot	\$1.90
2 Monthly	foot	\$0.16
Various Incremental Rates - Exhibit 8		
A Total Renewal to Clearance Point		
1 Labor and Other		
a Metal and Other - # 8 thru #10	turnout	\$32,651.19
b Metal and Other - #11 thru #19	turnout	\$40,596.95
c Metal and Other - #20	turnout	\$43,439.46
d Switch Timber Installation	each	\$292.39
e Cross Tie Installation	each	\$138.66
2 Material (See Note #)		
a Metal		82% of New Jersey Transit's Current Cost
b Switch Timber		29% of New Jersey Transit's Current Cost
c Cross Ties		100% of New Jersey Transit's Current Cost
3 Scrap/Salvage		84% Credit for Actual Scrap/Salvage Value
B Total Renewal Excluding Siding		
1 Labor and Other		
a Metal and Other - # 8 thru #10	turnout	\$28,382.90
b Metal and Other - #11 thru #19	turnout	\$36,328.66

c	Metal and Other - #20	turnout	\$39,171.17	
d	Switch Timber Installation	each	\$292.39	
2	Material (See Note #)			
a	Metal		80% of New Jersey Transit's Current Cost	
b	Switch Timber		29% of New Jersey Transit's Current Cost	
3	Scrap/Salvage		81% Credit for Actual Scrap/Salvage Value	
C	Component Renewal			
1	Labor and Other			
a	Frog and Guard Rail - # 8 thru #10	turnout	\$10,737	
b	Frog and Guard Rail - #11 thru #19	turnout	\$13,742	
c	Frog and Guard Rail - #20	turnout	\$14,818	
d	Switch Only - # 8 thru #10	turnout	\$14,809	
e	Switch Only - #11 thru #19	turnout	\$18,957	
f	Switch Only - #20	turnout	\$20,437	
g	Switch Timber Installation	each	\$292	
h	Cross Tie Installation	each	\$139	
2	Material (See Note #)			
a	Frog and Guard Rails		93% of New Jersey Transit's Current Cost	
b	Switch Only		94% of New Jersey Transit's Current Cost	
c	Switch Timbers		29% of New Jersey Transit's Current Cost	
d	Cross Ties		100% of New Jersey Transit's Current Cost	
3	Scrap/Salvage		81% Credit for Actual Scrap/Salvage Value	

Note: DDDR may provide materials from its inventory but must deliver to job site.

EXHIBIT E

OVERHEADS APPLICABLE TO DIRECT LABOR AND MATERIAL EXPENSES

Section 5. 5 - Whenever DDDR or NJ TRANSIT incurs costs, other than those incurred under Sections 5.3(b) and (c) and 5.4, billable to the other party in accordance with the provisions of this 2019 Agreement, costs shall be accumulated by work order. The billing details shall include:

For labor - the craft, man hours of direct labor separated between straight time and overtime, and the current hourly rate of pay. For direct material - a description and cost of material consumed less a credit for the scrap and second-hand value of materials released as determined by the party performing the work. For miscellaneous expenses - description and cost of items such as personal expenses, equipment rental, and for services or equipment provided by others a copy of the invoice. Overheads applicable to the above shall be those as set forth in Exhibit E, attached hereto and made a part hereof.

Direct Labor:

- 1. To direct labor expenses, NJ TRANSIT's then cuurent Rail Employee Benefit and Leave Recovery Rate shall be added. As of the effective date of this agreement, such Rate is 84.77%*
- 2. To the sum of the direct labor expenses and the labor additive expenses, per (1) above, NJ TRANSIT's then current overhead additive will be applied. As of the effective date of this agreement, the overhead additive is 82.58%.*

Direct Material

- 1. To direct material expenses, an additive of one (1) percent shall be applied.*

EXHIBIT F

NON DISCRIMINATION PROVISIONS

STATE OF NEW JERSEY EQUAL EMPLOYMENT OPPORTUNITY FOR PROCUREMENT AND SERVICE CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27-1.1 et seq.

DRAFT PURCHASE AND SALE AGREEMENT

This Contract of Purchase and Sale (this “**Agreement**”), dated this ____ day of _____, 20____ (the “**Effective Date**”), is made by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, hereinafter called “**Seller**”, and **NEW JERSEY TRANSIT CORPORATION**, an instrumentality of the State of New Jersey, hereinafter called “**Purchaser**”. Purchaser and Seller are sometimes referred to herein individually as a “**Party**” and, collectively, as the “**Parties**”.

WITNESSETH:

WHEREAS, Seller (as successor in interest to Consolidated Rail Corporation (“Conrail”)) and Purchaser are parties to that certain Lease Agreement dated April 28, 1994, extended by that certain supplemental agreement dated October 19, 2001, and further extended by amendments dated October 1, 2007 and October 11, 2018 (collectively, the “**Lease**”) governing the lease of the Premises (as defined in the Lease); and

WHEREAS, Purchaser constructed rail infrastructure improvements on the Premises in order to commence commuter rail service on the Premises and to allow continued operation of freight service; and

WHEREAS, Purchaser and Seller have operated rail service on the Premises pursuant to the May 1, 1994 Second Supplemental Agreement to the October 1, 1984 Trackage Rights Agreement, as amended (collectively, the “**TRA**”) by and between the Conrail (the predecessor-in-interest to Seller) and Purchaser; and

WHEREAS, Seller assumed Conrail’s rights and obligations under the TRA following Surface Transportation Board authorization of the sale of Conrail to Seller and CSX Transportation, Inc.; and

WHEREAS, Section 30 of the Lease included an Option to Purchase (as defined in the Lease) with respect to all or a portion of the Premises, to be exercised as prescribed therein; and

WHEREAS, on March 26, 2021, Purchaser exercised the Option to Purchase with respect to the portion of the Premises specific to the rail line known as the Washington Secondary, land and improvements of Seller in Morris and Warren Counties, New Jersey, between Milepost 48.1 and Milepost 57.25 near the northeast side of the private grade crossing near 3rd Avenue in Hackettstown, New Jersey consisting of approximately 9.15 miles of right-of-way, more or less, and 138.8 acres, more or less and as further described herein (the “**Purchased Premises**”); and

WHEREAS, the Amendment to Lease Agreement dated October 11, 2018 included a credit toward the purchase price of the Purchased Premises in the amount of 25% of all rent paid by Lessee pursuant to the Lease from June 1, 2019 through the exercise of the Option to Purchase, which amount is equal to XXX (\$XXX) (the “**Rent Credit**”);

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The recitals set forth above shall be incorporated into this Agreement as if fully set forth herein.

2. **Purchased Premises.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all of Seller's right, title and interest, if any, in the Purchased Premises, together with all servitudes, easements, appurtenances and hereditaments appertaining thereto, and (ii) all tracks, rails, ties, switches, crossings, bridges, tunnels, trestles, culverts, buildings, signals, crossing protection devices, communication lines, poles and auxiliary tracks (to the extent of Seller's ownership interest), improvements, structures, landscaping, appurtenances, and any and all personal property situated thereon being located substantially as shown on the copies of the valuation maps set forth in **Exhibit A** and the written description set forth in **Exhibit B**, each attached hereto and made a part hereof as if fully set forth herein. For the avoidance of doubt, the Purchased Premises shall not include, and Seller shall reserve, an easement as otherwise specified in this Agreement, for occupation, ingress/egress, and supporting utilities (as applicable), for a signboard that may be located on the Purchased Premises.

3. **Purchase Price.** The purchase price for the Purchased Premises is XXX (\$XXX) minus the Rent Credit, or XXX (\$XXX) (the "**Purchase Price**"). For the sake of clarity, the Purchase Price set forth herein shall be in addition to, and not inclusive of, the outstanding amount of Outstanding Rent (as defined in Section 7 of this Agreement) to be paid as part of Closing.

4. **Legal Description.** Seller shall prepare a general written description of the Purchased Premises based on a reference to the center line of the track as located in reference to certain Valuation Maps, and which shall, in Seller's and Purchaser's reasonable opinions, reasonably describe the Purchased Premises. Such legal description shall incorporate the Valuation Maps set forth at Exhibit A, and the legal description set forth at Exhibit B. Seller and Purchaser agree that, within three months after Closing and at Seller's sole cost and expense, Seller shall have the right to enter the Purchased Premises (or have its third party surveying contractors make such entry pursuant to Purchaser's then-current Temporary Access Permit) for the purposes of completing a survey to Seller's specifications specifically depicting the southernmost boundary of the Purchased Premises, as well as Seller, or Seller's contractors, physically installing monumentation documenting such southernmost boundary to clearly demarcate the common boundary of the Purchased Premises between Seller and Purchaser. **Seller will provide Purchaser with a copy of such survey for Purchaser's review and approval. Seller will prepare a revised legal description of the property and will record same pursuant to a Corrective Deed at the Morris and Warren County Clerks' offices.**

5. **Type of Conveyance.** At Closing (as defined in Section 7), Seller shall convey the Purchased Premises to Purchaser by bargain and sale deed without covenants, representations, or warranties, which grants, transfers, and quitclaims to Purchaser Seller's interest in the Purchased Premises, subject to the following:

- (a) Local real estate taxes for the year of Closing (but not any taxes that are in arrears) and subsequent years not yet due and payable;
- (b) Applicable zoning laws and regulations; and
- (c) All easements, conditions, reservations, leases, licenses, and restrictions whether or not of record or may be apparent by an inspection of the Purchased Premises.
- (d) That certain Partial Assignment and Assumption Agreement, as defined herein.

The deed for the Purchased Premises shall contain the following reservations and exceptions to title:

(i) *EXCEPTING AND RESERVING unto Grantor, its successors, and assigns and affiliates, a permanent, perpetual, exclusive, transferable, assignable and irrevocable retained freight service easement in the property described on Exhibit A to physically serve, with its own crews and locomotives, or the crews and locomotives of its owners, affiliates, transferees or assigns, present and future rail customers with access to the property described on Exhibit A, provide overhead freight service to other portions of Grantor's rail systems or to the rail systems of connecting freight railroads and temporary detour or emergency overhead rail operations. Grantee acknowledges Grantor's retained rights, and Grantee neither has nor will have any right to serve present and future shippers and will make no attempt to construct additional sidings to serve such shippers for its own account or to circumvent this Deed by other means, directly or indirectly. Grantor's right to operate on the Purchased Premises is subject to the Operating Agreement between Grantor and Grantee for the Washington Secondary Track, dated _____. Grantor's rights hereunder shall terminate upon consummation of any necessary authorization from the Surface Transportation Board or any successor agency to abandon or discontinue such service.*

(ii) *"FURTHER EXCEPTING AND RESERVING unto Grantor, its successors, assigns and affiliates, a non-exclusive easement for the maintenance, utilization, repair and replacement (including but not limited to ingress and egress) of one (1) existing signboard for outdoor advertising purposes only located in Mt. Olive Township (Morris County), NJ) and described as follows: two (14x48) Paint Bulletin static sign faces erected on one monopole located on the West Side of I-80, West of Route 46 in the area depicted on Exhibit __ attached hereto, under a License Agreement between Grantor and Right Angle Media, Inc., 16 Scott Drive, Churchville, PA 18966-1393 ("RAM") and BESKO Media P.O. Box 280, Hamlin, PA 18427, dated April 1, 2016 until expiration or termination of said agreement. Any use and enjoyment of the signboard by Grantor, its successors, assigns and affiliates shall be subject to the provisions of*

Grantee's Guidelines for Working Within Or In Vicinity of NJ TRANSIT's Right-of-Way which are then in effect as well as the Signboard Agreement between Grantor and Grantee effective as of the closing of title to the Property. Grantor shall give the Grantee twenty-one (21) days prior written notice before entering upon the Property to exercise the signboard reservation set forth herein. Any Grantor contractor, consultant or other third-party requesting entry in, on or below the area depicted on Exhibit ____ will be required to execute and deliver a then current Grantee Temporary Access Permit ("TAP") to Enter prior to entry on such property.

Seller represents that to the best of Seller's knowledge there are no rental, licensing agreements, or other occupancy agreements relating to the Purchased Premises to which Seller is a party other than those listed in Exhibit [] attached hereto and made a part hereof as if fully set forth herein.

6. **Lease Cancellation.** The Parties agree the Lease will terminate on the Closing Date.

7. **Closing.** The closing shall be held at a mutually agreed upon location and time, or by overnight mail, within [fifteen (15) business days] after the regulatory proceeding by the U.S Surface Transportation Board ("STB") set forth in **Section 12** below ("Closing Date") (the process described herein to occur on the Closing Date being "Closing"). At or before the Closing Date, each Party shall deliver to the other the following:

- (a) Seller shall deliver to Purchaser the duly executed and acknowledged deed substantially in the form set forth in **Exhibit D** attached hereto and made a part hereof conveying the Purchased Premises to Purchaser as provided in **Section 5** hereof. If any mortgage or trust encumbers the Purchased Premises, Seller shall provide a deed or deeds of release to release the lien of any mortgage or trust that may encumber the Purchased Premises. If any judgment liens, other liens for the payment of money (other than mortgages and deeds of trust) or lis pendens encumber the Purchased Premises at Closing, Seller shall, at its option, cause such lien or lis pendens to be released, provide a corporate surety bond with respect to such lien or lis pendens or execute and deliver to Purchaser or its title insurer an indemnity agreement, in form and substances reasonably satisfactory to Purchaser and Seller, with respect to such liens or lis pendens.
- (b) Purchaser shall pay to Seller the Purchase Price by wire transfer. Purchaser shall also pay all outstanding rent in the amount of XXX (\$XXX) ("**Outstanding Rent**") by wire transfer at Closing. Seller will provide Purchaser with wiring instruction prior to Closing. **The Outstanding Rent will be the total amount due by Purchaser and no further rent payments will be due and owing by Purchaser.**
- (c) General real estate taxes for the then-current year relating to the Purchased Premises, rents, water, sewer, and electric charges, if any, shall be prorated

as of the Closing Date and shall be so adjusted at Closing. If the Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuations. All special taxes or assessments accrued subsequent to the Closing Date shall be paid by Purchaser if required by New Jersey law. All general taxes, assessments, and water, sewer, and electric charges in arrears on the Closing Date shall be paid by Seller. Seller has represented that there are no outstanding charges for taxes, water, sewer, and electric charges. However, to the extent that the Purchased Premises contain any property classified as operating property (and therefore, is not locally assessed by the applicable taxing authority of each county or city in which the applicable portion of the Purchased Premises is situated), then Seller shall continue to pay all sums applicable to the portions of the Purchased Premises deemed operating property without pro-ratio or adjustment between the Parties, with Seller making the necessary adjustments to the next franchise tax return filed on the portion of the Purchased Premises deemed as operating property, and Purchaser paying any taxes, as may be applicable to Purchaser, that may become due and payable on and after the Closing Date after conveyance.

- (d) Seller shall pay for the deed preparation, transfer taxes and Seller's attorney's fees.
- (e) Purchaser shall pay for all other closing costs, taxes, recording and filing fees, and Purchaser's attorney's fees.
- (f) Seller will deliver to Purchaser an Owner's Affidavit substantially in the form set forth in **Exhibit F** attached hereto and made a part hereof (the "**Owner's Affidavit**"), a FIRPTA affidavit, Residency Certificate, Certificate of Incumbency authorizing the sale, an executed counterpart the final settlement statement, and any other documents in mutually agreeable form necessary for recordation and reasonably requested by the title company or Buyer's attorney in their reasonable discretion. Seller will have a continuing obligation to provide any such documents after Closing should additional documentation be required to record any instruments set forth herein.
- (g) Seller and Purchaser shall execute the Partial Assignment and Assumption Agreement substantially in the form set forth in **Exhibit E** attached hereto and made a part hereof to convey a portion of Seller's right, title and interest in certain third-party agreements to be set forth therein.
- (h) Purchaser will deliver an executed counterpart of the settlement statement, an Affidavit of Consideration or Exemption for this transaction to be exempt from New Jersey Real Estate Transfer Taxes.
- (i) Proofs of corporate authorization, such as certified Board Resolutions and Incumbency Certificates, as are reasonable and customary in commercial transactions to demonstrate each Party's authorization to execute the

constituent documents and to consummate the transactions contemplated by this Agreement.

- (j) An executed counterpart of the Operating Agreement.
- (k) Such other documents as are reasonably required by a title insurance company in order to issue an owner's policy of title insurance.

8. **Real Estate Commissions.** Purchaser and Seller each represents to the other that no real estate commissions are due and owing to any party with respect to the transactions contemplated by this Agreement. Each Party hereby agree to indemnify and save harmless the other Party from and against any and all claims or liability for real estate commissions arising out of the transactions contemplated by this Agreement attributable to the indemnifying Party.

9. **Assignment.** This Agreement may not be assigned by Purchaser to any other party without the written consent of Seller, which consent may be withheld for any reason, except in the case of an assignment to an entity of which Purchaser has a controlling interest or is the general partner, such consent shall not be unreasonably withheld. Seller expressly reserves the right to assign or delegate all or any part of Seller's rights and duties hereunder with respect to all or any portion of the Purchased Premises to one or more third parties, including a qualified intermediary as defined by Treasury Regulation Section 1.1031 (K)-1(g)(4).

10. **Disclaimers.**

- (a) Purchaser agrees to purchase the Purchased Premises "as is, where is" and acknowledges that Seller has not made any express or implied representation or warranty with respect to the condition or suitability of the Purchased Premises, including, but not limited to, title, the condition of the soil, the presence of hazardous materials, substances, wastes or other environmentally regulated substances, or other contaminants in the soil or improvements – whether known or unknown (referred to herein as "contamination of the Purchased Premises") – and other physical characteristics. Purchaser shall perform at its own expense and rely solely upon its own independent investigation concerning the physical condition of the Purchased Premises (including, but not limited to, an environmental assessment) and compliance of the Purchased Premises with any applicable law and regulations, provided that nothing in this subsection (a) constitutes a condition precedent to closing.
- (b) Seller has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to Purchaser concerning the Purchased Premises except as provided in the Owner's Affidavit, its condition or suitability or its compliance with any statute, ordinance or regulation, including, but not limited to, those relating to the environment. Purchaser acknowledges that neither Seller nor any of its agents or representatives have made, and Seller is not liable for, or bound in any manner by, any express or implied warranties, guarantees, promises, statements, inducements, representations or information pertaining to the Purchased Premises or any part thereof, the physical condition, size, zoning,

income potential, expenses or operation thereof, the uses that can be made of the same or in any manner or thing with respect thereof, including, without limitation, any existing or prospective leasing or occupancy of all or any part thereof.

- (c) Purchaser hereby agrees that, following its purchase of the Purchased Premises, Purchaser will protect, indemnify and hold harmless Seller from and against any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, costs (including, without limitation, cleanup and remedial action costs), judgments, and expenses (including, without limitation, attorney's and experts' fees and expenses) of every kind and nature suffered by, incurred by (whether voluntarily or by court or administrative order or direction) or asserted against Seller or Purchaser as a direct or indirect result of any hazardous materials, substances, wastes or other environmentally regulated substances located on, in or under the Purchased Premises that were caused or created by Purchaser, whether before or after Closing. Purchaser will not be responsible for any hazardous materials, substances, wastes or other environmentally regulated substances located on, in or under the Purchased Premises that were caused or created by Seller (or Conrail) or existing prior to the commencement of the Lease. This provision shall survive the Closing.
- (d) Nothing in this Section 10 shall abrogate or supersede any allocations of liability between Purchaser and Seller as set forth in the TRA or each of the Agreements listed in Exhibit E. The provisions of Section 10 shall survive closing of title.

11. **Eminent Domain.** If, at any time prior to the closing hereunder, any action or proceeding is filed under which the Purchased Premises, or a substantial portion thereof, may be taken pursuant to any law, ordinance or regulation or by condemnation or the right of eminent domain, then, at the option of either Seller or Purchaser, (a) this Agreement shall be terminated or (b) this Agreement shall remain in full force and effect and Seller, at the time of Closing hereunder, shall transfer and assign to Purchaser all of Seller's right, title and interest in any proceeds received or which may be received by the taking, or a sale in lieu thereof, said option to be exercisable by either Party by delivering to the other Party written notice of such exercise on or before the thirtieth (30th) day following the day on which the respective Party receives notice that such suit has been filed.

12. **Rail Operating Agreement; Regulatory Approval.**

- (a) The Parties shall enter into an Operating Agreement to reflect the change in ownership of the Purchased Premises and amend a corresponding March 1, 2019 Trackage Rights Agreement as between Seller, Purchaser, and Seller's local short line operator (collectively, the "**TRA Amendment**").
- (b) Purchaser shall (i) file a notice of exemption and motion to dismiss the notice in order to secure an STB decision that the transactions contemplated in this Agreement are not subject to the regulatory approval of the STB within fifteen (15) days after the Effective Date, and (ii) request that the

STB decide the motion to dismiss on an expedited basis. The Parties agree that they shall cooperate with each other in connection with all filings made with the STB and that neither Party shall make any filing with the STB related to the transactions contemplated by this Agreement without first having delivered a copy of such filing to the other Party at least three (3) business days before such filing is made.

- (c) Responsibility for Labor Protection. It is the intention of the Parties that each Party shall bear the full cost of protection of its own employees under employee protective conditions which may be imposed on it by the STB or which apply under any agreements made by either Party with its respective employees, and of grievances filed by its own employees under its collective bargaining agreements with its employees. The Party held responsible for protection or grievances by this Section 12(c) shall and hereby does release, indemnify, protect, defend and hold harmless the other Party (and its officers, directors, agents and employees) from and against such responsibility.
- (d) Either Party shall have the unilateral right to terminate and rescind this Agreement prior to the closing if the STB shall have found any of the transactions contemplated in this Agreement require STB authorization and:
 - i. The STB has imposed any conditions, including labor protective conditions, which either Party in its sole and absolute discretion deems unacceptable; or
 - ii. Any of the transactions shall have been stayed or enjoined by the STB or by any court of competent jurisdiction; or
 - iii. Any claim, litigation, labor dispute, or work stoppage is threatened or pending in connection with any of the transactions contemplated in this Agreement and any agreement to be executed in connection herewith.

13. **New and Undisclosed Agreements.**

- (a) Neither Party shall enter into a new agreement pertaining to the Purchased Premises between the Effective Date and either the Closing Date or the termination date of this Agreement without the written consent of the other Party.
- (b) Seller shall defend, hold harmless and indemnify Purchaser for any losses, claims, expenses, fees and costs arising in connection with any obligations or increased costs under any agreements related to the Purchased Premises that were (i) entered into by the Seller during the Seller's ownership of the Purchased Premises and (ii) in the case of each that any such agreement entered into by Seller, are not disclosed to Purchaser by the Closing Date, provided that Seller's obligations under this Section 13(b) with respect to a given agreement shall not extend beyond the date a copy of such agreement is provided to Purchaser.

14. **Notices.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered, or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth below.

Seller:

Solomon Jackson
Director - Real Estate
Norfolk Southern Corporation
650 West Peachtree Street NW
Atlanta, Georgia 30308

Purchaser:

Chief of Real Estate
New Jersey Transit Corporation
One Penn Plaza East,
Newark, NJ 07105

With copies to:

Howard D. McFadden
Senior General Attorney - Real Estate
Norfolk Southern Corporation
650 West Peachtree Street NW
Atlanta, GA 30308

General Counsel
New Jersey Transit Corporation
One Penn Plaza East, 9th Floor
Newark, NJ 07105

15. **Miscellaneous Provisions.**

- (a) This Agreement embodies the entire agreement between the Parties and cannot be varied except by the written agreement of the Parties. No representation, promise, or inducement not included in this Agreement shall be binding upon the Parties hereto.
- (b) All the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of both Parties hereto.
- (c) This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
- (d) This Agreement shall not be effective or binding until fully executed by the Parties hereto.
- (e) Any provision of this Agreement that imposes an obligation after termination or expiration of the Agreement, including without limitation all indemnifications and releases, will survive closing.
- (f) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- (g) Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

- (h) The Parties agree that this Agreement may be transmitted between them by facsimile machine or electronic mail. The Parties intend that faxed or scanned signatures shall constitute original signatures and that a faxed or electronically mailed agreement containing the signatures (faxed or scanned) of all the Parties is binding on the Parties.
- (i) This Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which shall comprise one and the same Agreement.
- (j) All potential liability of NJ TRANSIT hereunder will be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. No covenant, representation or obligation of NJ TRANSIT will be deemed or construed to create or constitute a debt, liability, loan or pledge to the credit of the State of New Jersey.

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EXECUTED in duplicate, each part being an original, as of the day and year set forth above.

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
[NS SIGNATORY]
[NS SIGNATORY TITLE]

NEW JERSEY TRANSIT CORPORATION

By: _____

Acting Senior Vice President, Chief Financial Officer, and
Treasurer

(Recording Data)

This instrument was prepared by:

Ryan Hankins
Norfolk Southern Corporation
650 West Peachtree St., NW
Atlanta, Georgia 30308

QUITCLAIM DEED

THIS DEED, made the ____ day of _____, 2023, between the undersigned, **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, successor by merger to Pennsylvania Lines, LLC, with an address of record being 650 West Peachtree Street NW, Atlanta, GA 30308, hereinafter referred to as “Grantor”, and **NEW JERSEY TRANSIT CORPORATION**, an instrumentality of the State of New Jersey, with an address of record being One Penn Plaza East, Newark, NJ 07105, hereinafter referred to as “Grantee”.

WITNESSETH, that said Grantor, for and in consideration of the sum of XXX (\$XXX) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, sell, remise, release and forever quitclaim all of the right, title, interest and claim of Grantor in or to that certain real property underlying that railroad corridor, between Milepost 48.1 and Milepost 57.25 located in the counties of Morris and Warren, New Jersey, as is fully described and depicted on Exhibit “A”, attached hereto and thereby made a part hereof.

SUBJECT, however, to such easements, reservations, conditions, licenses, leases and restrictions, whether or not of record.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

EXCEPTING AND RESERVING unto Grantor, its successors, and assigns and affiliates, a permanent, perpetual, exclusive, transferable, assignable and irrevocable retained

freight service easement in the property described on Exhibit A to physically serve, with its own crews and locomotives, or the crews and locomotives of its owners, affiliates, transferees or assigns, present and future rail customers with access to the property described on Exhibit A, provide overhead freight service to other portions of Grantor's rail systems or to the rail systems of connecting freight railroads and temporary detour or emergency overhead rail operations. Grantee acknowledges Grantor's retained rights, and Grantee neither has nor will have any right to serve present and future shippers and will make no attempt to construct additional sidings to serve such shippers for its own account or to circumvent this Deed by other means, directly or indirectly. Grantor's right to operate on the Purchased Premises is subject to the Operating Agreement between Grantor and Grantee for the Washington Secondary Track, dated _____. Grantor's rights hereunder shall terminate upon consummation of any necessary authorization from the Surface Transportation Board or any successor agency to abandon or discontinue such service.

FURTHER EXCEPTING AND RESERVING unto Grantor, its successors, assigns and affiliates, a non-exclusive easement for the maintenance, utilization, repair and replacement (including but not limited to ingress and egress) of one (1) existing signboard for outdoor advertising purposes only located in Mt. Olive Township (Morris County), NJ) and described as follows: two (14x48) Paint Bulletin static sign faces erected on one monopole located on the West Side of I-80, West of Route 46 in the area depicted on Exhibit __ attached hereto, under a License Agreement between Grantor and Right Angle Media, Inc., 16 Scott Drive, Churchville, PA 18966-1393 ("RAM") and BESKO Media P.O. Box 280, Hamlin, PA 18427, dated April 1, 2016 until expiration or termination of said agreement. Any use and enjoyment of the signboard by Grantor, its successors, assigns and affiliates shall be subject to the provisions of Grantee's Guidelines for

Working Within Or In Vicinity of NJ TRANSIT's Right-of-Way which are then in effect as well as the Signboard Agreement between Grantor and Grantee effective as of the closing of title to the Property. Grantor shall give the Grantee twenty-one (21) days prior written notice before entering upon the Property to exercise the signboard reservation set forth herein. Any Grantor contractor, consultant or other third-party requesting entry in, on or below the area depicted on Exhibit ____ will be required to execute and deliver a then current Grantee Temporary Access Permit ("TAP") to Enter prior to entry on such property.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto Grantee, its successors and assigns, forever so neither the said Grantor, nor its successors and assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

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IN WITNESS WHEREOF, Norfolk Southern Railway Company has caused these presents to be executed, and its corporate seal to be hereunto affixed and attested, by its officers thereunto duly authorized, this ____ day of _____, 2023.

L. S. ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY, a
Virginia corporation

By:

Assistant Corporate Secretary

Title:

STATE OF GEORGIA

COUNTY OF

I, _____, a Notary Public in and for the above State and County, hereby certify that _____, whose name as _____, _____ of Norfolk Southern Railway Company, a Virginia corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal this ____ day of _____, 2023.

Notary Public

My commission expires:

FIRST AMENDMENT TO THE TRACKAGE RIGHTS AGREEMENT

Among
DOVER AND DELAWARE RIVER RAILROAD, LLC
And
NEW JERSEY TRANSIT CORPORATION
And
NORFOLK SOUTHERN RAILWAY COMPANY

THIS FIRST AMENDMENT TO THE TRACKAGE RIGHTS AGREEMENT by and among DOVER & DELAWARE RIVER RAILROAD, LLC, (hereinafter referred to as “DDRR”) and NEW JERSEY TRANSIT CORPORATION, an instrumentality of the State of New Jersey (“NJ TRANSIT”). NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter referred to as “NSR”) (DDRR, NJ TRANSIT and NSR hereinafter referred to individually as a “Party” and collectively as the “Parties”).

WHEREAS, the Parties entered into a Trackage Rights Agreement, effective March 1, 2019 (“2019 Agreement”) for the Washington Secondary Track, a line of rail located between Milepost 48.1 in Netcong, New Jersey and Milepost 58.0 in Hackettstown, New Jersey; and

WHEREAS, NJ TRANSIT will be acquiring ownership of a portion of the Washington Secondary Track between Milepost 48.1 and 57.25 (“Rail Property”); and

WHEREAS, after purchase of the Rail Property by NJ TRANSIT, NSR will retain an exclusive, perpetual, and irrevocable easement over the Rail Property for the provision of freight rail service; and

WHEREAS, NSR will retain ownership of the remaining portions of the Washington Secondary Track; and

WHEREAS, the DDRR maintains freight operating rights over the Washington Secondary Track pursuant to the 2019 Agreement; and

WHEREAS, the Parties wish to amend the 2019 Agreement to acknowledge NJ TRANSIT’s purchase of the Rail Property and to amend the Subject Trackage;

NOW THEREFORE, NS, DDRR, and NJ TRANSIT, intending to be legally bound, and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby amend the 2019 Agreement as follows:

1. The above recitals are hereby incorporated into this Agreement as if set forth in their entirety.
2. Except as otherwise provided herein, all terms, covenants, and conditions of the 2019 Agreement remain in full force and effect except as modified herein.

3. The term of this First Amendment to the Trackage Rights Agreement shall commence upon closing of title to the Rail Property (the “Effective Date”) and shall continue until the Termination Date of the 2019 Agreement as set forth therein.
4. The following language from Section 1.2 of the 2019 Agreement is hereby deleted:

“...provided, however, that this Section 1.2 does not apply to the Washington Secondary (“WASS”) as described in Exhibit A.”
5. The Subject Trackage for the Morristown Line only set forth in **Exhibit A** to the 2019 Agreement shall be deleted and amended as follows:

MORRISTOWN LINE

Newark Broad Street to
Hackettstown

MP 7.8 – 57.25

The references to Gladstone and Montclair will remain the same.

6. The Parties acknowledge that a portion of NJ TRANSIT’s Positive Train Control system (“PTC”) remains active and in service on a portion of the Washington Secondary owned by NS between MP 57.25 and MP 58.0 (the “Remainder”). The Parties agree that upon the Effective Date of this Agreement, NJ TRANSIT will use commercially reasonable efforts to remove all PTC equipment on the Remainder (including approval of same by the Federal Railroad Administration). The Parties agree that NJ TRANSIT will continue to provide dispatching and PTC services for the Remainder until such time as the PTC equipment is fully removed from the Remainder. At such time, the Parties will confer to arrange for the orderly transfer of dispatching (consistent with current practice) of the Remainder from NJ TRANSIT to NS or DDDR. NJ TRANSIT shall solely bear all costs and expenses associated with the removal of all PTC equipment and transfer of dispatching.

NJ TRANSIT will not interfere with or in any way impair NS’ or DDDR’s ability to provide freight rail service or fulfill NS’ or DDDR’s common carrier obligations on the Remainder.

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IN WITNESS WHEREOF, NS, NJ TRANSIT and DDDR by and through their authorized representatives, hereby cause this First Amendment to the Trackage Rights Agreement to be executed as of the date first set forth above.

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

Randall Hunt
Director of Joint Facilities

WITNESS:

DOVER & DELAWARE RIVER RAILROAD,
LLC

Kean Burenga
President

WITNESS:

NEW JERSEY TRANSIT CORPORATION
through its subsidiary New Jersey Transit Rail
Operations, Inc.

James A. Sincaglia
Senior Vice President and General Manager
NJ TRANSIT Rail Operations, Inc.

This Agreement has been Approved as to legal form only
For NJ TRANSIT CORPORATION

By:

Suzanne L. Silverman, Esq.
Kaplan Kirsch & Rockwell L.L.P.

**Before the
Surface Transportation Board**

Finance Docket No. FD 36676

**NEW JERSEY TRANSIT CORPORATION
- ACQUISITION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY
IN THE COUNTIES OF MORRIS AND WARREN, NEW JERSEY**

CAPTION SUMMARY

The New Jersey Transit Corporation (“NJ TRANSIT”) has filed a Notice of Exemption to acquire from the Norfolk Southern Railway Company (“NSR”) a portion of the property commonly known as the “Washington Secondary” in the counties of Morris and Essex, New Jersey, from M.P. 48.1 to M.P. 57.25 (the “Line”). NJ TRANSIT will acquire the real property and railroad fixtures associated with the Line. NSR will retain an exclusive operating easement to continue to provide freight service over the Line. Because NJ TRANSIT is an instrumentality of the State of New Jersey with legal authority only to provide mass transportation services and will not acquire either rights or obligations that implicate in any way the freight common carrier operations that remain attached to the Line, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, NJ TRANSIT is simultaneously filing a Motion to Dismiss this Notice of Exemption.

Comments must be filed with the Board and served on Charles A. Spitulnik and Ayelet Hirschhorn, Kaplan Kirsch & Rockwell LLP, 450 7th Avenue, Suite 1401, New York, NY 10123, (646) 883-5110.

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.