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*NOT ADMITTED IN D.C.

December 15, 2005

DEC 17 2005
FBI

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

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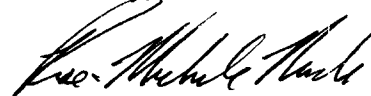
Re: Finance Docket No. 34803, Town of Corinth, New York – Acquisition
and Operation Exemption – Canadian Pacific Railway

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the Motion to Dismiss of the Town of Corinth, New York (the "Town"). Concurrent with filing this Motion to Dismiss, the Town is filing (i) the verified notice of exemption subject to the Motion to Dismiss, and (ii) a Request for Waiver of the Filing Fee for the verified notice of exemption.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Sincerely,



Rose-Michele Nardi

ENTERED
Office of Proceedings

DEC 15 2005

Part of
Public Record

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34803

**TOWN OF CORINTH, NEW YORK
--ACQUISITION AND OPERATION EXEMPTION--
CANADIAN PACIFIC RAILWAY**

MOTION TO DISMISS

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Contemporaneously with this Motion to Dismiss, the Town of Corinth, New York ("Town") has filed a Verified Notice of Exemption (the "Notice"), pursuant to 49 C.F.R. § 1150.31 *et. seq.*, to acquire and operate a rail line owned by Delaware and Hudson Railway Company, Inc., doing business as Canadian Pacific Railway ("CPR"). The Town, a New York municipal subdivision, hereby moves the Surface Transportation Board (the "Board") to dismiss the Notice, because the transaction that is the subject of the Notice fall outside the Board's jurisdiction. More specifically, the Town believes that neither its acquisition of the CPR rail line nor the intended operation (by either the Town or its designee) of intrastate scenic tour passenger trains is subject to the Board's jurisdiction.

I. STATEMENT OF FACTS

The Town does not currently own any rail lines or perform any rail operations. CPR, a class I rail common carrier, owns, among other rail lines, an approximately 16.45-mile line in Saratoga County, New York. This line extends approximately from Adirondack Branch milepost 39.44 at or near Saratoga Springs, New York to Adirondack Branch milepost 55.89 at or near Corinth, New York (the "Subject Line"). CPR has not performed any freight revenue service

over the line since November 2003. The Town will acquire the right of way, track and other rail assets comprising the Subject Line, subject to the reservation of a freight easement by CPR.

The Subject Line connects to another CPR-owned line located in Saratoga County, New York that extends approximately 0.69 miles from approximate milepost 38.20 to the Saratoga Springs Passenger Station at approximate milepost 37.10 (the "CPR Line"). Pursuant to an agreement between CPR and the Town, CPR will grant the Town trackage rights over the CPR Line. The Town (or its designee) initially intends to provide scenic tour passenger operations over the Subject Line and will board passengers at the station located on the CPR Line. At some point in the future, the Town anticipates the tour operations provided by the Town (or its designee) will extend over certain track connected to the Subject Line that is owned by and situated in Warren County, New York (the "Warren County Line").¹

A. CPR Reserves Exclusive Easement for Freight Railroad Purposes.

The Town seeks to acquire from CPR the real property, the track and other rail assets comprising the Subject Line, but does not seek to acquire from CPR any freight common carrier rights or obligations with respect to the Subject Line. Accordingly, the transaction has been structured so that CPR will retain the exclusive right and obligation to perform common carrier freight service over the Subject Line.

Pursuant to the Quit Claim Deed by CPR in favor of the Town, CPR will reserve "a permanent and exclusive easement for freight railroad purposes...on, over, under and across" the Subject Line. *See* Exhibit A, Form Quit Claim Deed (attachments excluded). The Asset Purchase Agreement ("APA") similarly excludes from the assets being transferred by CPR to the Town (i) "[a]ll transportation contracts; traffic and revenue data; customer supplier lists; tariffs and demurrage agreements and all other agreements (or portions thereof) related to freight

¹ The Town believes that the Warren County Line currently handles other passenger operations.

operations on the [Subject Line],” and (ii) “[a]ny and all rights and obligations of CPR under federal law to provide common carrier rail freight service over the [Subject Line], which rights and obligations shall be retained by CPR.” *See* Exhibit B, Form Asset Purchase Agreement (attachments excluded) at Section 5(e) and (f). In addition, to the extent CPR transfers to the Town its rights under any agreements, contracts, commitments, leases, licenses and permits, the APA provides that “CPR does not intend to assign, and Town does not intend to assume, rights or obligations, if any, regarding freight operations over the [Subject Line].” *See* APA, Section 3(a)(ii), (iii) and (iv). Finally, the Operating Agreement for the Subject Line expressly states that “the Town has no right or obligation to perform freight service over the [Subject Line], and will not hold itself out to provide such service.” *See* Exhibit C, Appendix 7-1, Form of Operating Agreement (attachments excluded) at Section 2.1. These provisions demonstrate that neither the Town nor CPR intend for the Town to acquire the common carrier right or obligation to provide freight service over the Subject Line.

The Operating Agreement also contains numerous provisions to facilitate CPR’s ability to fulfill its common carrier obligation over the Subject Line. Section 2.1 of the Operating Agreement provides that passenger operations over the Subject Line (either by the Town or any third party admitted by the Town) shall not unreasonably interfere with CPR’s ability to fulfill its common carrier obligation, and Section 2.1(c) of the Operating Agreement provides that the Town’s exercise of its ownership rights will not unreasonably interfere with CPR’s provision of common carrier freight service.² With respect to dispatching rights, Section 4.2.4 of the

² Section 2.1(c) of the Operating Agreement states: “The Town of Corinth possesses all rights incident to ownership of the Assets [, as that term is defined in the APA,] for any purpose, other than the provision of freight service, including the right to lease, convey, license, or grant other interests or concessions in or to the Assets to third parties, so long as such interests or concessions do not unreasonably interfere with CPR’s provision of common carrier freight service.”

Operating Agreement states that the dispatcher³ “shall have the unrestricted right to change the management of and operations on and over the [Subject Line]...*provided that any such change shall not materially interfere with the other Party’s rail operations.*” (Emphasis added.) See also Section 4.7.2 of the Operating Agreement (stating that “[i]nsofar as CPR continues to operate trains over the [Subject Line], the Town, when acting as the Dispatching Party, will endeavor, to the extent reasonable and appropriate, to adopt rules, instructions and restrictions that conform to or are consistent with those of CPR, and that do not unreasonably interfere with the provision of common carrier freight service by CPR.”)

Under the Operating Agreement, the Town (or its designee) eventually will become responsible for the maintenance of the Subject Line. However, the Operating Agreement provides that (i) ultimately, the Subject Line must be maintained to a condition that safely accommodates passenger operations⁴, and (ii) if the Subject Line is not maintained to the required condition, CPR, after giving the Town the opportunity to maintain the line, will have the right to perform the maintenance itself.⁵ See Operating Agreement, Section 4.3.⁶ In addition, the Operating Agreement provides that “any additions, modifications, or removals to or along the

³ Section 4.2.2 provides that “[d]uring any period of time that both Parties operate railroad equipment over the [Subject Line], then the Town or its Operator shall be the Dispatching Party.”

⁴ Section 4.3 of the Operating Agreement provides that the Subject Line “shall be maintained, at a minimum, to the standard that the [Subject Line] was placed in following the Upgrade Work by CPR....” The APA provides that (a) “[c]oncurrent with, or shortly following, the execution of this Agreement, CPR shall enter into a Force Account Agreement with the New York State Department of Transportation...to upgrade the condition of the Track, the “Upgrade Work,” and (b) “[i]n all events, the Upgrade Work shall result in track conditions that are satisfactory for the safe operation of passenger rail traffic.” See Section 12(g) of the APA.

⁵ More specifically, section 4.3 of the Operating Agreement states that “[i]n case the Town shall fail to repair any defect or maintain [the Subject Line] to the condition required in this Section within a reasonable time after CPR has given to the Town written notice specifying the defect or maintenance standard failure and requesting that it be repaired or maintained, then CPR shall have the right to make the necessary repairs or perform the maintenance and the Town shall reimburse CPR for the entire cost thereof.”

⁶ Section 4.12 of the Operating Agreement identifies circumstances under which certain provisions of the Operating Agreement will no longer be effective, including the maintenance obligations under section 4.3. However, section 4.12 provides that if “the condition of the [Subject Line] is not satisfactory for the safe operation of freight rail traffic, CPR shall have the right to maintain the [Subject Line] to the extent necessary to fulfill its common carrier freight obligation....”

[Subject Line]" shall not "unreasonably interfere with CPR fulfilling its common carrier freight obligation with respect to the [Subject Line]." *See* Section 4.1. Moreover, that same section of the Operating Agreement provides CPR with the opportunity to cause "an addition, improvement or removal" to be made if "necessary to fulfill its common carrier obligation." The above provisions demonstrate that CPR retains important rights to facilitate its fulfillment of its common carrier obligation.

B. The Town's Scenic Tourist Trains Will Be A Wholly Intrastate Operation.

The passenger operations by the Town (or its designee) will be an intrastate operation entirely in the State of New York. The Town anticipates that the scenic tour operations initially will cover approximately 17.14 miles, will make approximately three stops and will provide passengers with an opportunity to view scenic sites of the Adirondack Mountains. In addition to providing passenger operations over the Subject Line and the CPR Line, the Town anticipates, at some future date, that the passenger operations either will be extended over the Warren County Line (or portion thereof) or otherwise will be coordinated with Warren County, so that the tour operations provided by the Town (or its designee) can reach certain ski hills located in Warren County.

The agreement providing the Town with trackage rights over the CPR Line expressly provides that the Town (or its designee) shall have no right to perform any common carrier freight service over the CPR Line. As noted above, the Town also does not have any rights to perform common carrier freight service over the Subject Line. In addition, the Town does not intend to acquire any common carrier freight rights with respect to the Warren County Line.

The Subject Line and the CPR Line are situated entirely within Saratoga County, New York. Although the Saratoga Springs Passenger Station, which will be one of the three initial

stops on the scenic passenger tour, also will be used by CPR and Amtrak, there will be no joint ticketing between the Town (or its designee) and Amtrak, and there will be no physical interchange of cars among these three carriers. Similarly, the Warren County Line is situated entirely within Warren County, New York, and to the Town's knowledge, the passenger operations currently conducted over the Warren County Line are not coordinated with any other carriers. Moreover, despite any current or future coordination between the Warren County Line and other third-party carriers, the Town (or its designee) has no intention of participating in any movements beyond Saratoga and Warren Counties or otherwise coordinating with connecting carriers for the movement of passengers outside of Saratoga and Warren Counties. Under the circumstances described above, the scenic tour passenger operations over the Subject Line and the CPR Line (and the anticipated passenger operations over the Warren County Line) are wholly intrastate in nature.

II. STATEMENT OF LAW

Based on the facts described above and Board precedent, neither the Town's acquisition of the Subject Line, nor its (or its designee's) intended intrastate passenger operations, is subject to the Board's jurisdiction.

A. The Town's Acquisition of the Subject Line is Not Regulated by the Board.

Typically, when a non-carrier acquires a common carrier rail line, the transaction is subject to the Board's jurisdiction. *See* 49 U.S.C. § 10901. However, the Board has long recognized that its jurisdiction does not extend to transactions in which the common carrier obligation remains with the selling entity.⁷ In such circumstances, the Board will determine

⁷ *See* STB Finance Docket No. 33786, *New Jersey Transit Corporation – Acquisition Exemption – Certain Assets of Consolidated Rail Corporation*, 2000 STB LEXIS 88, at *5, served February 15, 2000 (stating that the Board has “typically declined to find jurisdiction when the seller retains a permanent easement to permit it to

whether the holder of the common carrier obligation has been afforded sufficient rights to fulfill this obligation.⁸

In this transaction, CPR will retain a permanent and exclusive easement to provide common carrier freight service over the Subject Line. CPR's common carrier freight obligation with respect to the Subject Line will not be included in the assets conveyed to the Town. Thus, although the Town will acquire the right of way, track and other rail assets comprising the Subject Line, this transaction will not involve a transfer to the Town of CPR's common carrier obligation.

In addition, provisions in the Operating Agreement provide that neither the ownership rights of the Town with respect to the Subject Line nor passenger operations over the Subject Line shall unreasonably interfere with CPR's provision of common carrier freight service. The Town's right to maintain, dispatch, add to, remove from and modify the Subject Line also are each subject to provisions protective of CPR's common carrier freight operations. Thus, there are several provisions that provide CPR with rights to facilitate its fulfillment of its common carrier obligation, should there be a future request for common carrier freight service over the Subject Line. (As noted above, CPR currently does not operate any freight revenue traffic over the Subject Line.) Moreover, the Board has previously recognized that passenger operations by a third party are not inconsistent with a railroad's ability to conduct common carrier freight operations. In *Wisconsin DOT*, the Board stated:

continue to provide freight common carrier service") ("*New Jersey Transit*"); STB Finance Docket No. 34181, *State of Wisconsin Department of Transportation – Petition for Declaratory Order*, 2002 WL 1767404, at *1, served August 1, 2002 ("*Wisconsin DOT*") (stating Board "authorization is not required...when only the physical assets will be conveyed and the common carrier rights and obligations that attach to the line will not be transferred"), citing *Maine, DOT – Acq. Exemption, Me. Central R. Co.*, 8 ICC.2d 835, 836-37 (1991).

⁸ See *New Jersey Transit* at *5 (stating that "[i]n making a determination here, [the Board] will look to whether [the seller] has retained a permanent easement and whether it has sufficient interest and control over the line to permit it to carry out its common carrier obligation").

Although Section 2.3(b) of the agreement allows for use of the property for commuter passenger service, subsequent language in that section makes it clear that such use must not unreasonably interfere with [the freight operator's] ability to meet its common carrier obligation. Moreover, a finding that such shared use will not impair a common carrier obligation is consistent with our precedent.

See Wisconsin DOT at *2 (citations omitted). Under these circumstances, the acquisition by the Town of the Subject Line should not be subject to the Board's jurisdiction.⁹

B. The Scenic Tour Operations Anticipated by the Town Are Not Subject to the Board's Jurisdiction.

The Board does not have jurisdiction over intrastate railroad transportation, unless such transportation is "part of the interstate rail network." *See* 49 U.S.C.

§ 10501(a)(2)(A); *see also* STB Finance Docket No. 33472, *Fun Trains, Inc., -- Operation Exemption -- Lines of CSX Transportation, Inc. and Florida Department of Transportation*, 1998 WL 92052, at *2, served March 5, 1998 ("*Fun Trains*") (noting that the Interstate Commerce Commission, the Board's predecessor, "determined that it did not have jurisdiction over wholly intrastate rail passenger service where that service was not part of the interstate rail passenger network [citations omitted]").

⁹ *See Wisconsin DOT* at *2 (stating that "[i]n short, the record demonstrates that there will be no alteration of any common carrier rights or obligations here, and that the transaction will not impede [the freight operator's] ability to continue to provide rail freight service" and that the Board "see[s] no basis for finding that [its] approval is required or that [purchaser] would become a rail carrier subject to [its] jurisdiction as a result of this transaction"); STB Finance Docket No. 34665, *Georgia Department of Transportation -- Petition for Declaratory Order*, 2005 WL 853841, at *2, served April 14, 2005 (finding that purchaser would not be under jurisdiction of Board where "all common carrier obligations and rights for both lines will transfer to [the freight operator] through permanent, exclusive and assignable freight easements without ever passing to [the purchaser]," purchaser "will not hold itself out as willing or able to provide rail service" and purchaser "may not interfere with [the freight operator's] rail service over the lines"); STB Finance Docket No. 34346, *Dallas Area Rapid Transit -- Acquisition Exemption--Certain Assets of Regional Rail Right of Way Company*, 2003 WL 22674652, at *2, served November 12, 2003 (stating that "[o]n the basis of representations made by [purchaser] that it will not hold itself out as a common carrier of freight, as well as the Board's review of [certain agreements] submitted into the record, which demonstrate that this transaction will not impair [the freight operator's] ability to fulfill its common carrier obligations, no authorization is required for the transfer of the rail assets in this case").

In *Fun Trains*, the Board stated that the Interstate Commerce Commission “has determined that it had jurisdiction over a railroad lying wholly within one state if the railroad participates in the movement of passengers from one state to another under common arrangements with connecting carriers, i.e., by means of through ticketing, or when the railroad participates in the movement of freight in interstate or foreign commerce.” *See id* (footnotes omitted). In reaching its determination that the excursion passenger operations in *Fun Trains* were not subject to the Board’s jurisdiction, the Board noted, in part, statements by the passenger operator that “it will not participate in through passenger operations or common carrier arrangements with Amtrak and it will not transport freight in interstate commerce.”¹⁰ *See id*.

As discussed above, the scenic tour passenger operations over the Subject Line and the CPR Line will be wholly within the County of Saratoga in New York State (and the anticipated passenger operations over the Warren County Line will not extend beyond Warren County, New York.) The Town (or its designee) will have no right to provide common carrier freight service over the Subject Line, the CPR Line or the Warren County Line. In addition, it is intended that the passenger operations conducted by the Town (or its designee) over the Subject Line, the CPR Line and the Warren County Line will not involve any through ticketing, or other coordination with connecting carriers, for the interstate movement of passengers. These passenger operations will not be coordinated with Amtrak at the Saratoga Springs Passenger Station, and any coordination with Warren County will be limited to operations within the Counties of Warren and Saratoga, New York. Under these circumstances, the scenic tour passenger operations over the Subject Line, the CPR Line and the Warren County Line will be a wholly intrastate

¹⁰ The Board also rejected arguments that it had jurisdiction “because Amtrak will supply crews and equipment for” passenger operations and that the passenger operator “could control operations on” trackage over which it operated.

operation, and will not be part of the interstate rail network. Accordingly, these passenger operations should not be subject to the Board's jurisdiction.

III. CONCLUSION

For all of the foregoing reasons, the Town requests that the Board grant its Motion to Dismiss the Notice filed in this proceeding. The transaction that is subject to the Notice falls outside the Board's jurisdiction. Accordingly, no Board approval is required for the subject transaction.

Respectfully submitted,



Rose-Michele Nardi
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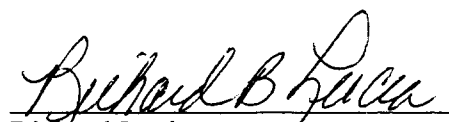
Attorneys for:

Town of Corinth, New York

Dated: December 15, 2005

VERIFICATION

I, Richard Lucia, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to cause this Motion to Dismiss to be filed.


Richard Lucia
Supervisor
Town of Corinth, New York

Dated: December 15, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34803

**TOWN OF CORINTH, NEW YORK
--ACQUISITION AND OPERATION EXEMPTION--
CANADIAN PACIFIC RAILWAY**

EXHIBIT A

FORM QUITCLAIM DEED

Quit Claim Deed

THIS INDENTURE, made this _____ day of _____ 2005, between

DELAWARE AND HUDSON RAILWAY COMPANY, INC. a corporation organized under the laws of the State of Delaware doing business as Canadian Pacific Railway having an office at 200 Clifton Corporate Parkway, P.O. Box 8002, Clifton Park, New York 12065, **Grantor**,

and

TOWN OF CORINTH, a New York municipal corporation, having its principal office at 600 Palmer Avenue, Corinth, New York 12822, **Grantee**.

WITNESSETH, that the Grantor, in consideration of Ten Dollars (\$10.00), and other good and valuable consideration in hand paid to Grantor by the Grantee, does hereby remise, release and quitclaim unto the Grantee, its successors and assigns forever, all right title and interest of Grantor in and to

All that certain piece or parcel of land situate in the State of New York, County of Saratoga and Towns of Greenfield and Corinth, together with the improvements thereon, consisting of the rail and tie, tracks, buildings, bridges, culverts, signals and appurtenances, constituting the railroad line commencing at a line that is parallel with and lying 100 feet north-northwesterly of, as measured at right angles to, the center line of the main line railroad track denoted as "**New Main Line**" running between Saratoga and Rouses Point, and terminating at the southwesterly line of Antone Road (Mallory's Crossing) (said terminus being the southerly most line of the railroad line conveyed by the Delaware and Hudson Railway Company, Inc. to the County of Warren (1455/423)), as depicted on those maps entitled "**Right of Way and Tract Map**." The Delaware and Hudson Company, Saratoga Division – Adirondack Branch – Saratoga Springs to North Creek", made and prepared by W.H. Mansfield, Engineer, dated June 30, 1916, maps V-12C2 – V-12C10, which maps were filed in the Saratoga County Clerk's Office on March 18, 2005 as Map Nos. D384 A-I.

BEING the line of railroad described in the attached Exhibit A, Sheets 1 through 9 of 9, and made a part hereof (the "**Property**".)

THIS CONVEYANCE does not constitute all, or substantially all of the assets of the Grantor.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted to the Grantee, its successors and assigns forever, subject to the following covenants:

As used in this paragraph,

"**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims);

"**Environmental Law**" means the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic

Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and

"Hazardous Substance" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law. By accepting delivery of the Quit Claim Deed, the Grantee, for itself, its directors, officers, agents, affiliates, predecessors, successors and assigns, and anyone acting on its behalf or their behalf, covenants and agrees not to sue Grantor or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that the Grantee had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Assets, except with respect to the liabilities and obligations apportioned to Grantor in the Asset Purchase Agreement by and between Grantor and Grantee dated October 1, 2005 (the **"APA"**) and the Ancillary Agreements (as that term is defined in the APA.) The foregoing shall apply to any condition of the Assets, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Assets, whether such Hazardous Substance is located on or under the Assets, or has migrated from or to the Assets, regardless of whether the foregoing condition of the Assets was caused in whole or in part by the Grantor's actions or inactions.

SUBJECT HOWEVER, to the following reservation:

Grantor reserves unto itself, its permitted successors and assigns a permanent and exclusive easement for freight railroad purposes (the **"Easement"**) on, over, under and across the Property and the public streets and rights of way appurtenant to the Property. Said easement to continue until governmental authority or an exemption in lieu thereof, shall have been granted to abandon or discontinue common carrier freight rail service over the Property (collectively, **"Abandonment Authority"**) and Grantor shall have exercised such Abandonment Authority; provided that, upon receipt of Abandonment Authority, Grantor agrees, at the Grantee's request, to promptly exercise such authority. Upon the exercise by Grantor of such Abandonment Authority the Easement shall forthwith terminate. The use, occupancy and maintenance of said Easement and the railroad trackage upon the Property shall be as set forth in a separate Operating Agreement between the parties, dated _____. Grantor may not transfer, sell or assign the Easement to any successor or assign without the prior written consent of Grantee, which shall not be unreasonably withheld, delayed or conditioned by the Grantee. Notwithstanding the foregoing, Grantor shall not be required to obtain Grantee's prior consent to its sale or transfer of the Easement if it is part of the sale or transfer of all, or substantially all, of its railroad operating assets in the vicinity of Saratoga Springs, New York.

This conveyance is made subject to the trust fund provisions of section thirteen of the lien law.

IN WITNESS WHEREOF, this Indenture has been executed on the day and year first above written.

WITNESS:

**DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

By: _____
Its Duly Authorized Agent

Country of Canada

ss.:

On the ____ day of _____ in the year 2005 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), that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

Notary Public/Commissioner of Oaths

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34803

**TOWN OF CORINTH, NEW YORK
--ACQUISITION AND OPERATION EXEMPTION--
CANADIAN PACIFIC RAILWAY**

EXHIBIT B

FORM ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

Adirondack Branch Line: Saratoga Springs to Corinth, New York

ASSET PURCHASE AGREEMENT dated **October 1, 2005** by and between

DELAWARE AND HUDSON RAILWAY COMPANY, INC., a Delaware corporation doing business as
Canadian Pacific Railway ("**CPR**")

and

TOWN OF CORINTH, a New York municipal corporation, (the "**Town of Corinth**" or "**Town**").

1. RECITALS

WHEREAS, CPR is the owner of a segment of rail beginning in Saratoga Springs, New York at a point that is approximately 100 feet northwesterly of, as measured at right angles to, the centerline CPR's Canadian Main Line track and extending, generally, northerly approximately 16.45 miles to the south line of Antone Road near Corinth, New York, the '**Adirondack Branch Line**'; and

WHEREAS, the Town of Corinth desires to purchase the Adirondack Branch Line and to provide certain scenic tour passenger operations over the line;

WHEREAS, CPR is retaining a permanent and exclusive freight easement over the Adirondack Branch Line, as more particularly described in the related Quit Claim Deed; and

WHEREAS, the Town of Corinth has no intention or desire to become a common carrier by rail and it is the express intention of the parties hereto that CPR retain the exclusive right to provide all common carrier freight service over the Adirondack Branch Line; and

WHEREAS, in order to close the transactions contemplated by this Agreement prior to obtaining a determination from the Surface Transportation Board ("**STB**") that such transactions are outside the STB's jurisdiction, the Town will file for STB approval or exemption of the acquisition and operation transactions contemplated by this Agreement (including without limitation Appendices 6-1 and 7-1), and will contemporaneously file a motion to dismiss its filing(s) for such approval or exemption based on the STB's lack of jurisdiction over the subject transactions.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

2. **DEFINITIONS:**

The following terms, when used with initial capitalization shall have the meanings set forth below. As the context requires, the singular number shall mean the plural number and vice versa.

Adirondack Branch Line or Subject Trackage means the rail line that is the subject of this Agreement and located between point A (Adirondack Branch Milepost 39.44) at Saratoga Springs, New York and Point B (Adirondack Branch Milepost 55.89) near Corinth, New York, as depicted in Exhibit A attached hereto.

Agreement or **APA** means this Asset Purchase Agreement, including all Exhibits and appendices to this Asset Purchase Agreement.

Assets means those assets described in Section 3 below.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

Claim or **Claims** means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

Closing has the meaning ascribed to it in Section 11 below.

Closing Date has the meaning ascribed to it in Section 11 below.

Environmental Law has the meaning ascribed to it in Section 22(b) below.

Excluded Assets are those assets described in Section 5 below.

Force Account shall have the meaning ascribed to it in Section 12(g) below.

FRA shall mean the Federal Railroad Administration, a subdivision of the United States Department of Transportation, or its successor.

FREIGHT EASEMENT is the permanent and exclusive easement reserved by CPR in the Quit Claim Deed by CPR in favor of the Town in the form set forth Appendix 5.1.

Hazardous Substances has the meaning ascribed to it in Section 22(b) below.

Licenses means any franchises, privileges, licenses and permits pertaining to the operation or ownership of any of the Assets.

STB or **Board** means the Surface Transportation Board, a division of the U.S. Department of Transportation, or its successor agency.

Track shall mean railroad track material, ties, spikes, switches and appurtenances thereto located upon the Adirondack Branch Line.

Upgrade Work shall mean the track work set forth in Section 12(g) below.

3. Agreement to Sell and Purchase And Agreement to re-convey.

- (a) **Agreement to Sell and Purchase** On the terms and subject to the conditions of this Agreement, CPR agrees to sell and transfer to Town of Corinth, and Town of Corinth agrees to purchase from CPR, on and as of the Closing Date, the following property and assets of CPR, other than Excluded Assets:
- (i) All interests of CPR in the line of railroad between point A (Adirondack Branch Milepost 39.44) at Saratoga Springs, New York and Point B (Adirondack Branch Milepost 55.89) near Corinth, New York, as depicted in Exhibit A attached hereto, subject to the reservation by CPR of the Freight Easement, together with
 - (A) associated rail facilities, including without limitation all rails, ties, ballast, switches, turnouts, wyes, crossovers, grade crossings, fixtures, rights-of-way and improvements thereto, communication and signal devices and installations (including computer software with appropriate licenses associated therewith, if reasonably available), sidings, spurs, trestles, bridges and culverts comprising installed rail facilities,
 - (B) pole lines, buildings and structures appurtenant thereto or situated thereon and
 - (C) all real estate including railroad operating and contiguous non-operating real property;
 - (ii) All rights of CPR under the leases described in Exhibit B attached hereto; provided, that, CPR does not intend to assign, and Town does not intend to assume, rights or obligations, if any, regarding freight operations over the Subject Trackage.
 - (iii) All rights of CPR relating solely to the ownership or the operation of the Assets, under the contracts, commitments and agreements identified on Exhibit C attached hereto; provided, that, CPR does not intend to assign, and Town does not intend to assume, rights or obligations, if any, regarding freight operations over the Subject Trackage.

- (iv) All interests of CPR in state and local licenses, and permits relating solely to the ownership or the operation of the Assets; provided, that, CPR does not intend to assign, and Town does not intend to assume, rights or obligations, if any, regarding freight operations over the Subject Trackage. To the extent that there are any such licenses or permits, CPR shall provide the Town with copies thereof;
- (v) Track profiles, blueprints, drawings, valuation, track and other maps, acquisition deeds, instruments, signal diagrams, engineering photographs, engineering data, easements and betterments, maps, real estate documents and records, and all construction, repair, maintenance and asset history records relating primarily to the ownership or the operation of the Assets, other than items that CPR determines in good faith it must retain for business purposes (including without limitation items for the fulfillment of its common carrier freight obligation), as to which CPR will
 - (A) identify the same to Town of Corinth;
 - (B) allow Town of Corinth full access thereto from and after the Closing Date; and
 - (C) when feasible supply the Town of Corinth with copies at the Town of Corinth's expense;provided, however, that the Town of Corinth agrees to allow CPR access to, and when feasible supply CPR with copies at CPR's expense of, items transferred to the Town of Corinth when necessary for CPR's business purposes.

The foregoing referred to herein as the "**Assets**."

(b) Agreement of Town of Corinth to re-convey the Assets to CPR:

If, after a reasonable effort, CPR is unable to obtain funding for the Upgrade Work defined in section 12(g) within one year of the Closing Date or if CPR fails to complete the Upgrade Work within two years of the Closing Date, then the Town shall provide CPR with a written demand made within the time frames outlined herein and shall, within thirty (30) days thereafter, re-convey to CPR the Assets upon similar terms and conditions as were conveyed by CPR to the Town. Upon such re-conveyance, CPR shall refund to the Town the Purchase Price, without interest, and CPR shall be responsible for the payment of any recording fees or transfer taxes. If the Assets are to be reconveyed and either party fails to cooperate in the exchange of documents or monies necessary to effect such re-conveyance (the Uncooperative Party,) then the other party may, following the failure of the Uncooperative Party to comply with the requirements of this section after receipt of a written demand to comply therewith, petition the Supreme court in Saratoga County, New

York to order the reconveyance of the Assets and payment by the Uncooperative Party of any transaction expenses owed by it plus attorneys' fees and court expenses incurred by the other party.

4. **Permitted Liens.** The Assets will be transferred by CPR to the Town of Corinth in accordance with this Agreement free and clear of all mortgages, security interests or other liens, other than (i) liens for taxes and installments of special assessments not yet due and payable, and (ii) other liens incidental to the ownership or the operation of the Assets which were not incurred in connection with the borrowing of money, the obtaining of advances or credit or the provision of labor or materials, and which do not in the aggregate materially detract from the value of, or materially impair the operation of, the Assets (collectively the "Permitted Liens").

5. **Excluded Assets and Obligations.** Notwithstanding anything in Section 3 above, the property and assets to be transferred to the Town of Corinth shall exclude the following Excluded Assets:

(a) All cash, restricted cash, cash equivalents, accounts receivable and prepaid expenses of CPR as of the Closing Date;

(b) All railroad rolling stock, including without limitation, locomotives, cars and cabooses and all bad order rolling stock located on the Assets. CPR shall remove any such rolling stock stored upon the Assets within ninety (90) days following the Closing Date;

(c) All general purpose data processing computers, computer terminals, controllers, modems, printers and associated computer hardware and software, wherever located;

(d) All labor and employment contracts;

(e) All transportation contracts, traffic and revenue data, customer supplier lists, tariffs and demurrage agreements, and all other agreements (or portions thereof) related to freight operations on the Subject Trackage; and

(f) Any and all rights and obligations of CPR under federal law to provide common carrier rail freight service over the Adirondack Branch Line, which rights and obligations shall be retained by CPR.

6. **Purchase Price.**

The purchase price for the Assets shall be:

Two-million and NO/100 Dollars (\$2,000,000.00)

(the "**Base Price**"), adjusted in accordance with Section 8 hereof as the result of certain loss, damage, destruction or condemnation of Assets (the Base Price, so adjusted, being hereinafter called the "**Purchase Price**").

7. **Assumption of Liabilities.**

Subject to the conditions of this Agreement, and excepting those liabilities allocated to CPR pursuant to any other provision in this Agreement or pursuant to the Ancillary Agreements (as defined in Section 9 of this Agreement), the Town of Corinth shall assume the following liabilities and obligations:

- (i) obligations accruing after 12:01 a.m. on the day immediately following the Closing Date under the leases described in Exhibit B hereto, relating solely to the ownership or the operations of the Assets under the contracts, commitments and agreements identified in Exhibit C hereto, and under the state and local licenses and permits described in Section 3(a)(iv) hereof;
- (ii) claims arising from the ownership or the operation of the Assets by the Town of Corinth, for bodily injury, personal injury, occupational disease, worker's compensation and property damage (and related claims for pain and suffering, mental distress, loss of consortium and similar matters and any related claim for punitive damages) arising from occurrences (or that portion of continuing occurrences) after the Closing;
- (iii) any other liability or obligation relating to or arising from the ownership or the operation of the Assets by CPR or its predecessors, but excluding the following, for which CPR shall assume the liabilities and obligations:
 - (A) liabilities and obligations for money borrowed or materials or services provided to CPR;
 - (B) court actions, suits and administrative proceedings commenced, or threatened in writing, against CPR prior to the Closing Date or subsequent to the Closing Date if

related to pre-Closing violations of administrative or court orders entered prior to Closing;

- (C) labor contracts and employment contracts and labor claims involving CPR and grievances against CPR;
- (D) claims under the Federal Employers' Liability Act and claims for bodily and personal injury (including death), occupational disease (including, without limitation, asbestosis), worker's compensation and property damage and destruction (and related claims for pain and suffering, mental distress, loss of consortium and similar matters and any related claim for punitive damages), in each case arising from occurrences (or that portion of continuing occurrences) prior to the Closing;
- (E) liabilities or obligations under any CPR "employee benefit plan," as that term is defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended;
- (F) tax liabilities of any and all kinds (federal, state, local, and foreign), relating to periods prior to the Closing, and railroad operating taxes associated with CPR's railroad operations relating to periods after the Closing
- (G) any fees and expenses incurred by CPR in connection with negotiating, preparing, Closing, and carrying out this Agreement and the transactions contemplated by this Agreement, including but not limited to the fees, disbursements, and expenses of CPR's attorneys and consultants;
- (H) Items in Section 21 that CPR has affirmatively agreed to indemnify the Town of Corinth from and against; and
- (I) All liability allocated to CPR pursuant to any other provision of this Agreement or pursuant to the Ancillary Agreements.

8. Loss, Destruction, Condemnation or Damage to Assets. If between the date of this Agreement and the Closing Date any Assets are lost, destroyed or condemned, or suffer any material damage and are not replaced or repaired prior to the Closing Date, liability for such loss, destruction or condemnation shall be borne by CPR, or, at the Town of Corinth's option, the Purchase Price specified in Section 6(a) shall be

decreased by the amount of such loss, destruction or condemnation. If the net aggregate fair market value of such loss, destruction or condemnation of Assets, after deduction of any insurance coverage amounts, exceeds Two-hundred-fifty-thousand Dollars (\$250,000), the Town of Corinth may, at its option, terminate this Agreement within 30 days upon written notice to CPR following any such event.

9. Ancillary Agreements. CPR and the Town of Corinth shall obtain execution of the Operating Agreements substantially in the forms of Appendices 6.1 and 6.3 and 7.1 and 7.2 attached hereto (also referred to herein as "**Ancillary Agreements**"), which shall become effective upon Closing.

10. Administration and Proration Procedures. In order to facilitate the transfer of the Assets to the Town of Corinth, subject to the conditions of this Agreement, the Town of Corinth and CPR agree to the administration and proration procedures attached hereto as Exhibit D.

11. Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of CPR, 200 Clifton Corporate Parkway, Clifton Park, New York at noon on the Closing Date, which shall be the later of (i) the tenth business day after the effective date of the STB's approval or exemption of the Town's acquisition of and operation over the Adirondack Branch Line and its exercise of trackage rights over the CPR line that is described in Appendix 6-1 (together, the "**Town's Acquisition and Operation Transactions**"); (ii) if any STB approval or exemption is required for CPR to consummate the transactions contemplated by this Agreement, the tenth business day after the effective date of such required approval or exemption by the STB; and (iii) such other date as CPR and the Town of Corinth may mutually agree.

12. Representations, Warranties and Covenants of CPR. CPR hereby represents, warrants and covenants to the Town of Corinth, as follows:

(a) Corporate Organization. CPR is a corporation duly organized and existing and in good standing under the laws of the State of Delaware.

(b) Corporate Power. CPR has the corporate power to execute and deliver this Agreement and to consummate the transactions contemplated hereby and the Agreement is enforceable in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and except as enforcement thereof may be limited by general principles of equity.

(c) No Prohibitions. There is no provision in the Articles of Incorporation or bylaws of CPR, or, except for provisions with respect to which consents or waivers have been obtained by CPR, in any indenture, security, contract (other than a labor contract) or other agreement relating to the Assets to which CPR is a party or by which it is bound or the Assets are bound, which prohibits the execution and delivery by CPR of this Agreement, or the consummation by CPR of the transactions contemplated hereby; provided, however, that notwithstanding anything contained in this Agreement to the contrary, no representation or warranty is made by CPR under this paragraph (c) with respect to the assignability of the Assets described in Section 3(a) hereof.

(d) Authorizations and Approvals. The execution and delivery of this Agreement by CPR, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary corporate action, and, subject to obtaining any required exemption or other regulatory approval from the STB, CPR has obtained all necessary governmental authorizations and approvals required in connection therewith.

(e) Actions, Suits, Proceedings. There are no actions, suits or proceedings pending, or to the best of CPR's knowledge threatened, against CPR or any of its property in any court or before any federal, state, municipal or other governmental agency which, if decided adversely to CPR, would affect the Assets, or would prohibit the execution and delivery by CPR of this Agreement, or the consummation by CPR of the transactions contemplated hereby, other than any required STB exemption or other regulatory approval proceeding for the consummation of the transactions contemplated by this Agreement.

(f) Title to Assets.

(i) CPR has not created or affirmatively assumed or permitted to arise by operation of law due to an act or omission of CPR any mortgage, security interests or other lien securing payment obligations on the

Assets, other than Permitted Liens and other liens to be released or discharged on or prior to the Closing Date.

(ii) CPR has sufficient interest in the Assets to permit its operation of the Assets as presently conducted, and to the knowledge of CPR there are no material claims which would affect in any material respect its interest in the Assets so as to materially affect the Town of Corinth's ability to conduct passenger operations over the Subject Trackage, following the Closing in the fashion contemplated in this Agreement (except as such operations are limited by the exclusions contained in Excluded Assets).

(iii) Except as specifically provided in the foregoing clauses (i) and (ii), CPR does not make, and expressly disclaims, any representation or warranty regarding title to the Assets.

(iv) To CPR's knowledge, the Assets have been held continuously for the operation of a railroad (other than temporary interruptions due to labor disputes or Acts of God) for more than the last twenty-one (21) years preceding the Closing Date.

(g) Condition of Assets; Upgrade of Tracks. Concurrent with, or shortly following, the execution of this Agreement, CPR shall enter into a Force Account Agreement with the New York State Department of Transportation ("NYSDOT") to upgrade the condition of the Track, the "**Upgrade Work**." The goal of the Upgrade Work shall be, within the funding provided by NYSDOT, to place as much of the Track as possible in a condition that meets the requirements of FRA Class 2 standards. CPR shall coordinate the Upgrade Work plan with the Town in order to implement the Upgrade Work in a manner that will maximize the benefit of such work to the Town. In all events, the Upgrade Work shall result in track conditions that are satisfactory for the safe operation of passenger rail traffic.

In its performance of the Upgrade Work, CPR shall be bound to use only reasonable and customary care, skill and diligence; and it shall protect and save harmless the Town from and against any and all Claims and mechanics' and materialman's liens that arise in connection therewith. CPR hereby warrants that the bridges which comprise part of the Track currently will allow 286,000 pounds gross rail load per car of forty (40) feet or longer.

(h) Leases and Contracts. The material leases, contracts, commitments and agreements to be assigned to the Town of Corinth under Sections 3(a)(ii) and (iii) hereof are each in full force and effect and no material

default has occurred under any of them (other than, perhaps, as a result of the Closing). CPR has not expressly waived or assigned to any other person any of its rights under any of those instruments.

(i) Brokers and Finders. CPR has not engaged any broker or finder in connection with the transactions contemplated by this Agreement.

Subject to the representations, warranties and covenants in this Section 12, the Assets are sold "**AS IS, WHERE IS**" with "**ALL FAULTS.**"

13. Representations and Warranties of The Town of Corinth. The Town of Corinth hereby represents and warrants to CPR as follows:

(a) Organization. The Town of Corinth is a municipal corporation and body politic duly organized and existing and in good standing under the laws of the state of New York, has the authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby, and the Agreement is enforceable in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and except as enforcement thereof may be limited by general principles of equity.

(b) No Prohibitions. There is no provision in the Municipal Charter, Articles, ordinances or bylaws of the Town of Corinth, or in any indenture, security, contract or other agreement to which the Town of Corinth is a party or by which the Town of Corinth is bound, except for those agreements under which the Town of Corinth has obtained necessary consents prior to Closing, which prohibits the execution and delivery by the Town of Corinth of this Agreement, or the consummation by the Town of Corinth of the transactions contemplated hereby.

(c) Authorizations and Approvals. The execution and delivery of this Agreement by the Town of Corinth, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary municipal corporate actions, and, subject to obtaining any required exemption or other regulatory approval from the STB, the Town of Corinth has obtained all necessary governmental authorizations and approvals required in connection therewith.

(d) Actions, Suits, Proceedings. There are no actions, suits or proceedings pending against the Town of Corinth or any of its property in any court or before any federal, state, municipal or other governmental

agency which, if decided adversely to the Town of Corinth, would prohibit the execution and delivery by the Town of Corinth of this Agreement, or the consummation by the Town of Corinth of the transactions contemplated hereby, other than any STB exemption or other regulatory approval proceeding required for the consummation of the transactions contemplated by this Agreement.

(e) The Town of Corinth as Principal. The Town of Corinth is acting as principal for its own account in connection with the execution and delivery of, and consummation of the transactions contemplated by, this Agreement.

(f) Brokers and Finders. The Town of Corinth has not engaged any broker or finder in connection with the transactions contemplated by this Agreement.

14. Conditions to Obligation of The Town of Corinth to Close. The obligation of the Town of Corinth to affect the Closing of the transactions contemplated by this Agreement is subject to the satisfaction prior to or at the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of CPR contained in this Agreement shall be true in all material respects at the time of Closing, as if made at that time;

(b) Performance and Compliance. CPR shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by CPR prior to or at the Closing;

(c) Officer's Certificate. CPR shall have delivered to the Town of Corinth a certificate of an authorized officer of CPR in the form set forth in Appendix 8, dated the Closing Date, to the effects set forth in Sections 14(a) and (b) above, and to the effect that no event has occurred which would permit the Town of Corinth to terminate this Agreement pursuant to Section 23 hereof;

(d) STB Regulation. The STB shall have approved or exempted the Town's Acquisition and Operation Transactions.

(e) Closing Documents. At Closing, the transfer to the Town of Corinth of the interests of CPR in the Assets shall be consummated by the execution and delivery of the documents attached hereto as Appendices 1 through 9:

<u>Appendix</u>	<u>Document</u>
1	General Bill of Sale
2	General Assignment & Assumption of Leases

- 3 General Assignment & Assumption of Contracts,
Commitments, Agreements, Licenses and Permits
- 4. [not applicable]
- 5.1 Quit Claim Deed
- 5.2 Parts 1 through 9, Exhibit A to Quit Claim Deed. Maps of property described in deed.
- 5.3 New York Real Property Transfer Report form EA-5217
- 5.4 New York Combined Real Estate Transfer Tax Return and
Credit Line Mortgage Certificate – Form TP-584
- 6.1 Operating Agreement – Saratoga Springs Rights to the Town of Corinth
- 6.2 Exhibit A to Saratoga Springs Operating Agreement (Town)
- 6.3 Memorandum of Saratoga Springs Operating Agreement (Town)
- 7.1 Operating Agreement – Adirondack Branch Line rights to CPR
- 7.2 Exhibit A to Adirondack Branch Line Operating Agreement (CPR)
- 7.3 Memorandum of Agreement – Adirondack Branch Line Operating Agr (CPR)
- 8 Officer's Certificate – CPR
- 9 Officer's Certificate - the Town of Corinth

(f) No Governmental Action or Legal Proceedings. As of the Closing Date, no statute, rule, regulation, order, decree, directive, writ or judgment shall have been enacted, adopted, issued, promulgated or rendered by any governmental authority or court, nor is any injunctive or other court action pending, which would:

- (i) prevent the consummation at Closing of or restrain or invalidate the transaction contemplated by this Agreement or any of the agreements or instruments called for hereunder, or
- (ii) materially interfere with or prohibit the continued effectiveness of such agreements or instruments; and

(g) Labor Conditions. There shall not exist on the Closing Date any action, event, circumstance or condition which would, in the reasonable judgment of the Town of Corinth, expose the Town of Corinth to any unacceptable obligation, liability, duty or exposure under, as a result of or with respect to labor protection (other than the standard labor protective conditions, if any, for the types of transactions contemplated by this Agreement) or strike or other job action as a result of the purchase or proposed purchase of the Assets.

(h) Ancillary Agreements. The Town of Corinth and CPR shall have executed and delivered the agreements substantially in the form attached hereto as Appendix 6-1 and Appendix 7-1.

15. Conditions to Obligation of CPR to Close. The obligations of CPR to effect the transactions contemplated by this Agreement are subject to the satisfaction prior to or at the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Town of Corinth continued in this Agreement shall be true in all material respects at the time of the Closing as if made at that time.

(b) Performance and Compliance. The Town of Corinth shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Officer's Certificate. The Town of Corinth shall have delivered to CPR a certificate of a responsible official of the Town of Corinth dated the Closing Date to the effects set forth in Sections 15(a) and (b) above, and to the effect that no event has occurred which would permit CPR to terminate this Agreement pursuant to Section 23 hereof.

(d) STB Exemption. The STB shall have granted CPR any necessary regulatory approvals for the rights under Appendices 6-1 and 7-1 and no extraordinary labor protection shall have been imposed as a condition to such approvals, it being understood that standard New York Dock protective conditions, as modified by the STB under existing decisions ("**Standard Labor Protective Conditions**"), shall not constitute extraordinary labor protection.

(e) [Intentionally Omitted]

(f) Operating Agreements. The Town of Corinth and CPR shall have executed and delivered the agreement substantially in the form attached hereto as Appendix 7.

(g) Labor Conditions. There shall not exist on the Closing Date any action, event, circumstance or condition which would, in the reasonable judgment of CPR, expose CPR to any unacceptable obligation, liability, duty or exposure under, as a result of or with respect to labor protection (other than Standard Labor Protective Conditions) or strike or other job action as a result of the sale or proposed sale of the Assets.

(h) No Governmental Action or Legal Proceedings. As of the Closing Date, no statute, rule, regulation, order, decree, directive, writ or judgment shall have been enacted, adopted, issued, promulgated or rendered by any governmental authority or court, nor is any injunctive or other court action pending, which would:

(1) prevent the consummation at Closing of or restrain or invalidate the transaction contemplated by this Agreement or any of the Agreements or instruments called for hereunder, or

(2) materially interfere with or prohibit the continued effectiveness of such agreements or instruments.

16. Operation of Business Prior to Closing. CPR agrees that, except with the prior written consent of the Town of Corinth, from the date of this Agreement to the Closing:

(a) No Disposition of Assets. CPR will not sell, transfer or dispose of any portion of the Assets, including any trackage rights, rights of way or real estate or, except in the ordinary course of business, sell, transfer or dispose of any other Asset.

(b) No Additional Liens. CPR will not permit all or any part of the Assets to become subject to any mortgage, security interest or other lien securing payment obligations, other than Permitted Liens.

(c) Inspection. The Town of Corinth states that it has had ample time and ability to inspect and become totally familiar with the Assets.

(d) Inventories. CPR shall have the right to remove all rolling stock from the Assets within 90 days after Closing.

17. STB Obligations of CPR and The Town of Corinth.

(a) The Town of Corinth shall be responsible for preparing and filing with the STB (i) all necessary documentation to obtain approval or exemption from the transactions contemplated in this Agreement from the requirements of 49 U.S.C. 10901 and all other pertinent statutes or regulations, (ii) a motion to dismiss the filing(s) by the Town for approval or exemption of the Town's Acquisition and Operation Transactions, based on the STB's lack of jurisdiction over such transactions (the "**Motion to Dismiss**"). The Town of Corinth shall promptly advise CPR of all correspondence and other communications with the STB or interested parties with respect to such documentation. CPR agrees to cooperate with the Town of Corinth in obtaining the approval or exemption of the Town's Acquisition and Operation Transactions and the granting of the Town's Motion to Dismiss.

(b) CPR shall be responsible for preparing and filing with the STB any necessary documentation to obtain approval or exemption for the transactions contemplated by this Agreement.

(c) If the STB rejects the Motion to Dismiss, CPR agrees to negotiate with the Town in good faith to amend the Agreement (including without limitation Appendix 7-1), to address any deficiencies noted in the STB's decision rejecting the Motion to Dismiss.

18. Installation of de-rails. As part of the Upgrade Work, CPR shall install a switch-point de-rail southerly of Daniels Road Crossing and at least five hundred (500) feet northerly of Point A (the southerly end point) of the Adirondack Branch Line, as said point is shown upon Exhibit A.

19. Covenant of Further Assurances. From time to time after the Closing, at the request of the Town of Corinth and without further consideration, CPR will execute and deliver other instruments of conveyance and transfer and take such other actions as the Town of Corinth may reasonably require to convey and transfer the Assets to, and vest title to the Assets in, the Town of Corinth and to put the Town of Corinth in possession of any of the Assets. If any contract or right owned by CPR relating to lines of railroad in addition to the Assets also relates to the ownership or operation of the Assets (other than solely freight operations), the parties agree to assist each other in obtaining evidence of the severance of the portion relating to the Assets from the contract or right owned by CPR.

20. Transaction Expenses. The Town of Corinth shall pay all sales, recording, filing, transfer, documentary stamp and similar taxes and fees (excluding income taxes of CPR), and other governmental charges arising in connection with the transfer of the Assets from CPR to the Town of Corinth. CPR and the Town of Corinth shall each bear its own legal, accounting, business advisory and consultant expenses.

21. Indemnification by CPR.

(a) Generally. CPR hereby agrees to indemnify and hold the Town of Corinth harmless at all times from and after the Closing Date against and with respect to:

(i) any and all liabilities and obligations of CPR, except to the extent assumed by the Town of Corinth pursuant to Section 7 hereof;

(ii) any and all loss, injury, damage or deficiency resulting from any misrepresentation or breach of warranty on the part of CPR under this Agreement;

(iii) any and all loss, injury, damage or deficiency resulting from any non-fulfillment of any covenant or agreement on the part of CPR under this Agreement; and

(iv) any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs and legal and other expenses (including attorneys fees) incident to any of the foregoing.

(b) Procedures. In the event any demands or claims are asserted against the Town of Corinth or any actions, suits or proceedings are commenced against the Town of Corinth for which CPR is obligated to indemnify the Town of Corinth under this Section 21, then the Town of Corinth shall give timely notice thereof to CPR in order to permit CPR the necessary time to evaluate the merits of such demand, claim, action, suit or proceeding and defend, settle or compromise the same so that its interests are not materially prejudiced; and, in the event the Town of Corinth fails to provide such timely notice, CPR shall have no liability whatsoever to indemnify and defend the Town of Corinth from such demand, claim, action, suit or proceeding pursuant to this Section 21 and the Town of Corinth shall be solely responsible for the defense thereof and any and all liability of the Town of Corinth arising therefrom. Within ten (10) business days after such notice, CPR shall assume the defense thereof with counsel chosen by CPR and reasonably acceptable to the Town of Corinth. CPR shall not be liable for any costs or expenses incurred by the Town of Corinth in connection with its defense of any demand, claim, action, suit or proceeding after the date of CPR's assumption of the defense thereof.

(c) Settlement Compromise. CPR shall not settle or compromise any actions, suits or proceedings for which the Town of Corinth has sought indemnification from CPR unless it shall have given the Town of Corinth not less than fifteen (15) days prior written notice of the proposed settlement or compromise and afforded the Town of Corinth an opportunity to consult with CPR regarding the proposed settlement or compromise.

22. The Town of Corinth's Covenants.

(a) Release. Except as contained in Section 12 herein, the Town of Corinth's acceptance of title to the Assets shall represent the Town of Corinth's acknowledgment and agreement that:

- (i) CPR has not made any written or oral representation or warranty of any kind with respect to the Assets (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose);
- (ii) the Town of Corinth has not relied on any written or oral representation or warranty made by CPR, its agents or employees with respect to the condition or value of the Assets;
- (iii) the Town of Corinth has had an adequate opportunity to inspect the condition of the Assets, including without limitation any environmental testing, and to inspect documents applicable thereto, and the Town of Corinth is relying solely on such inspection and testing; and
- (iv) Subject to the Upgrade Work agreed to be performed by CPR, the condition of the Assets is fit for the Town of Corinth's intended use.

(b) Covenant Not to Sue. As used in this paragraph, "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims); "**Environmental Law**" means the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and "**Hazardous Substance**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law. By accepting delivery of the Quit Claim Deed, the Town of Corinth, for itself, its directors, officers, agents, affiliates, predecessors, successors and assigns, and anyone acting on its behalf or their behalf, covenants and agrees not to sue CPR or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf with

respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that the Town of Corinth had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Assets, except with respect to the liabilities and obligations apportioned to CPR in this Agreement or in the Ancillary Agreements. The foregoing shall apply to any condition of the Assets, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Assets, whether such Hazardous Substance is located on or under the Assets, or has migrated from or to the Assets, regardless of whether the foregoing condition of the Assets was caused in whole or in part by the CPR's actions or inactions.

(c) Settlement and Compromise. The Town of Corinth shall not settle or compromise any actions, suits or proceedings for which CPR has sought indemnification from the Town of Corinth unless it shall have given CPR not less than (15) days prior written notice of the proposed settlement or compromise and afforded CPR an opportunity to consult with the Town of Corinth regarding the proposed settlement or compromise.

23. Termination of Agreement. This Agreement and the consummation of the transactions contemplated by this Agreement may be terminated prior to the Closing:

(a) By the agreement of CPR and the Town of Corinth at any time;

(b) By the Town of Corinth,

(i) if any representation or warranty of CPR contained herein proves to be false in any material respect,

(ii) if there has been a material breach of the agreements of CPR contained in this Agreement,

(iii) if there has been any material failure of CPR to comply with its obligations under this Agreement
or

(iv) pursuant to Section 8 hereof;

(c) By CPR, if any representation or warranty of the Town of Corinth contained herein proves to be false in any material respect, or if there has been a material breach of the agreements of the Town of Corinth

contained in this Agreement, or if there has been any material failure of the Town of Corinth to comply with its obligations under this Agreement;

(d) By CPR, if CPR is unable to obtain any required approval or exemption for the transactions contemplated in this Agreement (including without limitation Appendices 6-1 and 7-1), and by the Town, if Town is unable to obtain from the STB approval or exemption for the transactions contemplated in this Agreement (including without limitation Appendices 6-1 and 7-1);

(e) By the Town of Corinth if compliance with one or more of the conditions precedent set forth in Section 14 is rendered impossible, and by CPR if one or more of the conditions precedent set forth in Section 15 is rendered impossible;

(f) By the Town of Corinth or CPR, if STB regulatory approval or exemption is conditioned upon the imposition of any burdensome condition, including labor protection (beyond Standard Labor Protective Conditions), on the party seeking to terminate or if any court or administrative agency requires the Town of Corinth to assume any material contract not specifically required to be assumed pursuant to this Agreement;

(g) By the Town of Corinth or CPR, if the Closing shall not have occurred on or prior to December 1, 2005; and

(h) In the event of termination under this Section 23, the Town of Corinth shall have no liability or obligation to CPR by reason of such termination or its failure to close the transaction.

24. Certain Definitions.

Wherever used in this Agreement, the phrases "**known to CPR**," "**to the knowledge of CPR**," "**to the best knowledge of CPR**" and the like shall mean the actual knowledge of CPR's staff integrally involved in this transaction.

25. Assignment. Prior to Closing, the rights and obligations of the Town of Corinth under this Agreement may not be assigned or delegated without the prior written consent of CPR, which consent shall not be unreasonably withheld or delayed.

26. Entire Agreement. This Agreement, including the Exhibits and Appendices attached to this Agreement, constitutes the entire agreement and understanding between CPR and the Town of Corinth with respect to the sale and purchase of the Assets and the other transactions contemplated by this Agreement. Except as otherwise provided herein, all prior representations, understandings and agreements between the parties with respect to the purchase and sale of the Assets and the other transactions contemplated by this Agreement are superseded by the terms of this Agreement. The provisions of this Agreement shall survive the Closing.

27. Choice of Law. The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the State of New York, including for the purpose of choice of law, as though all acts and omissions related to this Agreement occurred in the State of New York.

28. Severability. The provisions of this Agreement shall, where possible, be interpreted in a manner necessary to sustain their legality and enforceability, and for that purpose the provisions of this Agreement shall be read as if they cover only the specific situation to which they are being applied. The unenforceability of any provisions of this Agreement in a specific situation shall not affect the enforceability of that provision in other situations or of other provisions of this Agreement.

29. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

30. Notices. A notice hereunder will be adequately given when it is personally delivered; when it is sent by telecopy with confirmation of receipt; one day after it is sent by overnight courier; or three days after it is mailed by certified mail, return receipt requested, postage prepaid, addressed in any case to:

(a) <u>CPR:</u> Manager Real Estate & Industrial Development Canadian Pacific Railway 200 Clifton Corporate Parkway P. O. Box 8002 Clifton Park, NY 12065-8002 ph: (518) 383-7204 fax: (518) 383-7222	(b) <u>The Town of Corinth:</u> Town of Corinth 600 Palmer Avenue Corinth, New York 12822 Attn: Richard B. Lucia, Supervisor ph: (518) 654-2413 fax: (518) 654-7615
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and if to the Town of Corinth, with copies to:

Lemery Greisler LLC 10 Railroad Place Saratoga Springs, New York 12866 Attn: John C. Lemery, Esquire ph: (518) 588800 fx: (518) 588823	Saratoga Economic Development Corporation 28 Clinton Street Saratoga Springs, New York 12866 Attn: Jon A. Kelley ph: (518) 587-0945 fx: (518) 587-5855	New York State Department of Transportation Region 1 50 Wolf Road Albany, New York 12232
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Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

31. Public Announcements and Releases. No party to this Agreement will make or cause to be made any public announcement or release concerning this Agreement or the transactions contemplated hereby without consultation and the approval of the other parties of this Agreement.

IN WITNESS WHEREOF the parties have set their hands hereto this _____ day of

_____, 2005.

**DELAWARE AND HUDSON RAILWAY
COMPANY, INC.** *doing business as*
Canadian Pacific Railway

By: _____
Fred Green
Its: President

TOWN OF CORINTH NEW YORK

Attest: _____
Secretary

By: _____
Name _____
Title _____

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34803

**TOWN OF CORINTH, NEW YORK
--ACQUISITION AND OPERATION EXEMPTION—
CANADIAN PACIFIC RAILWAY**

EXHIBIT C

**APPENDIX 7-1
FORM OPERATING AGREEMENT**

APPENDIX 7-1

ADIRONDACK BRANCH LINE OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") dated _____, 2005 is made between

TOWN OF CORINTH, a New York municipal corporation having its principal office at 600 Palmer Avenue, Corinth, New York 12822 (the "**Town**" or "**Town of Corinth**")

and

DELAWARE AND HUDSON RAILWAY COMPANY, INC., doing business as Canadian Pacific Railway, 200 Clifton Corporate Park, P. O. Box 8002, Clifton Park, NY 12065-8002 ("**CPR**");

sometimes referred to below individually as "**Party**" or sometimes collectively referred to below as "**Parties**."

RECITALS

1. Pursuant to an Asset Purchase Agreement between the Parties, dated October 1, 2005, the Town of Corinth became owner of CPR's line of railroad known as the Adirondack Branch Line between Saratoga Springs and Corinth, New York; and

2. In the Quit Claim Deed by CPR in favor of the Town, dated _____, 2005, CPR reserved unto itself a permanent and exclusive easement to conduct freight operations over the Adirondack Branch Line (the "**Easement**"), subject to the terms of an Operating Agreement; and

3. This Agreement is the Operating Agreement referenced by said Quit Claim Deed.

NOW THEREFORE, in consideration of the mutual and dependent covenants contained herein, the parties hereto agree as follows:

Section 1. DEFINITIONS AND INTERPRETATIONS

1.1 Capitalized terms not otherwise defined herein shall be defined in the Asst Purchase Agreement between the Parties dated October 1, 2005 ("**APA**"). If not otherwise defined herein or the APA, all words, terms and phrases shall be construed in accordance with the definition or meaning of such words, terms or phrases generally applicable in the railroad industry.

1.2 The Parties acknowledge and agree that numerous items not expressly addressed herein are governed by the terms of the APA. The Parties further acknowledge their intent that this Agreement and the APA be interpreted entirely consistently with one another.

Section 2. GRANT OF RIGHTS

Attached to, incorporated in and made a part of this Agreement is a print marked Exhibit A , also referred to as Appendix 7.2 to the APA, which shows the trackage owned and operated by the Town on the Adirondack Branch Line between points "**A**" and "**B**"; hereinafter wholly referred to as "**Subject Trackage**." Subject Trackage includes all of the Town's trackage, track connections, facilities and appurtenances, signals and switches located between these points, as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed, in accordance with the terms of this Agreement. Pursuant to the Easement, CPR has the exclusive right and obligation to conduct freight rail service on and over the Subject Trackage, including without limitation, the right to operate trains, locomotives, rail cars, cabooses and other rail equipment over the Subject Trackage for the purpose of performing freight service. CPR's freight operations shall be conducted over the Subject Trackage in common with passenger trains of the Town, and such other railroad company or companies as the Town may at any time in the future admit to the operate

passenger trains on the Subject Trackage; provided, that, neither the Town's passenger operations on the Subject Trackage, nor the passenger operations of any third party admitted by the Town to the Subject Trackage, shall unreasonably interfere with CPR's fulfillment of its common carrier obligation. Except to the extent necessary to perform its common carrier obligation for freight service over the Subject Trackage, CPR's operations over the Subject Trackage shall not interfere with passenger operations over the Subject Trackage. Both parties hereto acknowledge and agree that (i) the Town has no right or obligation to perform freight service over the Subject Trackage, and will not hold itself out to provide such service, and (ii) CPR has no right or obligation to use the Subject Trackage for any purpose other than freight service (or to exercise any express right granted in this Agreement).

- (a) In addition to fulfilling its common carrier obligations pursuant to applicable government laws or regulations, CPR may set out, pick up, or store equipment or switch industries upon all or any part of the Subject Trackage, as necessary to transport both revenue and non-revenue rail freight cars and to handle locomotives, cars or cabooses bad ordered en route; provided, however, CPR shall not store any locomotives, equipment or cabooses on the main track or passing sidings that comprise the Subject Trackage while not actively setting out or picking up freight cars from spur tracks connected to the Subject Trackage without prior consent of the Town.
- (b) CPR shall not have any right, without prior permission in writing from the Town of Corinth, to permit any third party to use all or any part of the Subject Trackage for any purpose, which permission shall not be unreasonably denied, delayed or conditioned; provided, however, that the foregoing shall not prevent CPR, pursuant to a run-through agreement with any railroad, or a bona fide equipment lease, from using the locomotives and cabooses of another railroad as its own under this Agreement.
- (c) Nothing contained in this Agreement shall be deemed to constitute a conveyance to CPR of any real property interests with respect to the Subject Trackage. The Town of Corinth possesses all rights incident to ownership of the Assets for any purpose, other than the provision of freight service, including the right to lease, convey, license, or grant other interests or concessions in or to the Assets to third parties, so long as such interests or concessions do not unreasonably interfere with CPR's provision of common carrier freight service.

2.2 The Town desires and CPR consents to the Town's appointment of a third party to conduct passenger rail activities on behalf of the Town of Corinth upon the Subject Trackage (an "**Operator**"). The term Operator shall include any third party appointed by the Town to replace the then-current Operator. The Parties agree that the Town will enter into an agreement with the Operator to conduct passenger rail activities upon the Subject Trackage. Such agreement between the Town and Operator will, at a minimum, contain the level of conveyance and obligations assumed by the Town pursuant to this Agreement with CPR.

Section 3. TERM

3.1 This Agreement shall be effective upon the Closing Date (as that term is defined in the APA). This Agreement shall remain in effect until such time as CPR:

- (i) Governmental authority or an exemption in lieu thereof shall have been granted to abandon or discontinue freight rail service over the Subject Trackage (collectively, "**Abandonment Authority**") and
- (ii) CPR shall have exercised such Abandonment Authority; provided, that, upon receipt of Abandonment Authority, CPR agrees, at the Town's request, to promptly exercise such authority. Upon the exercise by CPR of Abandonment Authority, this Agreement shall forthwith terminate.

3.2 Termination of this Agreement shall not relieve or release either Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to the termination hereof.

3.3 Termination of this Agreement shall have no impact to the trackage rights agreement between the Parties dated currently with this Agreement that grants the Town of Corinth rights to operate over CPR's line of

railroad between CPR's connection with the Town of Corinth at Saratoga Springs, NY and CPR's Saratoga Springs Station.

Section 4. CONSTRUCTION, REPAIR, MAINTENANCE, ADDITIONS TO, OPERATION, CONTROL AND USE OF THE SUBJECT TRACKAGE

4.1 Except as otherwise agreed herein, the construction, maintenance, repair and renewal of the Subject Trackage together with the discretion to add, modify, or remove facilities and appurtenances, signals and switches, along the Subject Trackage shall be under the exclusive direction and control of the Town or its Operator. The Town shall make any additions, modifications, or removals to or along the Subject Trackage that the Town deems necessary or desirable for the safe, efficient, and economical use of the Subject Trackage by the Parties, and such additions or modifications shall become part of the Subject Trackage upon completion of construction; provided, that, no such addition, modification or removal shall unreasonably interfere with CPR fulfilling its common carrier freight obligation with respect to the Subject Trackage. If CPR requests construction of additions or improvements to the Subject Trackage, the Town, following review of appropriate drawings or specifications, may agree to make additions or improvements for the benefit of both, and compensation by CPR to the Town for the additions and improvements shall be agreed upon by the Parties. In the event the Town does not agree to make the requested additions or improvements, or the Parties cannot agree on the compensation amount by CPR, then CPR may request the Town to construct said addition or improvement at the sole expense and for the sole use of CPR, which request shall not be unreasonably denied by the Town; provided, that, if an addition, improvement or removal is necessary to fulfill its common carrier freight obligation, the Town shall consent to such addition, improvement or removal, which work shall be performed, (a) at the Town's option, by either the Town (or the Operator) or CPR, and (b) at CPR's sole cost and with CPR bearing all Loss or Damage (as defined in Section 8 of this Agreement) arising from or in connection with such addition, improvement or removal. Unless otherwise agreed with respect to specific trackage improvements, trackage improvements constructed at the sole expense of either Party shall be owned by the Town.

4.2 Dispatching of Traffic:

4.2.1 For any given period of time, the Party managing operations over the Subject Trackage shall be the "**Dispatching Party**" and the other Party shall be known as the "**User**." The Dispatching Party shall provide a qualified employee to dispatch rail operations over the Subject Trackage.

4.2.2 During any period of time that both Parties operate railroad equipment over the Subject Trackage, then the Town or its Operator shall be the Dispatching Party.

4.2.3 During any period of time that only one Party operates railroad equipment over the Subject Trackage, that Party shall be the Dispatching Party, except that the Town shall give CPR nine months' advance notice prior to discontinuance of its operations.

4.2.4 The Dispatching Party shall have the unrestricted right to change the management of and operations on and over the Subject Trackage as, in its judgment, may be necessary, expedient or proper for the operation of the Subject Trackage pursuant to this Agreement; provided that any such change shall not materially interfere with the other Party's rail operations.

4.3 Trackage Maintenance:

From and after **November 11, 2006**, the "**Maintenance Date**," and subject to upgrades to the Subject Trackage to be made by CPR pursuant to the APA, the Town or its Operator shall employ all persons necessary to operate, maintain, repair and renew the Subject Trackage. The Subject Trackage shall be maintained, at a minimum, to the standard that the Subject Trackage was placed in following the Upgrade Work by CPR following the sale of the Adirondack Branch Line to the Town. The Town shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair, renewal and management of the Subject Trackage. In case the Town shall fail to repair any defect or maintain the Subject Trackage to the condition required in this Section within a reasonable time after CPR has given to the Town written notice specifying the defect or maintenance standard failure and requesting that it be repaired or maintained, then CPR shall have the right to make the necessary repairs or perform the maintenance and the Town shall reimburse CPR for the entire cost thereof. Prior to the Maintenance Date, CPR shall be responsible for maintenance and repair of the Subject Trackage to a level commensurate with the level of maintenance and repair that CPR performed to the Subject Trackage for the three month period prior to and

ending on the date of closing under the APA, such maintenance not to include payment of real property taxes related to the Subject Trackage. CPR's obligation of maintenance and repair of the Subject Trackage hereunder shall not include an obligation to repair damage caused by (i) acts of God including, but not limited to, fire and flood, (ii) vandalism, arson or burglary perpetrated by third parties or (iii) the willful misconduct of the Town or the Operator.

4.4 CPR shall install and maintain upon its trains, locomotives, cars and cabooses such equipment or devices as may now or in the future be required by any governmental agency having jurisdiction over the operation of railroad freight trains.

4.5 If the use of the Subject Trackage is at any time interrupted or traffic over the Subject Trackage is delayed for any cause, the Town shall, with reasonable diligence, restore the line for the passage of trains of the Parties. Except for interruption for any period of 30 days or more, neither Party shall have or make any claim against the other for loss or damage of any kind resulting from such interruption or delay.

4.6 Each Party shall be responsible for furnishing, at its own expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Subject Trackage.

4.7 Dispatching; Operating Rules.

4.7.1 The operations of the Parties over the Subject Trackage shall at all times be in accordance with NORAC (Northeast Operations Rules Advisory Committee) rules and the instructions and restrictions of the Dispatching Party, but such instructions and restrictions shall be reasonable, just and fair between all Parties using the Subject Trackage and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, safety and operating rules, timetables, special instructions, bulletins, general orders and authoritative directions of train dispatchers and operating officers. The Dispatching Party will not make any rule or restriction applying to the other Party that does not apply with equal force to itself (to the extent such rule or restriction is applicable to both freight and passenger operations).

4.7.2 Insofar as CPR continues to operate trains over the Adirondack Branch, the Town, when acting as the Dispatching Party, will endeavor, to the extent reasonable and appropriate, to adopt rules, instructions and restrictions that conform to or are consistent with those of CPR, and that do not unreasonably interfere with the provision of common carrier freight service by CPR.

4.8 CPR shall be responsible for all mileage allowances and car hire charges accruing on cars in CPR's revenue and car hire account on the Subject Trackage and CPR shall report and pay the allowances and charges direct to the owners of such cars.

4.9 All employees of the Operator engaged in the operation of the railroad equipment over the Subject Trackage shall be required to qualify for entry onto the Subject Trackage by passing periodic examinations on NORA rules and other rules and restrictions then in effect on the Subject Trackage provided that with respect to such examinations, CPR shall qualify one or more of the Operator's supervisory officers who will then examine and certify to CPR the qualification of the Operator's employees. In addition to examination, CPR may condition qualification of the Operator's employees under this provision upon the completion of a reasonable number of trips over the Subject Trackage piloted by a qualified employee of CPR or the Operator, and require that such qualification trips be repeated if the Operator employee has not made a trip over the Subject Trackage within a reasonable period of time. Pending qualification of subject employees, CPR shall furnish a pilot or pilots, at the reasonable expense of the Operator, to allow operation as contemplated in this Agreement. For liability purposes of Section 5 of this Agreement, any employee of CPR acting as a pilot for the Operator will be considered an employee of the Operator.

4.10 If any employee of the User, in the sole opinion of the Dispatching Party, neglects, refuses or fails to abide by the Dispatching Party's rules, instructions or restrictions governing the operation over the Subject Trackage, the Dispatching Party shall in writing so notify the User. The Dispatching Party shall have the right to require the User to withhold any of its employees from service over the Subject Trackage pending the result of a formal investigation of the alleged neglect, refusal or failure. After the notice is given to the non-Dispatching Party, the parties shall promptly hold a joint investigation in which each of the parties shall bear its

own expenses for its own employees and witnesses. Notice of such investigation to the subject employee shall be given by the User, and failure to give proper notice shall not bar the Dispatching Party from restricting the subject employee. The investigation shall be conducted in accordance with the terms and conditions of the applicable employment contracts or agreements, but said contracts or agreements shall not bar the Dispatching Party from restricting the User's employees. If, in the sole judgment of the Dispatching Party, the result of such investigation warrants, any employee so investigated, or which the User has failed to investigate after proper notice under this Agreement, shall upon written request by the Dispatching Party be restricted by User from operating on the Subject Trackage, and the User shall release and indemnify the Dispatching Party from and against any and all claims and expenses because of such restriction; provided, that, the Dispatching Party shall not unreasonably exercise this right of restriction .

4.11 If any locomotives, cars or cabooses of CPR are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those locomotives, cars or cabooses shall, after being promptly repaired by CPR, be promptly picked up by CPR.

4.12 In the event CPR fails to move rail freight on the Subject Trackage for a continuous period of not less than 18 months, the Town may serve notice to CPR alleging said non-use and should CPR be unable to refute said allegation within 30 days after receipt of the Town's notice, then paragraphs 4.3, 4.7 and 4.9 will cease to be in effect. If Section 4.3 ceases to be in effect pursuant to the terms of this Section 4.12 and the condition of the Subject Trackage is not satisfactory for the safe operation of freight rail traffic, CPR shall have the right to maintain the Subject Trackage to the extent necessary to fulfill its common carrier freight obligation; provided, that, CPR shall have sole responsibility for the cost of any such maintenance and CPR shall bear all Loss or Damage (as defined in Section 8 of this Agreement) arising from or in connection with such maintenance.

Section 5. CAPITAL ACCOUNT

5.1 **Account:** The Town shall set up an interest bearing reserve account, ("**Capital Account**") into which CPR's capital obligations pursuant to Section 4.1 and Section 6.1 of this Agreement shall be deposited and from which such funds shall be disbursed. The funds in the Capital Account shall be limited to the payment costs and expenses incurred in connection with the Subject Trackage for the maintenance, repair or replacement the following, or appurtenances thereto: associated rail, track, ties, rail bridges, at-grade road crossings, grade crossing warning devices, signals and excavation, grading or filling beneath railroad track or roadway crossings, collectively "**Railroad Infrastructure**."

5.2 **Rate of Depreciation:** It is agreed that the monthly straight-line depreciation value of the Subject Track is \$4,273.50. This monthly straight-line depreciation is derived from the valuation of the Subject Trackage at \$2,000,000 over a thirty-nine year life.

5.3 **Capital Payments by CPR:** CPR shall fund said Capital Account monthly, for the preceding month, in a amount that is the product of multiplying CPR's Use Proportion (defined in Section 6.2) by the monthly straight line depreciation value (\$4,273.50.)

5.4 **Major expenses – CPR approval:** Prior to committing to payment of funds from the Capital Account for any single project where the aggregate amount paid will exceed \$15,000, the Town shall request CPR's approval of the proposed project. If CPR does not respond within 21 days of the Town's request, CPR's approval shall be deemed to have been given.

5.5 **Audit & Accounting:** The Town shall provide CPR with an accounting of the Capital Fund on an annual basis one the anniversary date of this Agreement. CPR shall have the right to audit, at its expense, the management of the Capital Account and the Towns records pertaining thereto.

5.6 Administrative Role/Ownership of Residual Funds at Termination.

During the term of this Agreement the funds within the Capital Account are the property of CPR with the Town assuming a fiduciary role in the administration of the account. Any balance remaining in the Capital Account at the termination of this Agreement shall be the sole property of the Town.

Section 6. COMPENSATION AND BILLING.

6.1 For and in consideration of the rights contained herein and in addition to the costs and expenses herein elsewhere provided, CPR shall compensate the Town monthly CPR's Use Proportion (defined below) of the Town's actual cost to maintain the Subject Trackage in good operating condition consistent with the condition that the track was put in by CPR during the Upgrade Work following sale of the Subject Trackage by CPR to the Town and capable of handling freight cars of 286,000 pounds gross weight. Except to the extent otherwise set forth in Section 4.1 or unless the Town receives prior written consent from CPR, additions and betterments made to the Subject Trackage shall be the financial responsibility of the Town of Corinth.

6.2 CPR shall on or about the fifteenth day of each month provide the Town an accounting of its use of the Subject Trackage for the prior month ("**Monthly Statement**"). Such use of the Subject Trackage shall be furnished to the Town's designated representative and shall include a listing of loaded and empty freight rail car movements, locomotives and cabooses over the Subject Trackage. Such listing, to the extent available, shall be forwarded to the Town in an electronic format, and shall include a summarized list of freight rail cars and the dates of such movements. The Town of Corinth shall develop CPR's monthly "**Use Proportion**" by comparing volumes submitted by CPR on the Monthly Statement to the total rail cars, locomotives and cabooses operated by all parties over the Subject Trackage during the same period.

6.3 Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed by the Town and said bills shall contain an itemized statement of the costs incurred by the Town under Section 6.1 during the preceding month.

6.4 All payments called for under this Section shall be made by CPR within forty-five (45) days after invoice. Charges not billed within two (2) years after their being incurred shall be deemed waived. The payment of bills shall not be delayed nor payment refused or shorted because of errors in supporting details which are not serious and important, but bills shall be paid as rendered and exception taken in writing addressed to the officer of the Town operator responsible for the issuance of the bill. The Town will adjust the next subsequent bill if exception is valid. No exception to any bill shall be honored if filed after two (2) years from the last day of the calendar month during which the bill was rendered; provided, however, that nothing in this Section will bar the rendering and collection of bills arising from the operation of Section 7, below.

Section 7. EXPENSES

During the term of this agreement, CPR shall pay all railroad operating taxes payable as the result of its operations on the Subject Trackage. CPR reserves the right to challenge the amount or legality of such taxes, provided that CPR shall take reasonable actions to protect the Subject Trackage from tax forfeiture during the pendency of any such challenge. The Town of Corinth shall pay all other taxes and assessments levied against the Subject Trackage, or the underlying property.

Section 8. LIABILITY

Definition: Whenever the expression "**Loss or Damage**" is used in this Section, it means all costs, liabilities, judgments, fines, fees (including without limitation reasonable attorneys' fees and disbursements) and expenses of any nature arising from or in connection with death of or injury to persons, including without limitation employees of the Parties, and damage to or destruction of property including without limitation property of the Parties or the Subject Trackage, in connection with operations of the Parties over or on the Subject Trackage.

Definition: Whenever the expression "**proportionally by the Parties**" is used in this Section 8, it means that expenses will be borne in proportion to the total count of cars handled by each Party (and any other third party user admitted by the Town of Corinth), over any part of a segment of the Subject Trackage on which the Loss or Damage occurs during the three calendar months prior to the month of the occurrence, or if the occurrence is in any of the first three (3) months of operation under this Agreement, such lesser period as precedes the

date of occurrence. For the purposes of determining proportionality as herein provided, locomotive units and cabooses shall not be considered a car.

For purposes of this Agreement, locomotives, trains, cars, cabooses and property of third parties admitted by the Town of Corinth shall be deemed locomotives, trains, cars, cabooses or property of the Town of Corinth, and the employees of any Party while operating, maintaining or directing operations along the Subject Trackage shall not be considered as joint employees but will remain the sole employees of that Party. To the extent there is any conflict between the provisions of this Section 8 and the provisions of the APA, the provisions of this Section 8 shall control.

8.1 The Parties shall undertake to comply with all applicable federal, state and local laws or regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of any Party to comply with such laws, rules, regulations or orders in respect to the use of the Subject Trackage results in any fine, penalty, cost or charge being assessed against the other Party, the Party which failed to comply agrees to reimburse promptly and indemnify the other Parties for such amount.

8.2 Notwithstanding anything else contained in this Agreement or the APA, liability for Loss or Damage resulting from or in connection with the operation of trains, locomotives, cars, cabooses or maintenance-of-way motorized equipment ("**Equipment**") of either Party, or in connection with the presence on the Subject Trackage of Equipment of either Party, shall be borne and paid by the Parties as follows:

- (a) When the same shall involve the Equipment of only one of the Parties, regardless of any third party involvement, all Loss or Damage, including but not limited to, restoration and repair of the Subject Trackage and third party persons or property will be borne by that Party.
- (b) When the same shall involve the Equipment of both the Parties, Loss or Damage shall be borne by each Party as to its own employees, property, or property in its custody (except for damage to the Subject Trackage). As to third party persons or property and the Subject Trackage, Loss or Damage shall be borne equally by the Parties involved.

8.3 Liability for Loss or Damage not involving the Equipment of either Party, or where the identity of the Equipment involved is unknown, shall be borne and paid by the Parties as follows:

- (a) Liability for Loss or Damage shall be borne by each Party as to its own employees, property, or property in its custody. As to third party persons or property (other than those covered by Section 8.3(b) below), Loss or Damage shall be borne by the Party on whose property the Loss or Damage occurs.
- (b) Third party claims for Loss or Damage arising out of the killing or injuring of livestock or the setting of fires on or along the Subject Trackage, when caused by the Equipment or employee of one of the Parties, shall be handled or settled, and the Loss or Damage borne, by the Party whose Equipment or employee caused such Loss or Damage, but if it cannot be determined whose Equipment or employee caused such Loss or Damage, the claim will be handled or settled, and the Loss or Damage borne, on behalf of both Parties in the first instance by the Town of Corinth, and the Loss or Damage will then be borne proportionally by the Parties.

8.4 Each Party agrees that it will pay for all Loss or Damage, the risk of which it has herein assumed, the judgment of any court to the contrary notwithstanding, and will forever indemnify and save harmless the other Party, their successors and assigns, from such payment; provided, however, the indemnifying Party shall be assigned any rights which the indemnified Parties may have against any third party or parties for recovery of any indemnified amount.

8.5 In the event that both Parties hereto shall be liable under this Agreement for Loss or Damage, and the same shall be compromised and settled by voluntary payment of money or valuable consideration by one of

the Parties, the settling Party shall obtain a valid and enforceable release from liability for both Parties and the Town's Operator, if any, specifically naming Canadian Pacific Railway, Canadian Pacific Railway Limited, Delaware and Hudson Railway Company, Inc., Soo Line Corporation, the Town's Operator and their respective parents, subsidiaries and affiliated companies, and all of their officers, agents, directors, shareholders, licensee, invitees and employees. No Party shall make any such compromise or settlement in excess of five thousand dollars (\$5,000) without prior, written authority of the other Party having liability, but any settlement made by one Party in consideration of five thousand dollars (\$5,000) or less shall be a settlement releasing all liability of all Parties and shall be binding upon all Parties.

8.6 In case a lawsuit or lawsuits shall be commenced against any Party hereto for or on account of any Loss or Damage for which the other Party would be solely or jointly liable under this Agreement, the Party thus sued shall give the other Party timely written notice of the pendency of such suit, and thereupon the Party so notified shall assume or join in the defense thereof, and if the Party so notified is liable therefor under this Agreement, such Party shall save harmless the Party so sued from all Loss or Damage in accordance with the liability allocation set forth in this Agreement. Neither Party shall be bound by any judgment against the other Party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said opportunity to join in the defense of the action has been afforded, the Party so notified shall to the extent of its liability under this Agreement be bound by such judgment.

8.7 If Equipment of CPR is wrecked or derailed on the Subject Trackage, CPR shall promptly pick up and remove said Equipment, and CPR shall bear the entire cost of such service.

8.8 It is understood and agreed that a number of vehicular crossings on the Subject Trackage presently exist, or may be constructed. CPR agrees to accept all crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action against the Town of Corinth and will hold the Town harmless from any claim, demand or cause of action arising out of any crossing accident on the Subject Trackage in which the Equipment of CPR only is involved; provided, however, that nothing in this Section 7.8 shall relieve CPR or the Town of Corinth from liability arising from its gross negligence or intentionally malicious acts.

8.9 The allocations of Loss and Damage in this Section 8 and the provisions herein for indemnification are intended solely for the benefit of the Parties and their directors, officers, agents, employees, parents, subsidiaries and affiliates.

8.10 In respect to the allocation of loss, damage, and liability between CPR and any non-freight rail operator that is admitted to the Subject Trackage pursuant to an agreement or arrangement with the Town, CPR shall have the benefit and protection of the better of the terms, as determined by CPR, of this Agreement, or the provisions applicable to the Town of Corinth pursuant to the agreement or arrangement between the Town of Corinth and such third-party operator. The Town of Corinth shall include a provision similar to this section in any such non-freight rail agreement concerning the Subject Trackage.

Section 9. INSURANCE

9.1 The Town of Corinth or its Operator, at its own cost or expense, will procure and maintain in effect for any period during the term of this Agreement that it or its licensees operate passenger rail service upon the Subject Trackage, a policy or policies of insurance covering the liability to which the Town of Corinth or its Operator is or may be subject under this Agreement. Such policy shall name CPR as an additional insured which shall provide the following total insurance coverage:

9.1.1 The Town of Corinth or its Operator shall carry full and adequate insurance coverage for the operation of the Town of Corinth trains in amounts and in such form as set forth below. Without limiting the generality of the foregoing, the Town of Corinth or its Operator shall acquire and maintain at all times during the term of this Agreement, in a form and with an insurance company acceptable to CPR, comprehensive general liability insurance with limits not less than \$20 Million (US), which covers all railroad operations and includes passenger liability and extends to cover all contractual obligations assumed by the Town of Corinth or its Operator under this Agreement. All

insurance shall show CPR as additional named insured and contain a cross-liability endorsement evidencing that such insurance shall apply to CPR in the same manner and to the same extent as if a separate policy had been issued in favor of CPR.

- 9.1.2 The Town of Corinth or its Operator shall maintain **"ALL RISKS"** Property Insurance covering damage to cars to their full value during the Town of Corinth train movements, and such insurance shall contain a waiver of subrogation clause in favor of CPR.
- 9.1.3 Prior to the operation of the Town of Corinth trains, the Town of Corinth or its Operator shall submit to CPR certified evidence of the above insurance coverages, which shall indicate that thirty (30) days' prior written notice shall be given by the Insurer to CPR in the event the policy is to be materially altered or cancelled.
- 9.1.4 The Town of Corinth agrees that the amount of insurance coverage required to be acquired by it or its Operator under the provisions of this Agreement will not be construed to and shall in no manner limit or restrict the liability of the Town of Corinth or its Operator at law or pursuant to this Agreement.

9.2 If the insurance procured by the Town of Corinth or its Operator pursuant to this Section takes the form of a claims-made policy and is cancelled or allowed to expire without renewal, the Town of Corinth will provide evidence of insurance that provides per occurrence and annual aggregate limits not less than those required pursuant to Section 9.1. Such coverage must be retroactive to the original inception date of the cancelled or non-renewed policy. The Town of Corinth or its Operator further agrees promptly to give written notice to CPR of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company at:

Director, Risk Management
Canadian Pacific Railway
401 9th Ave SW
Gulf Canada Square
6th Floor SE
Calgary, Alberta, Canada T2P 4Z4

9.3 At any time not less than sixty (60) days prior to an anniversary date of this Agreement, CPR, in consideration of current and reasonably anticipated claims and litigation costs, may notify the Town of Corinth of CPR's intent to increase the amount of insurance required by this Agreement or to require that the terms and conditions of such insurance be modified. Should the Town of Corinth object to any such increase or modification, the Town of Corinth and CPR will attempt in good faith to negotiate a resolution of their disagreement. If the Town of Corinth and CPR are not able to agree and such disagreement continues for thirty (30) days past the anniversary date of this Agreement, then the matter or matters in disagreement will be submitted to arbitration pursuant to Section 10 hereof.

9.4 Each policy of insurance obtained by the Town of Corinth or its Operator pursuant to the requirement of this Section will contain provisions requiring that the insurance carrier give CPR, through CPR's Director of Risk Management, at least thirty (30) days notice in writing of any proposed policy cancellation or any modification of the terms and conditions of any policy of insurance the Town of Corinth or its Operator is required to provide under this Section.

9.5 The terms and conditions of each policy of insurance obtained by the Town of Corinth or its Operator to satisfy the requirements of this Section will be subject to the approval of CPR, which approval shall not be unreasonably withheld or delayed. As required pursuant to Section 9.2, at least thirty (30) days prior to the effective date of this Agreement pursuant to Section 8.2 hereof, the Town of Corinth or its Operator will furnish to CPR Rail's Director of Risk Management, an accurate copy of each policy of insurance obtained pursuant to the requirements of this Section. Neither compliance with this requirement nor CPR's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of the Town of Corinth or its Operator to provide the specific insurance coverage required by this Section.

9.6 If CPR fails to operate over the Subject Trackage for a period of 18 months for any reason other than the inoperability of the Subject Trackage, the provisions of paragraphs 9.1 through 9.5 shall cease to be in effect. If CPR wishes to resume service over the Subject Trackage following a cessation of service of greater than 18 months, CPR and the Town agree to renegotiate in good faith the Town's liability insurance requirements

Section 10. ARBITRATION

To the extent permitted by applicable law, any irreconcilable dispute arising between the Parties with respect to this Agreement involving amounts of Five-hundred-thousand dollars (\$500,000) or less shall be settled through binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the Parties.

Section 11. GOVERNMENT APPROVAL

11.1 CPR shall, at its own expense, initiate and prosecute any necessary applications for approval from any governmental agency having jurisdiction to approve this Agreement. The Town of Corinth, at its own expense, shall assist and support such applications and will furnish such information and execute, deliver and file such instrument or instruments in writing as may be necessary and appropriate to obtain such approval. In the event approval is denied or granted subject to conditions not acceptable to the Parties (other than any standard labor protective conditions, then this Agreement shall be void.

11.2 In the event CPR desires to abandon its common carrier freight service over the Subject Trackage, CPR shall, at its own expense, initiate and prosecute the necessary exemption or application for approval from any governmental agency having jurisdiction to approve abandonment, and the Town of Corinth, for itself and its parent, agrees not to oppose such abandonment.

Section 12. OTHER CONSIDERATIONS

12.1 This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective, permitted successors and assigns; provided, however, (a) the Town of Corinth agrees that it shall not transfer, sell or assign its interest in this Agreement to any successor who does not have insurance coverage at least as protective as required of CPR under provisions of Section 9 hereof, and (b) CPR may transfer, sell or assign the Easement or its interest in this Agreement to any successor or assign: (i) following 30 days advance written notice to the Town if such transfer sale or assignment is connected with the sale of all, or substantially all of CPR's rail operations at Saratoga Springs, New York; and (ii) in all other events with consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed.

12.2 Pursuant to the Easement, CPR has the exclusive common carrier obligation to provide freight service on and over the Subject Trackage. Subject to this common carrier obligation, nothing in this Agreement is intended to create, nor shall it be construed to create, any express or implied contractual obligation on the part of CPR to provide (or continue to provide) rail service to the Town of Corinth or other parties upon the Subject Trackage. Nothing in this agreement is intended to contractually prevent or limit, nor shall it be construed to contractually prevent or limit, the discontinuance by CPR (subject to all applicable regulatory requirements), of rail service over the Subject Trackage.

THE PARTIES hereto have caused this Agreement to be duly executed on the dates and at the places indicated, and agree that the laws of the State of New York (without regard to any conflict of laws provisions) will apply to its interpretation.

In the Presence of:

**DELAWARE AND HUDSON RAILWAY
COMPANY, INC.** *doing business as*
Canadian Pacific Railway

Witness

By _____

Its _____

Date _____

In the Presence of:

TOWN OF CORINTH

Witness

By _____

Its _____

Date _____