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March 5, 2003

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VIA HAND DELIVERY

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

207352

Re: Finance Docket No. 34293, Metro-North Commuter Railroad Company – Sublease and Operation Exemption – Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC

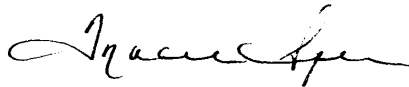
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Motion of Metro-North Commuter Railroad Company to Dismiss the Notice of Exemption**.

Pursuant to 49 C.F.R. § 1002.2(e)(1), Metro-North respectfully requests a waiver of the \$1,300 filing fee submitted by Metro-North in connection with the Verified Notice of Exemption filed in the above-captioned proceeding. As explained in the Motion to Dismiss, Metro-North is a state government entity dedicated to providing passenger rail service to commuters. Metro-North filed the Notice of Exemption at issue in furtherance of this public purpose and is filing the Motion to Dismiss in order to obtain a jurisdictional determination that it is not subject to Board jurisdiction. The benefits from participation in this proceeding will flow to the general public. Therefore, Metro-North believes that it is entitled to a waiver and refund of the filing fee pursuant to 49 C.F.R. § 1002.2(e)(1).

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,



Tracie D. Spear
Attorney for Metro-North Commuter
Railroad Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34293

METRO-NORTH COMMUTER RAILROAD COMPANY
-- SUBLEASE AND OPERATION EXEMPTION --
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY AND
PENNSYLVANIA LINES LLC

**MOTION OF METRO-NORTH COMMUTER RAILROAD COMPANY
TO DISMISS NOTICE OF EXEMPTION**

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**ATTORNEYS FOR METRO-NORTH
COMMUTER RAILROAD COMPANY**

Dated: March 5, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34293

METRO-NORTH COMMUTER RAILROAD COMPANY
-- SUBLEASE AND OPERATION EXEMPTION --
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY AND
PENNSYLVANIA LINES LLC

**MOTION OF METRO-NORTH COMMUTER RAILROAD COMPANY
TO DISMISS NOTICE OF EXEMPTION**

I. INTRODUCTION

Pursuant to a Sublease and a separate Operations Agreement¹ entered into by and between Metro-North Commuter Railroad Company ("Metro-North"), Pennsylvania Lines LLC ("PRR") and Norfolk Southern Railway Company ("NSR"),² Metro-North is subleasing and operating rail passenger service on a line of railroad currently owned by PRR and leased by NSR. Metro-North is subleasing the following segments of rail line: 1) between approximately Milepost JS-31.3 at Suffern, NY and approximately Milepost JS-76.6 at CP-Howells, NY; and 2) between approximately Milepost SR-68.7 (JS-76.6) at CP-Howells, NY and approximately Milepost SR-89.9 at Port Jervis, NY (the "Subject Line").³ The Subject Line extends for approximately 66.5 route miles and traverses

¹ A copy of the Sublease is attached hereto as Exhibit A. A copy of the Operations Agreement is attached hereto as Exhibit B.

² PRR is a party to the Sublease and the Operations Agreement only for purposes of those provisions in which it assumes stated obligations or reserves certain rights.

³ The Subject Line is a continuous line of railroad between Suffern and Port Jervis, NY that is sometimes referred to as the Port Jervis Line.

Orange and Rockland Counties in the State of New York. NSR has retained the exclusive, irrevocable and perpetual right to provide rail freight service on the Subject Line.

On February 21, 2003, Metro-North filed a Notice of Exemption (the "Notice") pursuant to 49 C.F.R. Section 1150.31, et seq. to sublease and operate the Subject Line. The Notice of Exemption became effective on February 28, 2003 and the parties consummated the transaction as of that date. Metro-North hereby moves the Surface Transportation Board (the "STB" or "Board") to dismiss the Notice. Metro-North submits that because of the nature and terms of the proposed transaction as described in the Notice and this Motion to Dismiss and as set forth in the Sublease and the Operations Agreement attached hereto, this transaction is not subject to Board jurisdiction and consummation of the transaction did not make Metro-North a rail carrier as a result of its sublease of the Subject Line.⁴

II. STATEMENT OF FACTS

Metro-North is a public benefit corporation of the State of New York. Metro-North was founded in 1983, at the time Metropolitan Transportation Authority ("MTA") assumed control of Consolidated Rail Corporation ("Conrail") rail passenger operations in the States of New York and Connecticut.

Metro-North provides mass transportation for commuters in seven counties in New York as well as in two counties in Connecticut. Since implementation of the Northeast Rail Services Act, and prior to the consummation of the Sublease, Metro-

⁴ Metro-North is not a carrier subject to STB jurisdiction as a result of its rail passenger operations because it is a local governmental authority that provides mass transportation. See 49 U.S.C. § 10501(c).

North provided rail passenger service over the Subject Line under a Trackage Rights Agreement among, inter alia, Metro-North, MTA and Conrail, dated January 1, 1983 ("1983 Trackage Rights Agreement").⁵ The 1983 Trackage Rights Agreement would have expired by its terms on December 31, 1997, but was extended under two renewal agreements. The Sublease and the Operations Agreement replaced the 1983 Trackage Rights Agreement.

Pursuant to the Sublease and the Operations Agreement, Metro-North is subleasing the Subject Line from NSR. See Sublease, Article 1(a)(i). NSR has retained "the sole, exclusive, perpetual, assignable, transferable, licensable, divisible and irrevocable right to provide, perform or permit rail freight service on and over the [Subject Line], including but not limited to rail overhead movements of freight, and local freight service to past, current and future freight service customers located on, adjacent to or near the [Subject Line]...." Sublease, Article 1(b)(i). Metro-North acquired the right to continue to operate rail passenger service on the Subject Line, but did not acquire the right to operate (or authorize any third party to operate) rail freight service of any kind on the Subject Line. See Operations Agreement, Article 2(c).

⁵ Norfolk Southern Corporation ("NSC"), parent to NSR, entered into a Transaction Agreement (the "Conrail Transaction Agreement") among NSC and CSX Transportation, Inc. ("CSXT"), a wholly-owned subsidiary of CSX Corporation ("CSX"); NSR; Conrail Inc. ("CRR"); Conrail, a wholly-owned subsidiary of CRR; and CRR Holdings LLC, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR. STB Finance Docket No. 33388, CSX Transportation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - - Control and Operating Leases/Agreements - - Conrail, Inc. and Consolidated Rail Corporation, (STB served July 23, 1998). Pursuant to the Conrail Transaction Agreement, certain Conrail assets, including the Subject Line, were allocated to PRR, a wholly-owned subsidiary of Conrail. These Conrail assets are leased and operated by NSR under the terms of an allocated assets operating agreement between PRR and NSR, effective as of June 1, 1999.

Metro-North had dispatching responsibility for the Subject Line under the 1983 Trackage Rights Agreement. Under the Operations Agreement, Metro-North will continue to be responsible for dispatching passenger and freight trains over the Subject Line. See Operations Agreement, Article 5(c)(ii)(A). NSR has contractual remedies if freight trains are not dispatched in accordance with the Operations Agreement.

Pursuant to the Operations Agreement, Metro-North's rail passenger operations on the Subject Line must not materially interfere with NSR's rail freight operations and its access to shippers and receivers. See Operations Agreement, Article 5(c)(iv)(B). Metro-North's operation of the Subject Line must be coordinated with NSR and the Subject Line's dispatchers. See Operations Agreement, Article 5(c)(iv)(A).

Metro-North passenger trains will have priority over NSR freight trains during the morning and evening "peak" operating periods for rail passenger service. See Operations Agreement, Article 5(c)(iv)(A). NSR has the right to run freight trains during those periods, subject to Metro-North's operating priority. Weekends and holidays (as listed in the Metro-North timetable, as amended from time to time) are considered off-peak periods. See Operations Agreement, Article 5(c)(iv)(B). Metro-North maintenance and other activities on the Subject Line during the period between the end of the evening peak period and the beginning of the morning peak period must not materially interfere with NSR's rail freight operations. See Operations Agreement, Article 5(j)(iv)(B).

Metro-North will not be permitted to admit third parties to operate rail freight service or rail passenger service on the Subject Line, except for contractors providing Metro-North's rail passenger service. See Operations Agreement, Article 2(c). NSR

has retained the exclusive right to grant trackage rights, haulage or any other access rights over the Subject Line to third parties for rail freight service. See Operations Agreement, Article 1(b)(ii).

Pursuant to Article 5(a)(ii) of the Operations Agreement, Metro-North will be responsible for all maintenance on the Subject Line. The Operations Agreement stipulates minimum Federal Railroad Administration ("FRA") standards to which Metro-North must maintain each segment of the Subject Line. NSR has contractual rights to ensure that the Subject Line is properly maintained.

Metro-North will be responsible for all inspections of the Subject Line, including inspections of all connecting tracks maintained by Metro-North. See Operations Agreement, Article 5(b)(i). Such inspections include those mandated by the FRA. Metro-North must provide NSR with a copy of all track and inspection vehicle reports. See Operations Agreement, Article 5(b)(ii). NSR will retain the right to enter the Subject Line to conduct inspections of the Subject Line for any business purpose. See Operations Agreement, Article 5(b)(ii). Metro-North must promptly correct any defects that place the Subject Line below the maintenance standards required by the Operations Agreement. See Operations Agreement, Article 5(b)(iii).

Pursuant to Article 5(j) of the Operations Agreement, Metro-North must coordinate the planning and design of capital improvements to the Subject Line with NSR to ensure that such improvements comply with clearance requirements and other applicable standards. See Operations Agreement, Article 5(j)(i)(A). The Operations Agreement also stipulates that upon written request by NSR, Metro-North "shall promptly install, replace or restore Connecting Tracks...needed to initiate, reinstitute or

continue service to any shipper or receiver of freight along the [Subject Line], at NSR's expense...." Operations Agreement, Article 5(j)(viii)(A). If Metro-North does not complete such work within a commercially reasonable time period, NSR may have access to the Subject Line to complete such work. See Operations Agreement, Article 5(j)(viii)(G). NSR has the right to:

inspect and test or sample any materials and may review in advance any maintenance, repair or construction methods to be used during the installation, replacement or restoration of Connecting Track from the [Subject Line] by Metro-North for NSR's use. NSR may reasonably reject any materials (other than material furnished by NSR) or methods that are not substantially in accordance with any Plans or with applicable FRA standards prescribed in this Operations Agreement. In the event of any rejection of materials or methods by NSR, Metro-North shall provide conforming materials and adhere to conforming repair or construction methods.

Operations Agreement, Article 5(j)(viii)(D).

Overall, the Sublease and the Operations Agreement will allow Metro-North to continue operating rail passenger service on the Subject Line. NSR will retain the property and contract rights it requires to continue operating rail freight service on the Subject Line. Although Metro-North will be responsible for dispatching, maintenance and constructing capital improvements on the Subject Line, Metro-North will not have sufficient property or contract rights to materially interfere with NSR's freight operations or NSR's ability to continue to meet its rail common carrier obligations. Metro-North is expressly prohibited from conducting or authorizing any third party to conduct rail freight operations on the Subject Line, and it will not hold itself out as willing or able to do so.

III. ARGUMENT

Under 49 U.S.C. § 10901, the Board has exclusive jurisdiction over the acquisition (including by lease) of a railroad line where common carrier rights and obligations also are being transferred. Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Whether a particular transaction is an acquisition of a railroad line depends on whether the acquiring entity is holding itself out to provide common carrier rail service and has the ability to provide common carrier rail service. Status of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973). This is an objective test; the Board (like the former Interstate Commerce Commission ("ICC")) looks at what the acquiring entity will do as opposed to how it labels itself. Los Angeles County Transportation Commission - Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374 (STB served July 23, 1996) ("LACTC/UP") at 5; see United States v. California, 297 U.S. 175, 181 (1936).

Subtitle IV of Title 49 defines "railroad" to include "... the road used by a rail carrier and owned by it or operated under an agreement" 49 U.S.C. § 10102(6)(B). It defines "rail carrier" as a "person providing common carrier railroad transportation for compensation" 49 U.S.C. § 10102(5). The typical acquisition of a railroad line includes the conveyance of a property interest sufficient to permit the buyer to provide (or at least control) railroad transportation for compensation, and that interest forms the basis of the Board's jurisdiction over the transaction and the buyer. However, the Board (and the former ICC) have consistently recognized that under certain circumstances the acquisition of the physical assets of a rail line is not subject to

STB/ICC jurisdiction and does not make the buyer a rail carrier. Such precedent is applicable to and should govern the transaction proposed here.

In State of Maine, Department of Transportation -- Acquisition and Operation Exemption -- Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) ("State of Maine"), the State of Maine, acting by and through its Department of Transportation ("MDOT"), sought an exemption to acquire certain railroad right-of-way and trackage from Maine Central Railroad Company ("MEC"), subject to MEC's retained easement for common carrier railroad operations. MDOT acquired the line for possible establishment of passenger rail service using the acquired assets. MEC's retained easement included access rights for maintenance and renewal of the line and was permanent. As a result, MDOT's acquisition of the line's underlying physical assets did not impair freight railroad operations. The ICC found that no common carrier rights or obligations were transferred to MDOT, because nothing in the transaction disabled MEC's affiliate and lessee, Springfield Terminal Railroad ("STR"), from meeting its common carrier obligation, and STR could not cease to offer service on the line without ICC approval. For these reasons, the ICC saw "no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation." State of Maine, 8 I.C.C.2d at 837.

In LACTC/UP, the Los Angeles County Transportation Commission ("LACTC") acquired and leased certain rail lines from Union Pacific Railroad Company ("UP") for the purpose of establishing commuter rail service in the Los Angeles area. UP retained a freight rail operating easement that gave priority to LACTC's commuter operations in the event of any conflict with freight service. The easement required UP's service to be

conducted in a manner that minimized disruption with all commuter operations and UP's right to conduct competitive or time sensitive service was effective only during periods other than LACTC's scheduled service. LACTC/UP at 3. LACTC was given control of dispatching and maintenance on the line. Nonetheless, the Board found that other provisions of the easement agreement and the low volume of freight traffic on the rail line made it unlikely that freight operations would be unduly affected by the commuter rail priority. Accordingly, the Board held that LACTC's acquisition did not require Board approval. LACTC/UP at 6.

In Sacramento-Placerville Transportation Corridor Joint Powers Authority -- Acquisition Exemption -- Certain Assets of Southern Pacific Transportation Company, Finance Docket No. 33046 (STB served October 28, 1996), the Joint Powers Authority ("JPA") acquired the right-of-way and all improvements on a Southern Pacific ("SP") line segment. SP retained an exclusive and perpetual freight easement over the line. Under the terms of a shared use agreement, JPA was responsible for maintenance, management and dispatching on the shared track encumbered by the easement. SP had the right to monitor dispatching on the shared track, had the right to maintain the shared track if JPA failed to maintain it at FRA Class I standards, and was responsible for maintenance of track which JPA did not use. The Board ruled that JPA did not acquire carrier status in the transaction because it was unlikely that SP's freight service would be unduly affected. The Board noted that although JPA would control maintenance and dispatching on the shared track, SP's exclusive freight operating windows were of ample frequency and duration for SP to meet its common carrier obligations. The Board also noted that JPA had no power to require SP to discontinue

or curtail freight service on the line. Accordingly, the Board held that JPA's acquisition was not subject to STB jurisdiction.

In Utah Transit Authority -- Acquisition Exemption -- Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC decided December 23, 1992), UTA sought an exemption and simultaneously filed a motion to dismiss the notice of exemption for acquisition of UP's right-of-way so that UTA could construct and operate light rail service.⁶ Pursuant to the transaction, UTA and the Freight Operator would share the right-of-way that UTA was to acquire. UTA and the Freight Operator would each conduct their own operations.

Pursuant to an Administration and Coordination Agreement, the Freight Operator would have the exclusive right to conduct freight service over the line. In addition, the Freight Operator would be responsible for maintenance and repair of trackage dedicated to freight service and UTA would be responsible for maintenance of trackage dedicated to passenger service. After the commencement of passenger operations, UTA would be responsible for maintenance of the shared trackage, subject to the Freight Operator's right to maintain the trackage if UTA failed to maintain it to at least current standards. Operations on the shared trackage would be divided into two periods - a passenger service preference period and a freight service preference period.

The ICC granted UTA's motion to dismiss the notice of exemption. The ICC concluded that the transaction did not impose restrictions that would prevent the freight rail carrier from fulfilling its common carrier obligation. Instead, UP would "retain and

⁶ UP's retained permanent easement was transferred to another railroad (the "Freight Operator").

convey ... a permanent easement for common carrier freight operations, including the right to operate freight trains and all contracts, agreements, permits, licenses and easements relating thereto.” Also, the Freight Operator retained the right to control all activities on the freight trackage. Accordingly, the ICC determined that the transaction fell within the ambit of State of Maine and other related cases.

Taken together, State of Maine and subsequent cases establish that a non-carrier may acquire the physical assets of a rail line without becoming a carrier, provided that another entity retains sufficient interest to operate as a carrier on the line and has autonomy to conduct carrier operations. Stated somewhat differently, if an acquisition of a rail line and trackage is subject to the existing operating interests of a common carrier and the acquiring entity does not control the carrier's operations, the acquiring entity is not a carrier subject to Board jurisdiction.

Like the transaction in the State of Maine case and the other cases discussed above, the transaction between Metro-North and NSR includes several important features. Although Metro-North will acquire a sublease over the Subject Line, Metro-North will not acquire the property and contractual rights necessary to conduct or control common carrier rail freight operations on the Subject Line. Metro-North will operate rail passenger service over the Subject Line, but will not be allowed to use the Subject Line to provide or permit rail freight service of any kind. NSR will retain the exclusive, irrevocable and perpetual right to provide or permit rail freight service on the Subject Line. Metro-North will not be permitted to admit third parties to operate rail freight service or rail passenger service on the Subject Line, except for contractors providing Metro-North's rail passenger service. With respect to freight operations on

the Subject Line, only NSR will have the right to grant access rights to third parties for rail freight service.

Metro-North will be responsible for maintenance and dispatching on the Subject Line. However, the Sublease and Operations Agreement contains adequate safeguards to ensure that Metro-North's maintenance and dispatching obligations do not interfere with NSR's ability to provide rail freight service. Metro-North must maintain the Subject Line at all times to maintain the infrastructure of the Subject Line to the requisite minimum FRA standards. NSR has rights to ensure that the Subject Line is properly maintained, including the right to notify Metro-North if its connecting tracks are not being properly maintained, in which case Metro-North must either promptly correct the deficiency or meet with NSR to discuss performance at the proper maintenance level. If the parties are unable to reach agreement, the dispute may be resolved by arbitration. NSR has similar contractual remedies with respect to dispatching.

The Sublease and the Operations Agreement require Metro-North to assume responsibility for all governmentally-required inspections of the Subject Line. NSR also has the right to inspect the Subject Line for any business purpose. Under the Operations Agreement, Metro-North must coordinate the design and construction of capital improvements to the Subject Line with NSR. NSR may request that Metro-North make capital improvements to connecting tracks and if Metro-North does not complete such work in a commercially reasonable time period, NSR may have access to the Subject Line to complete such work.

In summary, Metro-North's sublease of the Subject Line did not constitute an acquisition of a railroad line subject to the Board's jurisdiction because Metro-North

does not have the right to conduct (or authorize third parties to conduct) rail freight service thereon, does not have the property or contract rights to materially interfere with NSR rail freight service and will not hold itself out as willing or able to provide rail freight service on the Subject Line.

V. CONCLUSION

For the reasons set forth above, Metro-North respectfully requests that the Board dismiss its Notice of Exemption filed herein for lack of jurisdiction.

Respectfully submitted,

By: 
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**ATTORNEYS FOR METRO-NORTH COMMUTER
RAILROAD COMPANY**

Dated: March 5, 2003

LIST OF EXHIBITS

EXHIBIT A	Sublease
EXHIBIT B	Operations Agreement

Exhibit A to Motion to Dismiss

**EXHIBIT A TO OPERATIONS AGREEMENT BY AND BETWEEN METRO NORTH
COMMUTER RAILROAD COMPANY, NORFOLK SOUTHERN RAILWAY COMPANY AND
PENNSYLVANIA LINES LLC EFFECTIVE AS OF FEBRUARY 28, 2003**

SUBLEASE

By and Between

METRO NORTH COMMUTER RAILROAD COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY

and PENNSYLVANIA LINES LLC

With Respect to Line of Railroad Between Suffern, NY and Port Jervis, NY

EFFECTIVE February 28, 2003

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SUBLEASE

THIS SUBLEASE ("Sublease") is made as of this 28th day of February, 2003, by and between **METRO NORTH COMMUTER RAILROAD COMPANY** ("**METRO-NORTH**"), a body corporate and politic of the State of New York, AND **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation ("**NSR**") and **PENNSYLVANIA LINES LLC**, a Delaware limited liability company ("**PRR**").

RECITALS

WITNESSETH:

WHEREAS, METRO-NORTH is a public benefit corporation and a subsidiary and agency of Metropolitan Transportation Authority ("MTA"), a body corporate and politic of the State of New York and a public benefit corporation;

WHEREAS, METRO-NORTH enters this Sublease and an Operations and Maintenance Agreement of even date and term ("Operations Agreement") for transportation purposes, in order to secure access to transportation facilities now or in the future to further and carry out its public purposes;

WHEREAS, from April 1, 1976 until June 1, 1999, Consolidated Rail Corporation ("Conrail") held title to and operated a line of railroad known as either the Southern Tier Line (L.C. 6102/6103) or the Port Jervis Line, which Conrail acquired under the Final System Plan for reorganization of the bankrupt northeastern and midwestern railroads, submitted to Congress on July 26, 1975 ("Final System Plan");

WHEREAS, a portion of the Southern Tier Line or Port Jervis Line approximately 66.5 miles in length, which is located between Milepost JS-31.3 at Suffern, NY and Milepost JS-76.6 at CP-Howells, NY and Milepost SR-68.7 (equals JS-76.6) at CP-Howells, NY and Milepost SR-89.9 at Port Jervis, NY (hereinafter referred to, together with fixtures, appurtenances, support facilities and other associated, adjacent property used in support of or access to that line of railroad, as the "Line") is the subject of this Sublease and the Operations Agreement;

WHEREAS, since the implementation of the Northeast Rail Services Act ("NERSA"), METRO-NORTH has provided commuter rail passenger service over the Line under a "Trackage Rights Agreement Between Metro North Commuter Railroad Company, Metropolitan Transportation Authority, Connecticut Department of Transportation and Consolidated Rail Corporation, effective as of January 1, 1983" ("1983 Trackage Rights Agreement");

WHEREAS, METRO-NORTH's commuter rail passenger operations over

the Line are currently performed under contract by New Jersey Transit Corporation's railroad subsidiary, New Jersey Transit Rail Operations, Inc. ("NJTRO");

WHEREAS, Conrail retained exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable easements for freight operations over certain rail properties conveyed to MTA, and now operated by METRO-NORTH, pursuant to the provisions of NERSA and a Transfer Agreement between Conrail and MTA, dated as of September 1, 1982 (the "1982 Transfer Agreement"), and through reservations in the deeds from Conrail to MTA pursuant to the 1982 Transfer Agreement;

WHEREAS, Norfolk Southern Corporation ("NSC"), parent to NSR, entered into a Transaction Agreement (the "Conrail Transaction Agreement") among NSC; NSR; CSX Corporation ("CSX"); CSX Transportation, Inc. ("CSXT"), a wholly-owned subsidiary of CSX; Conrail Inc. ("CRR"); Conrail, a wholly-owned subsidiary of CRR; and CRR Holdings LLC, dated June 10, 1997, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR;

WHEREAS, the Conrail Transaction Agreement was approved by the Surface Transportation Board ("STB") in a decision served July 23, 1998 in STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation*, and the transaction was closed and became effective June 1, 1999;

WHEREAS, pursuant to the Conrail Transaction Agreement, certain Conrail assets, including Conrail's interest in the Line, were allocated to PRR, a wholly-owned subsidiary of Conrail;

WHEREAS, pursuant to the Conrail Transaction Agreement, PRR's assets, in turn, were leased to and are operated by NSR under the terms of an allocated assets operating agreement between PRR and NSR (the "NSR Operating Agreement") with an original term of twenty-five (25) years from the effective date of June 1, 1999, and two optional renewal terms of five (5) years each;

WHEREAS, Conrail, as the owner and operator of the Line until May 31, 1999, and NSR as lessee of PRR and operator of the Line since PRR acquired the Line from Conrail on June 1, 1999, have continuously and exclusively provided, performed or permitted rail freight service over the Line under Conrail's rail freight operating rights as owner of the Line, and related law and agreements, during the entire period of METRO-NORTH's use of the Line for commuter rail passenger service under the 1983 Trackage Rights Agreement;

WHEREAS, the Conrail Transaction Agreement, in relevant part, permits NSR to enter into various transactions with regard to the assets so allocated,

which include the Line;

WHEREAS, the 1983 Trackage Rights Agreement expired by its terms on December 31, 1997, was extended under an agreement that has subsequently expired, has been continued on a year to year basis pursuant to a holdover provision, and is the subject of a letter from NSR to METRO-NORTH dated April 25, 2002 in which NSR exercises certain termination rights;

WHEREAS, the 1983 Trackage Rights Agreement provides for the prompt negotiation of a new agreement upon termination of that agreement but does not require a specific form of replacement agreement;

WHEREAS, under the Conrail Transaction Agreement, all of the other Conrail railroad lines or operations included in the 1983 Trackage Rights Agreements, including all of the lines owned or operated by the Connecticut Department of Transportation ("CDOT"), have been allocated to or for the use of New York Central Lines LLC ("NYC"), also a wholly-owned subsidiary of Conrail, and are leased to and operated by CSXT under the terms of an allocated assets operating agreement (the "CSXT Operating Agreement") between NYC and CSXT;

WHEREAS, METRO-NORTH and NSR desire to continue their respective operations over the Line by replacing the 1983 Trackage Rights Agreement with replacement agreements that do not include the several NYC-allocated properties and related terms and do not include CDOT as a party, but permit METRO-NORTH to continue to provide rail passenger service over the Line, and to have an interest sufficient in quality and duration to assure METRO-NORTH of its ability to operate over, manage, supervise, direct, maintain, improve and control the Line to the extent required for its rail passenger service, without materially interfering with NSR's continued exclusive rail freight operating rights;

WHEREAS, in recognition of their respective current levels of use of the Line, METRO-NORTH and NSR desire to enter into replacement agreements as contemplated in the 1983 Trackage Rights Agreement in the form of this Sublease of the Line by NSR to METRO-NORTH and the Operations Agreement, that will permit each party to continue operations over and maintenance and improvement of the Line as appears most efficient, economical and reasonable according to the level of their current use of and interests in the Line;

WHEREAS, upon entering into this Sublease and the Operations Agreement, NSR, as PRR's lessee and operator of the Line, will continue to retain for itself and its successors and assigns, including but not limited to PRR, exclusive, perpetual, assignable, transferable, licensable, divisible and irrevocable rail freight operating rights to provide, perform or permit rail freight service over the Line by (a) itself and its subsidiaries and affiliates, and their successors and assigns, including PRR, and (b) trackage rights licensees, tenants or permittees (hereinafter collectively referred to as "NSR Operating

Licensees");

WHEREAS, PRR consents to NSR's sublease of the Line to METRO-NORTH and to the other terms of this Sublease and the Operations Agreement, agrees to certain other terms directly applicable to PRR and is a party to this Sublease and the Operations Agreement only for those limited purposes;

WHEREAS, the NSR Operating Agreement may expire or terminate before the end of the simultaneous terms of this Sublease and the Operations Agreement, but PRR is willing to lease the Line to METRO-NORTH for the remainder of the simultaneous terms of this Sublease and the Operations Agreement, subject to all of their terms and conditions, upon expiration or termination of the NSR Operating Agreement;

WHEREAS, METRO-NORTH does not require MTA's consent to enter into this Sublease or the Operations Agreement and has full legal and corporate authority and capability to perform all its duties, obligations and undertakings hereunder;

WHEREAS, in the event of a threat by METRO-NORTH to condemn the ownership interest in the Line, in order to avoid possible controversy or the threat and costs of litigation, the parties are willing to provide a mechanism for determining the price and have specified certain other terms that the parties will require in the event of a future sale of the Line to METRO-NORTH;

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable considerations set forth herein, METRO-NORTH, NSR, and to the extent specifically indicated, PRR, agree as follows:

ARTICLE 1. SUBLEASE.

(a) SUBLEASE OF THE LINE TO METRO-NORTH.

(i) Sublease.

NSR hereby subleases to METRO-NORTH and METRO-NORTH hereby subleases from NSR, effective as of February 28, 2003 (the "Commencement Date"), the line of railroad owned by PRR and leased and operated by NSR that is further described below (the "Line"). In addition to the specific terms and conditions of this Sublease, the use, operation and maintenance of the Line shall be governed by the terms and conditions of the Operations Agreement. Any capitalized terms that are not specifically defined herein shall have the meanings set forth in the Operations Agreement.

(A) Location, Description of the Line. The Line is located between Milepost JS-31.3 at Suffern, NY and Milepost JS-76.6 at CP-Howells, NY and Milepost SR-68.7 (equals JS-76.6) at CP-Howells,

NY and Milepost SR-89.9 at Port Jervis, NY, a distance of approximately 66.5 miles. The Line consists of certain railroad right-of-way, Tracks (including Main-Line Tracks, Ancillary Tracks and Connecting Tracks as defined and to the extent specified in this **Article 1(a)(i)**), and associated, adjacent real property, as further described in **Attachment A**, except to the extent any portion thereof or any rights or usages thereto are specifically reserved to NSR or PRR in this Sublease.

(B) Track Material, Signals, Associated Structures Defined as "Tracks." The term "Tracks," as used by itself or as part of a defined term, shall include without limitation rail, ties, tie plates, spikes, ballast, other track material and any associated bridges, tunnels, culverts, grading, crossing materials, switches, frogs, derails, interlockings, hot box detectors, automatic train control devices, signals (including traffic control signals), signal masts and poles, grade crossing and other warning devices, scanners, other mechanical, electrical or computerized devices and components, and other improvements, facilities, fixtures, devices or structures located thereon or appurtenant thereto.

(C) Line Includes Main-Line Tracks, Ancillary Tracks and Connecting Tracks. The Line includes any and all Tracks, including passing tracks and sidings, that are considered part of the main-line through route between the mileposts specified in **Article 1(a)(i)(A)** ("Main-Line Tracks"). The Line includes any and all Tracks adjacent to the Main-Line Tracks, including without limitation spurs, sidetracks, yard tracks, storage tracks, lead tracks, industrial tracks and other ancillary tracks, that (A) connect to the Main-Line Tracks, (B) are not Reserved Tracks, (C) are not Connecting Tracks, and (D) are listed in **Attachment A-1** ("Ancillary Tracks"). The Line includes all turnouts, crossovers and connections that connect the Main-Line Tracks with Reserved Tracks, but in each case only to the clear point of such turnouts, crossovers and connections (collectively, "Connecting Tracks"). All Connecting Tracks are listed in **Attachment F**. Signals, devices, appurtenances, switches or other Track components on or adjacent to the Line that control or are otherwise required for the operation or use of the Ancillary Tracks or Connecting Tracks are included within the definition of those terms regardless of their location.

(D) Exclusion of Reserved Tracks and Other Property. The Line does not include the Tracks used only by NSR for rail freight operations that connect to the Main-Line Tracks and that are listed in **Attachment B** ("Reserved Tracks"). The Line does not include the outparcels of real estate listed in **Attachment A** that were part of or associated with the right-of-way for abandoned or removed Tracks that were adjacent to or grade separated from the Line. The Line does not include the Port Jervis Yard owned by MTA. The Line does not include material, supplies, personal property, equipment, vehicles, locomotives,

and other rolling stock owned, possessed or in the account of NSR, which may be located on but not affixed to the Line.

(E) Change in Use of Reserved Tracks to Ancillary Tracks.

If the parties agree to joint use of any of the Reserved Tracks, such Reserved Tracks shall become Ancillary Tracks, and the parties shall remove such Reserved Tracks from **Attachment B**, add them to **Attachment A-1**, add any associated structures, fixtures and appurtenances to **Attachment C**, if it has been used for an initial inventory and included these types of structures, fixtures and appurtenances, and change the status of their associated Connecting Tracks in **Attachment F** to joint use.

(F) Possible METRO-NORTH Sublease of Reserved Tracks Designated To Be Permanently Discontinued or Abandoned by NSR.

In the event that NSR intends to permanently discontinue use of, abandon or remove any of the Reserved Tracks, it shall notify METRO-NORTH in writing of its intent to do so and METRO-NORTH shall have the right of first negotiation for thirty (30) days from receipt of such notice to sublease, use and maintain such Reserved Tracks on an exclusive basis. If METRO-NORTH notifies NSR in writing that it wants to sublease, use and maintain such Reserved Tracks, the parties shall negotiate in good faith regarding such sublease, use and maintenance, including any compensation for said sublease and use, and, if they reach agreement within sixty (60) days of METRO-NORTH's notice to NSR, shall remove them from **Attachment B**, add them to **Attachment A-1**, add any associated structures, fixtures and appurtenances to **Attachment C**, if it has been used for an initial inventory and included these types of structures, fixtures and appurtenances, and change the status of associated Connecting Tracks in **Attachment F** to exclusive use by METRO-NORTH.

(G) Possible Addition of Connecting Tracks to Sublease.

Subject to METRO-NORTH's right to review and approve construction plans as set forth in the Operations Agreement, NSR may provide (at its sole cost and expense) for the addition of Connecting Tracks between the Main-Line Tracks, or between the Main-Line Tracks and any new Reserved Tracks constructed by NSR that require any such connection. Such Connecting Tracks shall be added to **Attachment F**.

(ii) Sublease Subject to PRR Title Limitations, Amtrak

Rights, and Reserved Rights.

(A) Limitations, Restrictions and Reserved Rights.

This Sublease is subject to (1) any impediments, limitations or restrictions to PRR's title, whether or not known or disclosed by actual notice in this Sublease or otherwise, (2) any rights that the National Railroad Passenger Corporation ("Amtrak") may have to operate over the Line, and (3) Reserved Freight Operating Rights and Reserved Non-Operating Rights (collectively, "Reserved Rights").

(B) Admission of AMTRAK to Use of the Line.

If either METRO-NORTH or NSR is required by law or NSR's Basic Agreement(s) with Amtrak to admit Amtrak to use the Line, the party that is required to admit Amtrak to use the Line shall not breach this Sublease or the Operations Agreement by allowing Amtrak to so use the Line; provided, however, that neither party shall grant to Amtrak any greater or additional rights than those required by law or applicable Basic Agreement(s) without the other party's consent. If admitted to use the Line, Amtrak shall not be considered the Licensee of either party under this Sublease or the Operations Agreement, but the party admitting Amtrak to use the Line shall arrange for Amtrak to provide the other party to this Sublease and the Operations Agreement (1) the same liability allocation and indemnity protection that it receives from Amtrak, or (2) if the same liability allocation and indemnity protection cannot be granted by law or applicable Basic Agreement(s), the most favorable liability allocation and indemnity protection permitted by law or applicable Basic Agreement(s). To the extent allowed by law or applicable Basic Agreement(s), a party admitting Amtrak to use the Line shall not permit Amtrak to materially interfere with the other party's use of the Line. If either NSR or METRO-NORTH is required to admit Amtrak to use the Line, NSR shall not be required to count Amtrak's car-mile usage of the Line as NSR Car-Mile Usage or to compensate METRO-NORTH in any way for any such Amtrak use of the Line; provided, however, that if NSR is required to admit Amtrak, NSR shall pass on to METRO-NORTH the net amount, after subtraction of reasonable and documented NSR administrative costs and expenses, of any compensation paid by Amtrak to NSR for Amtrak's use of the Line.

(iii) Line Subleased To and Accepted By METRO-NORTH As Is, Where Is; No NSR, PRR Warranties.

NSR subleases the Line to METRO-NORTH in "AS IS, WHERE IS" CONDITION AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES BY NSR OR PRR, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A

PARTICULAR PURPOSE AND WITHOUT ANY RESPONSIBILITY BY NSR OR PRR FOR PATENT OR LATENT DEFECTS. Nothing in the foregoing provision shall limit the parties rights and obligations under Article 6 of the Operations Agreement.

(iv) No NSR, PRR Covenant or Warranty of Quiet Enjoyment.

Nothing herein shall imply or impart a covenant or warranty on the part of NSR, or PRR, for METRO-NORTH's or its contractors', passengers', invitees', licensees', or permittees' quiet enjoyment of the Line.

(v) Notice of Possible Existence of Asbestos or Lead-based Paint.

METRO-NORTH acknowledges that buildings, structures, fixtures, bridges and other facilities on the Line may contain asbestos and/or lead-based paint. METRO-NORTH shall conduct any removal of such asbestos or lead-based paint from any such buildings, structures, fixtures, bridges and other facilities on the Line required by law during the term of this Sublease, at its sole cost and expense and in accordance with all applicable federal, state and local laws; provided, however, that METRO-NORTH shall not be responsible for such removal from buildings, structures, fixtures, bridges and other facilities on the Line used exclusively by NSR, PRR or their Contractors or Licensees.

(vi) Termination of 1983 Trackage Rights Agreement.

Upon the Commencement Date, this Sublease and the Operations Agreement supersede, terminate and replace the 1983 Trackage Rights Agreement. METRO-NORTH disclaims all right to possession or use of the Line under the 1983 Trackage Rights Agreement, or under any other agreement, or upon any basis other than by virtue of this Sublease and the Operations Agreement as of the Commencement Date. Unless otherwise specifically stated in this Sublease or the Operations Agreement, the parties shall remain liable for any costs, demands, claims, liabilities or obligations incurred or accrued under the 1983 Trackage Rights Agreement prior to its termination upon the Commencement Date.

(vii) METRO-NORTH Control of Line on Commencement Date.

METRO-NORTH shall have possession, supervision and control of the Line under this Sublease as of the Commencement Date, in accordance with the terms and conditions of the Operations Agreement.

(viii) Optional Cancellation If Commencement Date Not Met.

If for any reason the Commencement Date for the Sublease and the Operations Agreement cannot occur until after February 28, 2003:

(A) either party may cancel and decline to execute and perform this Sublease and the Operations Agreement, or

(B) the parties shall confirm to each other in writing their continued agreement to this Sublease and the Operations Agreement and their willingness to accept a different Commencement Date, or

(C) either party may advise that it requires certain changes in the Sublease or the Operations Agreement in order to enter into the Sublease and the Operations Agreement with the delayed Commencement Date and the parties shall continue to negotiate in view of the changed circumstances.

(ix) Consequences of Cancellation.

In the event of a cancellation of this Sublease and the Operations Agreement under **Article 1(b)(viii)**, each party shall return all documents and information provided or disclosed during negotiation of this Sublease and the Operations Agreement by the other parties, unless the party to which the documents or information would be returned waives such return in writing, and METRO-NORTH shall promptly pay to NSR the car-mile trackage rights fees or other usage charges that would have applied under the 1983 Trackage Rights Agreement to METRO-NORTH's use of the Line, but have been waived since September 1, 2002, in accordance with **Article 3(a)(ii)** of this Sublease. In the event of any such cancellation of this Sublease and the Operations Agreement, the 1983 Trackage Rights Agreement shall continue in effect, subject to NSR's termination notice in NSR's letter to METRO-NORTH dated April 25, 2002.

(x) STB Submission Date.

In order to meet the deadline for the Commencement Date, METRO-NORTH must seek the necessary STB or other regulatory agency (if any) review, approval, authorization, exemption, order or decision with regard to this Sublease, or the transaction contemplated herein, and the Operations Agreement or the transaction contemplated therein, sufficiently in advance of that date to secure a decision or an exemption that will allow the Commencement Date to occur by February 28, 2003, as further set forth in **Article 2(d)**. The foregoing shall not be construed to require METRO-NORTH to obtain a determination from the STB on its carrier status prior to the aforementioned date. NSR shall fully cooperate with and support any METRO-NORTH's filings with the STB or other regulatory agency (if any) seeking the necessary approval or exemption and any carrier status determination.

(xi) No Consequential, Exemplary or Punitive Damages.

No party to this Sublease shall owe, or be liable to, any other party, its Contractors or Licensees for, consequential, exemplary or punitive damages arising from any breach of this Sublease by itself, its Contractors or its Licensees, including any failure to comply with or fully and satisfactorily perform any of its term or conditions, including but not limited to a failure to timely pay money due to the other party under this Sublease. No party shall seek the award of consequential, punitive or exemplary damages from any other party to this Sublease nor enter into any agreement permitting its Contractors or Licensees to seek such an award. An award of consequential, punitive or exemplary damages shall not be made to a party either in arbitration or litigation brought to obtain a judgment or award for damages, specific performance or other remedies for the breach of, or enforcement of any obligation, duty or responsibility under, this Sublease, including but not limited to the collection of unpaid amounts of money. NSR and METRO-NORTH shall defend, indemnify and hold harmless the METRO-NORTH Indemnified Parties and NSR Indemnified Parties, respectively, from and against any such consequential, punitive or exemplary damage claims by themselves, their parents, subsidiaries or affiliates, or their Contractors or Licensees (except that METRO-NORTH's obligations under this provision shall not extend to any consequential, punitive or exemplary damages claims by METRO-NORTH Licensees under agreements, easements or other rights assigned by NSR to METRO-NORTH pursuant to the Sublease).

(b) NSR RETAINS EXCLUSIVE, IRREVOCABLE RESERVED FREIGHT OPERATING RIGHTS.

(i) NSR Reserved Freight Operating Rights.

NSR, for itself and PRR, and their respective parents, subsidiaries, affiliates and members, and all of their successors and assigns, retains the sole, exclusive, perpetual, assignable, transferable, licensable, divisible and irrevocable right to provide, perform or permit rail freight service over the Line, including but not limited to rail overhead movements of freight, and local freight service to past, current and future freight service customers located on, adjacent to or near the Line or any Reserved Tracks, Ancillary Tracks or other trackage connected with or adjacent to the Line and to operate over the Line for any purpose related to providing such rail freight service, including without limitation the operation over the Line of:

(A) (1) road, (2) local and (3) switching freight trains and car movements,

(B) light engine (locomotive) moves, and movements of

(C) empty cars for (1) storage, (2) repair or (3)

repositioning; provided, however, that no cars (loaded or empty) shall be stored on the Main-Line Tracks;

(D) empty cars hauled as freight by NSR for the account of METRO-NORTH,

(E) company material,

(F) (1) work trains and (2) on track equipment, and

(G) self-propelled work equipment, and to

(H) (1) switch, (2) pickup, (3) deliver, (4) store or (5) service cars or equipment on or over the Line, and to

(I) (1) make up or (2) break up trains on or over the Line.

NSR and NSR Operating Licensees shall exercise the foregoing rights ("Reserved Freight Operating Rights") so as not to materially interfere with METRO-NORTH's rail passenger service operating and related rights under this Sublease and the Operations Agreement.

(ii) Exclusive NSR Right to Grant Trackage Rights for Rail Freight Service, Including Intermodal Freight Service.

NSR, for itself and PRR, retains the sole right to grant trackage rights, haulage, or any other access rights however denominated over the Line for the rail transportation of freight, including but not limited to, movements in overhead, local, switching, contract, private or industrial rail freight service or intermodal freight service, either to its subsidiaries, affiliates, members, partners or any other NSR Operating Licensees, provided that NSR shall be responsible to METRO-NORTH for the compliance of any such NSR Operating Licensees with the terms and conditions of this Sublease and the Operations Agreement. NSR shall provide METRO-NORTH with advance notice of the proposed grant of any such rail freight operating rights, which shall not materially interfere with METRO-NORTH's rail passenger service operating and related rights and use of the Line under this Sublease and the Operations Agreement.

(iii) METRO-NORTH Compensation for NSR Operating Licensee Rail Freight Use of the Line.

NSR shall compensate METRO-NORTH for use of the Line by NSR Operating Licensees in accordance with the NSR Car-Mile Usage Charges set forth in the Operations Agreement.

(c) FIBER OPTICS, CABLE AND COMMUNICATION SYSTEMS,

RADIO STATIONS, SIGNBOARDS AND CERTAIN OTHER RIGHTS AND AGREEMENTS.

(i) NSR and PRR Reservations of Certain Appurtenances, Agreements, Rights and Easements.

(A) NSR, PRR Reservation of Certain Appurtenances, Agreements, Rights and Easements. NSR reserves for itself, PRR and Conrail (but only to the extent specified in **Article 1(c)(i)(B)**), and their respective parents, members, subsidiaries, affiliates, successors, and assigns, for their own use and income (except as specified below), and with the right to convey, license, lease, assign or transfer to each other or their respective designees, lessees, sublessees, licensees or permittees (collectively, "NSR Non-Operating Licensees"):

(1) the existing radio base stations listed on **Attachment D** (the "Radio Base Stations") and any accompanying antennas, poles, towers, receivers, transmitters, power supplies, FCC (VHF) radio licenses, mechanical devices, electrical devices, computerized devices and other components and facilities (collectively, "Radio Base Station Components") used at, or necessary for the use and operation of, the Radio Base Stations. NSR and NSR Non-Operating Licensees retain the responsibility to maintain the Radio Base Stations and Radio Base Station Components at their sole cost and expense. METRO-NORTH and its Contractors (including NJTRO) shall have the right to use the Radio Base Stations and Radio Base Station Components in connection with their passenger rail operations, and the use and maintenance thereof by NSR and NSR Non-Operating Licensees shall not materially interfere with such use by METRO-NORTH and its Contractors. NSR shall have the right to install, at its own cost and expense and subject to the terms and conditions of this Sublease, additional Radio Base Stations and Radio Base Station Components on the Line that are necessary for freight rail operations;

(2) the existing signboard agreements listed on **Attachment D** (the "Signboard Rights");

(3) the right to develop electric transmission facilities on the Line (the "Electrical Transmission Rights"); provided, however, that METRO-NORTH shall be entitled to a pro rata portion of gross revenues received by NSR or NSR Non-Operating Licensees from any Electrical Transmission Rights agreement of any kind or character (as determined by the mileage of the Line subject to that agreement in proportion to the overall mileage of property subject to that agreement);

(4) the existing fiber optic, cable and communication system agreements listed on **Attachment D**, and the irrevocable, perpetual and divisible right to use the subsurface area of the Line (and any reasonably necessary other portions of the Line) for their own fiber optic, cable, communication or conduit

systems, and for third party use of the subsurface area of the Line for such purposes (collectively, "Communication Rights"). The Communication Rights shall be subject to METRO-NORTH's right to use the subsurface area of the Line (and any reasonably necessary other portions of the Line) to construct, operate and maintain fiber optic, cable, communication or conduit systems for its own and its parents', subsidiaries', affiliates' and Contractors' internal communication and operating purposes, together with the right to have such a system installed in conjunction with the installation of any communication systems installed by or for NSR (provided that METRO-NORTH pays for all materials required for its system and the incremental labor costs associated with its system);

(5) the existing below-ground agreements, leases, subleases, easements and licenses listed on **Attachment D** (the "Below-Ground Rights");

(6) the existing wire, pipe, pole and other similar agreements that do not constitute Below-Ground Rights as listed on **Attachment D** (the "Wire Rights");

(7) the right to modify, improve, maintain, repair, renew, replace, restore, inspect, test, use, operate or remove the facilities or systems, together with any above-ground or below-ground components (including without limitation all power supplies, electrical devices, mechanical devices and computerized devices), appurtenances, structures, and fixtures necessary to the placement, stability, use or operation of such facilities and systems (including without limitation the right to modify and improve existing and new Radio Base Stations and Radio Base Station Components), that are described in or governed by the agreements, licenses or easements referenced in **Article 1(c)(i)(A)(1)-(6)** above (collectively, "Reserved Non-Operating Rights Facilities"); and

(8) the right of reasonable ingress, egress and access to the Line to exercise the rights described in this **Article 1(c)(i)(A)** (collectively, "Reserved Non-Operating Rights") subject to (i) reasonable right-of-entry conditions and (ii) METRO-NORTH's right to review and approve any plans, specifications, drawings or other documents relating to the installation of new Radio Base Stations and Radio Base Station Components (as provided in **Article 1(c)(i)(A)(1)**), the installation of new communication systems and electric transmission facilities (as provided in **Articles 1(c)(i)(A)(3)-(4)**) and the modification, improvement, maintenance, repair, renewal, replacement, restoration, inspection, testing, use, operation or removal of any Reserved Non-Operating Rights Facilities prior to the commencement of any such work, which approval shall not be unreasonably withheld by METRO-NORTH. The right of entry conditions shall not include any fee or rental charge for the exercise of such Reserved Non-Operating Rights, but shall require reimbursement of any reasonable costs and expenses (with standard overhead charges) incurred by METRO-NORTH or its Contractors (including NJTRO) in connection with the exercise of such rights by NSR and NSR Operating Licensees (including flagging costs and expenses).

(B) Reservation of Conrail Licensed Facilities Agreements.

The Conrail Transaction Agreement, and the deeds that conveyed certain Conrail assets and properties to PRR, reserved to Conrail certain rights and easements pertaining to certain existing agreements with third-party licensees (the "Conrail Licensed Facilities Agreements") that permit fiber optic cables to be installed or maintained upon the Line (and other properties not subject to this Sublease), but not the right to enter into further such agreements or to renew such agreements beyond their stated terms and extension periods. The Conrail Licensed Facilities Agreements were not allocated to PRR or made subject to the NSR Operating Agreement. The parties acknowledge that NSR and PRR have no current rights under or with respect to the Conrail Licensed Facilities Agreements and that METRO-NORTH accepts this Sublease subject to Conrail's rights and privileges and the rights of any third-party licensees under the Conrail Licensed Facilities Agreements. The Conrail Licensed Facilities Agreements applicable to the Line are listed in **Attachment D**. The Conrail Licensed Facilities Agreements and the fiber optic systems that are subject thereto shall be treated as Reserved Non-Operating Rights and Reserved Non-Operating Rights Facilities for purposes of this Sublease and the Operations Agreement. NSR shall promptly advise METRO-NORTH if NSR discovers or is informed that there are any other Conrail Licensed Facilities Agreements that apply to the Line and the parties shall agree on appropriate terms and conditions to govern such agreements.

(C) Condition on Exercise of NSR Reserved Non-Operating Rights; Notice of Entry. In exercising the Reserved Non-Operating Rights, NSR and NSR Licensees shall not materially interfere with METRO-NORTH's passenger rail operations and related activities on the Line. NSR and NSR Licensees, and their employees, agents, and Contractors, shall be required to provide at least five (5) business days' notice to METRO-NORTH before entering the Line in order to exercise such Reserved Non-Operating Rights, except in an emergency, in which case as much notice as is practicable under the circumstances shall be given to METRO-NORTH. Such persons entering the Line for the purpose of exercising such Reserved Non-Operating Rights shall be subject to the direction of METRO-NORTH and its Contractors as reasonably required for the safety of persons and property.

(ii) No METRO-NORTH Material Interference With Reserved Non-Operating Rights Facilities.

(A) METRO-NORTH Responsibilities. METRO-NORTH shall not materially interfere with:

(1) any part of the Line that is occupied by Reserved Non-Operating Rights Facilities, and

(2) the use or operation of Reserved Non-Operating Rights Facilities.

(iii) Assignment of Certain Operations and Services Agreements to METRO-NORTH.

(A) Assignment to and Assumption by METRO-NORTH of Operations and Services Agreements Related to the Line or to METRO-NORTH Operations.

NSR hereby assigns and METRO-NORTH hereby assumes all agreements with third parties pertaining to the Line that relate solely to METRO-NORTH'S rail passenger operations or to its operation and maintenance of the Line, including without limitation (1) any grade crossing agreements, (2) any right-of-entry or access agreements with Governmental Bodies and (3) any specified services agreements. METRO-NORTH shall be entitled to any income from these agreements that (a) has not been collected, accrued or capitalized by NSR prior to the Commencement Date and (b) is for any period of time or service performed during the term of the Sublease. These agreements are listed in **Attachment D**.

(B) Partial Assignment to and Assumption by METRO-NORTH of Operations and Services Agreements Partially Related to the Line or to METRO-NORTH Operations.

NSR hereby partially assigns and METRO-NORTH hereby partially assumes all agreements with third parties pertaining:

(1) partly to operation and maintenance of or services with respect to the Line and partly to other property, services or subjects; or

(2) partly to METRO-NORTH operations or operation and maintenance of the Line and partly to NSR operations or Reserved Rights,

to the extent such agreements pertain to METRO-NORTH's operations or its operation and maintenance of the Line.

METRO-NORTH shall be entitled to a proportionate share of any income from these agreements that (1) has not been collected, accrued or capitalized by NSR prior to the Commencement Date and (2) is for any period of time or service performed during the term of the Sublease. These agreements are listed in **Attachment D**.

(C) Retention of Certain Operations and Services Agreements by NSR.

NSR shall retain (1) all operations agreements with third parties that pertain solely to (a) NSR operations or (b) the operation of freight service over the Line and (2) all services agreements with third parties that (a) pertain solely to services to be provided to NSR or (b) by their terms cannot be assigned to METRO-NORTH. These agreements are listed in **Attachment D**.

(D) Erroneous Assignment of Agreements.

If NSR assigns or partially assigns to METRO-NORTH any agreement that should not have been assigned, or only should have been partially assigned, to METRO-NORTH, METRO-NORTH shall re-assign the agreement in whole or in part to NSR upon receiving notice of the erroneous assignment. NSR shall be liable for its share of any costs, expenses, liabilities or obligations that accrue or are incurred under such erroneously assigned agreements to the extent they should not have been entirely or partially assigned to METRO-NORTH during the period of the erroneous full or partial assignment. However, METRO-NORTH shall be liable for any interest, penalties or other liabilities that NSR would not have accrued or incurred had the agreement been promptly re-assigned in whole or in part to NSR. METRO-NORTH shall pay to NSR its share of any income collected with respect to any such agreement during the period of the erroneous full or partial assignment, provided that METRO-NORTH may deduct from that payment an amount equal to any costs, expenses or liabilities that it directly incurs with respect to the administration or performance of the agreement during the period the agreement was erroneously assigned.

(E) Erroneous Failure to Assign Agreements.

If NSR fails to assign or partially assign to METRO-NORTH any agreements that should have been assigned or partially assigned to it under the criteria set forth in this **Article 1(c)(iii)**, NSR shall assign or partially assign those agreements to METRO-NORTH promptly upon the discovery of the failure to make the full or partial assignment. METRO-NORTH shall be liable for its share of any costs, expenses, liabilities or obligations that accrue or are incurred under such agreements during the period when the agreements should have been entirely or partially assigned, except that NSR shall be liable for any interest, penalties or other liabilities that METRO-NORTH would not have accrued or incurred had the agreement been fully or partially assigned to METRO-NORTH by NSR as of the Commencement Date. NSR shall pay to METRO-NORTH its share of any income collected with respect to any such agreement during the period that the agreement should have been

fully or partially assigned, provided that NSR may deduct from that payment an amount equal to any costs, expenses or liabilities that it directly incurs with respect to the administration or performance of the agreement during the period of erroneous full or partial retention of the agreement.

**(F) Assignment or Re-assignment of Agreements
Upon Termination of Sublease.**

If this Sublease expires or terminates without METRO-NORTH acquiring the Line, METRO-NORTH shall assign or re-assign to NSR any agreement with third parties that relates to the operation of, entry upon, use of or licensing of any right or facility with respect to the Line or any part thereof except those agreements that relate exclusively to METRO-NORTH's passenger rail operations.

**(iv) METRO-NORTH Rights to Enter Agreements Granting
Certain Licenses With Income to METRO-NORTH,
Limitations.**

**(A) METRO-NORTH Rights Concerning Easements,
Licenses or Permits.** METRO-NORTH shall be entitled to enter into any and all new above-ground licenses, permits, or agreements for additional signboards, towers or other income-producing fixtures on the Line, and to collect the income from them during the term of this Sublease, provided however that such signboards, towers or fixtures:

- (1) shall not materially interfere with NSR freight railroad operations,
- (2) shall not materially interfere with the operation, maintenance, or access to, or cause any damage to, any Reserved Non-Operating Rights Facilities and Reserved Freight Facilities (collectively, "Reserved Rights Facilities"),
- (3) shall not violate the applicable terms and conditions of any agreements, licenses or easements reserved by NSR or NSR Licensees under this Sublease (including without limitation any terms and conditions relating to exclusivity),
- (4) shall not violate any applicable laws or ordinances, and
- (5) must be removed upon termination or expiration of this Sublease unless:
 - (i) this Sublease is terminated by METRO-NORTH's purchase of the Line or

(ii) NSR or PRR may begin to collect rent for such signboards, towers, fixtures or licenses immediately upon termination or expiration of this Sublease and they do not interfere with NSR's use of or plans for the Line.

(v) NSR Right to Enter Into Agreements With New Non-Operating Licensees.

During the term of this Sublease, NSR shall have the right to enter into licenses, permits or agreements with new Non-Operating Licensees that seek to use any portion of the Line for additional pipelines, poles, wires, drainage facilities or other similar income-producing fixtures (except those above-ground facilities for which METRO-NORTH has rights under **Article 1(c)(iv)**), and to collect the income attributable to such licenses, permits or agreements, provided however that such income-producing fixtures:

(1) shall not materially interfere with METRO-NORTH passenger rail operations,

(2) shall not materially interfere with the operation, maintenance, or access to, or cause any damage to, any METRO-NORTH passenger rail facilities or other facilities permitted on the Line by METRO-NORTH pursuant to the terms and conditions of this Agreement, and

(3) shall not violate any applicable laws or ordinances.

ARTICLE 2. INVENTORY OF LINE; INSPECTIONS; APPROVALS.

(a) INVENTORY OF LINE.

(i) Provision for New Inventory, If Any.

At least ten (10) days prior to the Commencement Date, either NSR or METRO-NORTH may provide an inventory of the fixtures or structures on or along the Line, including all appurtenances and affixed personal property of any kind and their location. If approved and agreed to by the other party, any such inventory shall be included in **Attachment C** to this Sublease.

(ii) Request to Change Inventory or For Joint Inspection.

If, before the Commencement Date, a party does not agree with any or all of an inventory provided by the other party in accordance with **Article 2(a)(i)**, and makes a written request to the party offering the inventory to make appropriate changes and that party declines to make any of the changes

requested, or if a party requests a joint inspection in order to produce an inventory, the parties shall undertake a joint inspection of as much of the Line as is necessary to produce an agreed-upon inventory, with each party bearing their own cost and expense of the inspection.

(iii) NSR, PRR or Conrail Records Definitive In Absence of Inventory.

In the absence of an inventory, NSR's, PRR's or Conrail's business records kept in the ordinary course of business, as of the Commencement Date, shall determine (A) the existence and, if required, the value for NSR's or PRR's tax purposes as of the Commencement Date, of any NSR or PRR fixtures, appurtenances, structures, grade crossings, bridges or other property on or along the Line and (B) the existence and location of any Reserved Rights Facilities over, under, along, across, on or adjacent to the Line, including the existence of rights to place such Reserved Rights Facilities on the Line.

(b) ENVIRONMENTAL INSPECTION PRIOR TO COMMENCEMENT DATE.

METRO-NORTH shall have the right to conduct an environmental inspection of the Line on or prior to the Commencement Date. METRO-NORTH shall comply with any requirements or instructions of NSR with regard to such inspection, including but not limited to instructions reasonably designed to insure the safety of the personnel and property. METRO-NORTH shall provide NSR with a copy of any written reports or records created as part of such inspection. METRO-NORTH shall give notice to NSR of the proposed inspection dates and locations and shall require NSR's written consent before conducting any intrusive environmental inspection procedures, which consent shall not be unreasonably withheld. METRO-NORTH agrees that any contractor conducting such inspections for METRO-NORTH must sign standard right-of-entry or indemnification agreements required by NSR, or METRO-NORTH must sign such agreements on behalf of its contractor.

(c) CORPORATE APPROVALS.

(i) Provision of Corporate Approvals.

On or prior to the Commencement Date, METRO-NORTH, NSR and PRR shall obtain and provide to the other parties to this Sublease any necessary corporate approvals for entering into this Sublease and the Operations Agreement.

(ii) Cancellation Right in Absence of Timely Corporate Approvals, Return of Documents.

If any of the parties do not provide necessary corporate

approvals by the Commencement Date, any other party may cancel this Sublease with no party having any further obligation or duty to any other party hereunder, except that the parties shall return to the other parties any documents or other property related to the Line that is in their possession as a result of the negotiation or execution of this Sublease and the Operations Agreement, except to the extent any party waives the return of such documents or property, and the 1983 Trackage Rights Agreement shall continue in effect, subject to NSR's termination notice in the letter dated April 25, 2002. METRO-NORTH shall promptly pay all charges due to NSR from METRO-NORTH under that 1983 Trackage Rights Agreement that would have been payable since September 1, 2002 but collection of which were deferred during the negotiation of this Sublease and the Operations Agreement in anticipation of such charges being waived when the parties reached agreement as to the Sublease and the Operations Agreement.

(d) REGULATORY APPROVALS.

(i) METRO-NORTH Responsibility.

METRO-NORTH, at its own cost and expense, shall initiate an appropriate application, petition or notice to obtain STB or other necessary regulatory agency review, approval, authorization, exemption or decision for authority to enter into this Sublease, the Operations Agreement or the transactions contemplated in either of them, in whole or in part, promptly after the parties acknowledge acceptance of the terms of this Sublease and the Operations Agreement. It is the intention of the parties that the filing with the STB shall be made expeditiously and in time to obtain requisite authority from the STB in order to make the Sublease and the Operations Agreement effective by the Commencement Date.

(ii) METRO-NORTH Motion to Dismiss.

METRO-NORTH shall file a motion to dismiss its application, petition or notice to the STB for authority or exemption to enter into this Sublease and the Operations Agreement on the basis that the STB lacks jurisdiction over the transactions contemplated in either of them.

(iii) METRO-NORTH Responsibility for Other STB, FRA or Regulatory Filings.

METRO-NORTH shall also promptly initiate and diligently pursue any STB or other necessary Governmental Body notice, review, approval, authorization, exemption or decision required upon modification or termination of this Sublease and the Operations Agreement, or upon purchase of the Line under the right to purchase afforded by this Sublease. METRO-NORTH shall also be responsible for any necessary reporting to the Federal Railroad Administration ("FRA") during the term of this Sublease and the Operations

Agreement with regard to the operation, inspection, maintenance or condition of the Line.

(iv) NSR Review of Filings, Support.

METRO-NORTH shall provide to NSR, prior to filing with the STB, a copy of any application, petition, notice, filing, motion or pleading for NSR's review for accuracy and any other recommendations NSR may have. NSR will support efforts by METRO-NORTH to secure any necessary STB or other regulatory reviews, approvals, authorizations, exemptions, decisions or dismissal orders.

ARTICLE 3. SUBLEASE RENTAL; ADJUSTMENT; PAYMENT; INTEREST; AUDITS.

(a) SUBLEASE RENTAL AND CHARGES UNDER 1983 TRACKAGE RIGHTS AGREEMENT BEFORE COMMENCEMENT DATE.

(i) Conditional Waiver of Sublease and Trackage Rights Rental.

For the period between September 1, 2002 and the Commencement Date, METRO-NORTH shall not be obligated to make any rental or other payment for use of the Line, and METRO-NORTH also shall not be obligated to pay car-mile trackage rights fees or other usage charges under the 1983 Trackage Rights Agreement. If METRO-NORTH has already paid any trackage rights fees or usage charges for METRO-NORTH's use of the Line during any part of that period, NSR shall promptly refund those fees or charges, without interest.

(ii) Trackage Rights Payments Due If Commencement Date Deadline Not Met.

In the event this Sublease and the Operations Agreement are not fully effective on or before February 28, 2003, in addition to the parties rights under **Article 1(b)(viii)**, METRO-NORTH shall immediately pay to NSR the car-mile or other usage charges under the 1983 Trackage Rights Agreements that accrued, or would have accrued, for the period from and after September 1, 2002 through December 31, 2002; and the 1983 Trackage Rights Agreement shall remain in effect subject to NSR's termination notice in the letter dated April 25, 2002.

(b) SUBLEASE RENTAL AMOUNT

METRO-NORTH shall pay NSR rental payments for the sublease of the Line ("Sublease Rental") in the amount of five hundred thousand dollars (\$500,000) for the period between the Commencement Date and December 31, 2003, one million, five hundred thousand dollars (\$1,500,000) for the period

between January 1, 2004 and December 31, 2004, and three million dollars (\$3,000,000) per year for each of the three calendar years starting January 1, 2005. As of January 1, 2008, and for that calendar year and the two calendar years thereafter, and for each of the three years during every three-year period after the January 1, 2005-December 31, 2007 period, the Sublease Rental shall be adjusted, effective January 1 of the first year of the three-year period, in accordance with the index set forth in **Article 3(e)** of this Sublease.

(c) ANNUAL SUBLEASE RENTAL DUE DATE.

METRO-NORTH shall pay the Sublease Rental to NSR by the last business day of March for calendar year 2003, and the last business day of January for each calendar year thereafter, whether or not NSR bills METRO-NORTH for the Sublease Rental.

(d) LATE PAYMENT; INTEREST.

(i) Grace Period, Interest on Late Payments.

If METRO-NORTH fails to pay the annual Sublease Rental to NSR by April 15, 2003 for calendar year 2003 or the last day of February for each calendar year thereafter, or fails to make any other payment due under this Sublease within thirty (30) days of the billing date, or within thirty (30) days of the mailing or transmission date of the bill if later than the billing date, METRO-NORTH shall also pay NSR interest on the unpaid amount at the larger of (A) the rate of 0.67% per month or (B)(1) the prime rate of interest published in the Wall Street Journal or successor publication, or if such rate or publication is unavailable, (2) the prime rate charged by Citibank, N.A., or if that rate is unavailable, (3) the prime rate or average of prime rates for New York banks published in the newspaper of largest circulation in the City of New York, NY, on the first business day of each month, for each month or portion of a month for which the payment is late. Interest on late payments shall not be applied to the 30-day grace period unless litigation or arbitration is required to collect the late Sublease Rental.

(ii) Acceptance of Late Payments Not a Waiver.

NSR's acceptance of one or more late payments, and of interest on late payments, does not constitute a waiver of future payment due dates or of any other remedies available to NSR for any future failure to timely pay amounts due to NSR under this Sublease.

(e) SUBLEASE RENTAL ADJUSTMENT INDEX.

(i) Sublease Rental to Be Adjusted by CPI.

The Sublease Rental shall be revised for the three-year period starting January 1, 2008, and for each three-year period thereafter, by increasing

the annual rate in effect for the previous three-year period by the percentage change in the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index-Unadjusted for New York-Northern NJ-Long Island, NY-NJ-CT-PA ("CPI") between the index for the most recent month available five (5) business days before the end of the December prior to the start of a three-year period and the index for the month thirty-six (36) months prior to the most recent available monthly index, provided that the most recent month must be no earlier than the previous September, or the index will be considered unavailable. If the CPI for the area is changed to a quarterly index, the parties shall use a corresponding three-year change in the quarterly index as the adjustment factor. If the CPI for the area is discontinued, the parties shall use the CPI for the smallest applicable region including New York City or its metropolitan area. If the base year or base period used in computing the CPI is changed, the figures used in making the computation shall be changed in such manner that a percentage change that includes the entire intended three-year period be applied.

(ii) Minimum Sublease Rental.

Sublease Rental shall not be adjusted below the level of the annual rent for the previous three-year period.

(iii) Replacement Index.

In the event the CPI adjustment index provided for in **Article 3(e)(i)** is unavailable, an appropriate replacement index published or approved by a department or agency of the United States Government which is as near as possible in composition to the CPI shall be adopted for determining the percentage change in the Sublease Rental. In the absence of agreement on a replacement index, the parties shall submit the determination of a replacement index to binding arbitration by a single neutral arbitrator under the terms of **Article 9(a)** of the Operations Agreement.

(iv) Sublease Rental Due Date Not Deferred, Adjustment Not Waived, by Unavailability of Index.

In the event the CPI or other replacement index is unavailable when Sublease Rental is scheduled for adjustment, and the parties have not agreed upon a replacement index by the date the next Sublease Rental payment becomes due and payable, METRO-NORTH shall timely pay the same Sublease Rental paid for the previous year, and shall pay the difference between the previous Sublease Rental and the adjusted Sublease Rental within thirty (30) days of the agreement upon or determination of a replacement index.

(f) ADJUSTMENT OF RENTAL FOR FAILURE TO CONCLUDE PURCHASE/SALE PROCESS AFTER APPRAISAL.

(i) Rental Adjustment.

Notwithstanding and without acknowledging the validity or invalidity of any right that METRO-NORTH may or may not have to condemn the Line or an interest therein, in the event of a failure to conclude the purchase and sale process for the Line after the parties receive a final appraisal in accordance with **Article 11** of this Sublease, the Sublease Rental shall be adjusted beginning with the next calendar year as follows:

(A) METRO-NORTH Willing to Purchase, NSR Will Not Sell.

If METRO-NORTH is willing to purchase the Line but NSR declines to sell the Line, annual rent shall be adjusted to the lesser of: (1) the adjusted Sublease Rental as specified in **Article 3(b) through (e)** that otherwise would apply; or (2) the "across-the-fence" appraised value of the Line, multiplied by METRO-NORTH's cost of capital, as adjusted annually. METRO-NORTH shall have the option of electing (1) or (2) as the applicable annual rent for each calendar year thereafter unless and until this rental adjustment process is reinitiated under **Article 11(c)(ii)**.

(B) NSR Willing to Sell, METRO-NORTH Will Not Purchase.

If NSR is willing to sell the Line but METRO-NORTH declines to purchase the Line, annual rent shall be adjusted to the greater of: (1) the adjusted Sublease Rental as specified in **Article 3(b) through (e)** that otherwise would apply; or (2) the "across-the-fence" appraised value of the Line, multiplied by METRO-NORTH's cost of capital, as adjusted annually. NSR shall have the option of electing (1) or (2) as the applicable annual rent for each calendar year thereafter unless and until this rental adjustment process is reinitiated under **Article 11(c)(ii)**.

(ii) Inability to Determine or Non-Acceptance of METRO-NORTH's Cost of Capital.

If METRO-NORTH's cost of capital cannot be determined, or NSR does not accept METRO-NORTH's calculation of its cost of capital, the parties shall agree upon an alternative measure of METRO-NORTH's cost of capital. If the parties cannot agree on an alternative measure of METRO-NORTH's cost of capital by the time the next Sublease Rental is due, METRO-NORTH shall pay the adjusted Sublease Rental that would otherwise apply to the Line as determined by **Article 3(b) through (e)**, and either party may submit the determination of an appropriate cost of capital to a single, neutral arbitrator in accordance with **Article 9(a)** of the Operations Agreement. The determination of the arbitrator shall be applied retroactively, and METRO-NORTH shall pay to NSR, or NSR shall refund to METRO-NORTH, the difference between the Sublease Rental paid and the Sublease Rental that would have been due on the

date of payment if increased under this **Article 3(f)**.

(g) COLLECTION OPTIONS.

(i) Notice and Opportunity to Cure.

A party shall provide another party who has not made a timely payment to that first party under this Sublease or the Operations Agreement, whether due to a dispute or simple failure not to pay, a 30-day written notice of any proposed deduction or set-off or the institution of any arbitration or litigation seeking collection of unpaid amounts, during which period the party failing to pay may cure its non-payment.

(ii) Collection Options.

A payment dispute based on the interpretation of this Sublease or the Operations Agreement that cannot be resolved by the parties shall be submitted for resolution to arbitration under **Article 9(a)** of the Operations Agreement. Collection of past-due amounts for which payment has not been timely made, or assertedly deducted or set-off in error, whether without basis or explanation in writing or as a result of a dispute over the interpretation of records, may be pursued either through arbitration under **Article 9(a)** of the Operations Agreement or litigation under **Article 9(b)** of the Operations Agreement.

(iii) Interest Upon Amounts Awarded.

Interest shall be awarded on the amount due and awarded for a past due payment, in accordance with **Article 3(d)(i)**, whether the award is made in arbitration or litigation, and whether the amount was withheld because of a payment dispute or was simply not paid.

ARTICLE 4. TAXES AND UTILITIES.

(a) METRO-NORTH RESPONSIBLE PARTY FOR PROPERTY TAX PURPOSES AS BETWEEN IT AND NSR OR PRR; NOTICES.

(i) METRO-NORTH Status As to Line; Liability for Taxes.

(A) Tax Liabilities Defined. For purposes of this Sublease, "Tax Liabilities" shall mean any:

(1) fees, taxes or assessments on real estate, special ad valorem levies, and assessments of any kind, including but not limited to water or sewer assessments, whether state or local, upon or applicable to the Line or operation and maintenance of the Line, or

(2) franchise taxes, sales taxes or other excise taxes applicable to METRO-NORTH's possession of, operations over or maintenance of the Line under this Sublease, and

(3) any additional tax, penalty or interest required with respect to METRO-NORTH's failure to pay any such fee, tax, assessment or levy before the date on which the additional tax, penalty or interest becomes applicable or that may result from METRO-NORTH's failure to timely assert and insure application of any exemption it may have from such tax, fee, assessment or levy.

(B) NSR Liability for Penalties, Interest in Certain Cases Where Billing Not Forwarded.

NSR shall be liable for any Tax Liabilities resulting from METRO-NORTH's failure to make the timely payment of any Tax Liability for which METRO-NORTH is not exempt, or for which METRO-NORTH failed to assert any exemption, due to NSR's or PRR's failure to forward to METRO-NORTH a bill for any such Tax Liabilities within a commercially reasonable time of its receipt by NSR or PRR (a) during the period before METRO-NORTH has had a reasonable opportunity to advise the taxing authority to send any bills for applicable fees, taxes, assessments or levies directly to METRO-NORTH or to apply any tax exemption METRO-NORTH may have with respect to the Tax Liability without the need for further billing, or (b) during a later time period in which the taxing authority sends the bill to NSR or PRR despite METRO-NORTH's attempt to direct the billing to, or application of exemption on behalf of, METRO-NORTH, until such further reasonable time for METRO-NORTH to arrange for correction of the billing or exemption status.

(C) METRO-NORTH Status With Respect To Line Following Commencement Date, Tax Liability. As of the Commencement Date and during the term of this Sublease and the Operations Agreement, METRO-NORTH will possess, supervise and control the Line as long-term lessee under the terms of this Sublease and the Operations Agreement. METRO-NORTH shall be considered the record holder and controlling party of the Line for purposes of Tax Liabilities, and shall be solely responsible for and shall defend, indemnify and hold harmless NSR and PRR against any claims, demands or required payments for any Tax Liabilities, subject to the provisions of **Article 4(a)(i)(B)**.

(ii) METRO-NORTH Shall Advise Authorities of Status; Direct Billing; Combined Bills.

(A) As of the Commencement Date, METRO-NORTH shall advise any and all state and local Governmental Body taxing

authorities with jurisdiction over the Line of its status with respect to the Line and the date such status became effective, and METRO-NORTH shall further arrange for direct billing to METRO-NORTH of any Tax Liabilities.

(B) In the case of a bill received by METRO-NORTH, NSR or PRR for Tax Liabilities that pertains to the Line and to other property that is not part of the Line, the bill shall be allocated between the Line and other property based on the proportionate ceiling values of the Line and other property in the relevant taxing jurisdiction as determined by the taxing jurisdiction or the New York Office of Real Property Services, taking due account of any special assessments or additional values or amounts used because the Line is specially assessed as railroad property, whether or not either such special assessments or the use of additional values or amounts is permissible under any Applicable Law.

(iii) METRO-NORTH Status, Agreement Do Not Constitute Waiver of Rights With Respect to Tax Authorities.

METRO-NORTH's liability under this Sublease to NSR and PRR for the payment of, or indemnity for NSR's and PRR's liability for or payment of, Tax Liabilities, when due, and prior to the imposition of any penalty, does not (A) diminish any right of METRO-NORTH to contest any such Tax Liabilities in appropriate judicial or administrative proceedings, (B) constitute a waiver of any tax exemption that METRO-NORTH may enjoy under Applicable Law or (C) constitute a promise to pay to the taxing authorities any amounts otherwise exempt from taxation, provided the exercise of any waiver or exemption by METRO-NORTH does not operate to place responsibility for payment of such Tax Liabilities back upon NSR or PRR, or relieve METRO-NORTH of its indemnity to NSR and PRR with respect to such Tax Liabilities.

(iv) METRO-NORTH To Advise NSR About Tax Billing, Payment.

METRO-NORTH shall send to NSR, upon request, copies of official receipts for any payment of Tax Liabilities and shall timely advise NSR of any claim, demand, assessment or action by any taxing authority against NSR or PRR or that might affect NSR or PRR in any way whatsoever.

(v) METRO-NORTH To Reimburse NSR for Tax Liabilities Accruing as of or After or Paid for Any Period Beginning January 1, 2003.

METRO-NORTH shall pay directly or shall reimburse NSR for the payment of all State or Local Tax Liabilities that NSR or PRR incurs with respect to PRR's or NSR's ownership, lease or operation of the Line as of or after January 1, 2003, within thirty (30) days of NSR's written notice to METRO-NORTH requesting payment of the bill for the Tax Liabilities or within thirty (30)

days of NSR's request for reimbursement of such payments. NSR shall not request that METRO-NORTH make a direct payment of such Tax Liabilities if METRO-NORTH does not have at least thirty (30) days to pay before the application of interest or penalties to the billed amount or if METRO-NORTH requests that this obligation be handled by reimbursement or other payment.

(b) METRO-NORTH LIABILITY FOR UTILITY BILL PAYMENTS, EXCEPT WITH RESPECT TO DIRECT NSR USE OF UTILITIES.

(i) METRO-NORTH Liability for Payments of Utility Bills; Interest, Penalty Exception.

(A) METRO-NORTH Liability for Payments.

Except as provided in **Article 4(b)(i)(B)**, as of the Commencement Date, and during and for the term of this Sublease, METRO-NORTH will pay when due all utility bills for the Line or for or related to its operation, including but not limited to those for water, sewer, gas, and electric service, unless NSR directly uses the utilities in its operation as further provided in **Article 4(b)(ii)**. If METRO-NORTH is notified that this provision requires any change in billing from that applicable to current operations and billing, METRO-NORTH shall advise the utility companies or authorities of the change in responsibility for the bills and promptly change the billing address as of the Commencement Date. Upon request, METRO-NORTH will send to NSR copies of the official receipts (or photocopies thereof) showing the payment of any such utility bills.

(B) NSR Liability for Penalties, Interest in Certain Cases Where Billing Not Forwarded.

NSR shall be liable for any penalty or interest levied on METRO-NORTH as a result of METRO-NORTH's failure to make the timely payment of any utility bill that results from NSR's failure to forward to METRO-NORTH the utility bill within a commercially reasonable time of its receipt by NSR (1) during the period before METRO-NORTH has had a reasonable opportunity to change the billing address to have the bills sent directly to METRO-NORTH, or (2) during a later time period in which the utility company sends the bill to NSR despite METRO-NORTH's attempt to direct the billing to METRO-NORTH, until such further reasonable time for METRO-NORTH to arrange for correction of the billing error, or (3) in the event an NSR utility bill is to be allocated party to METRO-NORTH and NSR does not bill METRO-NORTH, or send METRO-NORTH its portion of the bill for payment within a commercially reasonable time of NSR's receipt of the utility bill.

(ii) NSR Utility Use.

Where practicable, NSR, at its sole cost and expense, shall arrange for and obtain necessary heat, water, electricity and other utility services required solely for freight rail operations any solely-used Radio Base Stations on the Line. If it is impracticable for NSR to secure any such solely-used utility services other than through facilities owned, subleased or controlled by METRO-NORTH, NSR shall install, at its expense, where permitted by law, necessary connections, supply lines and meters in connection with the METRO-NORTH facilities in order to measure NSR's consumption of such services. In the event separate metering is impracticable, the utility bill shall be allocated on a fair and reasonable basis that reflects NSR use of the utilities. METRO-NORTH shall not be liable for any temporary suspension of any such services unless the suspension is caused by METRO-NORTH or its employees, agents or Contractors. For sixty (60) days after the Commencement Date, NSR shall have the right to use facilities, connections, supply lines and meters presently providing utilities to the Line and METRO-NORTH and its employees, agents or Contractors shall not materially interfere with such use of utilities by NSR.

(c) METRO-NORTH REIMBURSEMENT, INDEMNITY OF NSR FOR PAYMENT OF PROPERTY TAXES OR UTILITY BILLS AND REMOVAL OF TAX LIENS.

(i) METRO-NORTH To Reimburse NSR for Tax Liability or Utility Bill Payments.

METRO-NORTH shall reimburse NSR for any payments that NSR makes after the Commencement Date of Tax Liabilities or utility bills for which METRO-NORTH is responsible under **Article 4**, but only to the extent such payments were required after the Commencement Date in order to avoid interest, penalties, liens or foreclosure actions against the Line or under court, agency or authority order and not if NSR makes payments for such Tax Liabilities or utility bills more than five (5) business days prior to the due date.

(ii) METRO-NORTH To Remove Tax Liens or To Reimburse NSR for Costs of Removing Tax Liens.

METRO-NORTH shall promptly take all action reasonably necessary for removal of tax liens upon the Line upon receiving actual notice that such liens have been placed against the Line. If NSR receives actual notice of a tax lien placed against the Line for any period during which this Sublease is in effect, it shall forward such notice to METRO-NORTH for handling the removal of the lien. If METRO-NORTH does not act promptly to have the lien removed, NSR may take action to have the lien removed. In that case, METRO-NORTH shall reimburse NSR for all of NSR's costs incurred in removing such liens, including payment of any Tax Liabilities, court costs, filing or recording fees, and reasonable attorney, witness or expert fees and expenses.

(iii) METRO-NORTH to Indemnify NSR for Tax Liability or

Utility Bill Payments.

METRO-NORTH shall defend, indemnify and hold harmless NSR, PRR, and either or both of their parents, subsidiaries, affiliates or members, and all of their respective directors, officers, agents, or employees against any liability for Tax Liabilities or utility bills for which METRO-NORTH is responsible under **Article 4**.

(d) BILLING FOR NSR PAYMENTS OF TAXES, UTILITY BILLS OR LIEN REMOVAL COSTS THAT ARE METRO-NORTH RESPONSIBILITY.

Within thirty (30) days of the later of the billing date or the mailing date of an itemized statement from NSR showing payments by NSR of any Tax Liabilities, utility bills or lien removal costs for which METRO-NORTH is responsible under this **Article 4**, METRO-NORTH shall reimburse NSR for any such payments by NSR, and upon request by METRO-NORTH, NSR will present to METRO-NORTH for inspection the official receipts (or photocopies thereof) showing the payment of any such Tax Liabilities, utility bills and lien removal costs.

ARTICLES 5-7. [RESERVED]

ARTICLE 8. PRR CONSENT TO SUBLEASE; STATUS OF PRR, POSSIBLE SUCCESSOR TO AGREEMENTS.

(a) ACKNOWLEDGMENT OF PRR OWNERSHIP OF LINE.

METRO-NORTH hereby acknowledges that NSR leases and operates, but does not own, the Line, and that the NSR Operating Agreement pursuant to which NSR operates the Line expires on May 31, 2024, subject to the possibility of two five-year extensions, if not terminated earlier under its terms or the Conrail Transaction Agreement.

(b) PRR CONSENT.

PRR hereby consents to this Sublease.

(c) PRR CONSENT REQUIRED FOR ASSIGNMENT OR TRANSFER.

PRR, as holder of the exclusive, irrevocable, perpetual, assignable, divisible, and transferable freight railroad operating rights over the Line, whether held in fee, easement or some other quality of title, must independently consent to any assignment, conveyance, grant or transfer of this Sublease.

(d) PRR PARTY FOR LIMITED PURPOSES.

METRO-NORTH and NSR acknowledge that PRR is a party to this Sublease only for the purposes of those Articles in which it assumes stated

obligations or reserves certain rights, including this **Article 8**. Except as specifically provided in this Sublease, PRR has no rights or obligations and is not liable for and does not assume any of the duties of NSR under this Sublease while the NSR Operating Agreement is in effect.

(e) NO NSR LIABILITY FOR SUBLEASE AND OPERATIONS AGREEMENT AFTER TERMINATION OF NSR OPERATING AGREEMENT.

If the NSR Operating Agreement expires or otherwise terminates without NSR controlling PRR, METRO-NORTH shall have no claim against NSR for NSR's failure to provide the sublease of the Line to METRO-NORTH or to perform any unaccrued duties or obligations under this Sublease or the Operations Agreement, nor shall NSR be subject to any unaccrued costs or liabilities under this Sublease or the Operations Agreement, unless specifically provided in any of its provisions.

(f) PRR SHALL ASSUME AGREEMENTS UNDER CERTAIN CIRCUMSTANCES.

PRR shall assume all the rights, benefits, duties and obligations of NSR under this Sublease and the Operations Agreement if the NSR Operating Agreement expires or is terminated during the term of this Sublease and the Operations Agreement without NSR controlling PRR. Any reservations and rights of NSR under the terms of this Sublease and the Operations Agreement shall revert to PRR if NSR does not control PRR should this Sublease and the Operations Agreement, or any subsequent agreement or amendment covering similar subject matter, continue beyond the term of the NSR Operating Agreement, or any similar subsequent agreement between NSR and PRR. Upon termination of the NSR Operating Agreement without NSR controlling PRR, METRO-NORTH shall owe all subsequent payments and other duties under this Sublease and the Operations Agreement to PRR.

ARTICLE 9. ARBITRATION; LITIGATION.

The terms and conditions of **Article 9** of the Operations Agreement are incorporated by reference as if fully set forth herein.

ARTICLE 10. TERM, TERMINATION AND EXPIRATION.

(a) TERM; RIGHT TO RENEW; VOLUNTARY TERMINATION.

(i) Initial Term Until December 31, 2027.

Unless otherwise terminated pursuant to the terms and conditions hereof, this Sublease and the Operations Agreement shall have an initial term beginning on the Commencement Date and ending on December 31, 2027 at 11:59 p.m.

(ii) Renewal Term.

In addition to the term specified in **Article 10(a)(i)**, METRO-NORTH shall have the right to renew this Sublease and the Operations Agreement for an additional term of twenty-three (23) years ending December 31, 2050 at 11:59 p.m. Should METRO-NORTH wish to exercise this right to extend this Sublease and the Operations Agreement, it must provide written notice no later than June 30, 2027 to NSR or to PRR if PRR has assumed this Sublease and the Operations Agreement.

(iii) METRO-NORTH Termination Option.

Upon sixty (60) days written notice to NSR, METRO-NORTH may terminate this Sublease and the Operations Agreement prior to the expiration of its term, in the event METRO-NORTH, or a permitted successor or assign, discontinues or ceases to provide passenger rail service on the Line. METRO-NORTH shall not be entitled to abatement of the Sublease Rental for any portion of the calendar year prior to the end of the month in which the effective date of the termination notice occurs. In the event of such termination, METRO-NORTH shall remain liable for (A) all accrued or continuing obligations under this Sublease and the Operations Agreement, (B) all duties and obligations required upon termination and surrender of the Line, including but not limited to the obligations specified in **Article 5(j)** of the Operations Agreement and this **Article 10**, and (C) any provisions that specifically survive expiration or termination of the Sublease or the Operations Agreement.

(iv) Sublease and Operations Agreement to Run Concurrently and Shall Expire or Terminate Concurrently.

The Sublease and the Operations Agreement shall run concurrently. The parties intend that the Sublease and the Operations Agreement must both remain in effect if one is in effect. If either the Sublease or the Operations Agreement expires or is terminated for any reason, the other agreement shall terminate automatically and without further action by the parties. All accrued costs and obligations and any duties or commitments that apply upon expiration or termination of either the Sublease or Operations Agreement, including any duties with respect to surrender of the Line and any terms that expressly provide that they shall survive the expiration or termination of the Sublease or the Operations Agreement shall apply and survive in accordance with their terms, regardless of the reason for the termination or the date of termination of either the Sublease or the Operations Agreement and the resulting termination of the other agreement.

(b) TERMINATION FOR BREACH.

(i) Termination Option for Material Breach.

This Sublease and the Operations Agreement may be

terminated by the non-breaching party if either METRO-NORTH, on the one hand, and NSR or PRR, on the other hand, breaches any one or more of its material covenants or obligations and if such breach continues for a period of thirty (30) days from the date of receipt of written notice of such breach from the non-breaching party; provided, however, that the party alleged to have breached a material covenant or obligation shall have a reasonable amount of additional time, not to exceed thirty (30) days, to cure such breach when cure efforts have been undertaken within the initial thirty (30) day period and such additional time is reasonably necessary to complete such efforts. A breach of a material covenant or obligation includes, but is not limited to, the following:

(A) failure to make any payments (including but not limited to Sublease Rental payments) after the later of sixty (60) days after the due date or thirty (30) days after receipt of a written notice of breach and request for payment,

(B) failure to maintain sufficient insurance or self-insurance coverage and certification of the same to the extent provided for in this Sublease or the Operations Agreement;

(C) subject to **Article 2(c)(ii)** of the Operations Agreement, any attempt by METRO-NORTH to extend any type of operating rights, access rights, trackage rights, franchise, permit, access, haulage or usage of the Line to any third party for any freight railroad purpose without the consent of NSR;

(D) METRO-NORTH's failure or refusal to maintain clearances required by this Sublease or the Operations Agreement, and

(E) any party's failure or refusal to fulfill its indemnity or insurance commitments under this Sublease or the Operations Agreement.

(ii) No Release of Accrued or Surviving Obligations.

The expiration or termination of this Sublease or the Operations Agreement shall not be construed to release any party from any duty, covenant or obligation as to which such party may have previously accrued or as to which such party may be in default as of the date of such expiration or termination or which by its terms survives expiration or termination of this Sublease or the Operations Agreement.

(c) METRO-NORTH DUTY TO FILE WITH STB OR REGULATORY AGENCY UPON EXPIRATION OR TERMINATION OF AGREEMENTS, IF THEN REQUIRED BY FEDERAL LAW; RIGHT OF FIRST REFUSAL AND RIGHT TO MATCH PURCHASE OFFERS.

(i) METRO-NORTH Duty to File, If Required by Law, in

Article 10.1, Attachment I.

If regulatory agency filings are then required by federal law for METRO-NORTH to terminate all or any part of this Sublease or the Operations Agreement, or all or any part of METRO-NORTH's operations over all or any segment of the Line, METRO-NORTH shall make all required regulatory filings and give all notices required, at its own cost and expense, when this Sublease, or the Operations Agreement, or all or part of METRO-NORTH's operations over all or any segment of the Line expire or are terminated. Details on the implementation of this duty and other terms and duties related thereto are found in **Article 10.1** of this Sublease. For administrative convenience, because it is currently thought to be a contingent provision, **Article 10.1** has been placed in **Attachment I**. **Article 10.1** is nonetheless a full and integral part of this Sublease and the Operations Agreement and shall be fully effective and binding on the parties to the extent it may be applicable.

(ii) METRO-NORTH Right of First Refusal to Purchase Line upon Abandonment.

NSR or PRR shall give METRO-NORTH the right of first refusal to purchase the Line upon the filing of an application, notice or petition to the STB, successor agency or other regulatory agency with jurisdiction for abandonment of all or any part of the Line, whether or not another party files an Offer of Financial Assistance. METRO-NORTH's right to purchase the Line in the event of an NSR or PRR abandonment filing does not apply to an application, petition or notice to the STB or other regulatory agency for authority only to discontinue freight service over the Line or to any authorization under which NSR or PRR shall cease service but retain the ownership interest in the property, or to an embargo or a cessation of freight service due to lack of demand or operational, safety or economic considerations, regardless of the length of time that NSR, PRR or their successors, assigns, licensees or tenants, do not operate rail freight service or run a train over the Line after such discontinuance, embargo or cessation of service.

(iii) METRO-NORTH Right To Match Other Purchase Offers.

(A) If NSR or PRR receives a bona fide offer to buy the Line from a third party, NSR or PRR shall first offer the Line for sale to METRO-NORTH on the same terms and conditions as the offer from such third party. NSR or PRR shall not be obligated to sell the Line to METRO-NORTH for less than the appraised price under **Article 11** of this Sublease as long as NSR or PRR does not proceed with a sale of the Line to the third party for a lower price. However, NSR or PRR may proceed with the sale to the third party, regardless of price, if METRO-NORTH cannot accept the offer of sale, whether due to inability to pay the proposed price or to meet the other conditions and terms of the proposed sale. If a third-party offer is made but the price term is to be determined,

for the purpose of METRO-NORTH considering whether to exercise its right of first refusal to purchase the Line, METRO-NORTH and NSR or PRR shall have the price determined through the appraisal process in **Article 11**, and if not accepted at appraisal price, any proposed sale below appraisal renews MN's right of first refusal, subject to the foregoing terms and conditions.

(B) NSR or PRR will not consider or accept any third-party offer to purchase the Line made before January 1, 2006.

(C) NSR or PRR will provide METRO-NORTH promptly after receipt with written evidence of the terms and conditions of any such bona fide third party offer to purchase the Line. Thereafter, METRO-NORTH shall have ninety (90) days to exercise its right of first refusal to purchase the Line on the same terms and conditions as the third-party offer, at the offer price. If METRO-NORTH fails to exercise such right of first refusal within the stated time the Line may be sold to such third party on the proposed terms and conditions

(D) METRO-NORTH shall not sell, assign, convey or in any way transfer its right of first refusal to purchase or to initiate the process for its proposed purchase of the Line, which are not separate interests severable from this Sublease, to an unaffiliated person or entity without the consent of NSR and PRR.

(E) NSR or PRR may not sell any portion of the Line during the term of this Sublease without permitting METRO-NORTH to exercise its right of first refusal to purchase that portion of the Line.

(d) SURRENDER OF THE LINE UPON EXPIRATION OR TERMINATION.

(i) METRO-NORTH Duty to Vacate upon Expiration, Termination or Regulatory Approval.

Upon the earlier of the expiration or termination of this Sublease, or any part of it, or the Operations Agreement, or the effective date of any necessary STB or other regulatory authority or exemption, in connection therewith, METRO-NORTH will forthwith cease operations over, vacate and surrender the Line in accordance with the terms of this Sublease and the Operations Agreement.

(ii) METRO-NORTH Duty to Surrender the Line, Property in Certain Condition.

Upon the expiration or termination of this Sublease, or the Operations Agreement, or the effective date of any necessary STB or other regulatory approval to discontinue METRO-NORTH's passenger rail operations

over all or any part of the Line under this Sublease, or the Operations Agreement, or upon METRO-NORTH's cessation of service and vacation of the Line or any part thereof, METRO-NORTH shall surrender the Line or pertinent portion of the Line to NSR in no worse condition than it was in as of the Commencement Date, normal wear and tear excepted. In order to fulfill the requirements with regard to surrender of the Line, METRO-NORTH's obligations shall include, but will not be limited to, the following:

(A) the Line must be at the maintenance levels specified in **Article 5(j)** of the Operations Agreement and **Attachment K** over its entire length;

(B) the entire Line must be free and clear of all (1) bills, claims, demands and liens for taxes, material or labor to the extent such items are attributable to the activities of METRO-NORTH during the term hereof, and (2) mortgages and financial encumbrances of any kind that are attributable to the activities of METRO-NORTH during the term hereof;

(C) any Response Actions Required by Law shall have been implemented to correct any Contamination, as defined in **Article 6(a)** of the Operations Agreement, on or at the Line to the extent such Contamination has been caused or exacerbated by METRO-NORTH or its Contractors or Licensees or unauthorized third parties for whose actions METRO-NORTH is responsible under that **Article 6** during the term of this Sublease and the Operations Agreement, provided that METRO-NORTH shall not be responsible for any such Contamination to the extent that such Contamination has been caused or exacerbated by NSR or PRR or their Customers, Contractors, Licensees, parents, affiliates or subsidiaries; and

(D) Unless otherwise provided in **Article 5(j)** of the Operations Agreement, METRO-NORTH must remove any structures, buildings, fixtures, appurtenances, systems, technologies or improvements constructed on its behalf during the term of this Sublease and the Operations Agreement that are not useful or necessary for NSR's rail freight service and that NSR requests be removed within six (6) months of METRO-NORTH's vacation of the Line and restore any clearances that were altered by METRO-NORTH or its Contractors or Licensees during the term of the Sublease and the Operations Agreement that NSR requests be restored to their condition and distance prior to the alteration within the same six-month period.

(e) HOLDOVER SUBLEASE RENTAL AND OPERATIONS AGREEMENT.

If, subject to the right of NSR to seek removal of METRO-NORTH from the Line by all applicable legal means, METRO-NORTH holds over or

remains in possession of the Line after the termination or expiration of this Sublease and the Operations Agreement, such holding over or continued possession will create a tenancy from month to month only, and monthly rental for such period will be calculated and payable monthly by dividing the yearly amounts provided in **Article 3(b) through (e)** herein, including any increase in the rate level that would be applicable if this Sublease were to be continued, by twelve (12) to obtain the monthly holdover Sublease Rental payment, and shall be due and payable on a monthly basis in advance of each holdover month, whether or not formally billed to METRO-NORTH by NSR. The terms and conditions of this Sublease and the Operations Agreement will continue to apply during METRO-NORTH's possession or use of the Line during any holdover tenancy.

(f) JOINT INSPECTION OF LINE AFTER EXPIRATION OR TERMINATION OF SUBLEASE.

Within thirty (30) days after expiration or termination of this Sublease, and upon no less than three (3) business days' notice by either party, METRO-NORTH and NSR shall conduct a joint inspection of the Line to determine if METRO-NORTH has met its duties and obligations with regard to surrender of the Line, with each party bearing its own cost and expense of the joint inspection.

(g) SURVIVAL OF ACCRUED PAYMENT OR INDEMNITY, INSURANCE, CONDITION OF LINE AND REGULATORY FILING OBLIGATIONS.

The following provisions, terms, duties and obligations of this Sublease shall survive the expiration or termination of the Sublease and the Operations Agreement, regardless of how they may be terminated:

- (i) any and all payment or indemnity obligations, accrued or incurred by the parties prior to the expiration or termination of this Sublease or the Operations Agreement;
- (ii) any indemnity commitments made in various Articles of this Sublease or the Operations Agreement, including without limitation those specifically set forth in **Article 6** and **Article 7** of the Operations Agreement;
- (iii) insurance obligations necessary to handle and cover expected payments of accrued Claims, whether or not yet made and to support any indemnity obligations accrued or incurred under this Sublease or the Operations Agreement;
- (iv) the regulatory filing obligations, if any, of this Sublease or the Operations Agreement;
- (v) NSR's rights in and use of the Suffern Industrial Track free of

Car-Mile Usage reporting and Car-Mile Usage Charges;

(vi) METRO-NORTH's obligations to surrender the Line in the condition specified in **Article 5(j)** of the Operations Agreement and **Article 10(d)(ii)** of this Sublease; and,

(vii) any other provision or term of this Sublease or the Operations Agreement that states that it shall survive the expiration or termination of this Sublease or the Operations Agreement.

All such provisions shall survive the term of the Sublease or the Operations Agreement, regardless of the date of or reason for the expiration or termination.

ARTICLE 11. PROCEDURE FOR DETERMINING FUTURE PURCHASE AND SALE PRICE FOR THE LINE.

(a) INITIATION OF APPRAISAL PROCESS FOR METRO-NORTH RIGHT TO PURCHASE, NSR RIGHT TO SELL, LINE.

(i) Time, Initiation.

After December 31, 2005, METRO-NORTH or NSR may initiate an appraisal process under which a mutually agreed upon appraiser shall determine a price for METRO-NORTH's purchase or NSR's sale of all but not less than all of the Line, whether or not pursuant to a threat of condemnation by METRO-NORTH and without NSR acknowledging whether the Line can be condemned.

(ii) Failure to Agree On Appraiser.

If the parties cannot agree on an appraiser within sixty (60) days of one party's request to begin the appraisal process, any party to this Sublease may initiate arbitration before a single arbitrator under **Article 9(a)** of the Operations Agreement for the purpose of having the arbitrator choose a disinterested and qualified appraiser. If neither party initiates arbitration within one hundred-twenty (120) days after initiating the appraisal process under **Article 11(a)(i)**, the parties must negotiate in good faith in an effort to choose an appraiser within sixty (60) days before again initiating arbitration.

(b) DETERMINATION OF PURCHASE PRICE; APPRAISAL.

(i) Determination of Price Through Appraisal, Methodologies.

The purchase price for METRO-NORTH's acquisition and NSR's sale of the Line shall be determined through an appraisal using an average of both "across the fence" and "assembled corridor" methodologies, but

shall not include valuation based on capitalization of income from payments made by METRO-NORTH under this Sublease and the Operations Agreement or the value of improvements to the Line to the extent paid for by parties other than NSR. The purchase price shall be increased through the application of interest in accordance with **Article 11(d)(iii)** if the purchase and sale of the Line does not close or is not completed within the time specified in that **Article 11(d)(iii)**.

(ii) Failure or Refusal to Agree to Sale, Re-initiation of Process.

If either party does not agree on a purchase and sale of the Line within sixty (60) days after receiving the final report of the appraiser, the appraisal process may be re-initiated, but only after a period of two years from the date of the previous, final appraisal report has passed.

(c) NO DUTY TO BUY OR SELL; FURTHER APPRAISAL OPPORTUNITIES; POSSIBLE RENTAL ADJUSTMENT IF PURCHASE OR SALE DECLINED AFTER APPRAISAL.

(i) No Obligation to Complete Purchase and Sale.

Except as provided in **Article 10(c)(ii)**, after the appraiser completes the appraisal and delivers a final report to the parties, no party shall be obligated either to buy or sell the Line either for the appraised price or for any adjusted, or offered higher or lower, price.

(ii) Possible Rental Payment Adjustments Upon Failure to Conclude Purchase and Sale.

After a failure to complete a purchase and sale of the Line within the time period provided in **Article 11(d)**, the Sublease Rental shall be adjusted in accordance with **Article 3(f)**. In the event of any number of subsequent failures to complete a purchase or sale, the rental adjustment provided for in **Article 3(f)** and appraisal process re-initiation provision in **Article 11(b)(ii)** shall again apply.

(d) PURCHASE AND SALE AGREEMENT; DEED OF SALE.

(i) Purchase and Sale Agreement Required.

Any sale of the Line to METRO-NORTH will be pursuant to a purchase and sale agreement ("Purchase and Sale Agreement") with NSR or PRR to be entered into at the time of the purchase. The Purchase and Sale Agreement shall include all of NSR's and PRR's right, title and interest in the Line, except for the NSR or PRR reservations of property rights and interests specified in **Articles 11(d) and (e)** herein. The Purchase and Sale Agreement shall contain other standard terms and conditions that are appropriate in agreements of that type for the sale of railroad lines with reserved interests,

including an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable easement for continuing freight rail operations, and shall be consistent with the provisions of this **Article 11(d)** with respect to the nature and quality of PRR's title and the type of deed to be given to METRO-NORTH.

(ii) METRO-NORTH Time to Close Sale, Notice, Continued Payment of Rent, Credit.

METRO-NORTH shall have up to five (5) years from the date of execution of a Purchase and Sale Agreement to close its purchase of the Line, provided that if the closing date to complete the transfer of the Line to METRO-NORTH is not specified in the Purchase and Sale Agreement, METRO-NORTH must give NSR or PRR written notice sixty (60) days in advance of the proposed closing date. METRO-NORTH shall continue to pay Sublease Rental calculated under **Article 3(b) through (e)** until the purchase and sale transaction is closed, subject to the credit toward the purchase price provided for in **Article 11(d)(v)**.

(iii) Interest On Purchase Price for Untimely Closing.

If the purchase and sale transaction for the Line does not close within one hundred-twenty (120) days from the execution date of the Purchase and Sale Agreement, METRO-NORTH's purchase price for the Line shall be increased by an amount equal to interest on the purchase price at an annual rate equal to NSR's cost of capital, as determined and adjusted by the STB or any successor agency, compounded monthly but applied daily from the date one hundred-twenty (120) days after such execution until the transaction is closed; provided that interest under this **Article 11(d)(iii)** shall not accrue during any period that failure to close is attributable to the acts or omissions of NSR or PRR.

(iv) NSR Cost of Capital Alternative Calculation, Arbitration Resolution, Retroactive Application.

If the STB or any successor agency no longer calculates the railroads' cost of capital, the parties shall agree upon a method for determining NSR's cost of capital. If the parties cannot agree on a new method for determining NSR's cost of capital prior to closing, METRO-NORTH shall pay interest under **Article 11(d)(iii)** based on NSR's asserted cost of capital. METRO-NORTH shall have the right to submit the determination of NSR's appropriate cost of capital to a single arbitrator in accordance with **Article 9(a)** of the Operations Agreement. The determination of the arbitrator shall be applied retroactively to the amount of interest paid by METRO-NORTH.

(v) Rental Credited to Purchase Price After Certain Date.

If the closing date for the purchase and sale transaction is not specified in the Purchase and Sale Agreement and the transaction is not in fact closed within one hundred-twenty (120) days of the execution date of the

Purchase and Sale Agreement, and provided the purchase and sale transaction is closed within five (5) years after the date of execution of the Purchase and Sale Agreement, Sublease Rental payments under this Sublease after the 120-day period following execution of the Purchase and Sale Agreement shall be credited to the purchase price to be paid by METRO-NORTH for the Line. This credit shall include a pro-ration of the current year's Sublease Rental to the purchase price calculated by dividing the current year's rent by 365 and applying the result to the number of days that the Line remained under the Sublease following the 120-day period following execution of the Purchase and Sale Agreement until the closing date or the end of the calendar year rental period, whichever occurs first.

(vi) Deed.

The Line shall be conveyed by Quitclaim Deed.

(vii) Quality of PRR Title.

Inasmuch as Conrail received title to the property on April 1, 1976 through the U.S. Railway Association, NSR shall not be required to warrant the nature and quality of PRR's title in any way and shall not be required to provide any information about the chain of title or title information prior to that date. However, METRO-NORTH shall have the right to review and approve the legal descriptions of the Line prior to Closing, shall have the right to terminate the Purchase and Sale Agreement if it discovers any defects in title to the Line that it is unwilling to accept, and NSR/PRR shall be obligated prior to Closing to remove any mortgages, mechanics' liens, judgment liens and other monetary liens that were placed on the Line by the action or default of Conrail, NSR or PRR.

(viii) METRO-NORTH Right to Perform Environmental Due Diligence and to Cancel Agreement.

METRO-NORTH shall have the right to perform environmental due diligence on the Line prior to closing a purchase of the Line under a Purchase and Sale Agreement, pursuant to the terms of a standard right of entry agreement to be entered into by the parties, and shall have the right to terminate the Purchase and Sale Agreement if the condition of the Line is not acceptable to METRO-NORTH.

(ix) NSR Assignment of Third Party Agreements.

Except for leases, licenses and other third party agreements that relate solely to the performance of rail freight service over the Line or NSR/PRR's retained Communication Rights and Electrical Transmission Rights, NSR/PRR shall either assign or partially assign in the Purchase and Sale Agreement all of its rights and interests in leases, licenses and other third party agreements that relate or partially relate to the Line to METRO-NORTH or shall cancel or partially cancel such leases, licenses and other third party agreements

at the election of METRO-NORTH, provided however, that NSR/PRR shall not be obligated to seek cancellation of any agreement for which regulatory approval is required if NSR/PRR has no right or other practicable and economic means to obtain or to require the third party to obtain such approval.

(x) NSR Support for Regulatory Filings.

NSR/PRR shall support METRO-NORTH in connection with any regulatory filings required in connection with consummation of the Purchase and Sale Agreement.

(xi) Abandonment of Freight Operating Rights After Acquisition of Line by METRO-NORTH.

The Purchase and Sale Agreement shall provide that in the event that NSR/PRR files for regulatory authority to abandon freight service over the Line or any portion thereof following METRO-NORTH's acquisition of NSR/PRR's ownership interest in the Line, and a third party files an Offer of Financial Assistance to acquire NSR/PRR's freight easement over the Line, then NSR/PRR shall accept any competing Offer of Financial Assistance filed by METRO-NORTH. In the event that NSR/PRR files for regulatory authority to abandon freight service over the Line or any portion thereof following METRO-NORTH's acquisition of NSR/PRR's ownership interest in the Line, and no Offer of Financial Assistance is filed by any third party, then NSR/PRR and METRO-NORTH shall enter into a railbanking/interim trail use agreement and NSR/PRR shall grant METRO-NORTH an option to acquire for \$1.00 NSR/PRR's retained rights concerning freight service over the Line. These provisions shall survive closing under the Purchase and Sale Agreement.

(xii) Operations and Maintenance Agreement To Be Entered Into Upon Acquisition of the Line by METRO-NORTH.

The Purchase and Sale Agreement shall contain, as an Exhibit attached thereto and incorporated therein, an Operations and Maintenance Agreement ("O&M Agreement") that will be entered into by the parties and effective as of closing. The O&M Agreement shall contain similar terms as those set forth in the Operations Agreement pertaining to operating and maintenance issues, except that those terms shall be modified, as appropriate, to reflect the change in ownership, provided however, that those terms of the Operating Agreement related to car-mile computation and compensation, the terms specified in these **Articles 11(d) and (e)**, and other terms of the Operating Agreement that specifically state they will survive Metro-North's acquisition of ownership of the Line shall not be modified but shall be adopted as stated in the Sublease and the Operations Agreement.

(e) CERTAIN SALE RESERVATIONS.

The Purchase and Sale Agreement, and the deed(s) if relevant to real estate matters (which shall survive closing), shall include the following NSR or PRR reservations:

(i) an exclusive, permanent, irrevocable, perpetual, assignable, divisible, licensable and transferable easement for the performance of rail freight service over the Line, including the exclusive right to permit any other parties to use, or to deny other party's use of, the Line for rail freight service of any kind, subject to the terms and conditions set forth in the O&M Agreement;

(ii) the continuation of the annual free car-miles and the current application, rate schedule and rate adjustment provision for excess car-miles for movement of freight rail traffic over the Line;

(iii) continued use of NSR's easement or other rights in the Suffern Industrial Track at no charge and under no less favorable terms than are contained in the Operations Agreement;

(iv) the Communications Rights and Electrical Transmission Rights described in **Article 1(c)(i)**; and

(v) the non-exclusive right to use Radio Base Stations and Radio Base Station Components in connection with rail freight operations.

ARTICLE 12. MISCELLANEOUS GENERAL PROVISIONS.

(a) NSR MAINTENANCE OF WAY EMPLOYEES; NOTICE; NEUTRALITY.

(i) METRO-NORTH will provide NSR maintenance of way employees who have been working on the Line and who seek employment with METRO-NORTH priority consideration for employment for each new maintenance of way position created by METRO-NORTH within one (1) year after the Commencement Date (the terms of the employment, including but not limited to seniority, rates of pay, benefits, employees' responsibilities and candidates' qualifications shall be determined by METRO-NORTH in its sole discretion) and (ii) if an effort is undertaken by the Brotherhood of Maintenance of Way Employees to organize maintenance of way employees working on the Line, METRO-NORTH will assume a neutral stance in such organizing effort.

(b) FORCE MAJEURE.

Whenever a period of time is provided in this Sublease and the Operations Agreement for either party to perform any act or thing, such party shall not be liable nor responsible for any delays due to derailments, wrecks, fire,

explosion, strikes, lockouts, work stoppages, casualty occurrences, acts of God or nature, severe weather or climatic conditions, war, riots, public disorder, blockade, acts of terrorism, protest, vandalism or sabotage, criminal acts of third persons or entities, acts of civil or military authorities, FRA and other applicable governmental regulations, control or orders, nuclear accidents or incidents, embargo of freight operations or service orders issued through the AAR or STB, and other such causes beyond the reasonable control of such party; and in any such event, such time period shall be extended for the amount of time such party is so delayed; provided, that this provision shall not be construed to affect the responsibilities of such party hereunder not affected by the force majeure or to do or perform such delayed act or thing once such delays have been removed.

(c) ASSIGNMENT.

(i) No Transfer to Third Party Without Consent.

This Sublease and the Operations Agreement, or any rights, duties or obligations in either of them, shall not be assigned, or in any manner transferred, granted, conveyed or licensed nor shall the Line be sublet, used or occupied by any party other than METRO-NORTH or its Contractors (whether through purported lease, sublease, trackage rights agreement, access rights agreement, operating rights agreement, haulage agreement, license, permit, invitation, right of entry, franchise agreement, contract, agency arrangement, transfer, assignment, conveyance, easement or any other type of grant, contract, agreement or arrangement, howsoever designated), nor used by METRO-NORTH or its Contractors or parties claiming through them for freight railroad operations, nor shall any party succeed to this Sublease or the Operations Agreement, without the advance written consent of NSR, which shall be signed by an authorized officer. Such consent shall not be unreasonably withheld, conditioned or delayed, but NSR shall have the absolute and unconditional right to refuse to permit the assignment, succession, license, permit, transfer to, or grant or conveyance of this Sublease or the Operations Agreement, or any right, duty or obligation hereunder, to a freight railroad or any other party whether or not related to a freight railroad, that might assert or seek rights to transport or attempt to transport freight over the Line. As a condition to obtaining NSR's consent to such an assignment, METRO-NORTH will provide written notice to NSR of its desire to assign this Sublease or the Operations Agreement, together with an agreement, in form and substance acceptable to NSR, signed by the intended assignee and agreeing that the intended assignee will be bound by all provisions of this Sublease and the Operations Agreement. In addition, NSR may require other conditions as may reasonably be placed on such assignment, as the circumstances may require, to insure compliance with the language and intent of this Sublease and the Operations Agreement.

(ii) Continuation or Renewal of NSR Right to Consent.

Regardless whether any permitted assignment or

succession to this Sublease and the Operations Agreement, or any of the rights or obligations hereunder, becomes effective, NSR's right of consent under this **Article 12(c)** shall be renewed with METRO-NORTH, if the assignment or transfer does not take place, or with the permitted successor or assignee, if it does take place. Subject to the foregoing **Article 12(c)(i)** and preceding sentence of this **Article 12(c)(ii)**, this Sublease and the Operations Agreement will be binding upon and inure to the benefit of successors and assigns of NSR and permitted successors and assigns of METRO-NORTH and shall continue in full force and effect for the term of this Sublease and the Operations Agreement and any renewals or extensions thereof.

(d) AGREEMENT FOR SOLE BENEFIT OF PARTIES.

Except to the extent expressly provided herein, this Sublease and the Operations Agreement are intended for the sole benefit of the parties hereto. Nothing in this Sublease and the Operations Agreement is intended or may be construed to give any person, firm, corporation, or other person or entity, other than the parties hereto and their respective officers, directors, agents, employees, lessors, parents, subsidiaries, affiliates, partners, members, successors, and assigns, any right pursuant to any provision or term of this Sublease and the Operations Agreement, and all provisions and terms of this Sublease and the Operations Agreement are and will be for the sole and exclusive benefit of the parties to this Sublease and the Operations Agreement.

(e) NO ADMISSIONS AGAINST INTEREST.

Nothing in this Sublease and the Operations Agreement shall be used, deemed, or construed to be an admission against the interest of any party in the event of arbitration or litigation involving any of the parties and a third party (or parties).

(f) RELATIONSHIP OF THE PARTIES.

Neither NSR nor PRR, on the one hand, nor METRO-NORTH, on the other hand, shall be considered as the agent, joint venturer, or partner of the other.

(g) WAIVER.

(i) Waiver Does Not Waive Remedy for Further Breach.

Any waiver, at any time, by any party, of a breach of any provision, condition, duty, obligation, or requirement of this Sublease or the Operations Agreement will extend only to the particular breach so waived and will not be deemed to waive, consent to or approve any subsequent similar act or impair or affect the existence of that or any other provision, condition, obligation, or requirement of this Sublease or the Operations Agreement or the right of any party thereafter to avail itself of any remedy for a future breach, subject to such

waiver.

(ii) Delay in Enforcement of Term or Right Not a Waiver.

Any delay or failure by any party to enforce a duty, obligation, term or condition of this Sublease or the Operations Agreement shall not be deemed a waiver of enforcement, or further enforcement, of that or any other duty, obligation, term or condition of this Sublease or the Operations Agreement.

(iii) Acceptance of Late Rental and Interest Not a Waiver of Future Obligations or Due Dates.

Acceptance by NSR of the Sublease Rental paid by METRO-NORTH pursuant to **Article 3** of this Sublease, whether or not such Sublease Rental is paid less than thirty (30) days late or paid late with interest, will not be taken or construed to be a waiver of any future duty or obligation under or breach of any provision of the Sublease or the Operations Agreement, including but not limited to payment due dates.

(iv) Waiver Only Through Written Instrument.

No provision of this Sublease or the Operations Agreement shall be waived by any act of or the possession of any knowledge by the parties, but only by a written instrument signed by the party waiving a right hereunder.

(v) No Release of Obligations Through Declaration of Termination or During Holdover Tenancy.

No declaration of termination of this Sublease or the Operations Agreement shall be construed to release a party from any term, condition, duty, commitment, covenant or obligation as to which that party may be in default at the date of such termination or to release a party from any term, condition, duty, commitment, covenant or obligation of this Sublease or the Operations Agreement during any holdover tenancy.

(vi) No Assumption of Obligations Not Specified Herein or By Law.

The parties do not, by reason of their execution of and performance of their obligations under this Sublease or the Operations Agreement, assume any other duties, obligations or liabilities not imposed upon them by law.

(vii) Rights and Remedies are Cumulative Unless Otherwise Provided.

All rights and remedies conferred under this Sublease or the Operations Agreement, other agreements between the parties, or by law or regulation, shall be cumulative unless specifically provided or limited herein, and may be exercised singularly, consecutively or concurrently.

(h) AMENDMENT; SUPERSESSION OF 1983 TRACKAGE RIGHTS AGREEMENT.

(i) No provision of this Sublease or the Operations Agreement, which includes the Attachments hereto, shall be modified or amended without the written concurrence of the parties.

(ii) This Sublease and the Operations Agreement supersedes any understandings, written or oral, prior to the date of this Sublease and the Operations Agreement, including the 1983 Trackage Rights Agreement, as to the subject matter of this Sublease and the Operations Agreement, except accrued or explicitly surviving duties, costs or obligations.

(i) EMINENT DOMAIN; CONDEMNATION.

(i) Effect and Value.

(A) Allocation of Condemnation Awards.

Without acknowledging whether a line of railroad subject to the jurisdiction of the STB or any other railroad property, whether or not devoted to a public use, may be subject to state or local condemnation actions, the parties provide as follows: Should any part of the Line included in this Sublease be subject to condemnation, any condemnation judgment or award shall be allocated to NSR, on behalf of itself and PRR, as to the value of the fee interest or railroad easement in the land and as to any fixtures, appurtenances or personal property in place prior to the Commencement Date or added by NSR or PRR after said Commencement Date, and to METRO-NORTH as to any fixtures, appurtenances or personal property that have been added to the property by METRO-NORTH after said Commencement Date and as to any additional value attributable to METRO-NORTH's sublease.

(B) Source of Value Determination. The existence and value of structures, systems, facilities, fixtures, appurtenances or any transferred personal property related to rail operations on the Commencement Date shall be determined by the inventory provided for in **Article 2(a)** or, if there is no inventory or record of the property on the inventory, by NSR's, PRR's or Conrail's business records kept in the ordinary course of business. In the absence of an inventory or other mutually acceptable evidence, records of structures, systems, facilities, fixtures, appurtenances or any transferred personal property related to rail operations on the Commencement Date shall be used to attribute those

structures, systems, facilities, fixtures, appurtenances or any transferred personal property to NSR with additional structures, systems, facilities, fixtures, appurtenances or any personal property then being attributed to METRO-NORTH, in the absence of agreements or other evidence indicating that the additional structures, systems, facilities, fixtures, appurtenances or any personal property are attributable to NSR or its Licensees.

(ii) Parties May Make Individual Claims.

NSR and METRO-NORTH shall be free to make any claim they may have against the condemning, appropriating or acquiring entity for the amount of any damage done to them, respectively, as a result of the condemnation, appropriation or acquisition.

(iii) Effect of Condemnation.

This Sublease and the Operations Agreement will terminate as to any part of the Line that is condemned as of the date of the appropriation or acquisition of that part of the Line by the condemnor. In the case of a complete taking of the Line, this Sublease and the Operations Agreement will terminate, but the parties will remain liable for accrued obligations and provisions that survive termination of this Sublease and the Operations Agreement, to the extent the taking does not prevent their performance. In the case of a partial taking that materially interferes with METRO-NORTH's operations over the Line or a segment of the Line, METRO-NORTH may terminate this Sublease and the Operations Agreement, or, if METRO-NORTH elects to continue this Sublease and the Operations Agreement, the Sublease and the Operations Agreement shall remain in effect as to the remainder of the Line. The parties shall remain liable for accrued obligations relating to the part of the Line that was taken in the case of a partial taking. Any partial taking that has no impact on METRO-NORTH'S ability to conduct rail operations over the Line and adds no significant costs to its conduct of such operations shall be deemed immaterial.

(j) NOTICES.

All notices required to be given under this Sublease and the Operations Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown on **Attachment J** or such successor addresses as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, or by express carrier, courier, e-mail or fax, with receipt requested or with confirmation by certified or registered mail if evidence or notice of receipt is not regularly provided or available. All notices shall be effective and time periods under this Sublease and the Operations Agreement shall begin to run on day of receipt of the letter, express or courier package, e-mail or fax.

(k) CAPTIONS; HEADINGS.

The captions or headings of the articles, sections, paragraphs or items in this Sublease and the Operations Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Sublease and the Operations Agreement and shall not be used in the interpretation or considered part of this Sublease or the Operations Agreement.

(l) INTERPRETATION.

All personal pronouns used in this Sublease and the Operations Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context requires otherwise. Terms such as "herein," "hereof," "hereby," "hereunder," and "hereinafter" refer to this Sublease and the Operations Agreement as a whole and not to the particular sentence, paragraph, or section where they appear unless otherwise specified. All references to "including" shall be construed to be without limitation, unless otherwise provided. The parties participated jointly in the preparation of this Sublease and the Operations Agreement and, therefore, no provisions shall be construed against any party as drafter.

(m) GOVERNING LAW.

Except to the extent necessarily governed by federal law, this Sublease and the Operations Agreement will be construed in accordance with the laws of the State of New York.

(n) CONFIDENTIALITY.

(i) Confidentiality Duty, Extent.

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Sublease and the Operations Agreement, or as may be necessary or appropriate for a party hereto to enforce its rights under this Sublease and the Operations Agreement, during the term of this Sublease and the Operations Agreement and during the three (3) years after termination or expiration of this Sublease and the Operations Agreement, the terms and provisions of this Sublease and the Operations Agreement, all preliminary correspondence and papers, and all information, whether or not from another party to which access has been provided or obtained in the negotiation of this Sublease and the Operations Agreement, will be kept confidential and will not be disclosed by METRO-NORTH, NSR or PRR to any party other than METRO-NORTH's, NSR's and PRR's parents, subsidiaries and affiliates or their respective directors, officers, employees, members and agents, which and who in turn will be required to keep this Sublease and the Operations Agreement confidential and will not disclose it, without the prior written approval of the other parties to this Sublease and the

Operations Agreement.

(ii) Limited Waiver of Confidentiality Provision.

The parties may waive the provisions of this **Article 12(n)**, in writing, in whole or in part, but any such waiver shall apply only to the disclosure authorized or circumstance that is the subject of the waiver.

(iii) Release of Confidentiality Obligation to Extent Agreement Publicly Disclosed and Available.

The parties shall not be bound by the provisions of this **Article 12(n)** to the extent they furnish a copy or redacted copy of all or part of this Sublease and the Operations Agreement to any person who could obtain such copy from a source or record readily available to the public, but the parties nonetheless shall attempt to limit distribution of such publicly available copies to persons requesting them in order to do business with the party providing the copies or as required by law.

(iv) Specific Performance.

The parties shall be entitled to an order or award of specific performance to enforce the obligations of this **Article 12(n)**, in addition to any other remedies allowed by law, regulation or contract.

(v) Confidentiality of Records.

In accordance with the terms of this **Article 12(n)**, each party hereto shall maintain the strictest confidentiality of any records of the other parties that come into its possession and are pertinent or related in any way to the rights, obligations or performance of this Sublease or the Operations Agreement, or subject to audit hereunder. The parties agree that said records may only be reviewed by their own officers, directors and employees, or outside professionals working for the party who agree to maintain the confidentiality of the records and to use them only for the limited purposes provided for in this Sublease and the Operations Agreement. The parties agree that such records may only be used by all such persons for the purpose of implementation and enforcement of this Sublease and the Operations Agreement.

(o) SEVERABILITY.

Each and every clause of this Sublease and the Operations Agreement shall be severable from each other. In the event that any particular clause herein shall be held invalid and null and void in any judicial proceeding, such finding shall have no effect on the remaining clauses and the remainder of the Sublease and the Operations Agreement unless the invalidity of that particular clause deprives the parties of the benefit of their bargain under this Sublease and the Operations Agreement, in which event this Sublease and the

Operations Agreement shall terminate.

(p) NEWS RELEASES.

A party shall obtain the prior review and written approval of the other parties before issuing any news release describing this Sublease and the Operations Agreement, or any of its terms.

(q) TIME IS OF THE ESSENCE.

Time is of the essence in the performance of each party's obligations under this Sublease and the Operations Agreement.

(r) NON-DISCRIMINATION.

(i) Adherence to Applicable State Law.

As among METRO-NORTH, NSR and PRR, the parties do hereby agree that the provisions of Sections 1266-C (13) and (14) of the New York Public Authorities Law, as amended and supplemented, dealing with discrimination in employment on public contracts, are hereby made a part of this Sublease and the Operations Agreement and, to the extent applicable, are binding upon them.

(s) COUNTERPARTS.

This Sublease and the Operations Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

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

METRO NORTH COMMUTER RAILROAD COMPANY

By: _____
Name:
Title:
Date:

PENNSYLVANIA LINES LLC

By: William A. Galante
Name: William A. Galante
Title: Vice President
Date: February 26, 2003

NORFOLK SOUTHERN RAILWAY COMPANY

By: H. Craig Lewis
Name: H. Craig Lewis
Title: Vice President
Date: February 26, 2003

ATTACHMENT A

Description of Line (Property) to Be Subleased

The line of railroad between Milepost JS-31.3 at Suffern, NY and Milepost JS-76.6 at CP-Howells, NY and Milepost SR-68.7 (equals JS-76.6) at CP-Howells, NY and Milepost SR-89.9 at Port Jervis, NY, a distance of approximately 66.5 miles, consisting of railroad right of way, Main-Line Tracks, Ancillary Tracks, Connecting Tracks, fixtures, appurtenances, facilities, and associated, adjacent real property used in support of or access to that line of railroad.

The Line does not include the Reserved Tracks listed in **Attachment B**, including without limitation the NSR yard tracks and facilities located at or near Port Jervis, or within the yard limits of Campbell Hall Yard, Maybrook Yard, Suffern Yard, Hillburn Yard and Harriman Yard, except for the existing Main-Line Tracks that are used for METRO-NORTH's operations as of the Commencement Date and may be within the yard limits of or adjacent to Campbell Hall Yard or Suffern Yard. The Line does not include, and this Sublease and the Operations Agreement do not apply to, the Port Jervis Yard owned by MTA. The Line does not include material, supplies, personal property, equipment, vehicles, locomotives, and other rolling stock owned, possessed or in the account of NSR, which may be located on but not affixed to the Line.

Passing tracks along the Line that are included as Main-Line Tracks are located at:

- (a) Harriman, between Mileposts JS-45.0 and JS-47.8.
- (b) Campbell Hall, between Mileposts JS-63.4 and JS-66.5, and.
- (c) Howells to Otisville, between Mileposts SR-68.9 and SR-74.0.

Attachment A

Page 2

Description of Line (Property) to Be Subleased

Outparcels of Non-Operating Property Located Adjacent to or Near the Line That Are Specifically Excluded From the Description of the Line and Excluded from the Sublease

The Line does not include the outparcels of real estate listed below that were part of or associated with the right-of-way for abandoned or removed Tracks that were adjacent to or grade separated from the Line:

- 1) Arden, NY - West side of right-of-way, shown on Val Section 2NY, Map 31.
- 2) Tuxedo, NY - East side of right-of-way, shown on Val Section 2NY, Map 25.
- 3) Central Valley, NY - East side of right-of-way, shown on Val Section 4NY, Map 3.
- 4) Newburgh Jct., NY
 - a) West side of right-of-way, shown on Val Section 2NY, Maps 33 & 34.
 - b) East side of right-of-way, shown on Val Section 4NY, Map 1.
- 5) Otisville, NY - All of the previously abandoned right of way shown on Val Section 2NY.

ATTACHMENT A-1

List of Ancillary Tracks Included Within Sublease

<u>Milepost</u>	<u>Track or Yard</u>	<u>Miles/Track</u>
JS 58.5	Clarks Siding	0.20 mile
SR 74.85	Cripple Track	0.20 mile

Note: METRO-NORTH shall have the right to store maintenance-of-way equipment on these Ancillary Tracks overnight when its maintenance-of-way crews are working in the vicinity unless such storage would interfere with NSR use of those tracks for storing bad-order cars or any other purposes. Except as provided in the foregoing sentence, METRO-NORTH shall not use these Ancillary Tracks for storage purposes. (This provision is contingent upon the approval of NSR's Vice President of Transportation. Once that approval is received, the parties shall prepare a revised **Attachment A-1** that eliminates this contingency.)

ATTACHMENT B

Reserved Tracks (Industrial Tracks, Spurs, Sidings, Yards and Yard Facilities except the Main-Line Tracks and Right-of-Way That Pass Through or Are Adjacent to Campbell Hall Yard and Suffern Yard) Not Included in Sublease of Suffern, NY-Port Jervis, NY Line of Railroad From Norfolk Southern Railway Company as operator of Pennsylvania Lines LLC to Metro North Commuter Railroad:

<u>Milepost</u>	<u>Track or Yard</u>	<u>Miles/Track</u>
JS 30.9	Suffern Yard	6.50 miles
JS 31.5	Hillburn Yard	2.05 miles
JS 31.75	Rockland Run	0.25 mile
	Harriman Yard	
JS 45.0	Harriman Industrial	0.90 mile
JS 45.4	W. Leg Wye	0.80 mile
JS 64.7	Campbell Hall Yard	4.85 miles
RT 1.3	Maybrook Industrial (off Campbell Hall Yard)	6.20 miles
	Maybrook Yard	
DJ 0.0	Walden Industrial (off Campbell Hall Yard)	8.25 miles
JS 63.2	Hudson Secondary	18.60 miles
LX 10.0	Greycourt Industrial (off Hudson Secondary)	1.20 miles
SR 71.0	Red Onion Tracks (two tracks)	0.50 mile
SR 89.8	North Siding	0.40 mile
SR 89.9	NSR Tracks and Facilities South of Main-Line Tracks and METRO-NORTH Yard at Port Jervis	

As of 12/31/2002

ATTACHMENT C

Inventory (if any) of Structures, Fixtures, Appurtenances on Line

In the absence of an inventory, the existence and condition of structures, fixtures and appurtenances on the Line will be determined by NSR's records kept in the ordinary course of business.

ATTACHMENT D

Page 1

List of Agreements, Easements and Other Reserved Rights Facilities Applicable to the Line

(1) Radio Base Stations.

The radio base stations, and accompanying antennas, towers, poles, receivers, transmitters and other mechanical, electronic and computerized devices, and FCC (VHF) Licenses, located at or near: Harriman (Newburgh Jct.) at Milepost JS-44.9, Campbell Hall at Milepost JS-65.7, Otisville at Mileposts SR-74.4 and SR-74.5 (maintenance of way, dial-up) and Sparrow (Port Jervis) at Milepost SR-89.9.

(2) Reserved Freight Operating Agreements.

These types of agreements, if any, shall be retained by NSR or PRR. See attached list.

(3) Fiber Optic, Cable and Communication System Agreements.

(A) Conrail Licensed Facilities Agreements That Relate to or
Could Relate to the Line With Respect to Such Systems.

Conrail's existing agreements with MCI Worldcom Network Services, Inc., successor in interest by name change to MCI Telecommunications Corporation, on all or part of the Line between Milepost JS-31.30 and Milepost JS-55.14.

(B) Others

These types of agreements, if any, shall be retained by NSR or PRR. See attached list.

ATTACHMENT D

Page 2

List of Agreements, Easements and Other Reserved Rights Facilities
Applicable to the Line

(4) Signboard Agreements That Relate to the Line or Could Relate to the Line.

These types of agreements, if any, are to be retained by NSR or PRR.
See attached list.

(5) Lease, Sublease, Rental and Other Agreements Relating to Real Property, Buildings or Offices.

These types of agreements, if any, are to be retained by NSR or PRR.
See attached list.

(6) Wire, Pipe, Pole, Drainage, Rights-of-Entry, Grade Crossings Agreements.

These types of agreements, if any, are to be assigned to METRO-NORTH. See attached list.

(7) Services, Transportation Facilities and Other Agreements

(A) Agreements To Be Assigned to METRO-NORTH.

(B) Agreements To Be Partially Assigned to METRO-NORTH and Partially Retained by NSR.

(C) Agreements To Be Retained by NSR For Which METRO-NORTH Requires Notice or Information

These types of agreements, if any, shall be allocated among the parties based on the principles set forth in the Sublease or as otherwise agreed by the parties. See attached list.

Note: The parties shall review the attached list within thirty (30) days of the Commencement Date and agree on the proper allocation of the agreements listed thereon in accordance with the principles set forth above and in the Sublease. A revised **Attachment D** shall be prepared by the parties and substituted herein upon the completion of that process.

ATTACHMENT E

Methodology for Determining Car-Mile Rate Adjustment

Methodology for Determining Annual Maintenance Rate Adjustment

The parties shall use the same adjustment methodology set forth on Exhibit 8 of the 1983 Trackage Rights Agreement, as adjusted in accordance with the terms and conditions of the Sublease and the Operations Agreement. The parties shall develop a description of that methodology within thirty (30) days of the Commencement Date and substitute that description for this **Attachment E**.

ATTACHMENT F

Connecting Tracks to Be Maintained by METRO-NORTH

Norfolk Southern Railway Connecting Track (Turnout, Crossover,
Connection) List On Southern Tier From Suffern To Port Jervis Maintenance to
Be Assumed by METRO-NORTH at NSR Cost Under Sublease

	<u>MP / TRK</u>	<u>SIZE / WT / HAND</u>	<u>INDUSTRY / USE</u>
1	JS 31.5 (#1)	#10 130RE (Bolted) LH	Doane Pet Foods
2	JS 31.85 (#1)	#10 132RE (Bolted) LH	W End Siding
3	JS 31.8 (#2)	#10 132RE (Bolted) RH	Rockland Runner
4	JS 31.85 (#2)	#10 132RE (Bolted) RH	Orange / Rockland
5	JS 31.85 (#1)	#10 132RE (Bolted) RH	Hillburn Xovers
6	JS 31.80 (#2)	#10 132RE (Bolted) RH	Hillburn Xovers
7	JS 44.9	#20 132RE (Bolted) LH	Harriman Ind
8	JS 45.4	#10 132RE (CWR) RH	West Leg Wye
9	JS 58.5	#10 132RE (CWR) RH	E End Clarks Sdg
10	JS 58.6	#10 132RE (CWR) LH	W End Clarks Sdg
11	JS 63.2	#20 132RE (CWR) RH	Hudson Sec
12	JS 66.5	#15 132RE (CWR) LH	West Hall (To Yard)
13	JS 70.6 (D)	#10 132RE (CWR) LH	Wakefern Whse
14	JS 71.0 (D)	#10 132RE (CWR) RH	E End Red Onion
15	JS 71.5 (D)	#10 132RE (CWR) LH	W End Red Onion
16	JS 71.8 (D)	#10 140RE (CWR) RH	84 Lumber
17	JS 74.0 (D)	#10 132RE (CWR) RH	4 Story Jct (To M&NJ)
18	SR 73.85 (#2)	#10 115RE (Bolted) LH	OV Cripple Switch

19	SR 87.8 (#1)	#10 132RE (Bolted) LH	Pa Xovers
20	SR 87.8 (#2)	#10 132RE (Bolted) LH	Pa Xovers
21	SR 87.81 (#2)	#10 132RE (Bolted) LH	Buckleys Lead (to Yard)
22	SR 89.9 (#1)	#15 132RE (Bolted) LH	North Track Siding

ATTACHMENT G

Clearances

Clearances on the Line must be no less than a standard minimum vertical clearance of 23'-0" above top-of-rail and a standard minimum horizontal clearance of 13'-0" from centerline of track, taking into account any added space needed to account for curvature, except that (A) thru truss and thru girder bridges may be constructed to a minimum 9'-0" horizontal clearance; (B) the minimum vertical clearance for non-voltage carrying wires and cables is 27'-0" above top-of-rail; (C) the minimum vertical clearance for voltage carrying wires is 30'-0" above top-of-rail (and this clearance requirement increases as voltage increases); and (D) the minimum horizontal clearance for signal masts is 15'-0" from centerline of track. Any applicable federal or state requirements for clearances that require more clearance than the stated distances shall apply in lieu of those distances.

No clearances have been identified on the Line that are less than the standards set forth in the Operations Agreement prior to the Commencement Date except at the following locations: the horizontal clearances at Harriman and Middletown are approximately 10'-6" from the centerline of the track due to mini-high station platforms.

ATTACHMENT H

Partial List of Environmental Laws

1. Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 125 et seq.
2. Air Pollution Prevention and Control Act (Clean Air Act), 42 U.S.C. 7401 et seq.
3. Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.
4. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund Act) PL 96-5 10.
5. The Rivers and Harbors Act of 1899 (The Refuse Act), 33 U.S.C. 401-413.
6. Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.
7. Toxic Substances Control Act, 15 U.S.C. 2601 et seq.
8. Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, including but not limited to Title VI (relating to underground storage tanks); codified as Subtitle I of the Resource Conservation and Recovery Act.
9. Superfund Amendments and Reauthorization Act of 1986, P.L. No. 99-499.
Emergency Planning and Community Right-to-Know Act of 1986, P.L. No. 99-499.

This is not intended to be a comprehensive list of federal environmental statutes but is illustrative only.

ATTACHMENT I

METRO-NORTH's Regulatory Filing Requirements Upon Termination or Expiration of Sublease or Operations Agreement Pertaining to Suffern, NY-Port Jervis, NY Line, If Applicable

ARTICLE 10.1. METRO-NORTH DUTY TO FILE WITH STB OR OTHER REGULATORY AGENCY UPON EXPIRATION OR TERMINATION OF SUBLEASE OR OPERATIONS AGREEMENT OR CESSATION OF OPERATIONS, IF THEN REQUIRED BY FEDERAL LAW.

(a) Purpose and Effect of Article 10.1.

The parties acknowledge that under current federal law, assuming the Surface Transportation Board ("STB") dismisses METRO-NORTH's notice of exemption to enter into this Sublease or the Operations Agreement and operations under either of them, no STB or other regulatory agency approval is needed to terminate this Sublease or the Operations Agreement, to terminate METRO-NORTH's operations over the Line or for METRO-NORTH to vacate the Line. The following provisions, which are a full and integral part of this Sublease and the Operations Agreement, but are placed in this Attachment for administrative convenience, shall apply only if STB or other regulatory approval to terminate the Sublease or the Operations Agreement, METRO-NORTH's operations over the Line or for METRO-NORTH to vacate the Line becomes necessary because METRO-NORTH proceeds to execute, implement and perform under the Sublease or the Operations Agreement pursuant to STB authority or exemption or because of a change in federal law. Thus, the following provisions are to be understood as applicable only upon such contingencies.

(b) METRO-NORTH Duty to File Prior to Agreements' Expiration, If Required by Law.

If then required by federal law, at least sixty (60) days prior to the expiration of this Sublease and the Operations Agreement, METRO-NORTH, at its own expense, shall submit all necessary applications, petitions or notices to the STB, any successor agency, any other agency with jurisdiction, or any agency or department simply requiring notification, to effectuate either the

termination of this Sublease or the Operations Agreement, or a discontinuance and termination of METRO-NORTH's authority to operate over the Line under this Sublease or the Operations Agreement, or both. METRO-NORTH shall provide NSR with a copy of any such application, petition or notice for review for accuracy or recommendations prior to its filing. NSR will assist and support efforts by METRO-NORTH to secure any necessary regulatory approvals or exemptions.

(c) METRO-NORTH Duty to File upon Termination, If Required by Law.

Should all or any part of this Sublease or the Operations Agreement terminate or be terminated prior to their expiration, or if METRO-NORTH shall cease operations over all or any part of the Line prior to expiration of this Sublease and the Operations Agreement, for any reason, and if then required by federal law, METRO-NORTH, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application, petition or notice to obtain from the STB, successor agency or any other regulatory agency with jurisdiction approval, authorization or exemption for the discontinuance and termination of all or part of this Sublease or the Operations Agreement, or all or any part of METRO-NORTH's authority to operate over the Line or a portion of the Line under this Sublease or the Operations Agreement, or both. METRO-NORTH shall provide NSR a copy of any such application, petition or notice for review for accuracy and recommendations prior to its filing. NSR will assist and support efforts by METRO-NORTH to secure any necessary regulatory approvals or exemptions.

(d) METRO-NORTH Appointment of NSR as Attorney to Take Court or Regulatory Action at METRO-NORTH Expense If METRO-NORTH Fails to File If Required by Law.

METRO-NORTH shall reimburse, defend, indemnify and save harmless NSR, PRR or any of the NSR Indemnified Parties or their successors or assigns, for the cost (including court costs, agency costs, filing fees, witness and consultant fees and attorney fees) of obtaining any required STB or successor agency or other regulatory approval, authorization or exemption for termination of the Sublease or the Operations Agreement or discontinuance of service over the Line for which METRO-NORTH does not timely apply or pursue but for which NSR then applies or pursues, if such filings are then required by federal law. METRO-NORTH hereby appoints NSR its attorney in fact to apply to any court to enforce this **Article 10.1** of this Sublease and to the STB or any agency with jurisdiction for any regulatory authority or exemption required under this **Article 10.1** due to the expiration or termination of

this Sublease or the Operations Agreement or cessation of METRO-NORTH operations, if then required by federal law. NSR may, but need not, exercise the power of attorney authority provided for in this paragraph at METRO-NORTH's risk, cost and expense should METRO-NORTH fail to timely make the filings required by this **Article 10.1**, but instead, at its option, may exercise any other right or pursue any other remedy permitted under the Sublease, the Operations Agreement, or Applicable Law.

(e) Effect of Partial Termination and Filing, If Required by Law.

If required by law, if METRO-NORTH obtains regulatory approval or exemption allowing it to discontinue service over any segment of the Line, this Sublease and the Operations Agreement shall terminate as to such segment, except for accrued obligations and to the extent certain terms shall survive as indicated in **Article 5(j)** of the Operations Agreement and **Article 10(g)** of this Sublease and, if required by law, the filing requirement provisions of this **Article 10.1** shall apply to the partial termination.

(f) METRO-NORTH Cooperation with Other NSR Regulatory Filings.

Upon the request of NSR, METRO-NORTH will fully cooperate with NSR in any other regulatory application, petition, notice, request or other action NSR takes to or before the STB or any other regulatory agency with jurisdiction that is required and related in any way to the Sublease unless such action is directly adverse to the interests of METRO-NORTH (provided, however, that METRO-NORTH shall fully cooperate with NSR in any such regulatory filing that relates to an abandonment, discontinuance or other regulatory action required under the terms and conditions of the Sublease or the Operations Agreement).

ATTACHMENT J

NSR, PRR, and METRO-NORTH Names and Addresses for Notices

Notices under this Sublease and the Operations Agreement shall be given to the parties by certified or registered mail, courier or express carrier, or via confirmed fax or e-mail with receipt requested or with confirmation by certified or registered mail if evidence or notice of receipt is not regularly provided or available, at the following addresses:

As to Norfolk Southern Railway Company:

Vice President Transportation
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

and

Vice President Strategic Planning
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

As to Pennsylvania Lines LLC:

Secretary
Pennsylvania Lines LLC
Three Commercial Place
Norfolk, VA 23510

As to METRO North Commuter Railroad

President
Metro-North Railroad
347 Madison Avenue
New York, NY 10017-3739

and

Vice President-General Counsel
Metro-North Railroad
347 Madison Avenue
New York, NY 10017-3739

ATTACHMENT K

MAINTENANCE STANDARDS

<u>LINE</u>	<u>MILE POST</u>	<u>CLASS OF TRACK</u>
SOUTHERN TIER LINE (L.C. 6102/6103)		
Suffern – Port Jervis		
	JS 31.3 – JS 76.6	
	SR 68.7 – SR 89.9	
Suffern to Newburgh Jct.		Class 3
Newburgh Jct. To 5 miles east of Howells Jct.		Class 4
5 miles east of Howells Jct. to Port Jervis		Class 3

METRO-NORTH CERTIFICATE OF ACKNOWLEDGMENT

State of New York)

County of New York) ss.:

On the ____ day of February in the year 2003 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of Individual
Taking Acknowledgment

NSR CERTIFICATE OF ACKNOWLEDGMENT
(Outside of New York State)

Commonwealth of Virginia

City
County of Norfolk) ss.:

On the 26th day of February in the year 2003 before me, the undersigned, personally appeared H. Craig Lewis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the Norfolk VA. (Insert the city or other political subdivision and the state or country or other place the acknowledgment was taken).

Sandra J. Boskey
Signature and Office of Individual
Taking Acknowledgment.

My commission expires March 31, 2006

PRR CERTIFICATE OF ACKNOWLEDGMENT
(Outside of New York State)

Commonwealth of Virginia

City
County of Dorchester) ss.:

On the 26th day of February in the year 2003 before me, the undersigned, personally appeared William A. Belarke, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the Dorchester, Va. (Insert the city or other political subdivision and the state or country or other place the acknowledgment was taken).

Sandra J. Kirby
Signature and Office of Individual
Taking Acknowledgment.

My commission expires March 31, 2006

EXHIBIT B

List of Certain Defined Terms

"1982 Transfer Agreement" is defined on page 2 of the Operating Agreement.

"1983 Trackage Rights Agreement" is defined on page 2 of the Operating Agreement.

"Ancillary Tracks" is defined on page 5 of the Sublease.

"Applicable Law" is defined on page 40 of the Operating Agreement.

"Casualty Loss" is defined on page 39 of the Operating Agreement.

"CERCLA" is defined on page 40 of the Operating Agreement.

"Claims" is defined on page 40 of the Operating Agreement.

"Commencement Date" is defined on page 4 of the Sublease.

"Connecting Tracks" is defined on page 5 of the Operating Agreement.

"Conrail Licensed Facilities Agreements" is defined on page 14 of the Sublease.

"Conrail Transaction Agreement" is defined on page 5 of the Operating Agreement.

"Contamination" is defined on page 40 of the Operating Agreement.

"Contractor" is defined on page 5 of the Operating Agreement.

"Customer" is defined on page 6 of the Operating Agreement.

"Environmental Law" is defined on page 40 of the Operating Agreement.

"Governmental Approval" is defined on page 41 of the Operating Agreement.

"Governmental Body" is defined on page 41 of the Operating Agreement.

"Invitee" is defined on page 41 of the Operating Agreement.

"Licensee" is defined on page 6 of the Operating Agreement.

"Line" is defined on page 4 of the Sublease.

"Main-Line Tracks" is defined on page 5 of the Sublease.

"METRO-NORTH Indemnified Parties" is defined on page 41 of the Operating Agreement.

"NJTRO" is defined on page 2 of the Operating Agreement.

"NSR Car-Mile Usage" is defined on page 13 of the Operating Agreement.

"NSR Car-Mile Usage Charges" is defined on page 13 of the Operating Agreement.

"NSR Environmental Contact" is defined on page 41 of the Operating Agreement.

"NSR Indemnified Parties" is defined on page 42 of the Operating Agreement.

"NSR Non-Operating Licensees" is defined on page 12 of the Sublease.

"NSR Operating Agreement" is defined on page 3 of the Operating Agreement.

"NSR Operating Licensees" is defined on page 4 of the Operating Agreement.

"O&M Agreement" is defined on page 41 of the Sublease.

"Pollution Control Measures" is defined on page 42 of the Operating Agreement.

"Pre-Commencement Contamination" is defined on page 42 of the Operating Agreement.

"PRR Indemnified Parties" is defined on page 42 of the Operating Agreement.

"Regional Rail Act" is defined on page 42 of the Operating Agreement.

"Regulated Substance" is defined on page 42 of the Operating Agreement.

"Release" is defined on page 43 of the Operating Agreement.

"Remediation Standards" is defined on page 43 of the Operating Agreement.

"Reportable Release" is defined on page 43 of the Operating Agreement.

"Required by Law" is defined on page 43 of the Operating Agreement.

"Reserved Freight Facilities" is defined on page 41 of the Operating Agreement.

"Reserved Freight Operating Rights" is defined on page 11 of the Sublease.

"Reserved Non-Operating Rights" is defined on page 13 of the Sublease.

"Reserved Rights" is defined on page 6 of the Operating Agreement.

"Reserved Rights Facilities" is defined on page 6 of the Operating Agreement.

"Reserved Tracks" is defined on page 5 of the Sublease.

"Response" is defined on page 44 of the Operating Agreement.

"Response Action" is defined on page 43 of the Operating Agreement.

"Sublease Rental" is defined on page 21 of the Sublease.

"Suffern Industrial Track" is defined on page 2 of the Operating Agreement.

"Tax Liabilities" is defined on page 25 of the Sublease.

"Tracks" is defined on page 5 of the Sublease.

Exhibit B to Motion to Dismiss

OPERATIONS AGREEMENT

By and Between

METRO NORTH COMMUTER RAILROAD COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY

and PENNSYLVANIA LINES LLC

With Respect to Line of Railroad Between Suffern, NY and Port Jervis, NY

EFFECTIVE February 28, 2003

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OPERATIONS AGREEMENT

THIS **OPERATIONS AGREEMENT** ("Operations Agreement") is made as of this 28th day of February, 2003, by and between **METRO NORTH COMMUTER RAILROAD COMPANY** ("**METRO-NORTH**"), a body corporate and politic of the State of New York, AND **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation ("**NSR**") and **PENNSYLVANIA LINES LLC**, a Delaware limited liability company ("**PRR**").

RECITALS

WITNESSETH:

WHEREAS, **METRO-NORTH** is a public benefit corporation and a subsidiary and agency of Metropolitan Transportation Authority ("**MTA**"), a body corporate and politic of the State of New York and a public benefit corporation;

WHEREAS, **METRO-NORTH** provides commuter rail passenger service in seven counties in the New York City area in the State of New York, as well as in two counties in the State of Connecticut;

WHEREAS, **METRO-NORTH** does not provide rail freight service;

WHEREAS, **METRO-NORTH** performs an essential governmental function and carries out its public purposes in all respects for the benefit of the people of the State of New York;

WHEREAS, **METRO-NORTH** enters this Operations Agreement and a Sublease of even date and term ("**Sublease**") for transportation purposes, in order to secure access to transportation facilities now or in the future to further and carry out its public purposes;

WHEREAS, under 49 U.S.C. § 10501(c)(2), the Surface Transportation Board ("**STB**") does not have jurisdiction under 49 U.S. Code, Subtitle IV, Part A, Rail, over mass transportation provided by a local governmental authority;

WHEREAS, the **STB** has jurisdiction over the sale or lease of a line of railroad by a regulated rail freight common carrier except in certain instances where the rail freight common carrier retains a sufficient interest in the line to be able to fulfill its common carrier obligation to shippers and receivers of freight;

WHEREAS, from April 1, 1976 until June 1, 1999, Consolidated Rail Corporation ("**Conrail**") held title to and operated a line of railroad known as either the Southern Tier Line (L.C. 6102/6103) or the Port Jervis Line, which **Conrail** acquired under the Final System Plan for reorganization of the bankrupt northeastern and midwestern railroads, submitted to Congress on July 26, 1975 ("**Final System Plan**");

WHEREAS, a portion of the Southern Tier Line or Port Jervis Line approximately 66.5 miles in length, which is located between Milepost JS-31.3 at Suffern, NY and Milepost JS-76.6 at CP-Howells, NY and Milepost SR-68.7 (equals JS-76.6) at CP-Howells, NY and Milepost SR-89.9 at Port Jervis, NY (hereinafter referred to, together with fixtures, appurtenances, support facilities and other associated, adjacent property used in support of or access to that line of railroad, as the "Line") is the subject of the Sublease and this Operations Agreement;

WHEREAS, since the implementation of the Northeast Rail Services Act ("NERSA"), METRO-NORTH has provided commuter rail passenger service over the Line under a "Trackage Rights Agreement Between Metro North Commuter Railroad Company, Metropolitan Transportation Authority, Connecticut Department of Transportation and Consolidated Rail Corporation, effective as of January 1, 1983" ("1983 Trackage Rights Agreement");

WHEREAS, METRO-NORTH's commuter rail passenger service continues over an additional segment of the Southern Tier Line or Port Jervis Line, for approximately 31.3 more miles, between Milepost JS-31.3 at Suffern, NY, and Milepost 0.0 at Hoboken, NJ, a segment now owned and operated by New Jersey Transit Corporation's railroad subsidiary, New Jersey Transit Rail Operations, Inc. ("NJTRO");

WHEREAS, METRO-NORTH's commuter rail passenger operations over the Line are currently performed under contract by NJTRO;

WHEREAS, NJTRO currently provides dispatching for the entire line of railroad between Port Jervis and Hoboken, including dispatching for all of METRO-NORTH'S commuter rail passenger trains and all of NSR's rail freight trains on the Line;

WHEREAS, Conrail retained exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable easements for freight operations over certain rail properties conveyed to MTA, and now operated by METRO-NORTH, pursuant to the provisions of NERSA and a Transfer Agreement between Conrail and MTA, dated as of September 1, 1982 (the "1982 Transfer Agreement"), and through reservations in the deeds from Conrail to MTA pursuant to the 1982 Transfer Agreement;

WHEREAS, the 1982 Transfer Agreement included a sale to MTA of, and the retention of an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight operating easement by Conrail over, the Suffern Industrial Track aka Piermont Branch, currently consisting of two active segments between Mileposts 0.0-3.33 and Mileposts 6.2-6.5 ("Suffern Industrial Track"), which connects with the Line near Suffern, NY;

WHEREAS, Norfolk Southern Corporation ("NSC"), parent to NSR,

entered into a Transaction Agreement (the "Conrail Transaction Agreement") among NSC; NSR; CSX Corporation ("CSX"); CSX Transportation, Inc. ("CSXT"), a wholly-owned subsidiary of CSX; Conrail Inc. ("CRR"); Conrail, a wholly-owned subsidiary of CRR; and CRR Holdings LLC, dated June 10, 1997, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR;

WHEREAS, the Conrail Transaction Agreement was approved by the STB in a decision served July 23, 1998 in STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation*, and the transaction was closed and became effective June 1, 1999;

WHEREAS, pursuant to the Conrail Transaction Agreement, certain Conrail assets, including Conrail's interest in the Line and Conrail's rail freight operations easement over and contract rights with regard to the Suffern Industrial Track, were allocated to PRR, a wholly-owned subsidiary of Conrail;

WHEREAS, pursuant to the Conrail Transaction Agreement, PRR's assets, in turn, were leased to and are operated by NSR under the terms of an allocated assets operating agreement between PRR and NSR (the "NSR Operating Agreement") with an original term of twenty-five (25) years from the effective date of June 1, 1999, and two optional renewal terms of five (5) years each;

WHEREAS, Conrail, as the owner and operator of the Line until May 31, 1999, and NSR as lessee of PRR and operator of the Line since PRR acquired the Line from Conrail on June 1, 1999, have continuously and exclusively provided, performed or permitted rail freight service over the Line under Conrail's rail freight operating rights as owner of the Line, and over the Suffern Industrial Track under Conrail's reserved easement under the 1982 Transfer Agreement, and related law and agreements, during the entire period of METRO-NORTH's use of the Line for commuter rail passenger service under the 1983 Trackage Rights Agreement;

WHEREAS, the Conrail Transaction Agreement, in relevant part, permits NSR to enter into various transactions with regard to the assets so allocated, which include the Line and the freight operating easement on the Suffern Industrial Track;

WHEREAS, the 1983 Trackage Rights Agreement expired by its terms on December 31, 1997, was extended under an agreement that has subsequently expired, has been continued on a year to year basis pursuant to a holdover provision, and is the subject of a letter from NSR to METRO-NORTH dated April 25, 2002 in which NSR exercises certain termination rights;

WHEREAS, the 1983 Trackage Rights Agreement provides for the prompt

negotiation of a new agreement upon termination of that agreement but does not require a specific form of replacement agreement;

WHEREAS, under the Conrail Transaction Agreement, all of the other Conrail railroad lines or operations included in the 1983 Trackage Rights Agreements, including all of the lines owned or operated by the Connecticut Department of Transportation ("CDOT"), have been allocated to or for the use of New York Central Lines LLC ("NYC"), also a wholly-owned subsidiary of Conrail, and are leased to and operated by CSXT under the terms of an allocated assets operating agreement (the "CSXT Operating Agreement") between NYC and CSXT;

WHEREAS, METRO-NORTH and NSR desire to continue their respective operations over the Line by replacing the 1983 Trackage Rights Agreement with replacement agreements that do not include the several NYC-allocated properties and related terms and do not include CDOT as a party, but permit METRO-NORTH to continue to provide rail passenger service over the Line, and to have an interest sufficient in quality and duration to assure METRO-NORTH of its ability to operate over, manage, supervise, direct, maintain, improve and control the Line to the extent required for its rail passenger service, without materially interfering with NSR's continued exclusive rail freight operating rights;

WHEREAS, in recognition of their respective current levels of use of the Line, METRO-NORTH and NSR desire to enter into replacement agreements as contemplated in the 1983 Trackage Rights Agreement in the form of the Sublease of the Line by NSR to METRO-NORTH and this Operations Agreement, that will permit each party to continue operations over and maintenance and improvement of the Line as appears most efficient, economical and reasonable according to the level of their current use of and interests in the Line;

WHEREAS, upon entering into the Sublease and this Operations Agreement, NSR, as PRR's lessee and operator of the Line, will continue to retain for itself and its successors and assigns, including but not limited to PRR, exclusive, perpetual, assignable, transferable, licensable, divisible and irrevocable rail freight operating rights to provide, perform or permit rail freight service over the Line by (a) itself and its subsidiaries and affiliates, and their successors and assigns, including PRR, and (b) trackage rights licensees, tenants or permittees (hereinafter collectively referred to as "NSR Operating Licensees");

WHEREAS, METRO-NORTH and NSR shall provide for NSR's continued use of the Suffern Industrial Track in this Operations Agreement;

WHEREAS, PRR consents to NSR's sublease of the Line to METRO-NORTH and to the other terms of the Sublease and this Operations Agreement, agrees to certain other terms directly applicable to PRR and is a party to the

Sublease and this Operations Agreement only for those limited purposes;

WHEREAS, the NSR Operating Agreement may expire or terminate before the end of the simultaneous terms of the Sublease and this Operations Agreement, but PRR is willing to lease the Line to METRO-NORTH for the remainder of the simultaneous terms of the Sublease and this Operations Agreement, subject to all of their terms and conditions, upon expiration or termination of the NSR Operating Agreement;

WHEREAS, METRO-NORTH does not require MTA's consent to enter into the Sublease or this Operations Agreement and has full legal and corporate authority and capability to perform all its duties, obligations and undertakings hereunder;

WHEREAS, in the event of a threat by METRO-NORTH to condemn the ownership interest in the Line, in order to avoid possible controversy or the threat and costs of litigation, the parties are willing to provide a mechanism for determining the price and have specified certain other terms in the Sublease that the parties will require in the event of a future sale of the Line to METRO-NORTH;

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable considerations set forth herein, METRO-NORTH, NSR, and to the extent specifically indicated, PRR, agree as follows:

ARTICLE 1. PURPOSE; DEFINITIONS.

(a) PURPOSE.

This Operations Agreement sets forth the terms and conditions applicable to the use, operation and maintenance of the Line that is the subject of the Sublease attached hereto as **Exhibit A**. The terms and conditions of the Sublease are hereby incorporated by reference. This Operations Agreement also governs the use, operation and maintenance of the Suffern Industrial Track.

(b) DEFINITIONS.

Unless otherwise indicated, any capitalized terms that are not specifically defined in this Operations Agreement shall have the meanings set forth in the Sublease. All references herein to a specific **Attachment** are references to the specified **Attachment** to the Sublease. In addition to those capitalized terms defined where used herein, the following capitalized terms shall have the following meanings:

(i) "Contractor" shall mean a person, corporation or other entity that provides labor, material or equipment, or performs services or other work in lieu of or on behalf of any party to this Operations Agreement (or Conrail, in the

case of "Conrail Contractors" as that term is used in **Article 6**). "PRR Contractors" shall not include NSR when NSR acts under the NSR Operating Agreement or in any way on its own behalf. PRR takes no additional responsibility or liability for the actions of NSR under this Operations Agreement.

(ii) "Customer" shall mean a shipper or receiver of freight that is transported in whole or in part by NSR, an NSR Contractor or an NSR Licensee over the Line.

(iii) "Licensee" shall mean a third party that is permitted to use the Line or a portion of the Line for its own specified purposes or account. Licensees may be (1) Operating Licensees or (2) Non-Operating Licensees.

(iv) "Overhead Charges" shall mean, as the context requires, NSR's then-current published schedule of overhead charges or METRO-NORTH's then current schedule of overhead charges reimbursed by the federal government on federally-funded capital improvement projects.

(v) "Reserved Rights" shall mean NSR's Reserved Freight Operating Rights and Reserved Non-Operating Rights.

(vi) "Reserved Rights Facilities" shall mean NSR's Reserved Non-Operating Rights Facilities and Reserved Freight Facilities.

ARTICLE 2. OPERATING RIGHTS.

(a) METRO-NORTH CONTROL OF LINE ON COMMENCEMENT DATE.

METRO-NORTH shall have possession, supervision and control of the Line under this Operations Agreement, in accordance with its terms and conditions, as of the Commencement Date.

(b) NSR OPERATION OF SUFFERN INDUSTRIAL TRACK.

NSR's exclusive rail freight operating easement over the Suffern Industrial Track, pursuant to the 1982 Transfer Agreement and any deed reservations, shall continue in effect pursuant to that agreement and any related documents, grants or deeds but shall be exercised solely in accordance with the terms and conditions of this Operations Agreement.

(c) NO METRO-NORTH RAIL FREIGHT SERVICE USE; NO METRO-NORTH RIGHT TO GRANT FREIGHT SERVICE RIGHTS; NO METRO-NORTH RIGHT TO ADMIT OTHER PASSENGER SERVICE OPERATORS, EXCEPT METRO-NORTH AFFILIATES OR CONTRACTORS, WITHOUT NSR CONSENT; NO STORAGE OF CARS ON MAIN-LINE TRACKS.

(i) No METRO-NORTH Rail Freight Service Use.

METRO-NORTH shall not use the Line to provide, perform or permit rail transportation of freight of any type or description, including express, mail, or intermodal freight. This prohibition includes but is not limited to METRO-NORTH's, or any parent, subsidiary or affiliated agency's or entity's, or any of their Contractors' or Licensees', haulage of freight on behalf of a third party, whether or not that third party is a railroad or other rail common, contract or private carrier, or a shipper or receiver of freight. However, METRO-NORTH and its parent, subsidiaries, affiliates and Contractors (including NJTRO) may transport light engines, other equipment and rolling stock, company material and any other things needed for the repair, maintenance, inspection, improvement or operation of the Line.

(ii) No METRO-NORTH Right to Admit Third-Party Freight Carriers or Permit Freight Carriage By or For Third Parties.

Neither METRO-NORTH nor any parent, subsidiary or affiliated agency or entity nor any of their Contractors or Licensees shall have the right or authority under this Operations Agreement to authorize, permit or allow any party, whether or not a railroad or a rail common, contract or private carrier, or a shipper or receiver of freight, to provide, perform or permit any rail freight service (whether as common carrier, contract carrier, or private carrier) over the Line through any agreement, instrument, document or other device, including but not limited to a lease, sublease, trackage rights agreement, access rights agreement, operating rights agreement, haulage agreement, license, franchise agreement, permit, invitation, right of entry, contract, agency arrangement, transfer, assignment, conveyance, easement or any other type of grant, contract, agreement or document, howsoever designated.

(iii) No METRO-NORTH Right to Admit Other Passenger Carriers Without NSR Consent.

METRO-NORTH does not and shall not have the right or authority under this Operations Agreement to authorize, permit or allow any third party, whether or not a railroad or common, contract or private carrier, except a parent, subsidiary, affiliate or Contractor (including NJTRO) of METRO-NORTH for which METRO-NORTH shall be responsible to NSR for performance of all terms and conditions under this Operations Agreement, to provide, perform or permit any rail passenger service over the Line, regardless of the level or duration of such rail passenger service, without the written consent of NSR, which consent shall be granted in accordance with the provisions of **Article 1(c)(iv)** and otherwise shall not be unreasonably withheld.

(iv) Conditions of NSR Consent.

NSR will not consent to the use of the Line by any such third-party rail passenger service operator ("METRO-NORTH Operating Licensee") if NSR can reasonably demonstrate that such party's use of the Line

would materially interfere with NSR's use of the Line. As a condition to its consent to permit METRO-NORTH to admit any METRO-NORTH Operating Licensee to use of the Line for rail passenger service, NSR shall receive from METRO-NORTH or the METRO-NORTH Operating Licensee any additional or increased liability allocation, indemnity and insurance protection required by NSR for the increased risk of liability from such rail passenger operations to NSR, its parent, subsidiaries or affiliates, including PRR, and their Contractors or Licensees, during its or their operations over or use of the Line.

(v) Limitations on METRO-NORTH Contractors' or METRO-NORTH Operating Licensees' Rights to Use the Line; Contractors and Operating Licensees Rights and Duties.

Any METRO-NORTH Contractor, or any METRO-NORTH Operating Licensee, shall have no additional or greater rights than METRO-NORTH has under this Operations Agreement and shall use, and operate over, the Line subject to the same terms and conditions of this Operations Agreement as METRO-NORTH. METRO-NORTH shall not attempt to grant any such greater or additional rights to any METRO-NORTH Contractor or METRO-NORTH Operating Licensee.

(vi) METRO-NORTH Responsibilities for Its Contractors and Operating Licensees.

METRO-NORTH shall be solely responsible to NSR for METRO-NORTH's payments, duties, liabilities, responsibilities, and obligations under this Operations Agreement, regardless of any performance of or operation under this Operations Agreement by any of METRO-NORTH's Contractors or Operating Licensees or NSR's previous acceptance of any such performance or operation by any such Contractors or Operating Licensees.

(vii) No Storage of Cars on Main-Line Tracks.

METRO-NORTH shall not store any cars on the Main-Line Tracks.

(viii) Specific Performance; NSR Remedies Are Cumulative.

NSR shall be entitled to an award or order of specific performance of the provisions of this **Article 1(c)**, money damages, the right to terminate this Operations Agreement for material breach and any other remedies permitted by this Operations Agreement or by law or regulation for breach of this **Article 1(c)** and may seek and shall be entitled to these remedies simultaneously and cumulatively.

(d) NO NSR RAIL PASSENGER SERVICE EXCEPT SPECIAL OR EXCURSION TRAINS; NO NSR RIGHT TO TRANSFER PASSENGER

SERVICE RIGHTS OR TO ADMIT OTHER PASSENGER SERVICE OPERATORS; NO STORAGE OF CARS ON MAIN-LINE TRACKS.

(i) Limited NSR Passenger Service Use.

NSR and NSR Operating Licensees shall not use the Line to provide, perform or permit rail transportation of passengers of any type or description, except as expressly provided in **Article 1(d)(ii)**.

(ii) Limited NSR Right to Operate Rail Passenger Trains, No NSR Right To Admit Third-Party Passenger Carriers To the Line, Or To Permit Passenger Carriage By Or For Third Parties.

Neither NSR nor any parent, subsidiary or affiliate nor any of their Contractors or Licensees retain the right or authority under this Operations Agreement to authorize, permit or allow any party, whether or not a railroad or a rail common, contract or private carrier, to provide, perform or permit any rail passenger service (whether as common carrier, contract carrier or private carrier) over the Line through any agreement, instrument, document or other device, including but not limited to a lease, sublease, trackage rights agreement, access rights agreement, operating rights agreement, haulage agreement, license, franchise agreement, permit, invitation, right of entry, contract, agency arrangement, transfer, assignment, conveyance, easement or any other type of grant, contract, agreement or document, howsoever designated, except for (A) NSR special or excursion passenger trains as provided in **Article 5(c)(v)(B)** or (B) Amtrak service as provided in **Article 1(b)(iii)(B)** of the Sublease.

(iii) No Storage of Cars On Main-Line Tracks.

NSR and NSR Operating Licensees shall not store any cars on the Main-Line Tracks.

(iv) Specific Performance; METRO-NORTH Remedies Are Cumulative.

METRO-NORTH shall be entitled to an award or order of specific performance of the provisions of this **Article 1(d)**, money damages, the right to terminate this Operations Agreement for material breach and any other remedies permitted by this Operations Agreement or by law or regulation for breach of this **Article 1(d)** and may seek and shall be entitled to these remedies simultaneously and cumulatively.

(e) ALLOCATION OF EXPENSES AND LIABILITIES.

(i) Expenses and Liabilities Before and After the Commencement Date.

(A) Before the Commencement Date.

Unless specifically provided herein, any and all Claims related to the Line and arising from the parties' or their Contractors' or Licensees' operations and other activities on the Line before the Commencement Date shall be allocated and determined according to the 1983 Trackage Rights Agreement, regardless when the Claims become due and payable.

(B) After the Commencement Date.

Any and all Claims related to the Line or arising from the parties', or their Contractors' or Licensees' operations and other activities on the Line after the Commencement Date shall be allocated, determined and handled in accordance with the terms of this Operations Agreement and the Sublease, including but not limited to their indemnity provisions.

(ii) No METRO-NORTH Claims for Accrued or Deferred Maintenance Costs or Maintenance Levels; NSR Responsible for Interim Maintenance.

(A) No NSR Liability or METRO-NORTH Claim Related to Maintenance.

METRO-NORTH shall neither have nor make any claim against NSR or PRR with regard to the level of maintenance of the Line or for former maintenance obligations or for any accrued or deferred maintenance costs or expenses, if any, under the 1983 Trackage Rights Agreement, regardless whether any such claim may have accrued before or after either the Commencement Date or any later date upon which METRO-NORTH assumes maintenance and inspection work for the Line.

(B) Interim Performance of Ordinary Inspection and Maintenance of the Line By NSR.

(1) NSR shall continue to perform ordinary and routine inspection and maintenance of the Line until such time as METRO-NORTH assumes such inspection and maintenance responsibilities (which the parties anticipate will occur on April 1, 2003). METRO-NORTH shall reimburse NSR for NSR's labor, material and equipment costs of such continued inspection and maintenance, including overhead charges, except with respect to maintenance of Reserved Rights Facilities (including without limitation Radio Base Stations).

(2) NSR shall only be required to perform such interim inspections or maintenance work with the number of employees assigned to work on the Line as of the Commencement Date. NSR shall not be required to provide new or additional employees to provide inspection and maintenance of the Line for the duration of the interim

maintenance period pursuant to this provision.

(3) NSR shall not be required to perform any extraordinary inspections or maintenance, or to perform or work on any capital improvements, for the Line for the duration of the interim maintenance period, but only to perform routine inspection and maintenance work and any necessary emergency inspection or maintenance work.

(4) NSR shall perform inspection and maintenance under this interim provision with the same standards of quality and workmanship that it used in inspecting and maintaining the Line prior to the Commencement Date and with no other warranties or representations of any kind, including without limitation warranties of quality, merchantability and fitness for a particular purpose, or assumption of any obligations with respect to said work.

(5) METRO-NORTH's sole remedy for any inspection or maintenance work performed by NSR under this interim provision that does not conform to NSR's usual standards of workmanship and quality shall be for NSR to re-work or provide for the re-working of any such inspection or maintenance work that does meet the specified NSR standards.

(iii) Inspections.

(A) Cost of Inspections Before Commencement Date.

METRO-NORTH shall pay for the costs and expenses of any inspections requested by METRO-NORTH related to acceptance of possession of the Line, except NSR costs and expenses incurred in joint inspections for that purpose.

(B) METRO-NORTH Duty To Perform Required Inspections After Commencement Date.

After the Commencement Date, and except as provided in **Article 1(e)(ii)(B)**, METRO-NORTH shall perform all inspections required on the Line by the Federal Railroad Administration ("FRA") or any other Governmental Body and all inspections required in order to comply with its maintenance obligations under this Operations Agreement at its cost.

(C) NSR Right to Have Joint Inspections of Connecting Track.

NSR shall have the right to perform joint inspections of Connecting Tracks with METRO-NORTH twice each year, and any

additional joint inspections that are required due to force majeure or casualty. METRO-NORTH shall participate in such joint inspections upon no less than five (5) days' written notice from NSR. Each party shall bear its own costs and expenses of such joint inspections.

(iv) Maintenance Costs.{ TC 113 "(iv) Maintenance Costs.}

Upon and after the Commencement Date, METRO-NORTH shall be responsible for all costs and expenses for the maintenance of the Main-Line Tracks, Ancillary Tracks and Connecting Tracks to the clear point from the Main-Line Tracks, but excluding maintenance of the Reserved Tracks listed in **Attachment B** and the Reserved Rights Facilities (including without limitation the Radio Base Stations). After METRO-NORTH assumes maintenance responsibilities for the Line, METRO-NORTH may bill NSR for the costs and expenses of maintaining the Connecting Tracks listed in **Attachment F** at the rates stated in **Article 3(b)(i)**. NSR shall continue to maintain during the term of this Operations Agreement, at its sole cost and expense, the Suffern Industrial Track.

(v) METRO-NORTH Party in Possession or Control.

Upon and after the Commencement Date:

(A) METRO-NORTH shall possess, control, operate, maintain (except as provided in **Article 1(e)(ii)(B)**) and supervise the Line under the terms and conditions of this Operations Agreement and shall be considered the party of record with the responsibility for Tax Liabilities as specified in **Article 4** of the Sublease; and

(B) METRO-NORTH shall take any reasonably necessary actions to disclose its status and obligations with regard to the Line as of the Commencement Date to any Governmental Body to the extent that the Governmental Body has any jurisdiction, authority or taxing power over the Line or its operation, or other interest in, METRO-NORTH's status or any of its obligations under this Operations Agreement or the Sublease.

(vi) No Consequential, Exemplary or Punitive Damages.

No party to this Operations Agreement shall owe, or be liable to, any other party, its Contractors or Licensees for, consequential, exemplary or punitive damages arising from any breach of this Operations Agreement by itself, its Contractors or Licensees, including any failure to comply with or fully and satisfactorily perform any of its term or conditions, including but not limited to a failure to timely pay money due to the other party under this Operations Agreement. No party shall seek the award of consequential, punitive or exemplary damages from any other party to this Operating Agreement nor enter into any agreement permitting its Contractors or Licensees to seek such an award. An award of consequential, punitive or exemplary damages shall not be

made to a party either in arbitration or litigation brought to obtain a judgment or award for damages, specific performance or other remedies for the breach of, or enforcement of any obligation, duty or responsibility under, this Operations Agreement, including but not limited to the collection of unpaid amounts of money. NSR and METRO-NORTH shall defend, indemnify and hold harmless the METRO-NORTH Indemnified Parties and NSR Indemnified Parties, respectively, from and against any such consequential, punitive or exemplary damages claims by themselves, their parents, subsidiaries or affiliates, or their respective Contractors or Licensees (except that METRO-NORTH's obligations under this provision shall not extend to any consequential, punitive or exemplary damages claims by METRO-NORTH Licensee under agreements, easements or other rights assigned by NSR to METRO-NORTH pursuant to the Sublease).

ARTICLE 3. COMPENSATION FOR NSR USE; MAINTENANCE CHARGES.

(a) COMPENSATION TO METRO-NORTH FOR NSR USE OF LINE.

(i) No NSR Car-Mile Payments to METRO-NORTH for September 2002-Commencement Date Period.

The parties acknowledge that NSR is not currently liable for any charges or payments to METRO-NORTH with respect to the use and maintenance of the Line. Thus, regardless of the Commencement Date of this Operations Agreement, NSR shall pay no car-mileage usage charges or other fees for use and maintenance of the Line for the period between September 1, 2002 and the Commencement Date. METRO-NORTH shall promptly return any such payments made by NSR in advance or in error for the stated September 1, 2002 - Commencement Date period.

(ii) NSR Car-Mile Payments to METRO-NORTH After Maximum Annual Free Use Car-Miles.

For each calendar year starting with the year 2003, NSR shall pay no compensation to METRO-NORTH for the first 2,480,000 reportable car-miles of use of the Main-Line Tracks by NSR together with the reportable car-miles of any NSR Operating Licensee (excluding Amtrak) granted permanent or temporary trackage or other access rights over all or more than one-mile of the Line by NSR or its parents, subsidiaries, and affiliates, and their respective successors and assigns (collectively, "NSR Car-Mile Usage"), subject to the exceptions and limitations on reportable car-mile accrual stated in this **Article 3(a)**.

(iii) No NSR Payments for Certain Movements.

Computation of NSR Car-Mile Usage, and payment of applicable usage charges to METRO-NORTH therefor ("NSR Car-Mile Usage Charges"), shall not include as reportable car-miles any car-mile usage of the Line for the following non-revenue movements of freight cars or equipment by

NSR or NSR Operating Licensees:

- (A) movements of cars for the account of METRO-NORTH,
- (B) movements of wrecking equipment and emergency equipment, and
- (C) repositioning of cars upon the Line that requires use of less than one-mile of the Line.

(iv) No Car-Mile Charge for Use of Suffern Industrial Track.

Car-miles shall not be counted, and NSR shall not pay NSR Car-Mile Usage Charges, for any usage whatsoever of the Suffern Industrial Track or any connected side track or other ancillary track by NSR or its Operating Licensees.

(v) Single-Trailer RoadRailer Units Are One-Half Car; Articulated Cars Are One Car.

Single-trailer RoadRailer units shall be counted as one-half of a car and articulated cars shall be counted as one car for the purpose of computing NSR Car-Mile Usage under this **Article 3(a)**.

(vi) NSR Excess Car-Mile Usage Charge Rate for Calendar Year 2003.

In any year starting with calendar year 2003, in which NSR Car-Mile Usage exceeds the annual free level of car-mile usage of the Line stated in this **Article 3(a)**, NSR shall pay METRO-NORTH at the rate of 38.2 cents per car-mile for each of the first one million car-miles moved on or over the Line in excess of the level of free car-mile usage stated in this **Article 3(a)**, and at the rate of 28.7 cents per car-mile for car-miles in excess of the first level of charges, which rates shall be adjusted annually starting January 1, 2004, in accordance with **Article 3(a)(vii)**, regardless whether NSR is liable to METRO-NORTH for any payments for NSR Car-Mile Usage in the preceding year.

(vii) Adjustment Index for NSR Car-Mile Usage Rate.

The rate level for billable NSR Car-Mile Usage specified in **Article 3(a)(vi)** shall be adjusted annually beginning in January 2004, and each January 1 thereafter 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 Indexes of Chargeout Prices and Wage Rates, East, Series RCR, included in the "AAR Railroad Cost Indexes", and supplements thereto, issued by the Association of American Railroads or other similar index, if such AAR index ceases to be published, has increased or decreased in the

preceding calendar year, using 2003 as the base index year. NSR Car-Mile Usage rates calculated in accordance with this provision shall be stated to the nearest one-tenth (1/10) of a cent. The methodology for determining the adjustment in Car-Mile Usage rates is further set forth in **Attachment E**.

(viii) NSR Responsibility For Third-Party Use of Line.

Any car-miles upon the Line, subject to the exceptions in **Article 3(a)(iii)**, that are accrued by any NSR Operating Licensee (except Amtrak) shall be counted in determining the annual free level of usage stated in **Article 3(a)(ii)** and the NSR Car-Mile Usage Charges to be paid by NSR to METRO-NORTH when that annual level of free car-mile use of the Line is exceeded.

(ix) Initial Determination of NSR Car-Mile Usage From METRO-NORTH Records, NSR Right to Audit, Retention of Car Movement Records.

Until such time as NSR gives notice that it will report NSR Car-Mile Usage to METRO-NORTH in accordance with **Article 3(a)(xi)**, NSR Car-Mile Usage shall be computed according to METRO-NORTH's and its dispatcher's records kept in the ordinary course of business. METRO-NORTH shall keep all such records for a minimum of three (3) years and during that period shall keep them available for audit and copying by NSR at NSR's cost and expense. NSR also shall retain for a minimum of three (3) years any records that it may have that relate to NSR Car-Mile Usage during this period. NSR shall make such records available for audit and copying by METRO-NORTH at METRO-NORTH's cost and expense.

(x) Initial METRO-NORTH Reporting of Car-Miles and Payment of Car-Mile Charges.

Until such time as NSR gives notice to METRO-NORTH that it will report NSR Car-Mile Usage to METRO-NORTH in accordance with **Article 3(a)(xi)**, METRO-NORTH shall report NSR Car-Mile Usage monthly to NSR. NSR and METRO-NORTH shall cooperate on determining the records and record systems required to show NSR Car-Mile Usage, with the exclusions and specifications required in this **Article 3(a)**. The report shall accompany the bill for the car-mile charges for the month. Reports and bills shall be issued on or after the first business day of the second month following the month for which the payment and report are made, but NSR shall have thirty (30) days from the actual billing date to pay a bill regardless whether the bill and accompanying report are issued late.

(xi) Future Determination of NSR Car-Miles From NSR Records, Retention of Records.

After such time as NSR gives advance written notice to

METRO-NORTH that it has developed an efficient and accurate procedure or system for reporting NSR Car-Mile Usage and takes over such reporting, NSR Car-Mile Usage shall be computed according to NSR records kept in the ordinary course of business. NSR shall keep all such records for a minimum of three (3) years and during that period shall keep them available for audit and copying by METRO-NORTH at METRO-NORTH's cost and expense. METRO-NORTH also shall retain for a minimum of three (3) years any records that relate to NSR Car-Mile Usage during this period. METRO-NORTH shall make such records available for audit and copying by NSR at NSR's cost and expense.

(xii) Future NSR Reporting of Car-Miles and Payment of Car-Mile Charges.

After NSR assumes reporting of NSR Car-Mile Usage, NSR shall report NSR Car-Mile Usage monthly to METRO-NORTH. NSR and METRO-NORTH shall co-operate on determining the records and record systems required to show NSR Car-Mile Usage, with the exclusions and specifications required in this **Article 3(a)**. The report shall accompany payment of the NSR Car-Mile Charges for the month. Reports and payments shall be made on the first business day of the second month following the month for which the payment and report are made.

(xiii) Rights to Audit, Overpayments, Underpayments.

(A) Three-Year Period Audit or Review Right.

METRO-NORTH and NSR may audit and copy the other party's records, or review their own records for errors, applicable to the calculation of NSR Car-Mile Usage for any month or months during the three-year period preceding the audit or review, at their own cost and expense, upon reasonable notice.

(B) Overpayments of Car-Mile Charges.

If an audit or review reveals an over-reporting of NSR Car-Mile Usage and an undisputed overpayment of NSR Car-Mile Usage Charges, METRO-NORTH shall refund the amount of the undisputed overpayment promptly upon presentation of records by NSR showing the overpayment.

(C) Underpayments of Car-Mile Charges.

If an audit or review reveals an under-reporting of NSR Car-Mile Usage and an undisputed underpayment of NSR Car-Mile Usage Charges, NSR shall pay METRO-NORTH the amount required due to any undisputed underpayment promptly upon presentation of records by METRO-NORTH showing the underpayment.

(D) NSR Right to Audit METRO-NORTH Contractor Records of NSR Car-Mile Usage.

METRO-NORTH shall require any of its Contractors to extend to NSR the same rights to audit and copy that Contractor's records upon which METRO-NORTH bases any bill, report or claim to or concerning NSR Car-Mile Usage and NSR Car-Mile Usage Charges.

(E) Three-Year, One Month Limit on Claims, Exception.

NSR and METRO-NORTH shall not have a claim for and shall not demand, set-off or bring any action for collection of, or with respect to, underpayments based on under-reported car-miles or overpayments based on over-reported car miles that were accrued more than three years and one month before the billed party receives the billing party's claim, demand, notice of set-off or bill for any past underpayments or overpayments, unless the party liable for the under-reported or over-reported car-miles actively concealed knowledge of the erroneous car-mile reports from the other party, in which case the limitations period shall be tolled for the period of the active concealment in accordance with and to the extent of the otherwise applicable statute of limitations of the State of New York, if longer than three years and one month.

(F) Billing and Payment Periods Apply to Undisputed Amounts.

The party discovering or being billed for an undisputed underpayment or overpayment shall make such payment or pay such bill within the payment period set forth in **Article 3(a)(xv)**.

(xiv) Late NSR Payments, Grace Period, Interest.

If any NSR payment under this Operations Agreement is not paid until more than thirty (30) days from the billing date, or from the mailing date or transmission date if later than the billing date, NSR shall also be liable to METRO-NORTH for interest on the unpaid amount at the larger of (A) the rate of 0.67% per month or (B)(1) the prime rate of interest published in the Wall Street Journal or successor publication, or if such rate or publication is unavailable, (2) the prime rate charged by Citibank, N.A., or if that rate is unavailable, (3) the prime rate or average of prime rates for New York banks published in the newspaper of largest circulation in the City of New York, NY, on the first business day of each month, for each month or portion of a month for which the payment is late. Interest on late payments shall not be applicable to the 30-day grace period unless litigation or arbitration is required to collect the late payments.

(xv) Acceptance of Late Payments Not a Waiver.

METRO-NORTH's acceptance of one or more late payments, and of interest on late payments, does not constitute a waiver of future payment due dates or of any other remedies available to METRO-NORTH for any future failure to timely pay amounts due to METRO-NORTH under this Operations Agreement.

(xvi) Survival of Article 3(a).

The provisions of this **Article 3(a)** shall survive the termination, expiration, supercession, succession, assignment or transfer of this Operations Agreement, to the extent such termination, change or transfer is permitted herein or by law, and whether or not through sale of the Line to METRO-NORTH, MTA or either of their successors or assigns, and shall continue to apply to NSR's use of the Line thereafter.

(b) MAINTENANCE CHARGES.

(i) Compensation for Maintenance of Connecting Tracks.

NSR shall pay METRO-NORTH for the maintenance of the Connecting Tracks listed in **Attachment F** according to the following flat rate payment schedule: \$10,424 per year per Connecting Track for routine and non-routine maintenance (\$4,079 of such amount being for the latter), which shall include both incremental and entire switch replacement. NSR shall pay METRO-NORTH for maintenance of Connecting Tracks used partially for the benefit of freight operations, which shall be listed separately in **Attachment F**, at the flat payment rate of \$5,212 per year per Connecting Track. These flat rate charges shall constitute the entire amount, including labor, material and equipment costs and any overhead charges otherwise applicable, due to METRO-NORTH for all routine and non-routine maintenance of said Connecting Tracks, including any necessary maintenance and replacement of related signals, switches, derails, frogs and other items included within the definition of "Track" as set forth in the Sublease.

(ii) Maintenance Rate Adjustment Index.

The maintenance rates in **Article 3(b)(i)** shall be effective as of the Commencement Date, and shall be adjusted annually as provided in this **Article 3(b)(ii)**. Beginning January 1, 2004, and each January 1 thereafter, the maintenance rates shall be adjusted by the same percentage by which the cost of material, prices, wage rates and supplements combined (excluding fuel), as reflected in the Annual Indexes of Chargeout Prices and Wage Rates, East, (1977=100), Series RCR, included in the "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads or other similar index if such AAR index ceases to be published, has changed in the preceding calendar year. The year 2003 level will be used as the base index year. Maintenance rates calculated in accordance with this provision shall be

stated to the nearest dollar. An explanation of the methodology for determining the annual adjustment in maintenance rates is set forth in **Attachment E**.

(iii) Payment Schedule for Maintenance Charges.

NSR shall pay annual maintenance charges in semi-annual installment payments of fifty percent (50%) each, one on July 31 and the other on January 31 of each calendar year, covering the periods January 1 through June 30 and July 1 through December 31, respectively, starting with the July 31, 2003 payment, which shall be pro-rated to cover only the time period from the date that METRO-NORTH takes responsibility for inspection and maintenance of the Line through June 30, 2003. At the time of each payment, NSR will furnish METRO-NORTH with a statement indicating, by month, the number of Connecting Tracks for which payment is made.

(iv) Retention, Audit of Line Inspection and Maintenance Records.

METRO-NORTH shall keep inspection and maintenance records for the Line, including without limitation records pertaining to the inspection and maintenance of Connecting Tracks, for a minimum of three (3) years. During that period, METRO-NORTH shall keep such records available for audit and copying by NSR at NSR's cost and expense, upon reasonable notice, except to the extent this Operations Agreement or the Sublease provides that METRO-NORTH shall provide certain reports to NSR for which METRO-NORTH shall make no charge to NSR.

(c) CHARGES FOR ACTUAL COSTS OF WRECKING OR OTHER SPECIAL OR EXTRAORDINARY SERVICES.

If METRO-NORTH or NSR shall from time to time, upon reasonable request in writing, or in an emergency, orally with confirmation in writing, perform services necessary to assist the other in carrying out its services and operations, including without limitation such services as train control, wrecking and clearing derailments, and pilot services, subject to the prior operating and service needs of the party receiving the request to provide the service, the party performing the services may bill the actual costs of such services to the other party, who shall pay the billed charges for those services within thirty (30) days of the billing date, or the mailing date or transmission date of the bill if such date is later than the billing date. The billing party shall retain all supporting documentation for such charges, which may be inspected or audited and copied by the paying party for three years from the later of the billing date or the mailing or transmission date.

(d) DISPUTED PAYMENT AMOUNTS.

(i) Payment of Undisputed Amounts Required.

A party disputing payment of any amount due or claimed as due under this Operations Agreement shall not be relieved from making timely payment of all undisputed amounts in the same bill or for the same time period as that in which the disputed amount occurs or for bills for other time periods that are not involved in the dispute. Interest shall accrue as specified in **Article 3(a)(xiv)** for late payment of the undisputed amounts.

(ii) Reasons Required In Writing for Payment Disputes.

Any dispute of all or part of the amount of a payment due under this Operations Agreement must be in writing and must give a basis in the Operations Agreement or in one of the party's records for the dispute. Simple failure or refusal to pay, whether or not accompanied by a request to audit or review records for the period for which payment is not timely made, without specific reasons based on the Operations Agreement or supporting records, does not constitute a dispute.

(iii) Interest Payable Upon Resolution of Dispute Requiring Payment to a Party.

Upon resolution of a payment dispute through arbitration or litigation, if it is determined that there are amounts due to either party, interest shall be levied on the amount of the past due payment in accordance with **Article 3(a)(xiv)**.

(e) COLLECTION OPTIONS.

(i) Notice and Opportunity to Cure.

A party shall provide another party who has not made a timely payment to that first party under the Operations Agreement, whether due to a dispute or simple failure not to pay, a 30-day written notice of any proposed deduction or set-off or the institution of any arbitration or litigation seeking collection of unpaid amounts, during which period the party failing to pay may cure its non-payment.

(ii) Collection Options.

A payment dispute based on the interpretation of this Operations Agreement that cannot be resolved by the parties shall be submitted for resolution to arbitration under **Article 9(a)**. Collection of past-due amounts for which payment has not been timely made, or assertedly deducted or set-off in error, whether without basis or explanation in writing or as a result of a dispute over the interpretation of records, may be pursued either through arbitration under **Article 9(a)** or litigation under **Article 9(b)**.

(iii) Interest Upon Amounts Awarded.

Interest shall be awarded on the amount due and awarded for a past due payment, in accordance with **Article 3(a)(xiv)**, whether the award is made in arbitration or litigation, and whether the amount was withheld because of a payment dispute or was simply not paid.

ARTICLE 4. [RESERVED]

ARTICLE 5. OPERATIONS, INSPECTIONS, DISPATCHING, AND MAINTENANCE.

(a) PROTECTION OF LINE BY METRO-NORTH AFTER COMMENCEMENT DATE.

(i) METRO-NORTH Protection and Supervision of Line.

During the term of this Operations Agreement, METRO-NORTH shall (A) supervise and protect the Line to minimize the likelihood of encroachments and adverse possession claims by third parties (except to the extent such encroachments or adverse possession claims are caused or contributed to by the actions of NSR, PRR or their Contractors or Licensees, in which case METRO-NORTH shall notify NSR of the encroachment or adverse possession claim, if known), and (B) take reasonable precautions to discourage vandalism, sabotage or other damage by third parties. METRO-NORTH shall take any commercially reasonable legal action necessary to fulfill these obligations, at its sole cost and expense.

(ii) METRO-NORTH Responsibility for Line Maintenance.

During the term of this Operations Agreement, METRO-NORTH shall be responsible, at its own cost and expense, for maintaining the Line in the condition described in **Attachment K** and for compliance with all other applicable federal and state laws, ordinances, regulations and court and administrative decisions. Without limiting the generality of the foregoing, METRO-NORTH shall comply with Federal Railroad Administration ("FRA") regulations pertaining to roadbed drainage and vegetation control, 49 C.F.R. Part 213, Subpart B and shall be responsible for snow and ice removal. METRO-NORTH shall not be responsible for maintaining Reserved Tracks, Reserved Rights Facilities (including without limitation Radio Base Stations) or the Suffern Industrial Track. METRO-NORTH also shall comply (and shall require its Contractors to comply) with any applicable FRA regulations pertaining to Roadway Worker Protection, 49 C.F.R. Part 214, Subpart C.

(b) INSPECTIONS.

(i) METRO-NORTH Responsibility to Inspect.

METRO-NORTH shall be responsible for all inspections of the Line required by any applicable federal or state laws, ordinances, regulations,

and court and administrative decisions. Without limiting the generality of the foregoing, METRO-NORTH shall comply with all FRA mandated inspections, automatic grade-crossing protection inspections, including those resulting from derailments, and any inspections required by any other government agency or entity with jurisdiction.

(ii) NSR Right to Inspect Line; Inspection Reports.

After the Commencement Date, NSR shall retain the right, but not the obligation, to enter the Line to conduct inspections of all or any part of the Line to monitor the Line for any business purpose, including maintenance of Connecting Tracks, provided that NSR shall give notice of any such inspections to METRO-NORTH and shall comply with any reasonable instructions of METRO-NORTH and provided that any such inspection shall not be used to assert an obligation by NSR to perform any maintenance on the Line. NSR specifically reserves the right to run its Research and Test Track inspecting car over the Line no fewer than two (2) times per year and shall provide any report from such inspection to METRO-NORTH. METRO-NORTH shall provide NSR with a copy of all of METRO-NORTH's track and inspection vehicle reports.

(iii) Prompt Correction of Defects, Response to NSR Inspections and Reports.

METRO-NORTH shall promptly correct any defects that place the Line below the maintenance standards set forth in **Attachment K** which are found through either test vehicle or track car inspections or the inspections, observations or reports of NSR freight train crews or transportation supervisors.

(c) METRO-NORTH CONTROL; OPERATIONS; ACCESS; EMERGENCY AND SPECIAL TRAIN MOVEMENTS; USE OF CONTRACTORS.

(i) Trains, Locomotives, Cars, Equipment Defined.

As used in this Operations Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, under the operation or control of (excluding dispatching control), or the responsibility of such party, including trains, locomotive, cars or equipment of the other party. Locomotives, cars, or equipment of third parties (except Amtrak) admitted to the Line shall be considered those of the party that permitted such admission for purposes of the rights, duties and responsibilities of the parties to this Operations Agreement.

(ii) METRO-NORTH Responsibility for Dispatching and For

Its Own Operations; NSR Consent for Dispatching by New Contractor.

(A) METRO-NORTH shall have exclusive responsibility, at its own cost and expense, with its own personnel or through METRO-NORTH Contractors (including NJTRO), for the dispatching of all passenger, freight, inspection, maintenance or work trains, vehicles, equipment or operations on the Line.

(B) NSR shall not be liable for any costs and expenses of or related to METRO-NORTH's or its Contractors' operations unless specifically set forth herein.

(C) NSR shall have the right to review and approve any proposed change in the Contractor performing METRO-NORTH's dispatching duties and responsibilities under this Operations Agreement, except for a change of the Contractor to a METRO-NORTH subsidiary or affiliate. NSR's consent to any such proposed change in the dispatching contractor under this provision shall not be unreasonably withheld, conditioned or delayed.

(iii) Use of Contractors Does Not Relieve or Waive METRO-NORTH Duties, Payments.

Use of Contractors or agents to operate METRO-NORTH's rail passenger service operations or to perform any of its duties or obligations under this Operations Agreement shall not in any way relieve METRO-NORTH of any of its duties, liabilities, payments or obligations to NSR under this Operations Agreement.

(iv) Access; Train Scheduling.

(A) METRO-NORTH Peak Periods and Operating Priority.

The time (1) from the scheduled start of the first inbound METRO-NORTH passenger train scheduled to arrive at Hoboken Terminal after 6:45 A.M. to 9:30 A.M. and (2) from 4:30 P.M. to the scheduled arrival time at the termination station of the last outbound METRO-NORTH passenger train scheduled to depart Hoboken Terminal before 8:30 P.M. shall be defined as the "Peak Period," with the time in subparagraph (1) also defined as the "Morning Peak" and the time in subparagraph (2) also defined as the "Evening Peak." METRO-NORTH's operation and maintenance of the Line for its rail passenger train service shall have priority over freight service during the Peak Period. METRO-NORTH passenger trains scheduled to arrive at Hoboken Terminal during the Morning Peak shall have priority over freight service even if they operate after the expiration of the Morning Peak; METRO-NORTH passenger trains scheduled to depart Hoboken Terminal during the

Evening Peak shall have priority over freight service even if they operate after the expiration of the Evening Peak.

(B) METRO-NORTH Operations Not to Materially Interfere With NSR Operations; Temporary Shutdowns of Line.

METRO-NORTH's rail passenger train operations over, and maintenance of, the Line shall not materially interfere with NSR's freight train operations and its access to shippers and receivers of freight during the period between the end of the Evening Peak and the beginning of the next Morning Peak ("Nighttime Off-Peak Period"). In the event that efficient maintenance practice necessitates the temporary shutdown of all train operations on the Line or a portion of the Line, NSR shall negotiate in good faith with METRO-NORTH to accommodate such a temporary shutdown.

(v) Special and Emergency Trains or Movements.

(A) Special or Emergency Movements.

Both METRO-NORTH and NSR shall be entitled to use the Line for special or emergency movements of light engines (locomotives), empty cars for storage or repair, company material, work trains, self-propelled work equipment and other on-track work equipment, wrecking equipment, emergency equipment, inspection vehicles or cars, and, respectively, special or emergency movement of rail passenger trains or rail freight trains, but the party using the Line for such purposes shall give as much notice as possible to the other party. Such special or emergency operations shall not materially interfere with scheduled trains or operations of the other party.

(B) NSR Special or Excursion Passenger Trains.

NSR also reserves the right to operate special or excursion passenger trains for company business, private groups or special events, but these trains shall not materially interfere with METRO-NORTH's rail passenger operations or related activities on the Line. NSR shall not have the right to admit any third party to operate any special or excursion passenger trains. NSR shall not have the right to use Contractors to operate NSR's special or excursion passenger trains.

(vi) No Interference With Communications.

The parties shall not use any device or equipment at a frequency or in a manner that materially interferes with the other party's communications.

(vii) No Requests to Other Party for Work Outside Labor

Agreement.

Neither party shall require the other party's crews to perform any work beyond that required by its current labor agreements. Should a party require the other party's crew to perform additional service over and above that contemplated herein, which results in penalty claims being progressed against that party, the requesting party shall reimburse the performing party for the cost of handling, settlement and payment of all such claims. The party subject to the penalty claims shall notify the other party's local officers or supervisors of such claims so that the movement(s) causing the claim(s) can be prevented or corrected.

(d) OPERATION AND MAINTENANCE IN COMPLIANCE WITH LAW.

In their operations over and use of the Line, each party shall comply with all Applicable Laws, including but not limited to those 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 Line, such as the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and those respecting the inspection and maintenance of the Line.

(e) EMERGENCY ASSISTANCE FOR EQUIPMENT AND WRECKING SERVICES.

(i) NSR, METRO-NORTH Responsibility to Clear Own Wrecks.

NSR and METRO-NORTH shall be responsible, at their own expense, for rerailling, wrecking service or wreck train service required for their respective locomotives, cars and equipment as a result of their operations (or the operations of their Operating Licensees or Contractors) over the Line. NSR and METRO-NORTH shall perform, or arrange to have performed, such rerailling or wrecking services, including, without limitation, removal of damaged equipment. Locomotives, cars, equipment, lading and salvage shall remain the property of the party which was transporting them, or who owns them, regardless of which party provides the wrecking, clearing, rerailling or salvage services or assistance.

(ii) METRO-NORTH Option to Provide Wrecking Service.

Notwithstanding the provisions of **Article 5(e)(i)**, if NSR is unable to provide or perform prompt rerailling, wrecking service or wreck train service for its damaged locomotives, cars and equipment on the Line, and such derailed or wrecked locomotives, cars or equipment could materially interfere with METRO-NORTH's rail passenger service, upon oral notice to NSR's local supervision, with written confirmation to follow within five (5) days, METRO-NORTH may perform or provide the rerailling, wrecking service or wreck train service, at NSR's expense, in order to clear the Line. METRO-NORTH's bills for

such rerailling or wrecking services shall provide details of the time and nature of the service provided (including overhead charges to the extent applicable) and, if the service was requested by NSR, shall include therein the name and title of the officer who requested and authorized such services. However, payment shall not be withheld if the service was clearly requested and performed solely for the reason that the requesting person's name may be unavailable.

(iii) Equipment Emergency Defined; Option to Assist Other Party In Equipment Emergency.

An "Equipment Emergency" is defined as a locomotive, car or other item of equipment that (A) has been forced to stop on the Line and is unable to proceed due to mechanical failure or any other cause not resulting from an accident or derailment, or (B) fails to maintain the speed required not to materially interfere with the operations of the other party on the Line, or (C) is crippled or otherwise defective and is being set out of trains operating on the Line. Upon notice to the other party's local supervision and to the train dispatchers, either party shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push locomotives, cars or equipment that are involved in an Equipment Emergency or to properly move such locomotives, cars or equipment off the Line. However, it shall be each party's responsibility to use its best efforts to deal with its own Equipment Emergencies on the Line. A party may orally request from the other party, and that party may provide, Equipment Emergency service, but the party requesting such service shall give written confirmation of the request as soon as possible, but in any event within five (5) days after the oral request and authorization for such service.

(iv) Reimbursement for Emergency Assistance.

A party receiving Equipment Emergency service from the other party shall reimburse the other party for the full cost of rendering any such service, or of the costs of any agents or Contractors (including NJTRO) who are engaged to render such service. The party performing such service may submit bills to the other party for such service. In addition, NJTRO may submit bills to NSR for such services. Such bills shall provide details of the time and nature of the service provided (including overhead charges to the extent applicable) and shall include therein the name and title of the officer who requested and authorized such service. However, payment shall not be withheld if the service was clearly requested and performed solely for the reason that the requesting person's name is unavailable.

(v) Reports of Incidents.

In the event a party is jointly involved with another party in, or performs any service in connection with, an incident covered by this **Article 5(e)**, including but not limited to emergency assistance with train, locomotive, car

or equipment movements, rerailling, wrecking services or wreck train service, the performing party shall maintain a record of said involvement or service(s) for its own and the other party's use, for a period of three years and shall provide a copy of that record to the other party upon request. Records relating to matters in dispute or in litigation shall be retained until such dispute or litigation is resolved. Such records shall be maintained in such a manner as to enable either party to verify the assimilation of charges to a particular bill or work order number. Additional information required to verify the work performed and the billing therefor, including but not limited to, logs, derailment reports, and unusual incident reports that are prepared in the normal course of business or required by law or regulation shall be made available to the other party upon request and shall be retained for at least three years or until the resolution of any dispute or litigation to which the records pertain, if more than three (3) years.

(f) OPERATING RULES; METRO-NORTH MODIFICATION OF RULES.

On the Commencement Date, the parties shall retain and continue to operate under the current operating and safety rules and regulations (collectively, "Operating Rules") that are in use by the parties for operation of and over and safety on the Line. However, METRO-NORTH shall have the right to change the Operating Rules, provided that METRO-NORTH shall not change them in a manner that materially interferes with rail freight operations. NSR shall qualify its employees under any changed Operating Rules at its sole cost and expense. NSR operations over the Line shall at all times be subject to the orders of METRO-NORTH's dispatchers and transportation officers. In the event METRO-NORTH or its Contractor changes the Operating Rules applicable to the Line so that NSR does not have a sufficient number of qualified employees to continue its operations over the Line, METRO-NORTH shall provide, or arrange for, qualified pilots for NSR trains operating on the Line in order to permit continued NSR operations over the Line until a sufficient number of NSR employees have become qualified to conduct NSR operations on the Line without such pilots.

(g) EMPLOYEE DISCIPLINE; LABOR HEARINGS.

Should either METRO-NORTH or NSR deem it necessary to hold a hearing or investigation regarding any NSR employee's neglect of, or refusal or failure to abide by METRO-NORTH's, or any other applicable rules, instructions and restrictions governing operations on the Line, NSR shall promptly hold an investigation in which all parties concerned, including METRO-NORTH, shall participate. Each party shall bear the expense of the investigation and any associated hearing for its officers, counsel, witnesses and employees. Notice of such investigation or hearing shall be given by NSR's officers to NSR's employees, and such investigation or hearing shall be conducted in accordance with the terms and conditions of schedule agreements between NSR and its employees. If the investigation or hearing shows that the subject employee

neglected, refused or failed to abide by METRO-NORTH's, or any other applicable, rules, instructions or restrictions governing operations on the Line, such employee shall upon written request by METRO-NORTH be withdrawn by NSR from service on the Line (or if withdrawal is not legally permissible, then such other action shall be taken by NSR at METRO-NORTH's request as may be appropriate and permissible pursuant to the employee's collective bargaining agreement) and NSR shall release and indemnify METRO-NORTH from and against any and all claims, demands, costs and expenses caused by such withdrawal or other action. This provision shall not limit NSR's ability to take action that it deems appropriate with respect to such employee in the absence of a specific request by METRO-NORTH.

(h) CLEARANCES.

(i) METRO-NORTH Clearance Obligations.

METRO-NORTH, METRO-NORTH Contractors, and METRO-NORTH Licensees (including Governmental Bodies with right of entry, license or other agreements pertaining to the Line that have been assigned to Metro-North) shall not reduce the clearances on the Line below the standards set forth in **Article 5(h)(iii)**, whether permanently or temporarily, and whether in width, height, weight or length, or reduce the access of shippers' tracks and facilities to NSR's rail freight operations over the Line, without the consent of NSR, which shall not be unreasonably withheld. Any existing clearances on the Line that are below the general minimum clearance standards are described in **Attachment G**.

(ii) METRO-NORTH To Advise of Proposed or Actual Clearance Changes.

METRO-NORTH shall notify NSR immediately about any proposed or actual changes to clearances on the Line, whether temporary or permanent, authorized or unauthorized, or the result of new or replacement construction or some other reason.

(iii) Minimum Clearance Standards for New or Replacement Structures.

METRO-NORTH shall adhere to the following minimum clearance requirements with regard to the construction or replacement of all platforms, stations, structures, fixtures, appurtenances, overhead lines, signal masts, warning devices or bridges on or adjacent to the Line: a standard minimum vertical clearance of 23'-0" above top-of-rail and a standard minimum horizontal clearance of 13'-0" from centerline of track, taking into account any added space needed to account for curvature, except that (A) thru truss and thru girder bridges may be constructed to a minimum 9'-0" horizontal clearance; (B) the minimum vertical clearance for non-voltage carrying wires and cables is 27'-

0" above top-of-rail; (C) the minimum vertical clearance for voltage carrying wires is 30'-0" above top-of-rail (and this clearance requirement increases as voltage increases); and (D) the minimum horizontal clearance for signal masts is 15'-0" from centerline of track. METRO-NORTH shall also adhere to any applicable federal or state requirements for clearances that require more clearance than provided for in this **Article 5(h)(iii)**.

(iv) NSR Clearance Inspections.

NSR shall have the right, but not the obligation, to periodically operate its clearance car over the Line in order to check the clearance levels, which operation may be conducted once every six (6) months. NSR shall report the results of any inspection of clearances on the Line to METRO-NORTH. The format of such report shall be at the discretion of NSR.

(v) Responsibility for Alteration of Clearances.

(A) METRO-NORTH Restoration of Clearances.

During the term of this Operations Agreement, upon NSR's request, METRO-NORTH, at its own cost and expense, shall restore any clearances that have been restricted or reduced by METRO-NORTH, METRO-NORTH Contractors, METRO-NORTH Licensees, or any person or entity other than NSR, PRR or their Customers, Contractors or Licensees to the clearances existing before the restriction or reduction, or, upon further agreement of the parties, at least to the minimum clearance requirements specified in **Article 5(h)(iii)**.

(B) Temporary Clearances for High or Wide Rail Freight Shipments.

METRO-NORTH shall be responsible for temporary clearance of the Line for any extra-dimensional ("high and/or wide") rail freight shipments (such as power plant generators) over the Line, including, but not limited to, any required alterations of METRO-NORTH facilities, including, but not limited to, catenary wire, electric traction facilities, wire lines and towers, signals, bridges and overpasses, other fixtures, buildings and high level platforms. METRO-NORTH shall bill NSR for any costs and expenses incurred by METRO-NORTH or its Contractors (including NJTRO) in providing such temporary clearances unless and to the extent the additional clearances are required due to a previous reduction in clearances by METRO-NORTH or its Contractors.

(vi) METRO-NORTH Responsibility and Liability and Indemnity for Non-Conforming Clearances.

(A) Notwithstanding anything to the contrary that may be implied from or contained in this Operations Agreement, METRO-NORTH

shall assume sole responsibility for and shall defend, indemnify and hold harmless the NSR Indemnified Parties (as defined in **Article 6**) from and against any and all claims, demands, costs, expenses, liabilities, court or arbitration actions, attorney, witness, expert or consultant fees and expenses or obligations for personal injuries, deaths or property damage of any kind which arise from or relate to, in whole or in part, the failure of METRO-NORTH to keep any clearances on the Line at levels that are in accordance with the clearance requirements set forth in this **Article 5(h)** and **Attachment G**, except to the extent NSR, PRR or their Customers, Contractors or Licensees reduced or restricted such clearances.

(B) In this connection it is specifically understood that knowledge on the part of either or both of NSR or PRR of a violation of any of the clearance requirements in this Operations Agreement, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve METRO-NORTH of its responsibilities under this **Article 5(h)**.

(vii) NSR Alteration of Clearances.

NSR shall have the right, at the sole cost and expense of parties other than METRO-NORTH, to expand or to reduce, to the level of the minimum standards specified in **Article 5(h)(iii)**, the clearances on the Line in the event that such expansions or reductions are necessary for rail freight operations. NSR shall provide METRO-NORTH with advance notice of and reasonably detailed plans for any such proposed clearance alterations. Within sixty (60) days of receipt of such plans, METRO-NORTH shall notify NSR of any projected design, construction, and additional maintenance costs and expenses attributable to such proposed clearance alterations that are necessary to preserve the utility of the Line for METRO-NORTH's rail passenger operations (including without limitation (i) any projected costs and expenses associated with any necessary redesign or reconstruction of, or changes in, stations or other facilities under construction and (ii) any projected additional costs and expenses associated with new stations or other facilities planned or dictated by future operational requirements). Prior to commencing work of any such clearance alterations, the parties shall agree on the amount of any such costs and expenses that will be incurred by NSR.

(i) GRADE CROSSINGS.

(i) METRO-NORTH Responsibility to Protect and Maintain Grade Crossings.

METRO-NORTH shall be solely responsible and liable for the maintenance and protection of highway/railroad grade crossings on the Line, including signals and warning devices, and for keeping such crossings free of obstructions to sight lines, including but not limited to weed and vegetation growth, but not including existing buildings, structures, or Reserved Rights

Facilities unless required by Applicable Law, at its own cost and expense, and for any Claims resulting from property damage, personal injury or death, arising from or related to failure to protect or maintain any grade crossing along the Line or to keep any such grade crossing clear of obstructions. This provision shall not imply a duty to third parties or be taken to impose requirements in excess of those required by Applicable Law.

(ii) Upgrading or Improving Grade Crossings; Federal or State Funding, Preservation of Records.

(A) METRO-NORTH may improve or upgrade any highway/railroad grade crossing on the Line, and for this purpose shall seek commitments of FHWA-approved funding for the installation of grade-crossing warning devices at said crossing, pursuant to an individual railroad signalization plan, which shall be FHWA-approved and funded, for each such highway/railroad grade crossing. METRO-NORTH may agree with the New York State Department of Transportation on any grade crossing separation, reconstruction, signalization, protection or improvement project with costs to be borne entirely by parties other than NSR or PRR, including the FHWA or other federal agencies in accordance with Title 23 of the Code of Federal Regulations, Chapter 1, Subsection B, and Part 140 or other applicable laws or regulations.

(B) METRO-NORTH shall retain all records and other evidence of the use of any FHWA-approved or other federal funding for the installation, improvement, upgrading, separation, reconstruction, signalization, or protection of any grade crossing or grade crossing warning device for the duration of this Operations Agreement and shall transfer such records or evidence to NSR upon the expiration or termination of this Operations Agreement unless the Line is conveyed to METRO-NORTH.

(iii) Closing Grade Crossings.

After consultation with NSR, and consistent with any applicable laws, ordinances, regulations or grade or road crossing agreements, METRO-NORTH may agree with the New York Department of Transportation and any other agency with jurisdiction to eliminate or close any grade crossings along the Line, at the sole cost and expense of parties other than NSR or PRR, provided such closing does not materially interfere with NSR's access to its own facilities, including without limitation Reserved Rights Facilities or Reserved Tracks, or to shippers or receivers of freight located along the Line.

(iv) Opening New Grade Crossings.

METRO-NORTH shall not open, or enter into any agreements to open or allow the opening of, any new grade crossings along the

Line without the written consent of NSR, which consent shall not be withheld unless the new grade crossing would materially interfere with NSR's access to its own facilities, including without limitation Reserved Rights Facilities or Reserved Tracks, or to shippers or receivers of freight located along the Line.

(j) LINE MAINTENANCE; CAPITAL IMPROVEMENTS.

(i) METRO-NORTH Responsibility for Line Maintenance and Capital Improvements.

(A) During the term of this Operations Agreement, METRO-NORTH shall be responsible for the performance of all construction, reconstruction, alteration, capital or ordinary improvements, repair, and maintenance on the Line required to comply with applicable FRA regulations and the maintenance standards set forth in **Attachment K**. METRO-NORTH specifically acknowledges the assumption of maintenance responsibility, at its cost and expense, for the following properties previously maintained by NSR:

Turnout to Port Jervis Passenger Yard Milepost SR-87.3

Crossover to West End of Passenger Yard Milepost SR-87.8

(B) METRO-NORTH shall provide all engineering, labor, supervision, purchased services, equipment, supplies and materials and procure any outside engineering or other contracts or permits or approvals necessary for the completion of said construction, reconstruction, alteration, capital or ordinary improvements, repair and maintenance at its own cost and expense, except for costs and expenses specifically allocated to NSR in this **Article 5(j)**.

(ii) Weight Capacity Requirement; Support for Heavy Cars.

METRO-NORTH shall construct any capital improvements to the Line so that such capital improvements will support the movement of any weight locomotive and freight cars with a gross weight on wheels up to 286,000 pounds.

(iii) Suffern Industrial Track.

NSR shall maintain the Suffern Industrial Track to FRA Class 1 standards.

(iv) METRO-NORTH Responsibility for Capital Improvements.

(A) METRO-NORTH to Provide and Pay For Capital Improvements.

During the term of this Operations Agreement, except as provided in **Article 5(j)(viii)**, METRO-NORTH shall provide and pay for all capital improvements to the Line required to meet the applicable FRA maintenance standards set forth in **Attachment K**, including the cost of any permits or approvals required to construct such capital improvements and the cost of any flagging required for the continued operation and safety of NSR rail freight service during the construction period unless METRO-NORTH or its Contractors directly provide such flagging.

(B) Co-ordination of Capital Improvement Planning and Design; NSR Approval.

METRO-NORTH shall provide NSR, for its review and approval, which shall not be unreasonably withheld or delayed, the plans for all capital improvements to the Line at least thirty (30) days before METRO-NORTH plans to commence such improvements. If within twenty-five (25) days after receipt of such plans, NSR does not approve the plans but notifies METRO-NORTH that it requires changes in order to preserve the utility of and access to the Line for its freight operations, including without limitation changes in plans to alter clearances, and METRO-NORTH declines to accept the proposed changes in whole or in part, METRO-NORTH and NSR shall promptly meet and confer to resolve any issues arising from the requested changes.

(C) Capital Improvement Standards.

Capital improvements shall comply with the plans in all material respects.

(v) Capital Improvements Provided BY METRO-NORTH Are METRO-NORTH Property; Requirements For Removal; Line's Condition Upon Surrender of Line.

(A) All capital improvements to the Line, and all appurtenances, fixtures, improvements, systems, technologies, buildings or structures added to the Line by METRO-NORTH, during the term of this Operations Agreement, shall remain the property of METRO-NORTH, except as may be otherwise specifically provided herein upon surrender of the Line to NSR.

(B) Upon permanent or indefinite cessation of METRO-NORTH's service, whether or not because of termination or expiration of this Operations Agreement, NSR shall have the right to require that any appurtenance, fixture, improvement, system, technology, building or structure added to the Line by, or for the benefit of, METRO-NORTH or METRO-NORTH's passenger rail operations, shall be removed from the Line, and any clearance that has been altered by METRO-NORTH or its

contractors or licensees shall be restored to its condition and distance prior to the alteration, at METRO-NORTH's cost or expense within six (6) months of METRO-NORTH's cessation of service, provided however, such removal does not result in breach of METRO-NORTH's duty to return the Line to NSR in similar condition to its condition on the Commencement Date, and provided further that METRO-NORTH shall reimburse NSR for its cost of removal of any such item that METRO-NORTH does not remove within six (6) months of the date it ceases service over the Line that NSR removes or has removed within the two (2) years following the end of said six-month period.

(C) Notwithstanding METRO-NORTH's obligation to return the Line to NSR in similar condition to its condition on the Commencement Date, upon surrender of the Line, METRO-NORTH shall leave on the Line any appurtenance, fixture, structure, building, system, technology or improvement that it placed on the Line which NSR requests for its continuing operation of the Line, even though METRO-NORTH would not be required to leave such items in order to return the Line in the condition otherwise required. NSR shall reimburse METRO-NORTH for the depreciated value of any such items that METRO-NORTH otherwise could have removed from the Line within three (3) months of METRO-NORTH's bill for such depreciated value, provided that the bill is rendered within six (6) months of METRO-NORTH's surrender of the Line and provided further that NSR is given the opportunity to confirm, or audit records concerning, such depreciated value during the three-month period.

(D) In the event (1) METRO-NORTH must leave any fixtures, structures, appurtenances, buildings, systems, technologies or improvements to fulfill its obligations with regard to the condition of the Line upon surrender of the Line, or (2) METRO-NORTH does not render a bill for any such additional improvements that NSR requests be surrendered with the Line within six (6) months of the surrender date, or (3) METRO-NORTH does not remove any other of its improvements within the specified six-month period, such fixtures, structures, appurtenances, buildings, systems, technologies or improvements shall become the property of NSR.

(vi) Avoidance and Discharge of Construction, Labor and Material Liens; Metro-North Indemnity to NSR With Respect to Liens.

(A) METRO-NORTH shall conduct its maintenance, construction and capital improvement activities and payments to its Contractors and suppliers so as to avoid the placement of liens upon the Line by such parties in order to secure payment for construction, material or labor that are used or employed by METRO-NORTH in the construction, repair, maintenance or removal of any improvements located

upon the Line, regardless of the ownership of said improvements. In the event any such claims or liens are placed against the Line, METRO-NORTH either (1) shall pay, satisfy and discharge all such claims or liens or (2) shall contest, in good faith, such claims or liens, and if unsuccessful in having them removed through contesting them, shall pay, satisfy and discharge them.

(B) If METRO-NORTH does not comply with the requirements of **Article 5(j)(vi)(A)** after notice to METRO-NORTH, NSR shall make any payments to any parties or courts, or incur any costs, in order to satisfy valid claims against METRO-NORTH or to discharge or remove liens from the Line based on such claims, and METRO-NORTH shall reimburse NSR for such payments and costs, including court costs, recording or filing fees and attorney and witness fees and expenses.

(C) METRO-NORTH shall defend, indemnify and save harmless the NSR Indemnified Parties from all such costs, expenses, claims, demands, liens, penalties or payments, including court costs, recording or filing fees and attorney and witness fees and expenses, arising out of related to discharge or removal of any valid construction, labor or material liens placed against the Line on account of METRO-NORTH's failure to comply with the requirements of **Article 5(j)(vi)(A)**.

(vii) NSR Right to Install Industrial Tracks for Freight Service.

(A) NSR shall retain the right to install, at its own cost and expense, additional trackage to be owned, leased, controlled or operated by NSR or its Customers, and designated as Reserved Tracks, in order to perform its rail freight service, subject to METRO-NORTH's right to review and approve the plans for any such new Reserved Tracks that are within forty feet (40') of the Line to determine whether they could materially interfere with the operation of the Line. New Connecting Tracks for such new Reserved Tracks shall be constructed pursuant to **Article 5(j)(viii)** hereof and shall be added to **Attachment F**.

(B) METRO-NORTH shall allow the same levels of utility and access to NSR for serving new Reserved Tracks through Connecting Tracks as it does for existing Reserved Tracks.

(viii) METRO-NORTH Installation, Replacement or Restoration of Connecting Tracks.

(A) Ordinary Installation, Replacement or Restoration of Connecting Tracks.

Upon written request by NSR, METRO-NORTH shall promptly install, replace or restore Connecting Tracks, including

associated signals, devices, derails, switches, frogs, diamonds or other items included in the definition of Track that are needed to initiate, reinstitute or continue service to any shipper or receiver of freight along the Line, at NSR's expense, in accordance with plans, specifications, standards, procedures or written directions prepared and furnished by NSR and reviewed and approved by METRO-NORTH (collectively, "Plans"). The Plans shall include an approved estimate of METRO-NORTH's construction costs and expenses for any such project.

(B) Immediate Installation, Replacement or Restoration of Connecting Tracks In Emergency.

In an emergency situation, METRO-NORTH shall install, replace or restore a Connecting Track immediately, and shall begin work at the oral request of NSR's General Manager or Division Superintendent or their assistants or designees, with written confirmation and Plans therefor to be given to METRO-NORTH by NSR as soon as possible.

(C) Use of NSR Material.

NSR may, at its discretion and subject to METRO-NORTH's approval, which approval shall not be unreasonably withheld, furnish material for any upgrading, special projects, or new construction for Connecting Tracks requested in this **Article 5(j)** in order to reduce the cost of the project.

(D) NSR Right to Inspect, Test and Approve Materials and Methods.

NSR may inspect and test or sample any materials and may review in advance any maintenance, repair or construction methods to be used during the installation, replacement or restoration of Connecting Tracks from the Line by METRO-NORTH for NSR's use. NSR may reasonably reject any materials (other than material furnished by NSR) or methods that are not substantially in accordance with any Plans or with applicable FRA standards prescribed in this Operations Agreement. In the event of any rejection of materials or methods by NSR, METRO-NORTH shall provide conforming materials and adhere to conforming repair or construction methods.

(E) Authority for Additional Costs; Completion of Project.

METRO-NORTH will promptly notify NSR if the cost of a project covered by this **Article 5(j)(viii)** will exceed the then-current approved estimated cost by more than ten percent (10%). METRO-NORTH shall secure additional authority from NSR for such additional

cost before exceeding the current approved estimated cost. If NSR does not provide such additional authority, METRO-NORTH has the right to stop working on the project. In the event that METRO-NORTH exercises such right, METRO-NORTH shall complete any work necessary to allow the parties to use any affected portion of the Line in a safe manner and NSR shall reimburse METRO-NORTH for the costs and expenses of all such work to the extent such costs and expenses do not exceed the then-current approved estimated cost of the project by more than ten percent (10%).

(F) METRO-NORTH To Provide NSR With Drawing, Disk of Construction.

Within three (3) months after completion of the installation, replacement or restoration of a Connecting Track, METRO-NORTH at NSR's expense will furnish NSR one (1) set of as-built construction drawings on mylar media and a CD-ROM or diskette containing the electronic files for the drawings in a MicroStation format and customary records of capital improvements, such as, material inventory control sheets, and annotated track profile sheets, the limits of timber and surface work, rail replacements, Connecting Tracks replaced, grade crossing modifications, and any details provided for in any agreement for the specific work project.

(G) Completion of Project by NSR if METRO-NORTH Fails To Complete; Reimbursement to NSR.

If METRO-NORTH fails or refuses to complete a project covered by this **Article 5(j)(viii)** for any reason within a commercially reasonable time period, it shall permit NSR or its Contractors access to the Line and project site in order to complete the project, and METRO-NORTH shall refund any advance payment for work that was not completed.

(ix) NSR Remedy For Inadequate Maintenance.

In the event NSR determines that the Connecting Tracks identified in **Attachment F** are not being properly inspected or maintained by METRO-NORTH under the standards required by this Operations Agreement, and METRO-NORTH agrees with NSR's determination, METRO-NORTH shall promptly correct the deficiency in inspection or maintenance identified by NSR. If METRO-NORTH fails to promptly correct the deficiency, NSR shall have the right to correct the deficiency and METRO-NORTH shall reimburse NSR for the costs and expenses thereof. In the event that METRO-NORTH disagrees with NSR's determination, the parties shall meet to resolve their differing interpretations. If the parties are unable to reach agreement on this matter, it shall be resolved by arbitration in accordance with **Article 9**.

**(x) Discontinuance of Operations Over and METRO-NORTH
Removal of Connecting Tracks; Scrap Value to NSR.**

**(A) Removal of Connecting Track, End of
Compensation for Maintenance.**

Subject to **Article 1(a)(i)** of the Sublease, NSR shall have the right to direct METRO-NORTH to remove any Connecting Track, at the sole cost and expense of NSR. NSR responsibility for payments to maintain a Connecting Track shall cease at the end of the calendar month after the month in which NSR directs METRO-NORTH to remove a Connecting Track, whether or not METRO-NORTH has removed such Connecting Track, and the Connecting Track shall be removed from **Attachment F**.

**(B) NSR To Receive Scrap Value of Removed
Connecting Track.**

METRO-NORTH shall account for and pay NSR the salvage value of any track, switches, frogs, derails, diamonds, or other material, whether salvageable and reusable or scrap, that METRO-NORTH removes from any Connecting Track. As an alternative to paying NSR the salvage value of the track and other material, METRO-NORTH may hold the Connecting Track's track, switches, frogs, diamonds, derails, scrap or other material, at Port Jervis Yard or other mutually agreeable location for NSR to reclaim within such time period as agreed by the parties, but shall pay the salvage value to NSR if NSR declines or fails to reclaim the salvaged material within the agreed upon time period.

**(xi) Continuing METRO-NORTH Inspection and Maintenance
Duty.**

Subject to the force majeure provision in **Article 12**, during the term of this Operations Agreement, METRO-NORTH will not suspend or discontinue its inspection and maintenance of any part of the Line. METRO-NORTH's responsibility to maintain the Line shall not be waived, changed or affected by:

- (A) cessation of METRO-NORTH service over all or any portion of the Line without termination of this Operations Agreement,
- (B) any unforeseen or unanticipated condition,
- (C) casualty loss,
- (D) third-party damage to the Line,
- (E) change in governmental regulations, or

(F) environmental investigation, clean-up or remediation.

(xii) NSR Right to Improve Reserved Tracks or Reserved Freight Facilities on Line.

NSR, at its sole cost and expense, may make reasonable use of the Line to improve any Reserved Tracks or Reserved Freight Facilities that NSR or its Customers or Licensees continue to maintain that connect with or are adjacent to the Line, including, but not limited to, Track, signal or communication facilities, and shipping, bulk terminal or intermodal facilities, but not buildings. NSR shall not materially interfere with METRO-NORTH rail passenger operations over or maintenance and inspection of the Line while making such improvements.

(xiii) Retention of Inspection, Maintenance and Operating Records.

The parties shall keep and maintain their books, records, accounts, and supporting workpapers which relate to operations, inspection and maintenance of the Line and for any expenses or services for which a bill may be rendered to the other party under this **Article 5(j)** for a period of three (3) years, or until the settlement of any dispute, litigation or arbitration, if longer, unless a longer period is provided in any other provision of this Operations Agreement. During normal business hours, each party 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, inspection and maintenance of the Line or in support of any billings rendered to it under this Operations Agreement.

(k) CASUALTY LOSSES.

In the event that all or any portion of the Line is damaged or destroyed by flood, fire, mudslide, landslide, subsidence, earthquake, storm, vandalism, criminal act, protest, civil disturbance, act of terrorism, sabotage, act of war, act of civil or military authorities or act of God or nature (collectively a "Casualty Loss"), METRO-NORTH shall (i) repair and restore the Line, at its own cost or expense, to the minimum standards prescribed in **Article 5(j)** and **Attachment K**, or (ii) replace, or cause to be replaced, the damaged portion with property of like kind, condition, or quality as soon as possible, or (iii) terminate this Operations Agreement, provided that the parties shall remain liable for all of their accrued costs, duties and obligations under this Operations Agreement, including duties upon termination of the Operations Agreement and surrender of the Line to NSR. The occurrence of any Casualty Loss shall not cause an automatic termination of this Operations Agreement. NSR shall have no responsibility to repair or restore the Line or any portion thereof upon the occurrence of a Casualty Loss.

ARTICLE 6. ENVIRONMENTAL CONDITIONS AND OBLIGATIONS.

(a) DEFINITIONS.

The following terms shall have the meanings ascribed below:

- (i) "Applicable Law" means all federal, state, and local statutes, laws, ordinances, regulations, rules, codes, orders and policies having the force of law applicable to the Line or to operations, facilities and activities relating to the Line.
- (ii) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*
- (iii) "Change in Law" means any of the following acts, events, or circumstances:

 - (A) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Commencement Date;
 - (B) the final order or judgment of any Governmental Body issued on or after the Commencement Date; or
 - (C) the suspension, termination, or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the requirements in effect as of the Commencement Date.
- (iv) "Claims" means any and all demands, suits, claims, actions, damages, losses, costs and expenses (including costs and expenses of investigation, claims handling, Response Actions Required by Law, defense, litigation, arbitration, settlement and reasonable attorneys', consultants', experts' and witnesses' fees and expenses), liabilities, obligations, judgments, awards, fines, and penalties (including late charges and interest).
- (v) "Contamination" means the presence of a Regulated Substance (other than a naturally-occurring substance) or the Release of a Regulated Substance on, at, under or affecting the Line which results in or could reasonably be expected to result in (A) a violation of any Environmental Law; (B) pollution, damage to water, groundwater, air, soil, subsurface strata, or ground, or natural resources damage, which is actionable under Applicable Law; (C) personal injury or property damage which is actionable under Applicable Law; or (D) an obligation to undertake Remediation Required by Law.
- (vi) "Environmental Law" means any applicable federal, state, or local statute, law, rule, regulation, ordinance, code, order or policy having the force of law (A) relating to protection of the environment, natural resources, or

public or employee health and safety, (B) regulating or prohibiting air, soil, ground, water, noise or Regulated Substance pollution, or (C) relating to the production, generation, use, storage, treatment, processing, transportation or disposal of Regulated Substances, including the laws listed in **Attachment H**.

(vii) "Reserved Freight Facilities" means the yards, freight-only tracks or other freight transportation or shipping facilities which remain under the possession, control, and operation of NSR, PRR, or their respective Licensees or Contractors. For purposes of this Operations Agreement only (and not the Sublease), the term "Reserved Freight Facilities" includes the Suffern Industrial Track.

(viii) "Governmental Approval" means any permit, license, authorization, consent, approval, waiver, exception, variance, order, or exemption issued by any federal, state or local Governmental Body pursuant to an Environmental Law.

(ix) "Governmental Body" means any agency of the United States Government, any state, county, municipality or other political subdivision of any of them, and any entity exercising executive, legislative, judicial, regulatory or administrative functions legally assigned and delegated by a government with jurisdiction over the matter in question, but not METRO-NORTH, MTA or Amtrak.

(x) "Invitee" means a person or entity other than a Contractor or Licensee admitted to the Line or the Suffern Industrial Track by a party, regardless of whether such admission to the Line is permitted under this Operations Agreement or the Sublease.

(xi) "METRO NORTH Indemnified Parties" means METRO NORTH and MTA and any or all of their parents, subsidiaries and affiliates, and any or all of their respective officers, directors, employees, servants, agents and contractors (including NJTRO).

(xii) "METRO-NORTH Non-Operating Facility" means the facilities or systems, together with any above-ground or below-ground components (including without limitation all power supplies, electrical devices, mechanical devices and computerized devices), appurtenances, structures, and fixtures necessary to the placement, stability, use or operation of such facilities and systems, that are described in or governed by the agreements, licenses or easements assigned to METRO-NORTH in **Article 1(c)(iii)** of the Sublease or that METRO-NORTH has the right to enter pursuant to **Article 1(c)(iv)** of the Sublease.

(xiii) "NSR Environmental Contact" means NSR's System Director - Environmental Protection, c/o Norfolk Southern Corporation, 110 Franklin Avenue, Roanoke, Virginia 24042-0013, or such other person as NSR may designate in writing from time to time.

(xiv) "NSR Indemnified Parties" means NS, its parent corporations, subsidiaries and affiliates, and any or all of their respective shareholders, officers, directors, employees, servants, agents, members, partners or contractors.

(xv) "PRR Indemnified Parties" means PRR, its parent corporations, subsidiaries and affiliates, and any or all of their respective shareholders, officers, directors, employees, servant, agents, members, partners or contractors.

(xvi) "Pollution Control Measures" means all measures, facilities, structures, fixtures, devices, improvements or equipment for the control, containment, monitoring, treatment, management, discharge or emission of Regulated Substances required under applicable Environmental Laws.

(xvii) "Pre-Commencement Contamination" means Contamination that existed on, at, or under the Line as of the Commencement Date, including the subsequent migration of such Contamination after the Commencement Date.

(xviii) "Regional Rail Act" means the Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. §701 *et seq.*

(xix) "Regulated Substance" means any material or substance that is defined or classified as:

(A) a "hazardous substance" pursuant to (1) Section 101 of CERCLA (42 U.S.C. §9601(14)) or (2) Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321) or (3) state statutes or regulations similar to either of them;

(B) a "hazardous waste" pursuant to (1) Section 1004 or Section 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921) or (2) similar state statutes or regulations;

(C) a "toxic pollutant" under (1) Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)), or (2) similar state statutes or regulations;

(D) a "hazardous air pollutant" under (1) Section 112 of the Clean Air Act (42 U.S.C. §7412), or (2) similar state statutes or regulations;

(E) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4));

(F) a "chemical substance" under Section 3 of the Toxic Substances Control Act (15 U.S.C. §2602);

(G) (1) asbestos and asbestos containing materials, (2) polychlorinated biphenyls, (3) flammable materials, (4) radioactive materials, (5) explosives, (6) wastes, (7) fuel oil, (8) lubricants, (9) petroleum products, (10) waste oil, (11) natural gas, (12) natural gas liquids, (13) liquefied natural gas, (14) synthetic gas useable for fuel, (15) solvents and (16) other substances, to the extent that such substances are defined or regulated under applicable Environmental Laws.

(xx) "Release" means the spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping or disposal of any Regulated Substance into surface water, groundwater, soil, the land surface or subsurface, or ambient air.

(xxi) "Remediation Standards" means those standards and criteria for remediation of a Release of Regulated Substances established or mandated under applicable Environmental Law and selected in accordance with **Article 6(h)(vi)**.

(xxii) "Reportable Release" means the Release of a Regulated Substance in an amount greater than a reportable quantity as defined under applicable Environmental Laws, or which otherwise requires notification to a Governmental Body, or which is likely to result in the imposition of liability for remediation, personal injury, property damage, or natural resource damage. Reportable Release does not include a Release which is authorized under applicable Governmental Approvals. The parties acknowledge that Response Actions may be Required by Law with respect to Releases of less than reportable amounts.

(xxiii) "Required by Law" means an action that is required by an injunction, order, consent order, any condition in a Governmental Approval, or other legally-binding document issued by a Governmental Body, or that is reasonably required in order to comply with an applicable statute, regulation or standard issued by a Governmental Body.

(xxiv) "Response" or "Response Action" means any action taken in the investigation, removal, confinement, remediation or cleanup of any Contamination, including without limitation any action which constitutes a "removal", "remedial action" or "response" as defined by Section 101 of CERCLA, 42 U.S.C. §9601(23), (24), and (25).

(b) GOVERNMENTAL APPROVALS AND COMPLIANCE WITH ENVIRONMENTAL LAWS

(i) METRO-NORTH Responsibility. Except as provided in **Article 6(b)(ii)** and **Article 6(b)(iii)**, during the term of this Operations Agreement, METRO-NORTH shall, or shall cause the responsible METRO-NORTH Licensees and METRO-NORTH Contractors to:

(A) comply with all applicable Environmental Laws, and acquire, maintain, and comply with all Governmental Approvals, if any, required under Environmental Laws, with respect to the use, operation, maintenance, and improvement of the Line, or construction activities on the Line, by METRO-NORTH, the METRO-NORTH Licensees or METRO-NORTH Contractors;

(B) comply with any monitoring, recordkeeping or reporting obligations, if any, imposed under applicable Environmental Laws with respect to the operation and maintenance of the Line; and

(C) plan, install, operate and maintain all Pollution Control Measures, if any, which are required with respect to the operation and maintenance of the Line.

(ii) NSR Responsibility. NSR shall, or shall cause the responsible NSR Licensees and NSR Contractors to:

(A) comply with all applicable Environmental Laws, and acquire, maintain and comply with all Governmental Approvals, if any, required under Environmental Laws, with respect to (1) NSR's operations on or use of the Line and Suffern Industrial Track, and (2) the construction, use, operation, maintenance, or improvement of the Reserved Rights Facilities on or adjacent to the Line or the Suffern Industrial Track that are retained, occupied or used by NSR or any NSR Licensee;

(B) comply with any monitoring, recordkeeping or reporting obligations, if any, imposed under applicable Environmental Laws with respect to (1) NSR's operations on or use of the Line and Suffern Industrial Track, (2) the operation and maintenance of the Reserved Rights Facilities on or adjacent to the Line or the Suffern Industrial Track that are retained, occupied or used by NSR or any NSR Licensee, or (3) facilities and activities on the Line solely related to freight rail service and use; and

(C) plan, install, operate and maintain all Pollution Control Measures, if any, which are required with respect to (1) NSR's operations on or use of the Line or Suffern Industrial Track, (2) the Reserved Rights Facilities or the Suffern Industrial Track that are retained, occupied or used by NSR or any NSR Licensee, or (3) facilities and activities on the Line solely related to freight rail service and use.

(iii) PRR Responsibility. PRR shall, or shall cause the responsible PRR Licensees and PRR Contractors to:

(A) comply with all applicable Environmental Laws, and acquire, maintain and comply with all Governmental Approvals, if any,

required under Environmental Laws for the construction, use, operation, maintenance and improvement of the Reserved Rights Facilities that are retained, occupied or used by PRR or any PRR Licensee;

(B) comply with any monitoring, recordkeeping or reporting obligations, if any, imposed under applicable Environmental Laws with respect to the operation and maintenance of the Reserved Rights Facilities on or adjacent to the Line that are retained, occupied or used by PRR or any PRR Licensee; and

(C) plan, install, operate and maintain all Pollution Control Measures, if any, which are required with respect to the Reserved Rights Facilities on or adjacent to the Line that are retained, occupied or used by PRR or any PRR Licensee.

(iv) **Allocation of Costs for Required Modifications and Improvements to Pollution Control Measures.** In the event that a modification or improvement to Pollution Control Measures is required to comply with applicable Environmental Laws, and such Pollution Control Measures serve areas or activities for which both METRO-NORTH is responsible and areas or activities for which NSR is responsible, the parties shall confer and negotiate in good faith an equitable allocation of the costs associated with the modification or improvement of such Pollution Control Measures.

(c) METRO-NORTH ENVIRONMENTAL DUTIES AND COVENANTS.

METRO-NORTH shall have the following environmental duties and obligations, **provided** that nothing in this provision shall be interpreted to impose on METRO-NORTH responsibility for any Pre-Commencement Contamination except as provided in **Article 6(h)(i)** or **Article 6(h)(iv)**:

(i) **Nuisances and Violations.** METRO-NORTH shall not create, or permit any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee to create, any nuisance, accumulation of debris or waste, or other condition in violation of any Environmental Law in, upon, under or above the Line.

(ii) **Release of Regulated Substances.** METRO-NORTH shall not Release, or permit any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee to Release, any Regulated Substance in, from, upon, under, or above the Line except in compliance with all applicable Environmental Laws and applicable Governmental Approvals.

(iii) **Storage of Waste.** METRO-NORTH shall not store, or permit any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee to store, any waste of any type in, upon, under or above the Line except for the temporary accumulation and storage of waste in the ordinary course of business, pending removal of such waste for recycling, treatment or

disposal at a permitted facility. Such waste shall not be accumulated for longer than the time allowed under applicable Environmental Laws. Waste shall be stored in appropriate containers and in compliance with all applicable Environmental Laws.

(iv) Storage of Other Regulated Substances. METRO-NORTH shall not store, or permit any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee to store, any Regulated Substances in, upon, under or above the Line except for (A) the temporary storage of waste as provided in **Article 6(c)(iii)** and (B) the storage of fuel, commercial products or other materials containing Regulated Substances necessary to operate and maintain METRO-NORTH's locomotives and equipment. Fuel oil and lubricants shall be stored only in tanks that comply with all applicable Environmental Laws and the provisions of **Article 6(e)**. All other materials containing Regulated Substances shall be stored only in properly labeled and appropriate containers, in facilities or buildings where such materials are stored as of the Commencement Date or at such other locations that NSR may approve, which approval shall not be unreasonably withheld.

(v) Disposal of Waste. METRO-NORTH shall not dispose, or permit any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee to dispose, of any waste of any kind (whether hazardous or not) on or upon the Line.

(vi) Avoidance of Hazardous Waste Permits. METRO-NORTH shall not conduct, or permit any METRO-NORTH Contractor to conduct, any activity on the Line that requires a hazardous waste treatment, storage or disposal permit from a federal or state Governmental Body unless approved in writing by NSR, which approval shall not be unreasonably withheld if (A) the acquisition of such a permit is required for activities on the Line that are necessary for rail passenger operations (including the fueling and maintenance of METRO-NORTH equipment), and (B) there are no practicable alternatives available for avoiding the need to procure such a permit. METRO-NORTH shall not permit any METRO-NORTH Licensee or METRO-NORTH Invitee to conduct any activity of the Line that requires a hazardous waste treatment, storage or disposal permit from a federal or state Governmental Body.

(vii) Fueling, Cleaning and Maintenance of Equipment. METRO-NORTH and any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee shall conduct fueling, cleaning and maintenance of locomotives or other equipment on the Line only in those areas previously used by NSR, METRO-NORTH and/or NJTRO, or in such new areas as are approved by NSR, which approval shall not be unreasonably withheld. Such activities shall be conducted only with appropriate containment and other protection as required under applicable Environmental Laws to avoid Release of Regulated Substances. METRO-NORTH shall consult with and obtain NSR's consent if METRO-NORTH or any METRO-NORTH Contractor, METRO-NORTH

Licensee, or METRO-NORTH Invitee plans to remove or reduce any containment or other protections used for such activities as of the Commencement Date.

(viii) **Reporting of Releases.** METRO-NORTH shall provide NSR with copies of any written reports with respect to Releases on or affecting the Line that are required to be submitted by METRO-NORTH, or any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee, to any Governmental Body in accordance with applicable Environmental Laws. The reports required under this paragraph shall be addressed to the representatives of NSR to whom notices are to be addressed as provided in **Article 12(j)** and **Attachment J**. The reports required under this paragraph shall be furnished within (A) thirty (30) days after the date that notification of such Reportable Release (whether written or otherwise) is required to be given by METRO-NORTH to any Governmental Body, or (B) thirty (30) days after the date that METRO-NORTH receives actual notice and knowledge of, or receives a written copy of or report concerning, the notification of a Reportable Release by a METRO-NORTH Contractor, METRO-NORTH Licensee or METRO-NORTH Invitee to any Governmental Body.

(d) **NSR ENVIRONMENTAL DUTIES AND COVENANTS.**

NSR shall have the following environmental duties and obligations, **provided** that nothing in this provision shall be interpreted to impose on NSR responsibility for any Pre-Commencement Contamination except as provided in **Article 6(h)(ii)** or **Article 6(h)(iv)**:

(i) **Nuisances and Violations.** NSR shall not create, or permit any NSR Contractor, NSR Licensee, or NSR Invitee to create, any nuisance, accumulation of debris or waste, or other condition in violation of any Environmental Law in, upon, under or above the Line or the Suffern Industrial Track.

(ii) **Release of Regulated Substances.** NSR shall not Release, or permit any NSR Contractor, NSR Licensee, or NSR Invitee to Release, any Regulated Substance in, from, upon, under, or above the Line or Suffern Industrial Track except in compliance with all applicable Environmental Laws and applicable Governmental Approvals.

(iii) **Storage of Waste.** NSR shall not store, or permit any NSR Contractor, NSR Licensee, or NSR Invitee to store, any waste of any type in, upon, under or above the Line or Suffern Industrial Track except for the temporary accumulation and storage of waste in the ordinary course of business, pending removal of such waste for recycling, treatment or disposal at a permitted facility. Such waste shall not be accumulated for longer than the time allowed under applicable Environmental Laws. Waste shall be stored in appropriate containers and in compliance with all applicable Environmental Laws.

(iv) **Storage of Other Regulated Substances.** NSR shall not store, or permit any NSR Contractor, NSR Licensee, or NSR Invitee to store, any Regulated Substances in, upon, under or above the Line or Suffern Industrial Track except for (A) the temporary storage of waste as provided in **Article 6(d)(iii)** and (B) the storage of fuel, commercial products or other materials necessary to operate and maintain NSR's locomotives and equipment. Fuel oil and lubricants shall be stored only in tanks, which comply with all applicable Environmental Laws. To the extent that such materials are stored on or at the Line or Suffern Industrial Track, all other materials shall be stored only in properly labeled and appropriate containers, in facilities or buildings where such materials are stored as of the Commencement Date or at such other locations on or at the Line or Suffern Industrial Track that METRO-NORTH may approve, which approval shall not be unreasonably withheld.

(v) **Disposal of Waste.** NSR shall not dispose, or permit any NSR Contractor, NSR Licensee, or NSR Invitee to dispose, of any waste of any kind (whether hazardous or not) on or upon the Line or Suffern Industrial Track.

(vi) **Avoidance of Hazardous Waste Permits.** NSR shall not conduct, or permit any NSR Contractor to conduct, any activity on the Line or Suffern Industrial Track which requires a hazardous waste treatment, storage or disposal permit from a federal or state Governmental Body unless approved in writing by METRO-NORTH, which approval shall not be unreasonably withheld if (A) the acquisition of such a permit is required for activities on the Line or Suffern Industrial Track that are necessary for freight rail operations, and (B) there are no practicable alternatives available for avoiding the need to procure such a permit. NSR shall not permit any NSR Licensee or NSR Invitee to conduct any activity of the Line or Suffern Industrial Track that requires a hazardous waste treatment, storage or disposal permit from a federal or state Governmental Body.

(vii) **Fueling, Cleaning and Maintenance of Equipment.** NSR and any NSR Contractor, NSR Licensee, or NSR Invitee shall conduct fueling, cleaning and maintenance of locomotives or other equipment on the Line or Suffern Industrial Track only in those areas previously used by NSR, or in such new areas on or at the Line or Suffern Industrial Track as are approved by METRO-NORTH, which approval shall not be unreasonably withheld. Such activities shall be conducted only with appropriate containment and other protection as required under applicable Environmental Laws to avoid Release of Regulated Substances. NSR shall consult with and obtain METRO-NORTH's consent if NSR or any NSR Contractor, NSR Licensee, or NSR Invitee plans to remove or reduce any containment or other protections utilized for such activities on or at the Line or Suffern Industrial Track as of the Commencement Date.

(viii) **Reporting of Releases.** NSR shall provide METRO-NORTH with copies of any written reports with respect to Releases on or affecting the Line or the Suffern Industrial Track that are required to be submitted by NSR, or any NSR Contractor, NSR Licensee, or NSR Invitee to any

Governmental Body in accordance with applicable Environmental Laws. The reports required under this paragraph shall be addressed to the representatives of METRO-NORTH to whom notices are to be addressed as provided in **Article 12(j)** and **Attachment J**. The reports required under this paragraph shall be furnished within (A) thirty (30) days after the date that notification of such Reportable Release (whether written or otherwise) is required to be given by NSR to any Governmental Body, or (B) thirty (30) days after the date that NSR receives actual notice and knowledge of, or receives a written copy of or report concerning, the notification of a Reportable Release by an NSR Contractor, NSR Licensee or NSR Invitee, to any Governmental Body.

(e) PRR ENVIRONMENTAL DUTIES AND COVENANTS.

PRR shall have the following environmental duties and obligations, **provided** that nothing in this provision shall be interpreted to impose on PRR responsibility for any Pre-Commencement Contamination except as provided in **Article 6(h)(iii)** or **Article 6(h)(iv)**:

(i) Nuisances and Violations. PRR shall not create, or permit any PRR Contractor, PRR Licensee, or PRR Invitee to create, any nuisance, accumulation of debris or waste, or other condition in violation of any Environmental Law in, upon, under or above the Line or Suffern Industrial Track.

(ii) Release of Regulated Substances. PRR shall not Release, or permit any PRR Contractor, PRR Licensee, or PRR Invitee to Release, any Regulated Substance in, from, upon, under, or above the Line or Suffern Industrial Track except in compliance with all applicable Environmental Laws and applicable Governmental Approvals.

(iii) Storage of Waste. PRR shall not store, or permit any PRR Contractor, PRR Licensee, or PRR Invitee to store, any waste of any type in, upon, under or above the Line or Suffern Industrial Track except for the temporary accumulation and storage of waste in the ordinary course of business, pending removal of such waste for recycling, treatment or disposal at a permitted facility. Such waste shall not be accumulated for longer than the time allowed under applicable Environmental Laws. Waste shall be stored in appropriate containers and in compliance with all applicable Environmental Laws.

(iv) Storage of Other Regulated Substances. PRR shall not store, or permit any PRR Contractor, PRR Licensee, or PRR Invitee to store, any Regulated Substances in, upon, under or above the Line or Suffern Industrial Track except for (A) the temporary storage of waste as provided in **Article 6(e)(iii)** and (B) the storage of fuel, commercial products or other materials necessary to operate and maintain PRR Contractors' or PRR Licensees' equipment. Fuel oil and lubricants shall be stored only in tanks that comply with all applicable Environmental Laws. To the extent that such materials are stored on or at the Line or Suffern Industrial Track, all other materials shall be stored

only in properly labeled and appropriate containers, in facilities or buildings where such materials are stored as of the Commencement Date or at such other locations on or at the Line or Suffern Industrial Track that METRO-NORTH may approve, which approval shall not be unreasonably withheld.

(v) **Disposal of Waste.** PRR shall not dispose, or permit any PRR Contractor, PRR Licensee, or PRR Invitee to dispose, of any waste of any kind (whether hazardous or not) on or upon the Line or Suffern Industrial Track.

(vi) **Avoidance of Hazardous Waste Permits.** PRR shall not conduct, or permit any PRR Contractor to conduct, any activity on the Line or Suffern Industrial Track which requires a hazardous waste treatment, storage or disposal permit from a federal or state Governmental Body unless approved in writing by METRO-NORTH, which approval shall not be unreasonably withheld if (A) the acquisition of such a permit is required for activities on the Line or Suffern Industrial Track that are necessary for freight rail operations, and (B) there are no practicable alternatives available for avoiding the need to procure such a permit. PRR shall not permit any PRR Licensee or PRR Invitee to conduct any activity of the Line or Suffern Industrial Track that requires a hazardous waste treatment, storage or disposal permit from a federal or state Governmental Body.

(vii) **Fueling, Cleaning and Maintenance of Equipment.** PRR and any PRR Contractor, PRR Licensee, or PRR Invitee shall conduct fueling, cleaning and maintenance of locomotives or other equipment on the Line or Suffern Industrial Track only in those areas previously used by PRR or NSR, or in such new areas on or at the Line or Suffern Industrial Track as are approved by METRO-NORTH, which approval shall not be unreasonably withheld. Such activities shall be conducted only with appropriate containment and other protection as required under applicable Environmental Laws to avoid Release of Regulated Substances. PRR shall consult with and obtain METRO-NORTH's consent if PRR or any PRR Contractor, PRR Licensee, or PRR Invitee plans to remove or reduce any containment or other protections utilized for such activities on or at the Line or Suffern Industrial Track as of the Commencement Date.

(viii) **Reporting of Releases.** PRR shall provide METRO-NORTH with copies of any written reports with respect to Releases on or affecting the Line or Suffern Industrial Track that are required to be submitted by PRR, or any PRR Contractor, PRR Licensee, or PRR Invitee to any Governmental Body in accordance with applicable Environmental Laws. The reports required under this paragraph shall be addressed to the representatives of METRO-NORTH to whom notices are to be addressed as provided in **Article 12(j)** and **Attachment J**. The reports required under this paragraph shall be furnished within (A) thirty (30) days after the date that notification of such Reportable Release (whether written or otherwise) is required to be given by PRR to any Governmental Body, or (B) thirty (30) days after the date that PRR receives actual notice and knowledge of, or receives a written copy of or report

concerning, the notification of a Reportable Release by a PRR Contractor, PRR Licensee or PRR Invitee, to any Governmental Body.

(f) STORAGE TANKS AND PIPING ON LINE.

(i) Permission Required. METRO-NORTH shall not install, or permit any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee to install, any aboveground or underground tanks or associated piping for the storage of any Regulated Substance on the Line without the express written consent of NSR, which consent shall not be unreasonably withheld.

(ii) Compliance with Standards. If consent is given by NSR to install any aboveground or underground storage tank or associated piping, METRO-NORTH agrees to comply with, and shall require any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee to comply with, the construction, maintenance, monitoring and other requirements imposed by all applicable Environmental Laws with respect to such tanks and piping, including the regulations and standards promulgated under Subtitle I of the Resource Conservation and Recovery Act (49 U.S.C. §6901 *et. seq.*). METRO-NORTH and any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee shall also comply with NSR's Requirements for Underground Storage Tank Systems Located on Leased Properties, which are applicable to substantially all of NSR's property and which will be provided to METRO-NORTH upon the giving of such consent. Such requirements will include, but are not limited to, evidencing financial responsibility, corrosion protection, providing requisite notifications, testing of tanks for leaks, periodic monitoring of the tanks and adjacent soil to detect any leakage, and the taking of necessary corrective action if a release from a tank does occur.

(iii) Reports to NSR. In the event of any Release after the Commencement Date from an aboveground or underground tank on the Line, METRO-NORTH agrees to send a copy of any notification filed with any Governmental Body regarding such Release to NSR within three working days of the discovery of such Release. Such notification shall be addressed to the NSR Environmental Contact.

(iv) Response Actions Regarding Leaking Tanks. Except as provided in **Article 6(f)(vi)**, in the event that any Release of Regulated Substances from any aboveground or underground tank or associated piping is detected (other than a tank which is under the sole control of NSR, PRR, or any NSR Contractor, NSR Licensee, NSR Invitee, PRR Contractor, PRR Licensee, or PRR Invitee), METRO-NORTH agrees to undertake promptly the repair or replacement of such tank or piping, and all Response Actions Required by Law, and to remediate any affected soil or groundwater in accordance with the Remediation Standards.

(v) **Removal of Tanks Upon Sublease Termination.** Upon termination of the Sublease and METRO-NORTH surrender and vacation of the Line, and unless NSR otherwise agrees in writing, METRO-NORTH shall remove any underground or aboveground tanks and associated piping which METRO-NORTH, or any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee, has installed, and shall implement any Response Actions Required by Law to remove and restore any Contamination resulting from such tanks or piping in accordance with the Remediation Standards.

(vi) **Unidentified Underground Storage Tanks and Pre-Commencement Contamination From Storage Tanks.** METRO-NORTH shall have no responsibility under this **Article 6(f)** with respect to

(A) any underground tanks or related piping that existed on the Line as of the Commencement Date where such tanks or piping (i) were not operated by METRO-NORTH or a METRO-NORTH Contractor prior to the Commencement Date and (ii) were not operated by a METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee after the Commencement Date;

(B) any underground tanks or related piping that existed on the Line as of the Commencement Date but that were not disclosed in writing to METRO-NORTH prior to the Commencement Date, unless and only to the extent that, after METRO-NORTH receives notice of or discovers such underground tanks or piping, METRO-NORTH thereafter fails to take due care with respect to such underground tanks or piping, resulting in the Release of a Regulated Substance or an increase in the severity, horizontal or vertical extent of any Contamination resulting therefrom; or

(C) any Pre-Commencement Contamination (including any Release of Regulated Substances that occurred prior to the Commencement Date) from any aboveground or underground storage tank or related piping that was not being operated by METRO-NORTH or a METRO-NORTH Contractor prior to the Commencement Date.

(g) RIGHT TO PERFORM ENVIRONMENTAL INSPECTIONS AND RESPONSE ACTIONS.

(i) At any time during the term of the Operations Agreement and the concurrent Sublease, upon reasonable notice and during regular business hours, NSR or any authorized representative of NSR shall have the right to enter the Line for purposes of inspecting the Line for compliance with this **Article 6**. NSR's exercise of such inspection rights shall not materially interfere with METRO-NORTH's operations or activities on the Line. If NSR detects any violation by METRO-NORTH, or any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee, of the obligations imposed under

this **Article 6**, including any Contamination of the Line for which METRO-NORTH is responsible, NSR shall notify METRO-NORTH of such violation, and METRO-NORTH shall promptly take steps to correct such violation and shall implement Response Actions Required by Law to correct any such Contamination.

(ii) If, after receiving notice from NSR, METRO-NORTH fails to take prompt steps to correct any violation of METRO-NORTH's obligations under this **Article 6**, or to implement Response Actions Required by Law to correct any Contamination of the Line for which METRO-NORTH is responsible, NSR and NSR's Contractors shall have the right to enter the Line and take such corrective actions as are reasonably necessary to correct such violation or to implement Response Actions Required by Law to correct such Contamination in accordance with the Remediation Standards, in which case NSR shall be entitled to reimbursement for the actual and reasonable costs of such work. For such purposes, actual and reasonable costs shall include (i) the wages and salaries of NSR employees involved in conducting or supervising such work, plus standard overhead charges (representing indirect costs of benefits and other overhead), and (ii) the charges incurred for work performed by NSR Contractors.

**(h) RESPONSIBILITY FOR CONTAMINATION AND CLAIMS;
INDEMNIFICATION PROVISIONS.**

The responsibilities and obligations of the parties with respect to Claims associated with environmental matters and for Contamination at, on, under or affecting the Line or Suffern Industrial Track shall be allocated as set forth in this **Article 6(h)**.

(i) METRO-NORTH Responsibility for Contamination and Claims.

(A) Except as provided in **Article 6(h)(i)(B)**, METRO-NORTH shall be responsible for all Response Actions Required by Law to respond to, and agrees to indemnify, defend and hold harmless the NSR Indemnified Parties and PRR Indemnified Parties from and against all Claims relating to Response Actions Required by Law, death, personal injury, property damage, or natural resource damages, arising from or related to:

(1) Contamination resulting from any Release of a Regulated Substance on, at or affecting the Line caused by the operations or activities of METRO-NORTH, or any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee, either prior to the Commencement Date (including operations and activities conducted by METRO-NORTH or any METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee under the 1983 Trackage Rights Agreement and the 1982 Transfer Agreement) or after the Commencement Date; or

(2) an increase in the severity, horizontal or vertical extent of any Contamination (including Pre-Commencement Contamination) on, at or affecting the Line caused by the actions of METRO-NORTH, or a METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee, where (i) METRO-NORTH received notice or knowledge of, or based on information readily available to METRO-NORTH it should have known of, the existence and location of such Contamination, and (ii) METRO-NORTH thereafter failed to take due care with respect to such Contamination, taking into consideration the characteristics of the Regulated Substances involved, in light of all relevant facts and circumstances; or

(3) Contamination resulting from any Release of a Regulated Substance occurring after the Commencement Date in areas of the Line which METRO-NORTH is responsible for monitoring and policing, where such Release is caused by a third party other than NSR, PRR, or any NSR Contractor, NSR Licensee, NSR Invitee, PRR Contractor, PRR Licensee, or PRR Invitee; or

(4) Contamination on, at or affecting the Line resulting from any Release of a Regulated Substance occurring after the Commencement Date arising from the construction, maintenance, operation or use of any METRO-NORTH Non-Operating Facilities by METRO-NORTH or a METRO-NORTH Licensee;

(5) any violation by METRO-NORTH of METRO-NORTH's duties or obligations under this **Article 6**; or

(6) the transportation by METRO-NORTH, METRO-NORTH Contractors or METRO-NORTH Licensees of any Regulated Substances over the Line or in connection with operations on or at the Line, or the arrangement by METRO-NORTH or METRO-NORTH Contractor for the treatment or disposal at off-site locations of Regulated Substances generated at the Line or in connection with operations associated with the Line; or

(7) any violation by METRO-NORTH, a METRO-NORTH Contractor or METRO-NORTH Licensee of Environmental Laws occurring on or at the Line during the period from June 1, 1999 to the Commencement Date.

(B) METRO-NORTH shall not be responsible for, and shall have no indemnification or defense obligations under **Article 6(h)(i)(A)** with respect to:

(1) Claims or Contamination for which NSR or PRR are responsible as set forth in **Articles 6(h)(ii)** and **6(h)(iii)**; or

(2) any Pre-Commencement Contamination, except as explicitly set forth in **Article 6(h)(i)(A)(1) or (2)**.

(ii) NSR Responsibility for Contamination and Claims.

(A) Except as provided in **Article 6(h)(ii)(B)**, NSR shall be responsible for all Response Actions Required by Law to respond to, and agrees to indemnify, defend and hold harmless the METRO-NORTH Indemnified Parties from and against all Claims relating to Response Actions Required by Law, death, personal injury, property damage, or natural resource damages, arising from or related to:

(1) Contamination resulting from any Release of a Regulated Substance on, at or affecting the Line or Suffern Industrial Track caused by the operations or activities of NSR or any NSR Contractor, NSR Licensee, or NSR Invitee, either prior to or after the Commencement Date; or

(2) an increase in the severity, horizontal or vertical extent of any Contamination (including Pre-Commencement Contamination) on, at or affecting the Line or Suffern Industrial Track caused by the actions of NSR, or any NSR Contractor, NSR Licensee, or NSR Invitee where (i) NSR received notice or knowledge of, or based on information readily available to NSR it should have known of, the existence and location of such Contamination, and (ii) NSR thereafter failed to take due care with respect to such Contamination, taking into consideration the characteristics of the Regulated Substances involved, in light of all relevant facts and circumstances; or

(3) any Pre-Commencement Contamination on, at or affecting the Line or Suffern Industrial Track that arises from Releases that occurred on or after June 1, 1999 and before the Commencement Date, to the extent not arising from Releases of a Regulated Substance by METRO-NORTH or a METRO-NORTH Contractor, METRO-NORTH Licensee, or METRO-NORTH Invitee;

(4) Contamination resulting from any Release of a Regulated Substance on, at or affecting the Line or Suffern Industrial Track occurring after the Commencement Date on, at or under Reserved Rights Facilities that are retained, occupied or used by NSR or any NSR Licensee;

(5) any violation by NSR of NSR's duties or obligations under this **Article 6**; or

(6) the transportation by NSR, or any NSR Contractor or NSR Licensee, of any Regulated Substances over the Line or Suffern Industrial Track or in connection with operations associated with

the Line or Suffern Industrial Track, or the arrangement by NSR or any NSR Contractor for the treatment or disposal at off-site locations of Regulated Substances generated at the Line or Suffern Industrial Track or operations associated with the Line or Suffern Industrial Track; or

(7) any violation by NSR, any NSR Contractor or NSR Licensee, of Environmental Law occurring on or at, or related to, the Line during the period from June 1, 1999 to the Commencement Date.

(B) NSR shall not be responsible for, and shall have no indemnification or defense obligations under **Article 6(h)(ii)(A)** with respect to:

(1) Claims or Contamination for which METRO-NORTH is responsible as set forth in **Article 6(h)(i)**, or for which PRR is responsible as set forth in **Article 6(h)(iii)**; or

(2) any Pre-Commencement Contamination arising from Releases that occurred prior to June 1, 1999, except as explicitly set forth in **Article 6(h)(ii)(A)(1)** or **(2)**.

(iii) PRR Responsibility for Contamination and Claims.

(A) Except as provided in **Article 6(h)(iii)(B)**, PRR shall be responsible for all Response Actions Required by Law to respond to, and agrees to indemnify, defend and hold harmless the METRO-NORTH Indemnified Parties from and against all Claims relating to Response Actions Required by Law, death, personal injury, property damage, or natural resource damages, arising from or related to:

(1) Contamination resulting from any Release of a Regulated Substance on, at or affecting the Line or Suffern Industrial Track caused by the operations or activities of PRR or Conrail, any PRR Contractor, PRR Licensee, or PRR Invitee, or any Conrail Contractor, Conrail Licensee, or Conrail Invitee, either before or after the Commencement Date; or

(2) Pre-Commencement Contamination on, at or affecting the Line or Suffern Industrial Track, except to the extent that METRO-NORTH is responsible for such Pre-Commencement Contamination pursuant to **Articles 6(h)(i)(A)(1)** or **(2)**;

(3) an increase in the severity, horizontal or vertical extent of any Contamination on, over, under, above or affecting the Line or Suffern Industrial Track (including any Pre-Commencement Contamination) caused by the actions of PRR or Conrail, or any PRR Contractor, PRR Licensee, PRR Invitee, Conrail Contractor, Conrail Licensee or Conrail Invitee, where (i) PRR or Conrail received notice or

knowledge of, or based on information readily available to PRR or Conrail, PRR or Conrail should have known of, the existence and location of such Contamination, and (ii) PRR or Conrail thereafter failed to take due care with respect to such Contamination, taking into consideration the characteristics of the Regulated Substances involved, in light of all relevant facts and circumstances; or

(4) any violation by PRR of PRR's duties or obligations under this **Article 6**; or

(5) the transportation by Conrail, or any PRR Contractor, PRR Licensee, Conrail Contractor or Conrail Licensee of any Regulated Substances over the Line or Suffern Industrial Track or in connection with operations associated with the Line or Suffern Industrial Track, or the arrangement by PRR or Conrail for the treatment or disposal at off-site locations of Regulated Substances generated at the Line or Suffern Industrial Track or operations associated with the Line or Suffern Industrial Track; or

(6) any violation by PRR, Conrail, PRR Licensee, PRR Contractor, Conrail Licensee or Conrail Contractor of Environmental Law occurring on or at, or related to, the Line or Suffern Industrial Track during the period from April 1, 1976 to the Commencement Date.

(B) PRR shall not be responsible for, and shall have no indemnification or defense obligations under **Article 6(h)(iii)(A)** with respect to Claims or Contamination for which METRO-NORTH is responsible as set forth in **Article 6(h)(i)** or for which NSR is responsible as set forth in **Article 6(h)(ii)**.

(iv) Responsibility for Certain Pre-Commencement Contamination, Contamination Caused by Other Parties, and Mixed Contamination.

(A) **Reservation of Rights and Defenses.** Each of the parties explicitly reserves all rights and defenses they each may have under the Regional Rail Act, the Final System Plan, the conveyance documents which conveyed the Line to Conrail pursuant to the Final System Plan, and any other Applicable Law, as against any claims that may be asserted by any Governmental Body or third party contending that they are or may be responsible for Contamination arising from Releases that occurred prior to April 1, 1976. Nothing in this Operations Agreement shall be construed as an admission by or as to any party, or as to any METRO-NORTH Indemnified Party, NSR Indemnified Party, or PRR Indemnified Party, of any responsibility for such Contamination arising from Releases that occurred prior to April 1, 1976.

(B) **Cooperation by Parties.** In the event of any circumstances or theories of law under which Claims are asserted against one or more of the parties, under which any of the parties are or may be held liable for Contamination on the Line arising from Releases that occurred prior to April 1, 1976, the parties agree that they will cooperate to the fullest extent practicable in pursuing cost recovery or contribution from those entities responsible for such Contamination or in seeking appropriate governmental funds.

(C) **Mixed Contamination.** Where it is determined that Contamination is the result of Releases for which METRO-NORTH is responsible in combination with Releases for which NSR or PRR are responsible, liability for any Claims associated with or arising from such Contamination shall be allocated equitably between METRO-NORTH, NSR and PRR, based on consideration of (among others) the following factors:

- (1) The relative amount of time that each of the parties has owned or controlled the Line;
- (2) The relative amount of time that each of the parties has conducted operations on the Line, and the nature and extent of those operations;
- (3) The relative quantity, toxicity, location and extent of Regulated Substances Released as the result of the activities or operations of each respective party;
- (4) Whether, but for a Release or Contamination for which one of the parties is solely responsible, an obligation to investigate or remediate would have arisen for the other Parties;
- (5) The degree to which the Regulated Substance for which a party is responsible affects the selection of the remedy, the cost of the remedy, and the period of time over which the remedy must be implemented;
- (6) The extent to which the actions of each party have caused an increase in the severity, horizontal or vertical extent of the Contamination; and
- (7) Other relevant considerations.

(v) **Notices of Contamination and Claims and Response Actions.**

(A) **Notice of Claims.** If any METRO-NORTH Indemnified Party, NSR Indemnified Party, or PRR Indemnified Party (an

"Indemnified Party") believes that it has suffered or incurred or will suffer or incur any Claims for which it is entitled to indemnification under this **Article 6**, such Indemnified Party shall notify the party or parties from whom indemnification is being claimed (the "Indemnifying Party") with reasonable promptness and reasonable particularity in light of the circumstances then existing. If any judicial or administrative action is instituted by or against a third party which respect to which any Indemnified Party intends to claim rights of defense or indemnification, such Indemnified Party shall promptly notify the Indemnifying Party of such action. The failure of such Indemnified Party to give any notice required by this paragraph shall not affect any of such party's rights under this **Article 6** or otherwise except and to the extent that such failure is actually prejudicial to the rights and obligations of the Indemnified Party.

(B) **Response to Third Party Claims.**

(1) The Indemnifying Party shall have the right to conduct and control, through counsel chosen by the Indemnifying Party and reasonably satisfactory to the Indemnified Party, the defense of any Claim asserted by a third party. The Indemnifying Party may compromise and settle such Claim, provided that (i) the Indemnifying Party shall give the Indemnified Party advance notice of any proposed compromise or settlement; and (ii) and the Indemnifying Party shall not thereby permit to exist any lien or other encumbrance on the assets constituting the Line or Suffern Industrial Track. The Indemnifying Party shall not consent to any settlement that does not include as an unconditional term thereof the giving of a complete release with respect to such Claim as to the Indemnified Party. The Indemnifying party shall permit the Indemnified Party to participate in the defense of any such Claim through counsel chosen by the Indemnified Party, provided that the fees and expenses of such counsel shall be borne by the Indemnified Party.

(2) In the event that the Indemnified Party and the Indemnifying Party are both parties to a Claim and representation of both the Indemnifying Party and the Indemnified Party by the same counsel is inappropriate under applicable standards of professional conduct due to actual or potential differing interests between them, then the Indemnifying Party may not assume the conduct and control of such Claim and the Indemnifying Party shall reimburse such Indemnified Party for the reasonable fees and expenses of any counsel retained by the Indemnified Party and reasonably satisfactory to the Indemnifying Party.

(C) **Notice of Contamination to NSR and PRR.** If at any time after the Commencement Date Contamination is discovered by METRO-NORTH for which Response Actions are Required by Law and such Contamination is or may be the responsibility of NSR or PRR, METRO-NORTH shall notify NSR and PRR, as the case may be, of the

discovery of such Contamination. Upon such notice, NSR and PRR shall have the right to investigate such Contamination. If NSR or PRR agrees, or an arbitrator subsequently finds, that the Contamination is NSR's or PRR's responsibility, NSR or PRR shall have the right to undertake, with their own forces or contractors and at their own expense, any Response Actions Required by Law to remediate such Contamination in accordance with the Remediation Standards and the provisions of Article 6(h)(vii). METRO-NORTH shall provide access to NSR, PRR and their designated consultants and contractors, upon reasonable notice, without charge, and upon reasonable terms and conditions, as may be necessary to perform such investigations and Response Actions. If, after receiving such notice from METRO-NORTH, NSR and PRR fail to undertake prompt action to initiate and diligently prosecute such investigations and Response Actions Required by Law to address Contamination at or affecting the Line or Suffern Industrial Track which is the responsibility of NSR or PRR, METRO-NORTH shall have the right to take such actions as are reasonably necessary to implement Response Actions Required by Law to correct such Contamination in accordance with the Remediation Standards, in which case METRO-NORTH shall be entitled to reimbursement for the actual and reasonable costs of such work to correct Contamination for which NSR or PRR are responsible as provided in **Articles 6(h)(ii) and 6(h)(iii)**. For such purposes, actual and reasonable costs shall include (i) the wages and salaries of METRO-NORTH employees involved in conducting or supervising such work, plus METRO-NORTH's Overhead Charges, and (ii) the charges incurred for work performed by METRO-NORTH Contractors.

(vi) Remediation Standards And Remedy Selection. With respect to Response Actions to address any Contamination, including any Contamination that existed prior to the Commencement Date and for which responsibility is allocated in this **Article 6**, the parties agree:

(A) to seek, accept and support the use of site-specific remediation standards based upon the assessment of risks to human health and the environment, considering (a) the current and future use of the Line for railroad and related commercial and industrial purposes, and (b) the use of appropriate institutional and engineering controls to eliminate or minimize exposure pathways;

(B) to seek, accept and support the selection of a remedial method capable of meeting the applicable remediation standards (including any site-specific risk-based standards) that is most cost-effective (considering both initial capital costs, the present discounted value of anticipated future monitoring, operation and maintenance costs and any costs incurred with respect to disruption of operations on and at the Line; and

(C) that appropriate institutional or engineering controls may be utilized to eliminate or minimize exposure pathways where the use of such controls does not significantly and unreasonably interfere with the operation of Line, or the current or future use of the Line for railroad and related industrial or commercial purposes.

(vii) Protocols Regarding Response Actions. In planning and conducting any Response Actions relating to or affecting the Line, the parties agree as follows:

(A) Plans and scheduling of any Response Actions relating to Contamination on or affecting the Line shall be coordinated between NSR and METRO-NORTH in an effort to avoid, to the maximum extent practicable, disruption of operations of the Line.

(B) In the event that it is not reasonably practicable to avoid impacts upon operations of the Line, Response Actions shall be undertaken in a manner which reduces to the minimum level practicable interference with or disruption of operations of the Line, and in no event shall such Response Actions cause material interference with operations on the Line by other parties.

(C) The party that has primary responsibility for particular Contamination (the "Lead Party"), or that has agreed to act as the Lead Party in the absence of a determination or admission of primary responsibility for particular Contamination, shall take the lead in preparing and implementing plans for Response Actions with respect to such Contamination.

(1) The Lead Party shall be responsible for: (a) the provision of all notices to Governmental Bodies Required by Law; (b) engagement of such consultants or other professionals to prepare any required studies, assessments, or plans; (c) consulting with, and obtaining the comments of the other parties, with respect to any draft studies, assessments, or plans; (d) submission of any correspondence to, and coordination of, communications with any involved Governmental Bodies; and (e) leading any negotiations with involved Governmental Bodies.

(2) The Lead Party shall promptly provide the other parties with notice and copies of any correspondence to or from any governmental agency concerning the Response Action or the Environmental Conditions giving rise to the Response Action. The other parties shall be advised of, and have the opportunity to attend and participate in any meetings or other communications with any involved governmental agency; provided that such other parties shall bear any costs associated with such participation, including the costs of counsel or consultants engaged by such other parties.

(3) Each party agrees to refrain, to the maximum extent practicable, from any *ex parte* communications with any involved Governmental Body or other entity or person regarding the Response Action or the conditions giving rise to the Response Action, without notice to and the opportunity by the other parties to participate in such communication. A party may engage in a communication with an involved governmental agency, without notice to the other parties, if:

(i) the party is Required by Law to make a notification to the governmental agency within a time period that does not practicably allow an opportunity to first notify the other parties, provided that the party undertaking the communication notify the other parties of any such notification as soon as practicable following the provision of such a notice; or

(ii) a Governmental Body conducts an inspection or otherwise initiates a communication with the party, provided that the party receiving such contact shall notify the other parties as soon as practicable following such communication.

In making any such notification or engaging in any communication, in no event shall such party advocate or take any action that would significantly hinder, render more difficult or render more expensive the Response Actions to be undertaken by other parties in accordance with the terms of this Operations Agreement.

(viii) **Survival.** The provisions of this **Article 6(h)** shall survive the termination of this Operations Agreement.

(i) **RESOLUTION OF DISPUTES OVER ENVIRONMENTAL OBLIGATIONS.**

(i) **Alternative Dispute Resolution Process.** In the event of a dispute concerning the responsibilities of the parties for any duty, obligation, Claim or Contamination governed under this **Article 6** (including determination of responsibility for environmental conditions), such dispute shall be subject to the alternative dispute resolution process set forth in this **Article 6(i)**.

(ii) **Invocation.** The resolution procedures shall be invoked when any party sends a written notice to the other parties. The notice shall describe the nature of the dispute and the party's position with respect to such dispute. The parties shall expeditiously schedule consultations or a meeting to discuss the dispute informally in accordance with **Article 6(i)(iv)**.

(iii) **Designation of Technical Representatives.** The parties shall designate Technical Representatives for purposes of this provision, and list their names, addresses and telephone and facsimile machine numbers in

Attachment L. Any party's Technical Representative may be changed by the appointing party upon written notice pursuant to **Article 12** hereof.

(iv) **Technical Discussions.** Any conflicts or disputes shall, in the first instance, be subject to informal consultation and discussion between the Technical Representatives of the parties. Unless otherwise agreed to, the Technical Representatives shall meet within twelve (12) business days of the date a dispute is referred to them. The period of informal consultations and discussions shall not extend beyond sixty (60) days from the date of the first consultations or meetings between the Technical Representatives, unless the parties agree to extend this period. The Technical Representatives may request the assistance of an independent mediator if they believe that such a mediator would be of assistance to the efficient resolution of the dispute.

(v) **Formal Resolution Procedures.** In the event that the Technical Representatives are unable to resolve the matter within the period provided in **Article 6(i)(iv)**, the dispute shall be resolved in accordance with the formal resolution procedures set forth in this **Article 6(i)(v)**.

(A) Where (prior to initiation of arbitration under paragraph (B) below, an action has been initiated in a court or similar adjudicating forum ("Court") by a third party asserting Claims against any of the parties, and such Court has jurisdiction to adjudicate the relative contribution liability of the respective parties, the parties shall (unless they mutually agree otherwise) utilize the Court to adjudicate any dispute between themselves regarding liabilities for such Claims, and the final decision of such Court, after exhaustion of any available appeals, shall be binding upon the parties.

(B) Except as provided in paragraph (A) above, the parties shall submit any dispute between themselves to binding arbitration and any controversy or claim arising out of or relating to the provisions set forth in this Article 6 or the breach thereof shall be settled and finally determined by arbitration pursuant to **Article 9** of this Operations Agreement, with the following additions and exceptions.

(1) Upon the occurrence of a dispute and failure of the parties to resolve such dispute through the informal processes described in **Article 6(i)(iv)**, any party may initiate the arbitration process by giving written notice to the other party (the "Arbitration Notice").

(2) Within thirty (30) days of the Arbitration Notice, the parties shall either agree upon the appointment of a single mutually-approved Environmental Professional to serve as the arbitrator; or, if the parties are unable to agree upon a single arbitrator, METRO-NORTH (on the one hand) and NSR and PRR, jointly (on the other hand) shall each appoint an Environmental Professional to serve as arbitrator, and the

two individuals so named shall, within thirty (30) additional days, agree upon a third independent Environmental Professional (who shall be an environmental lawyer) to serve as the third arbitrator. The parties shall cooperate to retain the arbitrator(s) upon terms and conditions mutually satisfactory to the parties as soon as practicable after selection of the arbitrator(s).

(3) The arbitrator(s) shall retain independence of all parties to the Agreement, and no party shall engage or attempt to engage the services of the arbitrator(s), or any firm of which they are a member or employee, for any purposes without prior written notice to the other parties.

ARTICLE 7. OPERATIONS AND MAINTENANCE LIABILITY, INDEMNITY, INSURANCE, EMPLOYEE PROTECTION.

(a) DEFINITIONS.

The following terms shall have the meanings ascribed below:

(i) METRO-NORTH Employee.

"METRO-NORTH Employee" shall mean an individual who is an officer, director, supervisor, employee, servant, agent or contractor (including NJTRO, but excluding NSR) of METRO-NORTH. METRO-NORTH Employees who provide services to NSR under the Operations Agreement shall be regarded as employees of METRO-NORTH.

(ii) METRO-NORTH Indemnified Parties.

"METRO-NORTH Indemnified Parties" shall mean METRO-NORTH and MTA, and any or all of their parents, subsidiaries and affiliates, and any or all of their respective directors, officers, employees, servants, agents or contractors (including NJTRO).

(iii) NSR Employee.

"NSR Employee" means an individual who is an officer, director, supervisor, employee, servant, agent or contractor (other than METRO-NORTH) of NSR. NSR Employees who provide services to METRO-NORTH under this Operations Agreement shall be regarded as employees of NSR.

(iv) NSR Indemnified Parties.

"NSR Indemnified Parties" shall mean NSR and PRR, and either or both of their respective parents, and any or all of their subsidiaries,

affiliates, members and partners, and any or all of their respective shareholders, directors, officers, employees, servants, agents or contractors.

(v) Persons Acting Under.

The phrase "persons acting under" when used in this **Article 7** shall mean a party's agents, Contractors, designees, lessees, sublessees, Licenses, permittees, Invitees or any other person admitted to the Line or the Suffern Industrial Track by a party, regardless of whether such admission is permitted under the Operations Agreement.

(b) OTHER INDEMNITY PROVISIONS.

The parties acknowledge that other specific indemnity obligations may be found in this Operations Agreement other than **Article 7**. The parties further acknowledge that all liability and indemnity obligations for environmental matters are set forth in and shall be governed exclusively by **Article 6**.

(c) ALLOCATION OF LIABILITY AND INDEMNITY FOR PROPERTY DAMAGE, PERSONAL INJURY, AND DEATH ARISING FROM OPERATIONS AND MAINTENANCE.

(i) METRO-NORTH Liabilities and Indemnities Arising from Operations and Maintenance.

METRO-NORTH shall be liable for, and shall defend, indemnify and hold harmless the NSR Indemnified Parties from and against any and all Claims arising from, related to or connected with METRO-NORTH's operation, maintenance or other activities on the Line, regardless of cause, negligence or fault, that result in:

(A) Loss of or damage to property of, or injury to or death of METRO-NORTH Employees; and

(B) Loss of or damage to locomotives, passenger cars, vehicles, equipment or other property owned by, leased to, used by or otherwise in the control, custody or possession of METRO-NORTH or persons acting under METRO-NORTH (including NJTRO).

(ii) NSR Liabilities and Indemnity to METRO-NORTH.

NSR shall be liable for, and shall defend, indemnify and hold harmless the METRO-NORTH Indemnified Parties from and against any and all Claims arising from, related to or connected with the operation of NSR's rail freight operations or other activities on the Line, regardless of cause, negligence or fault, that result in:

(A) Loss of or damage to property of, or injury to or death of NSR Employees; and

(B) Loss of or damage to locomotives, passenger cars, freight cars, vehicles, equipment or other property owned by, leased to, used by or otherwise in the control, custody or possession of NSR or PRR.

(iii) Third Party Liability and Indemnity.

With respect to all other Claims that are not addressed in (i) and (ii) above, as between themselves, NSR and METRO-NORTH, respectively, shall be liable for, and shall defend, indemnify and hold harmless the METRO-NORTH Indemnified Parties and the NSR Indemnified Parties, respectively, from any and all Claims resulting from any property damage, personal injury or death to the extent caused or contributed to by the respective party.

(iv) Drugs and Alcohol; Intentional Misconduct.

Notwithstanding any of the foregoing provisions of this **Article 7**, each party shall be liable for, and shall defend, indemnify and hold harmless the other party from and against any and all Claims arising from, related to or caused by (1) intentional misconduct of the indemnifying party or persons acting under the indemnifying party; or (2) any of the Employees of the indemnifying party or persons acting under the indemnifying party while under the influence of drugs or alcohol.

(d) CLAIMS AND LITIGATION.

In case suit shall at any time be brought against either METRO-NORTH or NSR asserting an Obligation against which the other agrees to indemnify and save harmless the party sued, the indemnifying party shall, at its own cost and expense and without any cost or expense whatever to the party sued, defend such suit and indemnify and save harmless the party sued against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against the party sued; provided, however, that the party sued shall promptly upon the bringing of any such suit against it give notice to the indemnifying party and thereafter provide all such information relating to the suit as the indemnifying party may from time to time request. Each party shall furnish to the other all such information relating to claims made for injuries, deaths, losses, damage or destruction of the type covered by this **Article 7** as such other party from time to time may request. Each party shall cooperate fully in the defense of claims for which the other party is responsible pursuant to this **Article 7** with respect to activities conducted pursuant to this Operations Agreement, including furnishing witnesses, documents, and other relevant information requested by the responsible party.

(e) **INSURANCE.**

(i) **NSR As Additional Insured.**

(A) METRO-NORTH shall cause its insurance carriers to add NSR as an additional insured on all general liability policies covering METRO-NORTH's operations on the Line.

(B) METRO-NORTH will also require that NSR be added as an additional insured with METRO-NORTH with respect to operations by any METRO-NORTH Contractor or METRO-NORTH Operating Licensee over the Line if METRO-NORTH requires that insurance be provided for it by such third party Contractor or Operating Licensee.

(ii) **METRO-NORTH As Additional Insured.**

NSR will require that METRO-NORTH be added as an additional insured with NSR with respect to operations by any NSR Contractor or NSR Operating Licensee over the Line if NSR requires that insurance be provided for NSR by such third party Contractor or Operating Licensee.

(iii) **Mutual Insurance or Self-Insurance Obligations.**

(A) Each party shall maintain sufficient insurance or self-insurance to cover all its indemnity obligations or commitments under this Operations Agreement.

(B) Each party shall furnish satisfactory certificates or other evidence of insurance or self-insurance to the other parties within thirty (30) days of the Commencement Date, and shall advise the other party when there is a change in insurer or any other material change in the insurance that might affect the other party, including but not limited to a change in deductible or in the amount of coverage.

(C) Compliance with the requirements of this **Article 7(e)** will not relieve the parties of any other duty or obligation under this Operations Agreement and will in no way limit or modify the parties' duties or obligations to provide the specific insurance coverage required by any and all provisions of this Operations Agreement.

(D) If a party determines that another party has insufficient insurance or self-insurance coverage to meet its duties or obligations under this Operations Agreement, it may request in writing that the party with said insufficient insurance or self-insurance coverage increase that coverage to appropriate levels and to provide certification of that increase within thirty (30) days.

(E) A party may seek an award or order enforcing the

other party's duty or obligation to maintain sufficient insurance or self-insurance coverage through arbitration or litigation.

(f) EMPLOYEE PROTECTION.

(i) METRO-NORTH Indemnity to NSR for Certain NSR Labor Claims.

METRO-NORTH shall pay for, or indemnify and hold harmless, the NSR Indemnified Parties against any and all costs, expenses and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on the behalf of NSR track maintenance of way, maintenance or construction, and communications or signal employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of the Sublease, or the operations contemplated thereunder, or the Operations Agreement, or the operations contemplated hereunder, or pursuant to a collective bargaining agreement or claim based on a collective bargaining agreement, whether or not the claim or grievance has been or will be disputed or the subject of an arbitration determination, or as a result of a settlement of a claim or grievance, from the performance of maintenance, construction, improvement or signal work on the Line by METRO-NORTH employees, agents or contractors, after the Commencement Date. NSR shall make its best efforts to avoid and to mitigate the consequences of any such claims or grievances.

(ii) Parties to Handle Labor Protection and Claims of Own Employees, Exception.

Except as provided in **Article 7(f)(i)**, it is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and under claims or grievances filed by its own employees, whether or not arising under collective bargaining agreements with its employees or pursuant to court, administrative, departmental or agency decision or order, or under any settlement agreement between the party and the employee(s).

(iii) Parties to Indemnify Each Other for Other Labor Protection Conditions or Claims of Indemnitor's Employees.

Except to the extent specified in **Article 7(f)(i)**, NSR and METRO-NORTH agrees to indemnify and hold harmless the METRO-NORTH Indemnified Parties and the NSR Indemnified Parties, respectively, against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on the behalf of its own employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of the Sublease, or operations contemplated thereunder, or this

Operations Agreement or the operations contemplated hereunder, or pursuant to a collective bargaining agreement.

ARTICLE 8. PRR CONSENT TO OPERATIONS AGREEMENT; STATUS OF PRR, POSSIBLE SUCCESSOR TO AGREEMENT.

(a) ACKNOWLEDGMENT OF PRR OWNERSHIP OF LINE.

METRO-NORTH hereby acknowledges that NSR leases and operates, but does not own, the Line, and that the NSR Operating Agreement pursuant to which NSR operates the Line expires on May 31, 2024, subject to the possibility of two five-year extensions, if not terminated earlier under its terms or the Conrail Transaction Agreement.

(b) PRR CONSENT.

PRR hereby consents to this Operations Agreement.

(c) PRR CONSENT REQUIRED FOR ASSIGNMENT OR TRANSFER.

PRR, as holder of the exclusive, irrevocable, perpetual, assignable, divisible, and transferable freight railroad operating rights over the Line, whether held in fee, easement or some other quality of title, must independently consent to any assignment, conveyance, grant or transfer of this Operations Agreement.

(d) PRR PARTY FOR LIMITED PURPOSES.

METRO-NORTH and NSR acknowledge that PRR is a party to this Operations Agreement only for the purposes of those Articles in which it assumes stated obligations or reserves certain rights, including this **Article 8**. Except as specifically provided in this Operations Agreement, PRR has no rights or obligations and is not liable for and does not assume any of the duties of NSR under this Operations Agreement while the NSR Operating Agreement is in effect.

(e) NO NSR LIABILITY FOR OPERATIONS AGREEMENT AFTER TERMINATION OF NSR OPERATING AGREEMENT.

If the NSR Operating Agreement expires or otherwise terminates without NSR controlling PRR, METRO-NORTH shall have no claim against NSR for NSR's failure to provide the sublease of the Line to METRO-NORTH or to perform any unaccrued duties or obligations under this Operations Agreement, nor shall NSR be subject to any unaccrued costs or liabilities under this Operations Agreement, unless specifically provided in any of its provisions.

(f) PRR SHALL ASSUME AGREEMENT UNDER CERTAIN CIRCUMSTANCES.

PRR shall assume all the rights, benefits, duties and obligations of NSR under this Operations Agreement if the NSR Operating Agreement expires or is terminated during the term of this Operations Agreement without NSR controlling PRR. Any reservations and rights of NSR under the terms of this Operations Agreement shall revert to PRR if NSR does not control PRR should this Operations Agreement, or any subsequent agreement or amendment covering similar subject matter, continue beyond the term of the NSR Operating Agreement, or any similar subsequent agreement between NSR and PRR. Upon termination of the NSR Operating Agreement without NSR controlling PRR, METRO-NORTH shall owe all subsequent payments and other duties under this Operations Agreement to PRR.

ARTICLE 9. ARBITRATION; LITIGATION.

(a) ARBITRATION.

(i) Arbitration Subjects, Selection of Arbitrators.

Except as provided in **Article 9(b)**, and unless a provision of this Operations Agreement specifies that a certain type of determination shall be made by a single arbitrator, any irreconcilable dispute arising between the parties with respect to this Operations Agreement shall be settled through binding arbitration by three (3) arbitrators, provided however, that within thirty (30) days of the receipt by one party of an arbitration demand by the other party, the parties may elect to have any arbitration conducted by a single disinterested arbitrator. Arbitration shall be conducted, and absent agreement by the parties or party-selected arbitrators, disinterested arbitrators shall be selected, under the Commercial Arbitration Rules of the American Arbitration Association, provided however, that the parties may agree within thirty (30) days of receipt of an arbitration demand by a party to use different rules, a different process or a different arbitration organization. The arbitration process shall be initiated by a written demand for arbitration from one party to the other party, which shall identify the issues to be arbitrated. Each party shall select one arbitrator, and the two arbitrators so selected shall select a third arbitrator. If the parties fail to select their arbitrators, or at their election, a single disinterested arbitrator, within sixty (60) days after the demand for arbitration made by either party is received by the other party, or if the two arbitrators fail to select a third arbitrator within thirty (30) days of the date that the second of the arbitrators is selected, the parties shall jointly submit the matter to binding arbitration by a single disinterested arbitrator under the Commercial Arbitration Rules of the American Arbitration Association. The first thirty (30) days of the period to select arbitrators shall run concurrently with the thirty (30) day option period for parties to agree on a single arbitrator, different rules, a different process or a different arbitration organization.

(ii) Decision of Arbitrator, Appeal.

The decision of the arbitrator(s) shall be issued in writing and contain the basis for the decision. The arbitrator(s) decision shall be final and conclusive upon the parties hereto, except that a party may appeal to a court with jurisdiction the question whether the arbitrator(s) exceeded the authority granted in this **Article 9(a)** or followed the applicable arbitration rules.

(iii) Costs and Expenses of Arbitration.

Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits, selected arbitrator and counsel. The compensation, costs, fees and expenses of the third arbitrator, or the sole arbitrator, shall be borne equally by the parties hereto.

(iv) Limitation on Arbitrator(s) Authority.

The arbitrator(s) shall not have the power to award interim relief unless the parties agree in writing to extend such powers to the arbitrator(s) in advance of the submission of the case to the arbitrator(s). The arbitrator(s) shall not have the power to award consequential or exemplary or punitive damages or to determine violations of criminal laws or civil antitrust laws.

(v) No Interruption of Business During Arbitration.

Pending the award of the arbitrator(s), there shall be no interruption in the transaction of business under the Operations Agreement, provided all payments in respect thereto shall be made in the same manner as prior to the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payments shall be made as required by the award of the arbitrator(s).

(b) LITIGATION.

Notwithstanding the foregoing, at their election, either party may bring an action in a court of competent jurisdiction:

(i) for an order for the payment of money owed under this Operations Agreement or the Sublease,

(ii) to enforce another party's indemnity and insurance obligations under this Operations Agreement or the Sublease,

(iii) to enforce or prevent a violation of **Article 6** of this Operations Agreement,

(iv) for NSR, to enforce METRO-NORTH's obligation to secure regulatory authority for the discontinuance of the sublease as provided in **Article**

10.1 of the Sublease,

(v) for an order requiring that METRO-NORTH surrender the Line to NSR in accordance with **Article 10(c) through (f)** and **Article 10.1** in **Attachment I** of the Sublease due to a material breach of the Sublease or the Operations Agreement, or as provided for in **Article 10(b)** upon expiration or termination of the Sublease,

(vi) to enforce or prevent the violation of the confidentiality provisions of the Sublease or the Operations Agreement; or

(vii) for any relief under any provision of the Sublease or the Operations Agreement that specifically permits resolution of a dispute or enforcement of a right or remedy through litigation.

(c) WAIVER OF TRIAL BY JURY.

The parties hereby waive trial by jury in any action, claim or proceeding under the Sublease or this Operations Agreement that is permitted to be litigated under **Article 9(b)**.

ARTICLE 10. TERM, TERMINATION AND EXPIRATION.

(a) TERM; RIGHT TO RENEW; VOLUNTARY TERMINATION.

(i) Initial Term Until December 31, 2027.

Unless otherwise terminated pursuant to the terms and conditions hereof, this Operations Agreement shall have an initial term beginning on the Commencement Date and ending on December 31, 2027 at 11:59 p.m.

(ii) Renewal Term.

In addition to the term specified in **Article 10(a)(i)**, METRO-NORTH shall have the right to renew this Operations Agreement for an additional term of twenty-three (23) years ending December 31, 2050 at 11:59 p.m. Should METRO-NORTH wish to exercise this right to extend this Operations Agreement (and the concurrent Sublease), it must provide written notice no later than June 30, 2027 to NSR or to PRR if PRR has assumed this Operations Agreement and the Sublease.

(iii) METRO-NORTH Termination Option.

Upon sixty (60) days written notice to NSR, METRO-NORTH may terminate this Operations Agreement (and the concurrent Sublease) prior to the expiration of its term, in the event METRO-NORTH, or a permitted successor or assign, discontinues or ceases to provide passenger rail service on the Line. METRO-NORTH shall not be entitled to abatement of the Sublease Rental for

any portion of the calendar year prior to the end of the month in which the effective date of the termination notice occurs. In the event of such termination, METRO-NORTH shall remain liable for (A) all accrued or continuing obligations under this Operations Agreement, (B) all duties and obligations required upon termination and surrender of the Line, including but not limited to the obligations specified in **Article 5(j)** and this **Article 10**, and (C) any provisions that specifically survive expiration or termination of the Operations Agreement.

(iv) Sublease and Operations Agreement to Run Concurrently and Shall Expire or Terminate Concurrently.

The Sublease and the Operations Agreement shall run concurrently. The parties intend that the Sublease and the Operations Agreement must both remain in effect if one is in effect. If either the Sublease or the Operations Agreement expires or is terminated for any reason, the other agreement shall terminate automatically and without further action by the parties. All accrued costs and obligations and any duties or commitments that apply upon expiration or termination of either the Sublease or Operations Agreement, including any duties with respect to surrender of the Line and any terms that expressly provide that they shall survive the expiration or termination of the Sublease or the Operations Agreement shall apply and survive in accordance with their terms, regardless of the reason for the termination or the date of termination of either the Sublease or the Operations Agreement and the resulting termination of the other agreement.

(b) TERMINATION FOR BREACH.

(i) Termination Option for Material Breach.

The Sublease and the Operations Agreement may be terminated by the non-breaching party if either METRO-NORTH, on the one hand, and NSR or PPR, on the other hand, breaches any one or more of its material covenants or obligations and if such breach continues for a period of thirty (30) days from the date of receipt of written notice of such breach from the non-breaching party; provided, however, that the party alleged to have breached a material covenant or obligation shall have a reasonable amount of additional time, not to exceed thirty (30) days, to cure such breach when cure efforts have been undertaken within the initial thirty (30) day period and such additional time is reasonably necessary to complete such efforts. A breach of a material covenant or obligation includes, but is not limited to, the following:

(A) failure to make any payments (including but not limited to Sublease Rental payments) after the later of sixty (60) days after the due date or thirty (30) days after receipt of a written notice of breach and request for payment,

(B) failure to maintain sufficient insurance or self-

insurance coverage and certification of the same to the extent provided for in the Sublease or this Operations Agreement;

(C) subject to **Article 2(c)(ii)**, any attempt by METRO-NORTH to extend any type of operating rights, access rights, trackage rights, franchise, permit, access, haulage or usage of the Line to any third party for any freight railroad purpose without the consent of NSR;

(D) METRO-NORTH's failure or refusal to maintain clearances required by this Operations Agreement or the Sublease, and

(E) any party's failure or refusal to fulfill its indemnity or insurance commitments under this Operations Agreement or the Sublease.

(ii) No Release of Accrued or Surviving Obligations.

The expiration or termination of the Sublease or the Operations Agreement shall not be construed to release any party from any duty, covenant or obligation as to which such party may have previously accrued or as to which such party may be in default as of the date of such expiration or termination or which by its terms survives expiration or termination of the Sublease or the Operations Agreement.

(c) SURVIVAL OF ACCRUED PAYMENT OR INDEMNITY, INSURANCE, CONDITION OF LINE AND REGULATORY FILING OBLIGATIONS.

The following provisions, terms, duties and obligations of the Sublease shall survive the expiration or termination of the Sublease and the Operations Agreement, regardless of how they may be terminated:

(i) any and all payment or indemnity obligations, accrued or incurred by the parties prior to the expiration or termination of this Sublease or the Operations Agreement;

(ii) any indemnity commitments made in various Articles of this Sublease or the Operations Agreement, including without limitation those specifically set forth in **Article 6** and **Article 7**;

(iii) insurance obligations necessary to handle and cover expected payments of accrued Claims, whether or not yet made, and to support any indemnity obligations accrued or incurred under the Sublease or the Operations Agreement;

(iv) the regulatory filing obligations, if any, of the Sublease or the Operations Agreement;

(v) NSR's rights in and use of the Suffern Industrial Track free of Car-Mile Usage reporting and Car-Mile Usage Charges;

(vi) METRO-NORTH's obligations to surrender the Line in the condition specified in **Article 5(j)** of this Operations Agreement and **Article 10(a)(ii)** of the Sublease; and,

(vii) any other provision or term of the Sublease or the Operations Agreement that states that it shall survive the expiration or termination of the Sublease or the Operations Agreement.

All such provisions shall survive the term of the Sublease or the Operations Agreement, regardless of the date of or reason for the expiration or termination.

ARTICLE 11. [RESERVED]

ARTICLE 12. MISCELLANEOUS GENERAL PROVISIONS.

(a) NSR MAINTENANCE OF WAY EMPLOYEES; NOTICE; NEUTRALITY.

(i) METRO-NORTH will provide NSR maintenance of way employees who have been working on the Line and who seek employment with METRO-NORTH priority consideration for employment for each new maintenance of way position created by METRO-NORTH within one (1) year after the Commencement Date (the terms of the employment, including but not limited to seniority, rates of pay, benefits, employees' responsibilities and candidates' qualifications shall be determined by METRO-NORTH in its sole discretion) and (ii) if an effort is undertaken by the Brotherhood of Maintenance of Way Employees to organize maintenance of way employees working on the Line, METRO-NORTH will assume a neutral stance in such organizing effort.

(b) FORCE MAJEURE.

Whenever a period of time is provided in the Sublease and the Operations Agreement for either party to perform any act or thing, such party shall not be liable nor responsible for any delays due to derailments, wrecks, fire, explosion, strikes, lockouts, work stoppages, casualty occurrences, acts of God or nature, severe weather or climatic conditions, war, riots, public disorder, blockade, acts of terrorism, protest, vandalism or sabotage, criminal acts of third persons or entities, acts of civil or military authorities, FRA and other applicable governmental regulations, control or orders, nuclear accidents or incidents, embargo of freight operations or service orders issued through the AAR or STB, and other such causes beyond the reasonable control of such party; and in any such event, such time period shall be extended for the amount of time such party is so delayed; provided, that this provision shall not be construed to affect the responsibilities of such party hereunder not affected by the force majeure or to do

or perform such delayed act or thing once such delays have been removed.

(c) ASSIGNMENT.

(i) No Transfer to Third Party Without Consent.

This Sublease and the Operations Agreement, or any rights, duties or obligations in either of them, shall not be assigned, or in any manner transferred, granted, conveyed or licensed nor shall the Line be sublet, used or occupied by any party other than METRO-NORTH or its Contractors (whether through purported lease, sublease, trackage rights agreement, access rights agreement, operating rights agreement, haulage agreement, license, permit, invitation, right of entry, franchise agreement, contract, agency arrangement, transfer, assignment, conveyance, easement or any other type of grant, contract, agreement or arrangement, howsoever designated), nor used by METRO-NORTH or its Contractors or parties claiming through them for freight railroad operations, nor shall any party succeed to the Sublease or the Operations Agreement, without the advance written consent of NSR, which shall be signed by an authorized officer. Such consent shall not be unreasonably withheld, conditioned or delayed, but NSR shall have the absolute and unconditional right to refuse to permit the assignment, succession, license, permit, transfer to, or grant or conveyance of the Sublease or the Operations Agreement, or any right, duty or obligation hereunder, to a freight railroad or any other party whether or not related to a freight railroad, that might assert or seek rights to transport or attempt to transport freight over the Line. As a condition to obtaining NSR's consent to such an assignment, METRO-NORTH will provide written notice to NSR of its desire to assign the Sublease or the Operations Agreement, together with an agreement, in form and substance acceptable to NSR, signed by the intended assignee and agreeing that the intended assignee will be bound by all provisions of the Sublease and the Operations Agreement. In addition, NSR may require other conditions as may reasonably be placed on such assignment, as the circumstances may require, to insure compliance with the language and intent of the Sublease and the Operations Agreement.

(ii) Continuation or Renewal of NSR Right to Consent.

Regardless whether any permitted assignment or succession to the Sublease and the Operations Agreement, or any of the rights or obligations hereunder, becomes effective, NSR's right of consent under this **Article 12(c)** shall be renewed with METRO-NORTH, if the assignment or transfer does not take place, or with the permitted successor or assignee, if it does take place. Subject to the foregoing **Article 12(c)(i)** and preceding sentence of this **Article 12(c)(ii)**, the Sublease and the Operations Agreement will be binding upon and inure to the benefit of successors and assigns of NSR and permitted successors and assigns of METRO-NORTH and shall continue in full force and effect for the term of the Sublease and the Operations Agreement and any renewals or extensions thereof.

(d) AGREEMENT FOR SOLE BENEFIT OF PARTIES.

Except to the extent expressly provided herein, the Sublease and the Operations Agreement are intended for the sole benefit of the parties hereto. Nothing in the Sublease and the Operations Agreement is intended or may be construed to give any person, firm, corporation, or other person or entity, other than the parties hereto and their respective officers, directors, agents, employees, lessors, parents, subsidiaries, affiliates, partners, members, successors, and assigns, any right pursuant to any provision or term of the Sublease and the Operations Agreement, and all provisions and terms of the Sublease and the Operations Agreement are and will be for the sole and exclusive benefit of the parties to the Sublease and the Operations Agreement.

(e) NO ADMISSIONS AGAINST INTEREST.

Nothing in the Sublease and the Operations Agreement shall be used, deemed, or construed to be an admission against the interest of any party in the event of arbitration or litigation involving any of the parties and a third party (or parties).

(f) RELATIONSHIP OF THE PARTIES.

Neither NSR nor PRR, on the one hand, nor METRO-NORTH, on the other hand, shall be considered as the agent, joint venturer, or partner of the other.

(g) WAIVER.

(i) Waiver Does Not Waive Remedy for Further Breach.

Any waiver, at any time, by any party, of a breach of any provision, condition, duty, obligation, or requirement of the Sublease or the Operations Agreement will extend only to the particular breach so waived and will not be deemed to waive, consent to or approve any subsequent similar act or impair or affect the existence of that or any other provision, condition, obligation, or requirement of the Sublease or the Operations Agreement or the right of any party thereafter to avail itself of any remedy for a future breach, subject to such waiver.

(ii) Delay in Enforcement of Term or Right Not a Waiver.

Any delay or failure by any party to enforce a duty, obligation, term or condition of the Sublease or the Operations Agreement shall not be deemed a waiver of enforcement, or further enforcement, of that or any other duty, obligation, term or condition of the Sublease or the Operations Agreement.

(iii) Acceptance of Late Rental and Interest Not a Waiver of

Future Obligations or Due Dates.

Acceptance by NSR of the Sublease Rental paid by METRO-NORTH pursuant to **Article 3** of the Sublease, whether or not such Sublease Rental is paid less than thirty (30) days late or paid late with interest, will not be taken or construed to be a waiver of any future duty or obligation under or breach of any provision of the Sublease or the Operations Agreement, including but not limited to payment due dates.

(iv) Waiver Only Through Written Instrument.

No provision of the Sublease or the Operations Agreement shall be waived by any act of or the possession of any knowledge by the parties, but only by a written instrument signed by the party waiving a right hereunder.

(v) No Release of Obligations Through Declaration of Termination or During Holdover Tenancy.

No declaration of termination of the Sublease or the Operations Agreement shall be construed to release a party from any term, condition, duty, commitment, covenant or obligation as to which that party may be in default at the date of such termination or to release a party from any term, condition, duty, commitment, covenant or obligation of the Sublease or the Operations Agreement during any holdover tenancy.

(vi) No Assumption of Obligations Not Specified Herein or By Law.

The parties do not, by reason of their execution of and performance of their obligations under the Sublease or the Operations Agreement, assume any other duties, obligations or liabilities not imposed upon them by law.

(vii) Rights and Remedies are Cumulative Unless Otherwise Provided.

All rights and remedies conferred under the Sublease or the Operations Agreement, other agreements between the parties, or by law or regulation, shall be cumulative unless specifically provided or limited herein, and may be exercised singularly, consecutively or concurrently.

(h) AMENDMENT; SUPERSESSION OF 1983 TRACKAGE RIGHTS AGREEMENT.

(i) No provision of the Sublease or the Operations Agreement, which includes the Attachments hereto, shall be modified or amended without the written concurrence of the parties.

(ii) The Sublease and the Operations Agreement supersedes any understandings, written or oral, prior to the date of the Sublease and the Operations Agreement, including the 1983 Trackage Rights Agreement, as to the subject matter of the Sublease and the Operations Agreement, except accrued or explicitly surviving duties, costs or obligations.

(i) EMINENT DOMAIN; CONDEMNATION.

(i) Effect and Value.

(A) Allocation of Condemnation Awards.

Without acknowledging whether a line of railroad subject to the jurisdiction of the STB or any other railroad property, whether or not devoted to a public use, may be subject to state or local condemnation actions, the parties provide as follows: Should any part of the Line included in the Sublease be subject to condemnation, any condemnation judgment or award shall be allocated to NSR, on behalf of itself and PRR, as to the value of the fee interest or railroad easement in the land and as to any fixtures, appurtenances or personal property in place prior to the Commencement Date or added by NSR or PRR after said Commencement Date, and to METRO-NORTH as to any fixtures, appurtenances or personal property that have been added to the property by METRO-NORTH after said Commencement Date, and as to any additional value attributable to METRO-NORTH's sublease.

(B) Source of Value Determination. The existence and value of structures, systems, facilities, fixtures, appurtenances or any transferred personal property related to rail operations on the Commencement Date shall be determined by the inventory provided for in **Article 2(a)** of the Sublease or, if there is no inventory or record of the property on the inventory, by NSR's, PRR's or Conrail's business records kept in the ordinary course of business. In the absence of an inventory or other mutually acceptable evidence, records of structures, systems, facilities, fixtures, appurtenances or any transferred personal property related to rail operations on the Commencement Date shall be used to attribute those structures, systems, facilities, fixtures, appurtenances or any transferred personal property to NSR with additional structures, systems, facilities, fixtures, appurtenances or any personal property then being attributed to METRO-NORTH, in the absence of agreements or other evidence indicating that the additional structures, systems, facilities, fixtures, appurtenances or any personal property are attributable to NSR or its Licensees.

(ii) Parties May Make Individual Claims.

NSR and METRO-NORTH shall be free to make any claim

they may have against the condemning, appropriating or acquiring entity for the amount of any damage done to them, respectively, as a result of the condemnation, appropriation or acquisition.

(iii) Effect of Condemnation.

The Sublease and the Operations Agreement will terminate as to any part of the Line that is condemned as of the date of the appropriation or acquisition of that part of the Line by the condemnor. In the case of a complete taking of the Line, the Sublease and the Operations Agreement will terminate, but the parties will remain liable for accrued obligations and provisions that survive termination of the Sublease and the Operations Agreement, to the extent the taking does not prevent their performance. In the case of a partial taking that materially interferes with METRO-NORTH's operations over the Line or a segment of the Line, METRO-NORTH may terminate the Sublease and the Operations Agreement, or, if METRO-NORTH elects to continue the Sublease and the Operations Agreement, the Sublease and the Operations Agreement shall remain in effect as to the remainder of the Line. The parties shall remain liable for accrued obligations relating to the part of the Line that was taken in the case of a partial taking. Any partial taking that has no impact on METRO-NORTH'S ability to conduct rail operations over the Line and adds no significant costs to its conduct of such operations shall be deemed immaterial.

(j) NOTICES.

All notices required to be given under the Sublease and the Operations Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown on **Attachment J** or such successor addresses as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, or by express carrier, courier, e-mail or fax, with receipt requested or with confirmation by certified or registered mail if evidence or notice of receipt is not regularly provided or available. All notices shall be effective and time periods under the Sublease and the Operations Agreement shall begin to run on day of receipt of the letter, express or courier package, e-mail or fax.

(k) CAPTIONS; HEADINGS.

The captions or headings of the articles, sections, paragraphs or items in the Sublease and the Operations Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of the Sublease and the Operations Agreement and shall not be used in the interpretation or considered part of the Sublease or the Operations Agreement.

(l) INTERPRETATION.

All personal pronouns used in the Sublease and the Operations

Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context requires otherwise. Terms such as "herein," "hereof," "hereby," "hereunder," and "hereinafter" refer to the Sublease and the Operations Agreement as a whole and not to the particular sentence, paragraph, or section where they appear unless otherwise specified. All references to "including" shall be construed to be without limitation, unless otherwise provided. The parties participated jointly in the preparation of the Sublease and the Operations Agreement and, therefore, no provisions shall be construed against either party as drafter.

(m) GOVERNING LAW.

Except to the extent necessarily governed by federal law, the Sublease and the Operations Agreement will be construed in accordance with the laws of the State of New York.

(n) CONFIDENTIALITY.

(i) Confidentiality Duty, Extent.

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of the Sublease and the Operations Agreement, or as may be necessary or appropriate for a party hereto to enforce its rights under the Sublease and the Operations Agreement, during the term of the Sublease and the Operations Agreement and during the three (3) years after termination or expiration of the Sublease and the Operations Agreement, the terms and provisions of the Sublease and the Operations Agreement, all preliminary correspondence and papers, and all information, whether or not from another party to which access has been provided or obtained in the negotiation of the Sublease and the Operations Agreement, will be kept confidential and will not be disclosed by METRO-NORTH, NSR or PRR to any party other than METRO-NORTH's, NSR's and PRR's parents, subsidiaries and affiliates or their respective directors, officers, employees, members and agents, which and who in turn will be required to keep the Sublease and the Operations Agreement confidential and will not disclose it, without the prior written approval of the other parties to the Sublease and the Operations Agreement.

(ii) Limited Waiver of Confidentiality Provision.

The parties may waive the provisions of this **Article 12(n)**, in writing, in whole or in part, but any such waiver shall apply only to the disclosure authorized or circumstance that is the subject of the waiver.

(iii) Release of Confidentiality Obligation to Extent Agreement Publicly Disclosed and Available.

The parties shall not be bound by the provisions of this

Article 12(n) to the extent they furnish a copy or redacted copy of all or part of the Sublease and the Operations Agreement to any person who could obtain such copy from a source or record readily available to the public, but the parties nonetheless shall attempt to limit distribution of such publicly available copies to persons requesting them in order to do business with the party providing the copies or as required by law.

(iv) Specific Performance.

The parties shall be entitled to an order or award of specific performance to enforce the obligations of this **Article 12(n)**, in addition to any other remedies allowed by law, regulation or contract.

(v) Confidentiality of Records.

In accordance with the terms of this **Article 12(n)**, each party hereto shall maintain the strictest confidentiality of any records of the other party that come into its possession and are pertinent or related in any way to the rights, obligations or performance of the Sublease or the Operations Agreement, or subject to audit hereunder. The parties agree that said records may only be reviewed by their own officers, directors and employees, or outside professionals working for the party who agree to maintain the confidentiality of the records and to use them only for the limited purposes provided for in the Sublease and the Operations Agreement. The parties agree that such records may only be used by all such persons for the purpose of implementation and enforcement of the Sublease and the Operations Agreement.

(o) SEVERABILITY.

Each and every clause of the Sublease and the Operations Agreement shall be severable from each other. In the event that any particular clause herein shall be held invalid and null and void in any judicial proceeding, such finding shall have no effect on the remaining clauses and the remainder of the Sublease and the Operations Agreement unless the invalidity of that particular clause deprives the parties of the benefit of their bargain under the Sublease and the Operations Agreement, in which event the Sublease and the Operations Agreement shall terminate.

(p) NEWS RELEASES.

A party shall obtain the prior review and written approval of the other parties before issuing any news release describing the Sublease and the Operations Agreement, or any of its terms.

(q) TIME IS OF THE ESSENCE.

Time is of the essence in the performance of each party's obligations under the Sublease and the Operations Agreement.

(r) NON-DISCRIMINATION.

(i) Adherence to Applicable State Law.

As among METRO-NORTH, NSR and PRR, the parties do hereby agree that the provisions of Sections 1266-C (13) and (14) of the New York Public Authorities Law, as amended and supplemented, dealing with discrimination in employment on public contracts, are hereby made a part of the Sublease and the Operations Agreement and, to the extent applicable, are binding upon them.

(s) COUNTERPARTS.

The Sublease and the Operations Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

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

METRO NORTH COMMUTER RAILROAD COMPANY

By: _____
Name:
Title:
Date:

PENNSYLVANIA LINES LLC

By: William A. Galanko
Name: William A. Galanko
Title: Vice President
Date: February 26, 2003

NORFOLK SOUTHERN RAILWAY COMPANY

By: H. Craig Lewis
Name: H. Craig Lewis
Title: Vice President
Date: February 26, 2003