

PUBLIC VERSION

Before The
Surface Transportation Board

Finance Docket No 35147



NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS INC, *ET AL.*
—JOINT CONTROL AND OPERATING/ POOLING AGREEMENTS—
PAN AM SOUTHERN LLC

**APPLICATION FOR APPROVAL OF JOINT CONTROL OF
PAN AM SOUTHERN LLC AND OPERATING/POOLING AGREEMENTS**

VOLUME II

AGREEMENTS

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Company*

Dated May 30, 2008

VOLUME II OF APPLICATION NS/PA-1 (Green)

AGREEMENTS

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TRANSACTION AGREEMENT

BY AND AMONG

**NORFOLK SOUTHERN RAILWAY COMPANY,
PAN AM RAILWAYS, INC.,
BOSTON AND MAINE CORPORATION, AND
SPRINGFIELD TERMINAL RAILWAY COMPANY**

DATED AS OF

MAY 15, 2008

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TRANSACTION AGREEMENT

THIS TRANSACTION AGREEMENT (this "Agreement") is made and entered into as of May 15, 2008, by and among Norfolk Southern Railway Company, a Virginia corporation ("NSR"), Pan Am Railways, Inc., on behalf of itself and its Subsidiaries ("Pan Am"), Boston and Maine Corporation ("B&M"), and Springfield Terminal Railway Company ("Springfield Terminal"). Each of NSR, Pan Am, B&M, and Springfield Terminal shall hereinafter be referred to as a "Party" or collectively as the "Parties." Pan Am, B&M, and Springfield Terminal shall hereinafter collectively be referred to as the "Pan Am System Parties."

RECITALS

WHEREAS, B&M or one or more of the other Pan Am System Parties or their Subsidiaries, including the Vermont & Massachusetts Railway, a wholly-owned Subsidiary of B&M, currently owns or operates certain railroad lines in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the "Line") and certain other related assets (together with the Line, the "Assets"), in each case more particularly described in Schedule 1.1(a), and generally depicted in Appendix A, and

WHEREAS, pursuant to a 1976 deed, B&M conveyed certain lines and other real property to the Massachusetts Bay Transportation Authority ("MBTA"), with B&M reserving an exclusive freight easement for the operation of those lines, and which exclusive freight easement (the "MBTA Operating Rights") has been leased to Springfield Terminal, and

WHEREAS, MBTA operates passenger train service over a portion of the Line, and

WHEREAS, MBTA owns a line of railroad between Milepost 313.77±, CPF WL, near Ayer, MA and Milepost 329.55±, near Fitchburg, MA near Ayer, MA and Milepost 329.55±, near Fitchburg, MA (the "MBTA Segment") which constitutes a portion of the operating rights included in the Line, and

WHEREAS, MBTA and one or more of the Pan Am System Parties are parties to certain agreements that govern the rights and obligations of such parties relating to the provision of passenger service, including passenger service on the Line, and

WHEREAS, the National Railroad Passenger Corporation ("Amtrak") and Connecticut Department of Transportation ("ConnDOT") and/or Metropolitan Transportation Authority of New York ("Metro North") own lines in Connecticut and Massachusetts between New Haven, CT and Springfield, MA (Amtrak) and between Derby and Waterbury, CT (ConnDOT and/or Metro North) which constitute portions of the operating rights included in the Line, and

WHEREAS, CSX Transportation, Inc. ("CSXT") owns and/or operates a line in Connecticut between Cedar Hill and North Haven which constitutes a portion of the operating rights included in the Line, and

WHEREAS, NSR and the Pan Am System Parties desire to form a joint venture which will own and operate the Assets, and

WHEREAS, the Parties intend to seek STB Approval (as hereinafter defined) of the joint venture, and

WHEREAS, the Parties have entered into an agreement (the "Option Agreement") dated as of May 1, 2008, pursuant to which NSR has paid to B&M Five Million Dollars (\$5,000,000) in the aggregate for an option to purchase (i) a twenty-six and three hundred sixteen thousandth percent (26 316%) undivided interest in the Assets for a purchase price of Fifty Million Dollars (\$50,000,000), and (ii) a one-hundred percent (100%) interest in certain to-be-constructed assets described in Section 1.4 of the Option Agreement (the "To-Be-Constructed Assets") for a purchase price of Two Million Five Hundred Thousand Dollars (\$2,500,000), and

WHEREAS, by October 1, 2008, and pursuant to the Option Agreement, B&M is required to expend Two Million Five Hundred Thousand Dollars (\$2,500,000) to acquire rail, tie, and ballast and to use that material for improvements to the Line to remove the long-term slow orders between Milepost CPF 345 and CPF 346 (#1 Track and #2 Track) and between CPF 354 and CPF 363 (#1 Track and #2 Track) between Mechanicville and Ayer as more fully described in Appendix B attached to the Option Agreement, and

WHEREAS, at the Closing (as hereinafter defined) and on the terms and subject to the conditions contained herein, the Parties intend for B&M and the other Pan Am System Parties to sell in part, and contribute in part, the Assets to, and for the Parties to perform all necessary steps (including but not limited to executing the Company Agreement, as hereinafter defined, and the related Certificate of Formation, and filing the Certificate of Formation with the Secretary of State of the State of Delaware) to form, a Delaware limited liability company (the "Company"), to be governed by an LLC operating agreement (the "Company Agreement") substantially in the form attached hereto as Appendix B, which, among other things, sets forth the rights and obligations of B&M and NSR as members of the Company, and

WHEREAS, in connection with the transactions contemplated by this Agreement, at the Closing, the Parties will enter into, or will cause the Company to enter into, as applicable (i) the Company Agreement, (ii) a Master Norfolk Southern Joint Use Agreement substantially in the form attached hereto as Appendix C (the "NSR Joint Use Agreement") pursuant to which the Company shall provide to NSR haulage over the Line for traffic moving between NSR, on the one hand, and certain properties located on the Line and certain other railroad carriers connecting with the Line, on the other hand, and which further provides to NSR limited trackage rights, (iii) an assignment and assumption agreement to be developed and attached hereto in the future as Appendix D

("Assignment and Assumption Agreement Regarding Passenger Rail Operations") generally providing for the partial assignment of the Agreements between the relevant Pan Am System Parties and MBTA, (iv) an assignment and assumption agreement substantially in the form attached hereto as Appendix E (the "Miscellaneous Assignment and Assumption Agreement") generally providing for the assignment to the Company of certain rights and obligations of the Pan Am System Parties with respect to the Line, (v) a bill of sale to be developed and attached hereto in the future as Appendix F (the "Bill of Sale") generally providing for the contribution to the Company by the Pan Am System Parties of all personal property included in the Assets, (vi) a commercial agreement substantially in the form attached hereto as Appendix G (the "Transportation Agreement Assignment and Divisions Allocation Agreement") generally providing for the assignment of Existing Transportation Agreements, as hereinafter defined, and setting forth the respective divisions for transportation services to be provided by the Company under certain existing and future contract and tariff movements that will become interline movements upon Closing, as hereinafter defined, (vii) an agreement governing the provision of certain switching services to be provided by the Company to Springfield Terminal, substantially in the form attached hereto as Appendix H (the "Ayer Switching Agreement"), (viii) a joint agreement governing the provision of certain trackage and haulage rights granted by the Company to Springfield Terminal, substantially in the form attached hereto as Appendix I (the "Springfield Terminal Joint Use Agreement"), (ix) an agreement providing for the Company to retain Springfield Terminal and NSR to oversee the certain bidding and hiring processes, substantially in the form attached hereto as Appendix J (the "Capital Projects and Facility Management Agreement"), (x) an agreement concerning the provision of certain specified railroad operating and administrative services by Springfield Terminal to the Company substantially in the form attached hereto as Appendix K (the "Railroad Operating Agreement" and, collectively with the Option Agreement and the other agreements identified in this Recital under (i) through (ix), the "Ancillary Agreements")

NOW, THEREFORE, with reference to the foregoing facts and in consideration of the mutual agreements and understandings set forth herein, the Parties hereto, intending to be legally bound, hereby agree as follows

1. Definitions.

1.1 **Certain Definitions** All terms defined in this Agreement shall have the defined meanings when used in this Agreement, unless otherwise defined or the context otherwise requires. The following terms shall have the following meanings

"Action" means any litigation, action, suit, proceeding, investigation, arbitration, claim or other dispute by or before any court or other Governmental Authority, or any other alternative dispute resolution proceedings, such as arbitration or mediation

"Affiliate" shall mean, with respect to any specified Person, (i) any other Person who, directly or indirectly, controls, is under common control with, or is controlled by, such specified Person, (ii) any other Person who is a director, officer,

manager, member, partner or trustee of the specified Person or a Person described in clause (i) of this definition or any spouse of the specified Person or any such other Person or (iii) any Person of which the specified Person and/or any one or more of the Persons specified in clause (i) or (ii) of this definition, individually or in the aggregate, beneficially own 10% or more of any class of voting securities

"Agreement" shall have the meaning given to that term in the introductory paragraph

"Amtrak" shall have the meaning given to that term in the Recitals

"Ancillary Agreements" shall have the meaning given to that term in the Recitals

"Assets" shall have the meaning given to that term in the Recitals

"Assignment and Assumption Agreement Regarding Passenger Rail Operations" shall have the meaning given to that term in the Recitals

"Assumed Liabilities" shall have the meaning given to that term in Section 2.4

"Automotive Traffic" means finished automobiles, sport utility vehicles, vans (including minivans), trucks and any other vehicles

"Ayer Automotive Facility" shall mean that facility for the transfer of Automotive Traffic generally located at approximately MP 314 in Ayer, MA

"Ayer Intermodal Facility" shall mean that facility for the transfer of Intermodal Traffic generally located in Ayer (Devens), MA, but excluding the warehouse complex owned by Pan Am

"Ayer Switching Agreement" shall have the meaning given to that term in the Recitals

"B&M" shall have the meaning given to that term in the introductory paragraph

"Bill of Sale" shall have the meaning given to that term in the Recitals

"Business Day" shall mean any day other than a Saturday or Sunday or any day banks in the State of New York are authorized or required to be closed

"Canadian Pacific" shall mean Canadian Pacific Railway Company or Delaware and Hudson Railway Company, Inc. as its subsidiary, as the context may require

"Capital Projects and Facility Management Agreement" shall have the meaning given to that term in the Recitals

"Charter Documents" shall mean the certificate of incorporation or articles of incorporation and the by-laws, with respect to a corporation, the partnership agreement, with respect to a general partnership, or the certificate of formation and operating or company agreement, with respect to a limited liability company

"Cleanup" shall mean all actions, including investigations, required by Law to (1) cleanup, remove, treat or remediate Hazardous Materials in the environment, (2) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or welfare or the environment, (3) perform pre-remedial studies and investigations and post-remedial monitoring and care, or (4) respond to any government requests for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Hazardous Materials in the environment

"Closing" shall mean the closing for the joint venture, which shall involve, among other things, the capital contribution by NSR to the Company described in Section 2.2(a) of this Agreement and the capital contribution by the Pan Am System Parties to the Company described in Section 2.3(a) of this Agreement

"Closing Date" shall have the meaning given to that term in Section 6

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time

"Company" shall have the meaning given to that term in the Recitals

"Company Agreement" shall have the meaning given to that term in the Recitals

"Company Indemnified Parties" shall have the meaning given to that term in Section 14.2(a)

"ConnDOT" shall have the meaning given to that term in the Recitals

"Confidentiality Agreement" shall have the meaning given to that term in Section 12.2(a)

"Contract" shall mean any note, bond, debenture, mortgage, license, agreement, commitment, contract, obligation, promise or understanding

"CSXT" shall have the meaning given to that term in the Recitals

"Damages" shall have the meaning given to that term in Section 14.2(a)

"Delaware Courts" shall have the meaning given to that term in Section 16 3(a)(1)

"Dispute" shall have the meaning given to that term in Section 16 1

"Environmental Claim" means any fine, claim, action, lien, cause of action, investigation or notice by any Person alleging potential liability (including potential liability for Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, manufacture, processing, distribution, use, treatment, storage, Release or threatened Release, disposal, transport or handling, of any Hazardous Materials, or (b) circumstances forming the basis of any violation of any Environmental Law

"Environmental Laws" means all Laws relating to pollution or protection of human health or the environment, including all Laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, disposal, transport or handling of Hazardous Materials, all Laws relating to record keeping, notification, disclosure and reporting requirements respecting Hazardous Materials and all Laws relating to endangered or threatened species of fish, wildlife and plants and natural resources

"Environmental Reports" shall have the meaning given to that term in Section 10 6(d)

"Excluded Assets" shall have the meaning given to that term in Section 10 3(a)

"Execution Date" shall mean the date that the last Party executes this Agreement

"Existing Transportation Agreement" shall have the meaning given to that term in Section 8

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB

"Hazardous Materials" shall mean asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, and any and all other materials or substances deemed hazardous or toxic or regulated by applicable Laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U S C §§ 6901 et seq (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U S C §§ 2601 et seq

"Indebtedness" means, with respect to any Person, (i) any liability, contingent or otherwise, (a) for borrowed money, capitalized lease obligations, purchase money obligations or other obligations relating to the deferred purchase price of assets or property or (b) evidenced by a note, bond, debenture, letter of credit or similar instrument given in connection with the acquisition, other than in the ordinary course of business consistent with past practice, of any property, assets, securities or otherwise, including indebtedness created or arising under conditional sale or other title retention agreements (even though the rights and remedies of the seller or lender under the agreements in the event of default are limited to repossession or sale of the property), (ii) any liability of others described in the preceding clause (i) which such Person has guaranteed or which otherwise is its legal liability, (iii) all indebtedness referred to above secured by (or for which the holder of the indebtedness has an existing right, contingent or otherwise, to be secured by), any Lien upon the property of such Person, whether or not the obligations secured thereby have been assumed, and (iv) any amendment, renewal, extension or refunding of any liability referred to in clauses (i), (ii) and (iii) above, provided, however, that Indebtedness does not include any trade payables of any Person incurred in the ordinary course of business consistent with past practice. The amount of Indebtedness of any Person at any date shall be the outstanding balance at the date of all unconditional obligations as described above and the maximum amount of any contingent obligations at the date

"Indemnified Party" shall have the meaning given to that term in Section 14.4

"Indemnifying Party" shall have the meaning given to that term in Section 14.4

"Intermodal Traffic" generally shall refer to the movement of railcars for the transportation of containers and trailers

"Knowledge" with respect to Pan Am shall mean the actual knowledge, after due inquiry into the matter in question, of Pan Am officials with managerial responsibility over the subject matter in question, and, with respect to NSR, shall mean the actual knowledge, after due inquiry into the matter in question, of NSR officials with managerial responsibility over the subject matter in question

"Law" shall mean any U.S. federal, state or local or foreign statute, law, rule, regulation, ordinance, order, code, policy or rule of common law, now or hereafter in effect and, in each case, as amended, any binding judicial or administrative interpretation thereof by a Governmental Authority or otherwise, including any judicial or administrative order, consent, decree or judgment

"Lease" and **"Leases"** shall have the meaning given to those terms in Section 10.4(b)(v)

"Leased Personal Property" shall mean all personal property leased by any of the Pan Am System Parties that is included in the Assets

"Leased Property" and **"Leased Properties"** shall have the meaning given to those terms in Section 10 9(b)

"Lien" shall mean any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, purchase option, right of first offer, right of first refusal, priority or other security agreement (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable Law of any jurisdiction to evidence any of the foregoing)

"Line" shall have the meaning given to that term in the Recitals

"Material Adverse Effect" shall mean, with respect to any Party, any change, circumstance, event or effect which, individually or when considered in conjunction with other changes, circumstances or effects, has had or would reasonably be likely to have a material adverse effect on (a) with respect to a Material Adverse Effect on Pan Am and its Subsidiaries, the Assets, taken as a whole, or the financial condition or results of operations of the business of the Company to be conducted with the Assets after the Closing, taken as a whole, or (b) with respect to a Material Adverse Effect on any Party, the ability of such Party to consummate the transactions contemplated by this Agreement or the Ancillary Agreements or to perform its obligations hereunder or thereunder, provided, that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect (x) any adverse change, event, development, or effect arising from or relating to (1) general business or economic conditions, including changes in energy prices or availability, except to the extent that such conditions disproportionately affect such Party's business relative to the effect of such factors on other Persons operating in such party's industry, (2) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, except to the extent that such conditions disproportionately affect such Party's business relative to the effect of such factors on other Persons operating in such party's industry, (3) financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (4) changes in United States generally accepted accounting principles, (5) changes in Law or (6) the taking of any action contemplated by this Agreement and the other agreements contemplated hereby, (y) any of the events, occurrences, or circumstances set forth in Schedule 1 1(b) and (z) any change, occurrence, event or effect, which shall have been cured without a Material Adverse Effect (excluding this clause (z)), on the Assets, before the earlier of the Closing Date or the date on which this Agreement is terminated pursuant to Section 14

"Material Contracts" shall have the meaning given to that term in Section 10 4(b)

"MBTA" shall have the meaning given to that term in the Recitals

"MBTA Operating Rights" shall have the meaning given to that term in the Recitals

"MBTA Segment" shall have the meaning given to that term in the Recitals

"Mechanicville Improvements" shall have the meaning given to that term in Schedule 2 2(a)

"Mechanicville Intermodal and Automotive Facility" shall mean that intermodal and automotive facility anticipated to be constructed in Mechanicville, NY on property now owned, or under option by, one or more of the Pan Am System Parties or a subsidiary thereof

"Metro North" shall have the meaning given to that term in the Recitals

"Miscellaneous Assignment and Assumption Agreement" shall have the meaning given to that term in the Recitals

"Notices" shall have the meaning given to that term in Section 17 1

"NSR" shall have the meaning given to that term in the introductory paragraph

"NSR Contribution" shall have the meaning given to that term in Section 2 2(a)

"NSR Indemnified Parties" shall have the meaning given to that term in Section 14 2(a)

"NSR Joint Use Agreement" shall have the meaning given to that term in the Recitals

"Option Agreement" shall have the meaning given to that term in the Recitals

"Owned Property" and **"Owned Properties"** shall have the meaning given to those terms in Section 10 9(a)

"Pan Am" shall have the meaning given to that term in the introductory paragraph

"Pan Am Change in Control" shall mean (1) the establishment of a voting trust as described in 49 C.F.R. Part 1013 – Guidelines for the Proper Use of Voting Trusts, or any subsequent regulation, with regard to the acquisition of a controlling block of voting securities of the Pan Am Member or any entity having direct

or indirect control over the Pan Am Member, including but not limited to the Pan Am Parent, (2) the submission to the SIB of any application, petition for exemption, or notice of exemption seeking approval, or exemption from approval, to effect a change in control of the Pan Am Member or any entity having direct or indirect control over the Pan Am Member, (3) any merger or consolidation of the Pan Am Parent with or into any Person, (4) the acquisition by any Person of all or substantially all of the assets of the Pan Am Parent, or (5) not taking into account Pan Am's membership interest in the Company, the sale, transfer or other distribution of all or substantially all of the assets of Pan Am

"Pan Am Contribution" shall have the meaning given to that term in Section 2 3(a)

"Pan Am Disclosure Schedule" shall have the meaning given to that term in Section 10

"Pan Am Indemnified Parties" shall have the meaning given to that term in Section 14 3(a)

"Pan Am Member" shall mean B&M or any permitted transferee of its membership interest in the Company under the Company Agreement

"Pan Am Parent" shall mean Pan Am Systems, Inc , a Florida corporation, and the ultimate parent of the Pan Am System Parties

"Pan Am System Parties" shall have the meaning given to that term in the introductory paragraph

"Parent" as to NSR shall mean Norfolk Southern Corporation

"Party" and **"Parties"** shall have the meaning given to those terms in the introductory paragraph

"Permits" shall have the meaning given to that term in Section 10 11(b)

"Permitted Liens" shall mean collectively, (i) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been made, (ii) such imperfections of title, easements and other similar encumbrances, if any, as do not, individually or in the aggregate, interfere in any material respect with the use of any Owned Property as such Owned Property is used on the date of this Agreement, (iii) mechanics', materialmen's, workmen's, repairmen's, warehousemen's, carrier's and other similar Liens arising in the ordinary course of business consistent with past practice, all of which shall be released at or prior to the Closing, or (iv) those Liens set forth on Schedule 1 1(c) hereto

"Person" shall mean an individual or a partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity

"Properties" shall have the meaning given to that term in Section 10 9(b)

"Railroad Operating Agreement" shall have the meaning given to that term in the Recitals

"Release" means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, or leaching into the environment (including ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property of any Hazardous Material, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property

"Remaining Springfield Terminal" shall mean those lines owned or operated by Springfield Terminal on the day after the Closing

"Required Governmental Consents" shall have the meaning given to that term in Section 12.3

"Rules" shall have the meaning given to that term in Section 16.3(b)

"Sanvel Automotive Facility" shall mean that facility anticipated to be constructed for the transfer of Automotive Traffic to be located east of Willows Road in Ayer, MA as generally identified as Sanvel on the Ayer Switching Agreement schematic

"Special Use Facilities" shall have the meaning given to that term in Section 9.2

"Springfield Terminal" shall have the meaning given to that term in the introductory paragraph

"Springfield Terminal Haulage Rights Agreement" shall mean an agreement governing the provision of certain haulage rights granted by the Company to Springfield Terminal, substantially in the form of Appendix I., which such agreement shall be executed and delivered in the stead of the Springfield Terminal Joint Use Agreement if the consent to use the MBTA Section for purposes of the Springfield Terminal Joint Use Agreement is not procured

"Springfield Terminal Joint Use Agreement" shall have the meaning given to that term in the Recitals

"Springfield Terminal Transportation Contract" shall mean a Transportation Agreement to which one of the Pan Am System Parties is a party involving the purchase of railroad transportation services over the Line

"STB" shall mean the Surface Transportation Board or any successor entity thereto

"STB Approval" shall mean the grant of the approval of the STB, or the grant of an exemption from the need to obtain such approval, in each case received in response to submissions of the Parties requesting the same

"Subsidiary" of any Person shall mean any entity of which such Person owns, directly or indirectly, securities or other ownership interests having the power to elect a majority of the board of directors or other persons performing similar functions, or otherwise having the power to direct, manage or control the conduct of business of such entity and, when used with respect to Pan Am, shall include without limitation B&M and Springfield Terminal

"Tax Return" shall mean any report, return, document, declaration or other information or filing (including any amendment thereto) with respect to Taxes required by Law to be supplied to any Governmental Authority (foreign or domestic) or to be collected or maintained, including information returns, any documents accompanying payments of estimated Taxes, or requests for the extension of time in which to file any such report, return, document, declaration or other information or filing

"Tax" or **"Taxes"** shall mean all federal, state, local, foreign and other taxes, customs, duties, fees, levies, assessments or charges of any kind whatsoever, including all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, estimated, severance, stamp, occupation, real or personal property, business, documentary, registration, filing, recordation, unemployment, worker's compensation, commercial rent, premium, windfall profits, deemed profits, lease, capital, production, corporation, value added, bulk sale or other taxes, customs, duties, fees, levies, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority (domestic or foreign) regardless of whether disputed or whether related to the filing of a Tax Return (or the failure to file a Tax Return)

"Third Party Claim" shall have the meaning given to that term in Section 14 5(a)

"Third Party Lease" and **"Third Party Leases"** shall have the meaning given to those terms in Section 10 4(b)(vi)

"Title Company" shall have the meaning given to that term in Section 12 4(b)

"Transfer" shall mean sell, assign, transfer, pledge, grant a security interest in, or otherwise dispose of, with or without consideration, and **"Transferred"** shall have a correlative meaning

"Transportation Agreement" shall mean a Contract between rail carrier(s) and a Person or Persons relating to the purchase of transportation services as specified in 49 U S C Section 10102(9)(A) and (B), provided that, if a Transportation Agreement covers service between more than one pair of points, the provisions governing service between each pair of points shall be treated as a distinct Transportation Agreement

“Transportation Agreement Assignment and Divisions Allocation Agreement” shall have the meaning given to that term in the Recitals

1 2 Construction of Certain Terms and Phrases

Unless the context otherwise requires, (a) words of any gender include each other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement, (d) the terms “Article” or “Section” refers to the specified Article or Section of this Agreement, (e) the terms “and” and “or” include the term “and/or” when the context is appropriate, (f) the terms “include” or “including” also include the words “without limitation” when the context is appropriate, and (g) the phrases “ordinary course of business” and “ordinary course of business consistent with past practice” refer to the business and practice of the Person specified or, in the case of the operation of the Line, the business and practice of Pan Am and its Subsidiaries with respect to the Assets. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. Unless the context otherwise requires, whenever this Agreement refers to an Appendix, Exhibit or Schedule, it is a reference to an Appendix, Exhibit or Schedule attached hereto, and the referenced Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference.

2. Option, Improvements and Capital Contribution

2 1 Execution of the Company Agreement

On the Closing Date, which shall in all cases be a date subsequent to the effective date of the decision granting STB Approval, B&M and NSR shall (a) execute the Company Agreement, and (b) complete and execute and submit all other forms reasonable and necessary or desirable, and perform all other tasks reasonable and necessary or desirable, to have the Company (i) exist in good standing to do business in the States of New York, Vermont, Connecticut, Massachusetts, and New Hampshire and (ii) governed by the Company Agreement.

2 2 Capital Contribution for NSR Interest

(a) At the Closing, NSR and B&M shall cause the Company to issue to NSR, in exchange for an assignment of the Option Agreement and cash and commitments to contribute cash in the amounts and on the dates set forth in Schedule 2 2(a) (the “NSR Contribution”), the NS Member’s Membership Interests (as defined and otherwise described in the form of Company Agreement attached). The commitments to contribute cash shall be reflected by one or more demand notes that permit prepayment with no penalty.

(b) The Parties acknowledge that NSR's initial capital account in the Company immediately after the Closing shall be the amount reflected in Exhibit 2.2 of the form of Company Agreement attached

2.3 Capital Contribution for Pan Am Interest

(a) At the Closing, NSR and B&M shall cause the Company to issue to B&M, in exchange for contribution by it of the remaining undivided interest in the Assets (other than the To-Be-Constructed Assets, as defined in the Option Agreement) that is not subject to the Option Agreement, (the "Pan Am Contribution"), the Pan Am Member's Membership Interests (as defined and otherwise described in the form of Company Agreement attached). The Pan Am System Parties shall cause the Assets to reside in B&M before its contribution in part to the Company, and its sale in part to the Company under the Option Agreement, of the Assets free and clear of all Liens other than Permitted Liens and judgment liens of record with respect to which Pan Am shall execute and deliver an indemnification agreement in the form of the attached Appendix M. The Parties acknowledge that, at Closing, Springfield Terminal will have an inventory of track material physically on the property to be contributed. It is the intention that this track material will remain the property of Springfield Terminal. Such track material shall be collected and removed by Springfield Terminal from the Company's property after Closing. Any such track material remaining on the Company's property ninety (90) days after the Closing shall become the property of the Company.

(b) The Parties acknowledge that the Pan Am Member's initial capital account in the Company will be as reflected in Exhibit 2.2 of the form of Company Agreement attached

2.4 Transfer of Liabilities

Subject to the terms and conditions of this Agreement, at the Closing, NSR and Pan Am shall cause the Company to assume the liabilities and obligations of the Pan Am System Parties relating to the operation of the Assets set forth on Schedule 2.4 hereto (the "Assumed Liabilities"). Except as and to the extent otherwise expressly provided in this Agreement, the Company does not agree to pay, shall not be required to assume and shall not have any obligation in respect of, any liability or obligation, direct or indirect, absolute or contingent, of Pan Am, NSR or any other Person, the assumption of which by the Company is not expressly provided for in this Agreement, including but not limited to any Environmental Claims arising out of conditions existing prior to Closing.

2.5 Use of Proceeds

NSR and Pan Am shall cause the Company to use \$87,500,000 of the proceeds from the NSR Contribution plus any interest earned thereon from time to time for the capital expenditures anticipated to be made over a three (3) year period commencing on the Closing Date in accordance with Schedule 2.5.

3. Asset Purchase and Sale.

At the Closing, NSR and Pan Am shall cause the Company to exercise the NSR-contributed Option Agreement and purchase from B&M a twenty-six and three hundred sixteen thousandth percent (26 3/16%) undivided interest in the Assets other than the To-Be-Constructed Assets, as defined in the Option Agreement, and a one-hundred percent (100%) interest in the To-Be-Constructed Assets, in exchange for Forty-seven Million Five Hundred Thousand Dollars (\$47,500,000) (being the net of the purchase price of Fifty-two Million, Five Hundred Thousand Dollars (\$52,500,000) taking into consideration the Five Million Dollars (\$5,000,000) credit of the option purchase price) B&M shall sell the Option Property, as defined in the Option Agreement, to the Company free and clear of all Liens other than Permitted Liens and judgment liens of record with respect to which Pan Am shall execute and deliver an indemnification agreement in the form of the attached Appendix M

4. Freight Rail Operations over the MBTA Segment and other Passenger Corridors.

Prior to the Closing, each of the Pan Am System Parties shall use its commercially reasonable efforts to obtain the consent of MBTA, pursuant to the Assignment and Assumption Agreement Regarding Passenger Rail Operations or its general equivalent, to an assignment of the MBTA Operating Rights to the Company, together with the consent of MBTA for the use of the MBTA Segment as contemplated in the Springfield Terminal Joint Use Agreement and the NSR Joint Use Agreement. Prior to Closing, each of the Pan Am System Parties shall use its commercially reasonable efforts to obtain the consent of Amtrak, ConnDOT and Metro North to an assignment of the Pan Am System Parties' operating rights over sections of the Line owned by those passenger entities. The Parties shall seek the authority, or exemption from the need to obtain such authority, of the STB permitting said assignments, should such consent be obtained and should STB authority be required for said assignments.

5. Passenger Rail over the Line.

The Parties acknowledge and agree that the potential exists for additional passenger service on the Line, including the potential for an expansion, or increased frequency, of service between Boston and the surrounding areas. While other entities, including Amtrak, Metro North, ConnDOT and MBTA, state government and the federal government, are responsible for funding infrastructure and operating costs related to the introduction and operation of additional passenger trains and service, the Parties acknowledge their respective obligations to work with Amtrak, Metro North, ConnDOT and MBTA and other governmental entities to evaluate in good faith proposals for government-funded passenger service, and to cooperatively implement such funded proposals to the extent they do not interfere with the growth and development of freight service.

6. The Closing.

The Closing shall take place at the offices of Zuckert, Scoutt & Rasenberger, LLC (7th Floor, 888 17th Street, N W , Washington, D C) at 10 00 A M , local time on a date to be agreed to by the Parties, which shall be no later than three Business Days following the date on which all of the conditions set forth in Article 13 shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), or at such other time and place as the Parties mutually agree upon in writing. The date of the Closing is referred to in this Agreement as the "Closing Date."

7. Deliveries at the Closing.

7.1 Deliveries at the Closing

At the Closing

(a) NSR shall deliver (i) to the Company, the NSR Contribution, (ii) to each of the parties to each of the respective Ancillary Agreements, a duly executed counterpart original of each Ancillary Agreement, including but not limited to the Company Agreement, to which NSR is a party, and (iii) to Pan Am, such other documents and instruments as Pan Am may reasonably request to evidence the satisfaction of all conditions precedent set forth in Articles 13.1 and 13.3 of this Agreement or which are required to be delivered by NSR at or prior to the Closing Date pursuant to this Agreement.

(b) Each of the Pan Am System Parties shall deliver (i) to each of the parties to each of the respective Ancillary Agreements, a duly executed counterpart original of each of the Ancillary Agreements, including but not limited to the Company Agreement, to which such Pan Am System Party is a party, (ii) to the Company, quitclaim deeds with respect to each of the Owned Properties, (iii) to the Company, the consents to the assignment provided for in Section 4 of this Agreement, if any, (iv) to the Company, all such other deeds, endorsements, assignments and other instruments as are necessary to transfer to the Company the interests of each and every one of the Pan Am System Parties in the Assets in accordance with the terms hereof, and (v) to NSR, such documents and instruments as NSR may reasonably request to evidence the satisfaction of all conditions precedent set forth in Articles 13.1 and 13.2 of this Agreement or which are required to be delivered by Pan Am at or prior to the Closing Date pursuant to this Agreement. Notwithstanding anything to the contrary in this Section 7.1(b), if consent to use the MBTA Section for the purposes of the Springfield Terminal Joint Use Agreement is not procured, then the Springfield Terminal Haulage Rights Agreement shall be executed and delivered in the stead of the Springfield Terminal Joint Use Agreement.

(c) NSR and Pan Am shall cause the Company to deliver to each of NSR and the Pan Am System Parties duly executed counterpart originals of each Ancillary Agreement to which both the Company and the other Party are parties. Notwithstanding anything to the contrary in this Section 7.1(b), if consent to use the MBTA Section for the purposes of the Springfield Terminal Joint Use Agreement is not

procured, then the Springfield Terminal Haulage Rights Agreement shall be executed and delivered in the stead of the Springfield Terminal Joint Use Agreement

(d) Each of the Pan Am System Parties shall deliver to the Company a copy of each and every Existing Transportation Agreement

7.2 Further Assurances

At and following the Closing, each Party to this Agreement shall deliver or cause to be delivered, as appropriate, such further certificates, consents and other documents as may be necessary to carry out the terms of this Agreement

8. Allocation of Pan Am Transportation Agreements.

Each Pan Am Transportation Agreement in effect as of the Closing Date ("Existing Transportation Agreement") shall remain in effect through its stated term and the rights and obligations thereunder shall, from and after Closing, belong to, and be carried out by, the Company and Pan Am, each to the extent said Existing Transportation Agreement involves rail transportation over its respective rail lines, all pursuant to the Transportation Agreement Assignment and Divisions Allocation Agreement. Revenues accruing from and after Closing under each such Existing Transportation Agreement shall be allocated in accordance with the Transportation Agreement Assignment and Divisions Allocation Agreement

9. Destination Facilities

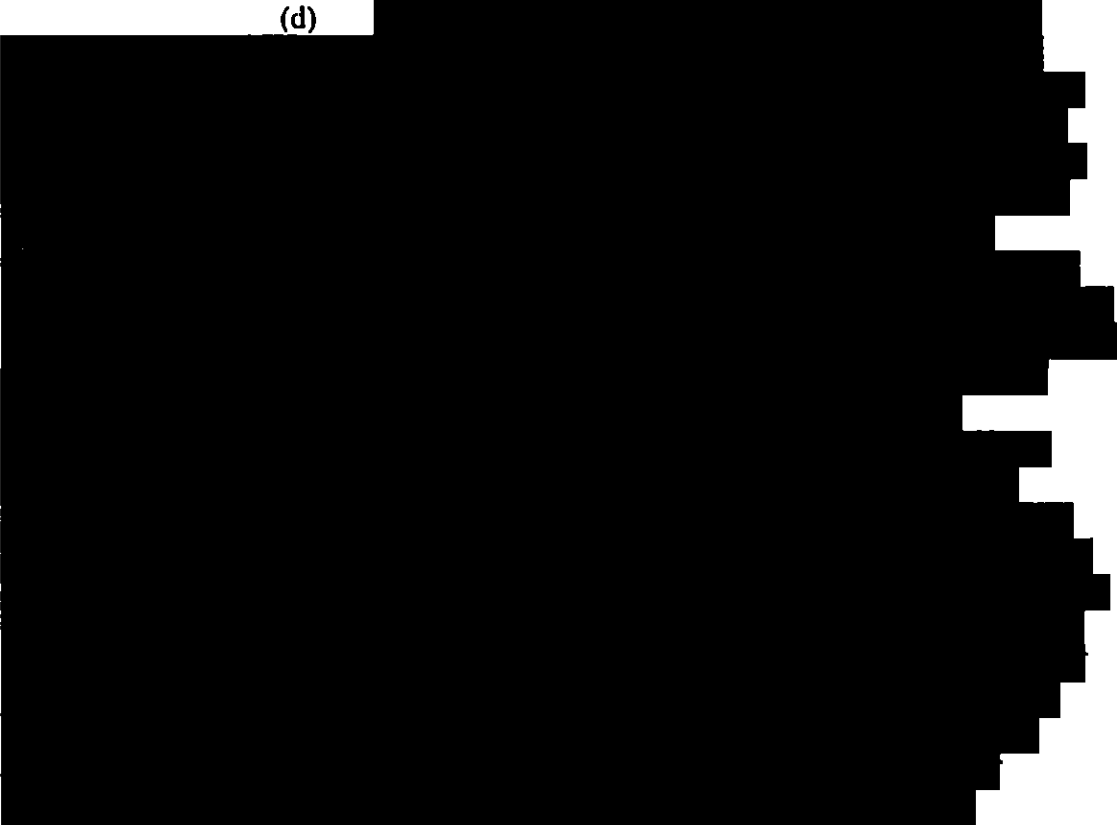
9.1 Mechanicville Intermodal and Automotive Facility

(a) The Parties acknowledge and agree that the construction and operation of the Mechanicville Intermodal and Automotive Facility are material to the proposed transactions described herein, and agree to perform, and to cause their respective subsidiaries, at and following the Closing, to perform those actions as are reasonably necessary in order to effectuate the construction and entering into operation said Facility, all in accordance with the terms and conditions of the Capital Projects and Facility Management Agreement as it appears as an appendix hereto

(b) Following construction, and subject to Section 9.2, the Parties agree that the Mechanicville Intermodal and Automotive Facility will be a facility for the interchange and yard work (including the loading and unloading) of loaded and empty Intermodal Traffic and Automotive Traffic (i) between Canadian Pacific and the Company, (ii) between NSR and the Company, (iii) if and when NSR initiates trackage rights operations pursuant to the NSR Joint Use Agreement, between Canadian Pacific (or NSR trackage rights operations over the same) and NSR Joint Use Agreement trackage rights operations, and (iv) between Canadian Pacific and Springfield Terminal. Canadian Pacific shall not be charged for access to the Mechanicville Intermodal and Automotive Facility for the purpose of delivering or pulling NSR Intermodal Traffic or Automotive Traffic

(c) Except as may be required by Section 9(g)(11)(A) of the Railroad Operating Agreement, as it appears as an Appendix hereto, the Mechanicville Intermodal and Automotive Facility will be operated by a terminal operator(s) selected in accordance with the terms and conditions of the Capital Projects and Facility Management Agreement as it appears as an appendix hereto, which terminal operator shall provide all services, including mechanical, switching, unloading, data entry, tracking, security, and such other services as may be reasonable and necessary to efficiently and effectively carry out the purposes of the facility. The rules and terms of the then-current NSR Intermodal Rules Circular and the NSR Conditions of Carriage, in each case as amended from time to time, shall apply to services provided at the facility.

(d)



9.2 Special Use Facilities

In recognition of the limited capacity of the Mechanicville Intermodal and Automotive Facility, the Ayer Intermodal Facility, the Ayer Automotive Facility, and the Sanvel Automotive Facility (collectively, the "Special Use Facilities"), the Company shall dedicate all capacity at the Special Use Facilities as follows: (i) the Ayer Intermodal Facility shall be dedicated to NSR for Intermodal Traffic having a prior or subsequent move over Mechanicville, and to Springfield Terminal for Intermodal Traffic having a prior or subsequent move over the remaining Springfield Terminal System east of CPF 312, (ii) the Mechanicville Intermodal and Automotive Facility shall be dedicated to Springfield Terminal for traffic having a prior or subsequent move over the lines of Remaining Springfield Terminal east of CPF 312, and to NSR for all other

Intermodal Traffic and Automotive Traffic, (iii) the Sanvel Automotive Facility shall be dedicated to NSR for Automotive Traffic, and (iv) as soon as it becomes available upon termination or expiration of the existing lease thereon, the Ayer Automotive Facility shall be dedicated to NSR for Automotive Traffic

10. Representations and Warranties of Pan Am

Except as set forth in the disclosure schedule (the "Pan Am Disclosure Schedule") prepared by Pan Am and delivered by Pan Am to NSR concurrently with the execution of this Agreement (in each case making reference to the particular subsection of this Agreement to which the relevant disclosure or exception is being made), Pan Am, on behalf of itself and the other Pan Am System Parties, represents and warrants to NSR as of the date hereof and, to the extent provided in Section 13.3(a), as of the Closing, as follows:

10.1 Organization, Standing and Power

Pan Am, and each of the other Pan Am System Parties, is a corporation (or, in relevant case, a limited liability company) duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or other formation and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Pan Am, and each of the other Pan Am System Parties, is duly qualified or licensed as a foreign entity and is in good standing in each jurisdiction where the nature of its properties owned or held under lease or the nature of the business conducted by it make such qualification necessary, except for any failure to be so qualified, licensed and in good standing as would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

10.2 Authority, Enforceability, Noncontravention

(a) Each of Pan Am and the other Pan Am System Parties has full power and authority to enter into, execute and deliver this Agreement, each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) to which it is a party, and perform its obligations hereunder and thereunder. This Agreement has been, and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) will be, duly authorized by all necessary action of the Pan Am System Parties. This Agreement has been, and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) will be, duly executed and delivered by each of Pan Am and the other Pan Am System Parties and, assuming their due execution and delivery by the other party or parties hereto or thereto, constitutes or will constitute a valid and legally binding obligation of each of Pan Am and the other Pan Am System Parties, respectively, enforceable against them in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar Laws relating to or affecting creditors' rights generally, and to the availability of equitable remedies.

(b) The execution and delivery of this Agreement and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) by each of Pan Am and the other Pan Am System Parties, as the case may be, does not and will not, and compliance by Pan Am and the other Pan Am System Parties with the provisions of this Agreement and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) will not, (i) conflict with or result in a breach or default under the Charter Documents of the relevant Pan Am System Party, (ii) constitute or result in a material breach or violation of, or a material default under, or the acceleration of (with or without the giving of notice, the lapse of time or both) any obligation pursuant to, any provision of any Material Contract to which the relevant Pan Am System Party is a party or otherwise bound, or to which any property or asset of the relevant Pan Am System Party is subject, (iii) subject to the filings with Governmental Authorities and other matters referred to in Section 10 2(c) below, violate any Law applicable to Pan Am or the other Pan Am System Parties, (iv) result in the creation or imposition of any material Lien on the Assets, or (v) constitute or result in any material change in the rights or obligations of any party under any of the Material Contracts

(c) Except (i) for the applicable requirements of the STB and (ii) as set forth on Section 10 2(c) of the Disclosure Schedule, there are no approvals, authorizations, consents, orders or other actions of, or filings with, any Person, including any Governmental Authority, that are required to be obtained or made by Pan Am or any other Pan Am System Party in connection with the execution of, and the consummation of the transactions contemplated under, this Agreement or the Ancillary Agreements (including the Company Agreement), except in each case as will not, individually or in the aggregate, impair in any material respect the performance by Pan Am or any other Pan Am System Party of their respective obligations hereunder

10 3 Assets

(a) The Assets constitute all properties, assets and rights (real, personal and mixed, tangible and intangible) currently utilized in the operation of the Line, other than (i) operating equipment such as locomotives, rail cars and maintenance vehicles, (ii) maintenance of way machinery and tools and (iii) an inventory of track material physically on the property not to be contributed (the "Excluded Assets") and, except for the Excluded Assets, the Assets are sufficient to operate the Line (i) in substantially the same manner as operated by the Pan Am System Parties prior to the Closing (assuming the use, by the Railroad Operator, as defined in the form of Railroad Operating Agreement attached, of operating equipment and maintenance of way machinery and tools) and (ii) as contemplated by the NSR Joint Use Agreement. It is the intent of the Pan Am System Parties to convey all interest in any real property that is contiguous and/or appurtenant to the Line delineated on the attached Schedule 1 1(a), but not to convey any interest in any real property that is not contiguous and/or appurtenant to the Line delineated on the attached Schedule 1 1(a). To the extent the Parties have erroneously failed to exclude from Schedule 1 1(a) any real property that is not contiguous and/or appurtenant to the Line, the Parties agree to perform all things reasonable and necessary to correct that error. Upon consummation of the transactions

contemplated hereby, the Company will acquire, good and marketable title to all of the non-real estate owned Assets free and clear of all Liens except for Permitted Liens

(b) The Ayer Automotive Facility shall be available for use by the Company for receipt and distribution of Automotive Traffic by 2017

10.4 Material Contracts

(a) (i) True and correct copies of each Material Contract, including all amendments and modifications thereof and waivers thereunder, have been made available to NSR and its counsel, (ii) each Material Contract is in full force and effect, and is the valid and binding obligation of the relevant Pan Am System Party and, to the Knowledge of Pan Am, each other party to the Material Contract, and upon consummation of the transactions contemplated hereby each Material Contract will remain in full force and effect, and will be the valid and binding obligation of the Company and, to the Knowledge of Pan Am, each other party to the Material Contract, (iii) each of the relevant Pan Am System Parties has performed all of its respective material obligations required to be performed by it to date under each Material Contract, and is not in material breach of or material default under any Material Contract, and no event has occurred or circumstance exists which, with notice or lapse of time or both, would constitute a material breach of or material default by the relevant Pan Am System Party under any Material Contract, (iv) to the Knowledge of Pan Am, each party to each Material Contract other than a Pan Am System Party has performed all of the material obligations required to be performed by it to date under the Material Contract, and is not in material breach of or in material default under the Material Contract, and no event has occurred or circumstance exists which, with notice or lapse of time or both, would constitute a material breach of or material default by such other party under any Material Contract, and (v) no Material Contract will be affected adversely in any material way by the execution, delivery or performance of this Agreement or the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement), each in accordance with its terms, and no Material Contract contains any change in control provision, restriction on assignment or other terms that will become applicable or inapplicable as a result of the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement)

(b) For purposes of this Agreement, "Material Contracts" shall mean the following Contracts of any of the Pan Am System Parties, each of which contracts is listed in Section 10.4(b) of the Disclosure Schedule, (X) relating to or affecting in any material way the Assets or the Assumed Liabilities or (Y) to be assigned to the Company pursuant to the terms hereof which are in effect on the date hereof

(i) Each Contract which is to be performed in whole or in part at or after the date of this Agreement and which (1) Pan Am cannot cancel upon a specified number of days' notice, not to exceed ninety (90) days, without payment or penalty and involves aggregate annual payments of more than \$100,000, (2) involves material non-monetary obligations to be performed later than one year from the date

hereof, (3) otherwise materially affects the Assets or the operation of the Line, or (4) was not entered into in the ordinary course of business consistent with past practice,

(ii) Each Contract providing for any future payments that are conditioned, in whole or in part, on any Transfer or assignment of any of the Assets,

(iii) Each Contract for the Transfer of any of the Assets or for the grant of any preferential right to purchase any of the Assets or which requires the consent of any third party to the Transfer of any of the Assets,

(iv) Each Contract pursuant to which any material Leased Personal Property is used or leased in the operation of the Line,

(v) Each lease, sublease or other occupancy agreement pursuant to which any of the Pan Am System Parties leases, subleases or otherwise occupies any real property included or related to the Line (such leases, subleases and other occupancy agreements, together with any amendments, modifications and other supplements thereto, each a "Lease" and collectively, the "Leases"),

(vi) Each lease, sublease or other occupancy agreement pursuant to which any of the Pan Am System Parties leases or subleases any real property included or related to the Line to a third party or one of its Affiliates (each such lease, sublease and other occupancy agreement, together with any amendments, modifications and other supplements thereto, a "Third Party Lease" and collectively, the "Third Party Leases"),

(vii) Each Contract imposing a Lien on any of the Assets which serve as collateral for Indebtedness, and

(viii) Each Contract granting haulage, trackage or other access or operating rights with respect to the Line

10.5 Litigation and Proceedings

There is no pending or, to the knowledge of Pan Am, threatened Action to which any of the Pan Am System Parties is a party involving the Assets or the operation of the Line in any material way, and none of the Pan Am System Parties are subject to any material judgment, order, writ, injunction, decree or regulatory directive or agreement with respect to the Assets or the operation of the Line. None of the Assets is subject to any judgment, order or decree entered in any Action which would be reasonably likely to have a Material Adverse Effect on the Company.

10.6 Environmental Matters

(a) Each of the Pan Am System Parties, with respect to the Properties and the operation of the Line, are in compliance in all material respects with all applicable Environmental Laws (which compliance includes, but is not limited to, the

possession by each of the Pan Am System Parties of all material permits or decrees and other governmental authorizations required or entered into under applicable Environmental Laws, and compliance with the terms and conditions thereof), except as set forth in Section 10 6(a)(i) of the Disclosure Schedule. None of the Pan Am System Parties has received in writing any notice, action, inquiry, investigation or claim alleging that the relevant Pan Am System Party, with respect to the Properties or the operation of the Line, are not in such compliance, except as set forth in Section 10 6(a)(ii) of the Disclosure Schedule.

(b) To the best of Pan Am's knowledge or belief, there is no Environmental Claim relating to the Properties or the operation of the Line pending or threatened against any of the Pan Am System Parties or against any Person whose liability for any such Environmental Claim any of the Pan Am System Parties has retained or assumed either contractually or by operation of Law which would, individually or in the aggregate, be a Material Adverse Effect, except as set forth in Section 10 6(b) of the Disclosure Schedule.

(c) To the best of Pan Am's knowledge and belief, there are no present or past or future actions, activities, circumstances, conditions, events or incidents, including, without limitation, the Release, threatened Release or presence of any Hazardous Material which could form the basis of any Environmental Claim relating to the Properties or the operation of the Line which would, individually or in the aggregate, be a Material Adverse Effect, except as set forth in Section 10 6(c) of the Disclosure Schedule.

(d) Pan Am has delivered or otherwise made available for inspection to NSR true and correct copies and results of any reports, studies, analyses, tests or other monitoring reports or related substantive correspondence with any Governmental Authority possessed or initiated by or on behalf of any of the Pan Am System Parties pertaining to Hazardous Materials in, on, beneath or adjacent to the Properties, or regarding the compliance of the Pan Am System Parties with applicable Environmental Laws with respect to the Properties and the operation of the Line (any of the foregoing, "Environmental Reports").

10 7 Labor Relations

Except as set forth in Section 10 7 of the Disclosure Schedule

(a) There is no strike, lockout, slowdown or stoppage pending or, to the Knowledge of Pan Am, threatened against or directly affecting the operation of the Line.

(b) None of the Pan Am System Parties is delinquent in payments in any material respect (i) to any of its employees involved in the operation of the Line for any wages, salaries, commissions, bonuses or other direct compensation for any services performed by them, (ii) to any of its employees involved in the operation of the Line for amounts required to be reimbursed to such employees or (iii) to any benefit

plans with respect to amounts owed on behalf of any of its employees involved in the operation of the Line

(c) There is no material unfair labor practice, charge or complaint against any of the Pan Am System Parties with respect to the operation of the Line, pending or, to the knowledge of Pan Am, threatened, before any Governmental Authority, and there is no grievance that would be reasonably likely to have a Material Adverse Effect on any of the Pan Am System Parties nor any arbitration proceeding arising out of or under any collective bargaining agreement pending against the Pan Am System Parties with respect to the operation of the Line

10.8 Books and Records

The books and records of the Pan Am System Parties relating to the Assets and the operation of the Line have been fully, properly and accurately maintained in all material respects

10.9 Real Property

(a) Section 10.9(a) of the Disclosure Schedule sets forth a true, correct and complete identification of the real property owned by any of the Pan Am System Parties included in the Assets (each such parcel individually, an "Owned Property" and collectively, the "Owned Properties") showing the common address, or other means of identification, and record title holder thereof and, to the knowledge of Pan Am, all Liens thereon. Each of the Pan Am System Parties, as applicable, owns, and upon the consummation of the transactions contemplated hereby will transfer and quitclaim to the Company all of their respective rights, titles and interests in and to the Owned Properties and to all buildings, structures and other improvements thereon, free and clear of all Liens, except for Permitted Liens, sufficient for the operation of the Line in the ordinary course of business (i) in substantially the same manner as operated by the Pan Am System Parties prior to the Closing and (ii) as contemplated by the NSR Joint Use Agreement

(b) Section 10.9(b) of the Disclosure Schedule sets forth, with regard to property to be included in the Assets, an identification of the real property leased or subleased by the Pan Am System Parties pursuant to each Lease (each a "Leased Property" and collectively, the "Leased Properties," and, collectively with the Owned Properties, the "Properties") Each of the Pan Am System Parties has conducted a search of its records and has provided to NSR true, correct and complete copies of all leases, work letters, side agreements, consents, subordination agreements, guarantees and other similar arrangements or agreements with respect to each Lease and to which the respective Pan Am System Party is a party. The respective Pan Am System Party holds, and after the consummation of the transactions contemplated hereby the Company will hold, a valid and existing leasehold or subleasehold interest, as applicable, in each Leased Property pursuant to the applicable Lease, free and clear of all Liens, other than Permitted Liens. There are no oral agreements in effect as to any Lease to which any of the Pan Am System Parties is a party. The terms of the Leases have not been modified in any

respect, except to the extent that such modifications are set forth in the documents previously delivered or made available to NSR and its counsel, and none of the Pan Am System Parties is in negotiations with any landlord to cancel or terminate any Lease prior to the stated maturity date of such Lease. Except for Permitted Liens, none of the Pan Am System Parties has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered its leasehold interest in any Lease. None of the Pan Am System Parties has received a notice of default or termination with respect to any Lease. No material damage or destruction (i.e., damage or destruction that would permit either party to the applicable Lease to terminate such Lease or cause the abatement of rent thereunder) has occurred with respect to any of the Leased Properties which has not been repaired prior to the date hereof.

(c) The Properties constitute all of the real estate within which the Pan Am System Parties operate the Line. The Properties are in compliance with all requirements of applicable Law in all material respects, and none of the Pan Am System Parties has received notice of, and none of the Pan Am System Parties has knowledge of, any condemnation, eminent domain, zoning, land use proceedings or other claims, causes of action, lawsuits or legal proceedings pending, threatened or contemplated regarding the ownership, use or possession of the Properties or any part thereof or of any sale or other disposition of the Owned Properties or any part thereof in lieu of condemnation, except for those matters that are set forth in Section 10.9(c) of the Disclosure Schedule.

(d) Section 10.9(d) of the Disclosure Schedule sets forth, with regard to property to be included within the Assets, the common address of, or other means of identifying, each parcel of real property leased or subleased by a Pan Am System Party pursuant to each Third Party Lease and the property (or portion thereof) subject to such Third Party Lease. True, correct and complete copies of all work letters, side agreements, consents, subordination agreements, guarantees and other similar arrangements or agreements with respect to the Third Party Leases and to which the Pan Am System Party is a party have heretofore been made available to NSR. The terms of the Third Party Leases have not been modified in any respect, except to the extent that such modifications are set forth in the documents previously delivered or made available to NSR and its counsel, and none of the Pan Am System Parties is in negotiations with any tenant or subtenant to cancel or terminate any Third Party Lease prior to the stated maturity date of such Third Party Lease.

10.10 Brokers

None of the Pan Am System Parties has retained or otherwise engaged or employed, or paid or agreed to pay any fee or commission, to any agent, broker, finder or other Person, for or on account of acting as a finder or broker in connection with this Agreement or the Ancillary Agreements (including the Company Agreement or, if applicable, the Springfield Terminal Haulage Rights Agreement) or the transactions contemplated hereby and thereby.

10.11 Compliance With Laws and Other Matters Each of the Pan Am System Parties

(a) is, and has been, in compliance in all material respects, in the operation of the Line, with all applicable Laws (it being understood that, solely for purposes of this Section 10 11(a), the term "Laws" shall not include any statutes, laws, rules, regulations, ordinances, orders, codes, policies or rules of common law or amendment thereto that becomes effective after the Closing Date or any Environmental Laws) and the regulations, ordinances, rules, judgments, orders or decrees of any Governmental Authority applicable thereto or to the employees involved in the operation of the Line,

(b) has, and upon the consummation of the transactions contemplated hereby the Company will have, all material permits, licenses, franchises, certificates of authority, orders, and approvals of, and has made all material filings, applications, and registrations with, Governmental Authorities that are required in order to permit it to operate the Line (the "Permits"), and has been in compliance in all material respects with the terms of the Permits, and all the Permits are, and will be, in full force and effect and a complete and accurate list of the Permits is set forth in Section 10 11(b) of the Disclosure Schedule,

(c) has received no notification or communication from any Governmental Authority (i) asserting that it is not in compliance with any Laws (or indicating, in the absence of any such assertion, a possible investigation or inquiry with respect to any of the foregoing) with respect to the operation of the Line or (ii) threatening to suspend, materially modify or revoke any Permit, and

(d) is not a party to or subject to any material order, decree, agreement, memorandum of understanding or similar arrangement with, or a commitment letter, supervisory letter or similar submission to, any Governmental Authority with respect to the Assets or the operation of the Line, and none of the Pan Am System Parties has been advised by any such Governmental Authority that such Governmental Authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such material order, decree, agreement, memorandum of understanding, commitment letter, supervisory letter or similar submission other than those items identified in Section 10 11(d) of the Disclosure Schedule

10 12 Taxes (a) All Tax Returns required to be filed by each of the Pan Am System Parties with respect to the Assets and the operation of the Line have been filed on a timely basis and all such returns are true, complete, and correct in all material respects, (b) all Taxes (whether or not shown on any Tax Return) that are due or claimed to be due from any of the Pan Am System Parties with respect to the Assets and the operation of the Line have been paid, (c) no notice has been received of any deficiencies for Taxes claimed, proposed or assessed by any Government Authority with respect to the Assets or the operation of the Line for which any of the Pan Am System Parties may be liable, (d) there are no pending, current or proposed audits, examinations, suits, proceedings, investigations, claims or administrative proceedings for or relating to any liability in respect of any Taxes with respect to the Assets or the operation of the Line for which any of the Pan Am System Parties may be liable, (e) each of the Pan Am System Parties has withheld and paid to the relevant Governmental Authority all Taxes required

to have been withheld and paid in accordance with applicable Law with respect to the Assets and the operation of the Line, including in connection with any amounts paid or owing to any employee, independent contractor, creditor, equity holder or other Person, (f) there is, to the Knowledge of Pan Am, no outstanding material claim by any Governmental Authority in a jurisdiction where the Pan Am System Parties does not file Tax Returns that the Pan Am System Parties may be subject to Tax in such jurisdiction with respect to the Assets or and the operation of the Line. (g) there are no Liens on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax, (h) none of the Pan Am System Parties with respect to the Assets or the operation of the Line will be required to include any item of income in, or exclude any item of deduction from, income for any Tax period (or portion thereof) ending after the Closing Date as a result of any (1) change in method of accounting for a Tax period ending on or prior to the Closing Date, (2) agreement with a Governmental Authority executed on or prior to the Closing Date, (3) deferred gains, (4) installment sale or open transaction disposition made on or prior to the Closing Date, or (5) prepaid amount received on or prior to the Closing Date, in each case under this Section 10 12. to the extent that the Tax liability of the Company or any Member (as defined in the form of Company Agreement attached) could be materially affected, and (i) none of the Pan Am System Parties with respect to the Assets or the operation of the Line is or will be required to adjust its tax basis in the Assets as may be required under Section 45G of the Code

10 13 Insurance The Assets are insured with reputable insurers and Section 10 13 of the Disclosure Schedule contains a true and correct list of such insurance policies maintained by the Pan Am System Parties, copies of which have been made available to NSR With respect to all insurance policies that are individually or in the aggregate material to the Assets and the operation of the Line (i) such policies are in full force and effect on the date hereof and the Pan Am System Parties shall use their commercially reasonable efforts to continue such policies in full force and effect through the Closing Date, (ii) all premiums currently payable or previously due and payable with respect to all periods up to and including the Closing Date have been paid to the extent such premiums are due and payable on or prior to the date hereof and, with respect to premiums not due or payable at or prior to the date hereof, all premiums due and payable prior to the Closing Date, will have been paid prior to the Closing Date and (iii) no notice of cancellation or termination has been received with respect to any such policy

10 14 Transactions with Affiliates

With respect to the Assets and the operation of the Line, there are no outstanding amounts payable to or receivable from, or advances by any of the Pan Am System Parties to, and none of the Pan Am System Parties is otherwise a creditor or debtor to, any member or stockholder, director, employee or Affiliate of any of the Pan Am System Parties With respect to the Assets and the operation of the Line, none of the Pan Am System Parties are a party to any transaction or agreement with any Affiliate, member or stockholder, director or executive officer of any of the Pan Am System Parties or any material transaction or agreement with any employee other than executive officers

11. Representations and Warranties of NSR. NSR hereby represents and warrants as of the date hereof and, to the extent provided in Section 13 2(a), as of the Closing, as follows

11.1 Organization, Standing and Power

NSR is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted

11.2 Authority, Enforceability, Noncontravention

(a) NSR has full power and authority to enter into, execute and deliver this Agreement and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) to which it is a party and perform its obligations hereunder and thereunder. This Agreement has been, and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) to which it is a party will be, duly authorized by all necessary action of NSR. This Agreement has been and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) to which it is a party will be, duly executed and delivered by NSR, and, assuming it is duly executed and delivered by the other parties thereto, constitutes or will constitute a valid and legally binding obligation of NSR, enforceable against it in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar Laws relating to or affecting creditors' rights generally, and to the availability of equitable remedies

(b) The execution and delivery by NSR of this Agreement and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) *do not and will not, and compliance* by NSR with the provisions of this Agreement and each of the Ancillary Agreements (including the Company Agreement and, if applicable, the Springfield Terminal Haulage Rights Agreement) will not, (i) conflict with or result in a breach or default under the Charter Documents of NSR or any of the terms, conditions or provisions of any Contract to which NSR is a party or otherwise bound, or to which any property or asset of NSR is subject, (ii) subject to the filings with Governmental Authorities and other matters referred to in Section 13.1(c) below, violate any Law applicable to NSR, or (iii) result in the creation or imposition of any Lien on any asset of NSR, except in each case as will not, individually or in the aggregate, impair in any material respect NSR's performance of its obligations hereunder

(c) Except (i) for the applicable requirements of the STB and (ii) as set forth on Schedule 11.2(c), there are no approvals, authorizations, consents, orders or other actions of, or filings with, any Person that are required to be obtained or made by NSR in connection with the execution of, and the consummation of the

transactions contemplated under, this Agreement or the Ancillary Agreements (including the Company Agreement or, if applicable, the Springfield Terminal Haulage Rights Agreement) except for any matters as will not, individually or in the aggregate, impair in any material respect NSR's performance of its obligations hereunder

11.3 Brokers

NSR has not retained or otherwise engaged or employed, or paid or agreed to pay any fee or commission, to any agent, broker, finder or other Person, for or on account of acting as a finder or broker in connection with this Agreement or the Ancillary Agreements (including the Company Agreement or, if applicable, the Springfield Terminal Haulage Rights Agreement) or the transactions contemplated hereby and thereby

12. Covenants

12.1 Operation of the Line by the Pan Am System Parties

Between the date of this Agreement and the earlier of the Closing or termination pursuant to Section 15, except (a) as contemplated by this Agreement, (b) as may be required by applicable Law, (c) as set forth in Schedule 12.1 or (d) with the prior written consent of NSR, the Pan Am System Parties will (X) operate the Line according to the ordinary course of business consistent with past practice, (Y) use all commercially reasonable efforts to preserve intact the Assets and maintain the rights, franchises and existing relations with customers, suppliers, employees and business associates relating thereto and (Z) without limiting the generality of the clauses (X) and (Y) above

(i) not transfer any of the Assets or any interest of the Pan Am System Parties therein other than in the ordinary course of business consistent with past practice or to another of the Pan Am System Parties in a manner consistent with this Agreement,

(ii) not change the general nature of operation of the Assets or conduct any new line of business with the Assets not consistent with past practice,

(iii) not mortgage, encumber or pledge any of the Assets or permit or allow any of the Assets to be subjected to any Lien other than Permitted Liens,

(iv) not terminate, make any material modifications to, transfer or materially amend any Material Contract,

(v) not dispose of any books, records and accounts relating to the Assets, and to maintain such books records or accounts in the usual, regular and ordinary manner, on a basis consistent with prior periods.

- (vi) not enter into any lease for real property with respect to any portion of the Assets,
- (vii) not permit any waste of any of the Assets,
- (viii) not pay, discharge or satisfy any material claim, liability or obligation (absolute, accrued, contingent or otherwise) related to the Assets other than in the ordinary course of business consistent with past practice,
- (ix) not cancel or compromise any material debt or material claim or waive or release any material rights relating to the Assets or the operation of the Line.
- (x) not grant any haulage, trackage or other access or operating rights with respect to the Line, except as required by Law,
- (xi) not take any action that would cause a breach of any representation or warranty set forth in Section 10 hereof, or
- (xii) not authorize or enter into any agreement to otherwise take any of the foregoing actions

12.2 Inspection of Records, Environmental Audits

(a) Between the date of this Agreement and the Closing, each of the Pan Am System Parties shall allow, to the extent not prohibited by applicable Law, the officers, attorneys, accountants and other duly authorized representatives of NSR reasonable access during regular business hours to the records and files, correspondence, audits, properties and personnel, as well as to all information, in each case, relating to the Assets and the operations of the Line. Any information regarding the Assets or the operations of the Line so obtained, and any information obtained by any Party pursuant to the provisions of this Agreement shall be subject to the Non-Disclosure Agreement, dated as of October 26, 2005, as extended to date (the "Confidentiality Agreement"), and such information shall be held by the recipient in accordance with the terms of the Confidentiality Agreement, it being understood that, for purposes of this provision, the term of the Confidentiality Agreement shall be deemed to have been extended for a period of one (1) year immediately following the Closing Date. Notwithstanding anything herein to the contrary, any Party may disclose any information in connection with an audit by its external auditors, the Internal Revenue Service, or other tax authority

(b) Between the date of this Agreement and the Closing, each of the Pan Am System Parties shall continue to make available for inspection by NSR true, correct and complete copies of the Environmental Reports, and shall promptly deliver to NSR true, correct and complete copies of any Environmental Reports that are prepared after the date hereof or that have not been previously disclosed to NSR

12.3 Commercially Reasonable Efforts Between the date of this Agreement and the Closing, each of the Parties to this Agreement will use its

commercially reasonable efforts to cause the conditions to the obligations of the other Parties set forth in Section 13 of this Agreement, as the case may be, to be satisfied. provided, that, except as agreed in writing by the Parties hereto, in no event shall any of the Parties hereto be obligated to accept, or cause the Company to accept, in connection with obtaining any Required Governmental Consents required by Section 13.1(c) or any consent, approval or agreement anticipated by Section 5, any condition or requirement that is not acceptable to such Party, to be exercised in its sole discretion. In addition, the Parties hereto shall (i) cooperate and use their commercially reasonable efforts to obtain all consents, approvals, authorizations and agreements (or exemptions therefrom) of all Governmental Authorities necessary to authorize, approve or permit the consummation of the transactions contemplated by this Agreement, the Company Agreement and the Ancillary Agreements (the "Required Governmental Consents") at the earliest possible time hereafter, including but not limited to the assignment of the MBTA Operating Rights to the Company notwithstanding a failure to obtain consent therefor, (ii) as promptly as practicable hereafter, file or submit, or cause to be filed or submitted, to all Governmental Authorities all notices, applications, documents and other materials necessary in connection with obtaining the Required Governmental Consents and (iii) use their respective commercially reasonable efforts to respond as promptly as practicable to all inquiries received from all Governmental Authorities for additional information or documentation in connection with obtaining such Required Governmental Consents. Each of the Parties hereto shall promptly advise each other Party hereto upon receiving any communication (written or oral) from any Governmental Authority whose consent, approval or authorization is required, or to whom notice must be submitted, for consummation of the transactions contemplated by this Agreement, and the Ancillary Agreements which constitutes a reasonable likelihood that any requisite regulatory consent, approval or authorization will not be obtained or that receipt of any such consent, approval or authorization will be materially delayed or materially conditioned. Each of the Parties hereto shall furnish to each other Party hereto such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any filings or submissions to any Governmental Authority necessary to obtain any of the Required Governmental Consents. Each of the Parties hereto shall provide each other Party hereto with draft copies and as-filed copies of all filings and submissions with Governmental Authorities in respect of the Required Governmental Consents and shall provide the other with a reasonable opportunity to comment upon all such draft copies. Each of the Parties hereto and its respective representatives shall promptly inform the other Party hereto regarding the substance of all communications and contacts received from any Governmental Authority with respect to this Agreement, the Ancillary Agreements or the transactions contemplated hereby and thereby, and neither of the Parties hereto shall initiate any contact or communications with any Governmental Authority regarding this Agreement, the Ancillary Agreements or the transactions contemplated hereby and thereby without giving reasonable prior notice to each other Party hereto and offering each other Party hereto the opportunity to have a representative of such other Party participate in the contact or communication. For the avoidance of doubt, each Party hereto shall be free to discuss regulatory matters with any Governmental Authority without the participation of the other Parties hereto to the extent

such discussions do not directly relate to the transactions contemplated by this Agreement, and the Ancillary Agreements

12.4 Real Estate Matters

(a) The Pan Am System Parties shall use their commercially reasonable efforts to obtain an estoppel certificate from each landlord under the Leases certifying that each lease is in full force and effect and that there are no defaults thereunder or any conditions that with the passage of time would constitute a default thereunder, or an estoppel certificate in the form so provided for under any such Lease or Third Party Lease. In the event that the Pan Am System Parties are unable to deliver an estoppel certificate for any of the Leases or Third Party Leases to NSR at the Closing, Pan Am shall indemnify NSR against any loss, cost, liability or expense which NSR may incur as a result of the failure of the Pan Am System Parties to deliver such estoppel certificate.

(b) The Pan Am System Parties shall cause (i) title to the Owned Properties, at Closing, to be free and clear of all Liens and without exceptions, disclaimers of liability or objections except for Permitted Liens and any matters which the Title Company has committed to insure over or omit, and (ii) the First American Title Insurance Company of New York or another reputable title insurance company selected by NSR (the "Title Company") to insure the Owned Properties under the terms described above.

(c) Between the date of this Agreement and the Closing, the Pan Am System Parties shall disclose to NSR any newly identified Liens on the Owned Properties that have not been previously disclosed to NSR.

(d) Any and all Taxes associated with the contribution of the Assets described in Section 2.3 and associated with the sale of the Assets described in Section 3 shall be the sole responsibility of Pan Am and the Pan Am System Parties.

(e) Pan Am and the Pan Am System Parties shall promptly notify NSR in writing if the Internal Revenue Service or other tax authority raises any issue under examination that could affect the Company and any of its members in any way, including an adjustment to the tax basis of the Assets. Pan Am and the Pan Am System Parties also shall keep NSR informed of the progress of any examination relating to any such issues until the matter has reached a final determination under the law.

12.5 Publicity

The initial public disclosure relating hereto, if any, will be a joint press release and thereafter, except as otherwise required by law, the applicable rules of the stock exchanges on which NSR's, Pan Am's and/or Norfolk Southern Corporation's shares are listed, if any, or any other self-regulatory organization, each of the Parties shall coordinate with each of the other Parties, including by the provision of drafts and the opportunity to comment thereon, prior to issuing any press releases or otherwise making public statements with respect to the transactions contemplated hereby.

12.6 Encumbrance and Transfer of Assets

From and after the date hereof, none of the Pan Am System Parties shall, without the prior written consent of NSR, enter into, amend or extend any Contract in any manner which would encumber any of the Assets

12.7 Employee Claims

Each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement, any of the Ancillary Agreements and operations hereunder or thereunder, or pursuant to a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Transaction Agreement or any of the Ancillary Agreements, except to extent otherwise specifically provided in the Transaction Agreement or the pertinent Ancillary Agreement

13. Conditions to the Closing

13.1 Mutual Conditions

The respective obligations of the Parties to consummate the NSR Contribution and the Pan Am Contribution and to take the other actions required to be taken by each of the Parties at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived jointly by NSR and the Pan Am System Parties in writing, in whole or in part)

(a) Company Agreement NSR and Pan Am shall have entered into, and the Company shall have taken all necessary and reasonable action to make effective, the Company Agreement

(b) Ancillary Agreements Each of the Ancillary Agreements shall have been entered into by the respective parties thereto

(c) Regulatory Approvals All Required Governmental Consents (including the receipt of STB Approval from the STB) shall have been obtained and shall be in full force and effect, and not subject to conditions that any Party deems unacceptable in its sole judgment, and shall not be subject to a pending petition for review before a U S Court of Appeals

(d) No Order or Action No Law shall have been enacted, entered, promulgated, clarified or enforced by any Governmental Authority which prohibits, restricts or makes illegal the consummation of the Closing or any of the material transactions contemplated thereby, or material provisions hereof, and no Action shall be pending or threatened that questions the validity of this Agreement, the Company Agreement or any of the other Ancillary Agreements or declares or proposes to declare the same unlawful or seeks to enjoin the consummation of any of the material transactions contemplated hereby or thereby

13.2 Additional Conditions of NSR

The obligation of NSR to consummate the NSR Contribution, and to take the other actions required to be taken by NSR at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following additional conditions (any of which may be waived by NSR in writing, in whole or in part)

(a) Representations and Warranties The representations and warranties contained in Section 10 hereof and in all certificates delivered by the Pan Am System Parties to NSR pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate in all respects (in the case of representations and warranties qualified by "materiality," "in all material respects," "Material Adverse Effect" or similar terms or phrases, and in the case of the representations and warranties set forth in Sections 10.1 and 10.2) or in all material respects (in the case of all other representations and warranties) as of the date of this Agreement and as of the Closing as though made at and as of the Closing (except for changes contemplated by this Agreement and except for representations and warranties that by their terms speak specifically as of the date of this Agreement or some other date, in which case as of such date)

(b) Performance The Pan Am System Parties shall have performed all of their respective obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by the Pan Am System Parties on or prior to the Closing Date

(c) Certificate Pan Am shall have delivered to NSR a certificate, dated the Closing Date, signed on behalf of the Pan Am System Parties by an officer of Pan Am, certifying that the conditions specified in Sections 13.2(a) and (b) of this Agreement have been satisfied

(d) No Material Adverse Effect There shall have been no Material Adverse Effect on any of the Pan Am System Parties

(e) Consents At the Closing, Pan Am shall have delivered to NSR all consents, approvals and agreements of any third Persons required to effectuate the NSR Joint Use Agreement and the Springfield Terminal Joint Use Agreement, and required by the terms of any Material Contract in order that the rights of any of the Pan Am System Parties or the prospective rights of the Company under such Material

Contract, in each case, as they relate to the Assets or the Assumed Liabilities, will not be impaired by the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, and such consents, approvals and agreements shall be in full force and effect

13.3 Additional Conditions of the Pan Am System Parties

The obligation of the Pan Am System Parties to consummate the Pan Am Contribution in exchange for the Pan Am Member's Membership Interest, and to take the other actions required to be taken by the Pan Am System Parties at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following additional conditions (any of which may be waived by Pan Am in writing, in whole or in part)

(a) **Representations and Warranties** The representations and warranties contained in Section 11 hereof and in all certificates delivered by NSR to Pan Am pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate in all respects (in the case of representations and warranties qualified by "materiality," "in all material respects," "material adverse effect" or similar terms or phrases, and in the case of the representations and warranties set forth in Sections 11.1 and 11.2) or in all material respects (in the case of all other representations and warranties) as of the date of this Agreement and as of the Closing as though made at and as of the Closing (except for changes contemplated by this Agreement and except for representations and warranties that by their terms speak specifically as of the date of this Agreement or some other date, in which case as of such date)

(b) **Performance** NSR shall have performed all obligations and complied with in all material respects all covenants required by this Agreement to be performed or complied with by NSR on or prior to the Closing Date

(c) **Certificate** NSR shall have delivered to Pan Am a certificate, dated the Closing Date, signed on behalf of NSR by an officer of NSR, certifying that the conditions specified in Sections 13.3(a) and (b) of this Agreement have been satisfied

(d) **No Material Adverse Effect** There shall have been no Material Adverse Effect on NSR

14. Survival of Representations and Warranties; Indemnity.

14.1 **Survival of Representations and Warranties** All representations and warranties made in this Agreement or made in any document delivered pursuant to this Agreement by or on behalf of any party shall survive the execution and delivery of this Agreement and the Closing, regardless of notice of or any investigation or right of investigation made after the date of this Agreement by or on behalf of any Party, and shall terminate and expire five (5) years following the Closing Date, except that, (a) if later, the representations and warranties made in Sections 10.6, 10.8, 10.9 and 10.12 shall terminate and expire sixty (60) days after the termination of the applicable statute of limitations (including extensions thereof), in each case, after which date they shall be of

no further force or effect (except for bona fide claims of which a party has provided written notice in good faith to the other parties prior to the relevant expiration date) and (b) that the indemnifications set forth in Section 12.7 and Section 14.7 shall survive without expiration or termination

14.2 Indemnification by Pan Am

(a) Pan Am shall indemnify, save and hold harmless (i) each of NSR, its Affiliates, and each of their respective officers, directors, employees and agents, and each of their respective successors and assigns (collectively, the "NSR Indemnified Parties"), from and against any and all costs, losses, claims, liabilities, damages, fines, penalties, expenses and Cleanup costs (including any interest which may be imposed in connection therewith and court costs and reasonable fees and disbursements of counsel) ("Damages," which shall not include any claim of diminution of value of NSR's membership interest in the Company) incurred in connection with, arising out of, resulting from or incident to (A) any breach of the representations or warranties of the Pan Am System Parties in this Agreement, except for Section 10.6 (in each case, solely for the purpose of calculating the amount of Damages, without regard to any qualification or limitation with respect to "materiality," whether by reference to "material," "in all material respects" or "Material Adverse Effect"), or (B) any breach or default in any covenants or agreements made by the Pan Am System Parties in this Agreement, and (ii) the Company and each of its officers, directors, employees and agents and its successors and assigns (collectively, the "Company Indemnified Parties") and any NSR Indemnified Parties from and against any and all Damages incurred in connection with, arising out of, resulting from or incident to any obligation or liability, other than the Assumed Liabilities, incurred in connection with, arising out of, resulting from or incident to any act or omission by the Pan Am System Parties prior to the Closing relating to the Assets, whether fixed or contingent, recorded or unrecorded, known or unknown and whether or not set forth on the Disclosure Schedule

(b) Pan Am shall defend, indemnify and hold harmless any NSR Indemnified Parties and any Company Indemnified Parties for, from, and against all Damages asserted against, resulting to, imposed on, or incurred by any NSR Indemnified Party or Company Indemnified Party in connection with (i) any misrepresentation or breach of any environmental representation or warranty set forth in Section 10.6 of this Agreement, (ii) the Release of any Hazardous Materials (A) prior to the Closing Date on, from or under the Properties or in connection with the operation of the Assets or (B) on, from or under any other property where, prior to the Closing Date, Hazardous Materials are or were Released, discharged or disposed of in connection with the Properties or the Assets, whether or not, in any case, such Release, discharge or disposal was in compliance with Environmental Laws, (iii) the violation of any Environmental Law prior to the Closing by any of the Pan Am System Parties or any other Person in connection with the Properties or the Assets, and (iv) any Environmental Claim arising out of, resulting from, or incident to any act or omission prior to the Closing Date relating to the Properties or the Assets against any Person whose liability for such Environmental Claim any of the Pan Am System Parties has retained or assumed either contractually or by operation of Law

(c) Except for fraud, injunctive and provisional relief and remedies that cannot be waived as a matter of Law, if the Closing occurs, this Section 14.2 shall be the exclusive remedy for any breach of any of the Pan Am System Parties' representations and warranties or any breach of any Pan Am System Party's covenants contained in this Agreement.

14.3 Indemnification by NSR

(a) NSR shall indemnify, save and hold harmless each of the Pan Am System Parties, and each of their respective officers, directors, employees and agents and each of their respective successors and assigns (collectively, the "Pan Am Indemnified Parties"), from and against any and all Damages incurred in connection with, arising out of, resulting from or incident to (i) any breach of or any inaccuracy in any of the representations or warranties of NSR in this Agreement (in each case, solely for the purpose of calculating the amount of Damages, without regard to any qualification or limitation with respect to "materiality," whether by reference to "material," "in all material respects" or "Material Adverse Effect"), or (ii) any breach or default in covenants or agreements made by NSR in this Agreement. For the purposes of this Section 14.3 only, "Damages" shall not include Cleanup costs or expenses.

(b) Except for fraud, injunctive and provisional relief and remedies that cannot be waived as a matter of Law, if the Closing occurs, this Section 14.3 shall be the exclusive remedy for any breach of any of NSR's representations and warranties or any breach of NSR's covenants contained in this Agreement.

14.4 Notification of Claims A Party entitled to indemnification under Sections 14.2 or 14.3 (an "Indemnified Party") shall notify the other Party (the "Indemnifying Party") within a reasonable period of time after becoming aware of any Damages which the Indemnified Party shall have determined has given or could give rise to a claim for indemnification under Sections 14.2 or 14.3 hereof. Such notice shall include an estimate of the Damages that the Indemnified Party has determined may be incurred to the extent then known or reasonably determinable. The failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent of any prejudice to the Indemnifying Party resulting from such delay. As soon as practicable after the date of such notice, the Indemnified Party shall provide to the Indemnifying Party all information and documentation necessary to support and verify the Damages so claimed and the Indemnifying Party and its agents shall be given access to all books and records in the possession or control of the Indemnified Party which the Indemnifying Party reasonably determines to be related to such claim.

14.5 Matters Involving Third Parties

(a) If any third party shall commence an Action against any Indemnified Party with respect to any matter (a "Third Party Claim") which may give rise to a claim for indemnification under Sections 14.2 or 14.3 or if an Indemnified Party otherwise becomes aware that a Third Party Claim may be asserted against the

Indemnified Party, the Indemnified Party shall notify the Indemnifying Party in writing as soon as practicable so that the Indemnifying Party has an opportunity to assume the defense of such Third Party Claim. The failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent of any prejudice to the Indemnifying Party resulting from such delay. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the Third Party Claim, or fails to notify the Indemnified Party within 30 days after delivery of such notice by the Indemnified Party whether the Indemnifying Party disputes the Third Party Claim, all Damages incurred in connection with, arising out of, resulting from or incident to such Third Party Claim will be conclusively deemed a liability of the Indemnifying Party and the Indemnifying Party shall pay the amount of such Damages to the Indemnified Party promptly upon the final determination thereof.

(b) If the Indemnifying Party does not respond to the notice or elects not to assume the defense of such Third Party Claim, in each case within the period allowed after delivery of the notice, the Indemnified Party shall have the right to defend such Third Party Claim by appropriate proceedings or to settle or pay any such Third Party Claim for such an amount as the Indemnified Party shall deem appropriate, in either case at the sole cost and expense of the Indemnifying Party, provided that the Indemnified Party shall not settle any such Third Party Claim without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned or delayed. In the event that the Indemnifying Party does not assume the defense of such Third Party Claim, the Indemnifying Party shall have the right to participate in such defense (including with counsel of its choice), at its own expense, and the Indemnified Party shall reasonably cooperate with the Indemnifying Party in connection with such participation.

(c) If the Indemnifying Party notifies the Indemnified Party that it desires to defend against such Third Party Claim, then the Indemnifying Party shall be entitled to participate in or, at the Indemnifying Party's option, assume at its own cost and expense the defense of any such Third Party Claim with counsel of its own choosing (which shall be reasonably acceptable to the Indemnified Party), provided, that, if the Indemnifying Party assumes the defense of such Third Party Claim it shall reimburse the Indemnified Party for out of pocket expenses incurred by the Indemnified Party (such as travel costs, but not internal time charges) and the Indemnified Party (i) shall reasonably cooperate with the Indemnifying Party, and (ii) may elect to participate in any such defense at its sole cost and expense, but the control of such defense and its settlement or resolution shall rest with the Indemnifying Party. If, in the opinion of the Indemnified Party, there is a significant conflict of interest between the Indemnified Party and the Indemnifying Party in the conduct of the defense of such Third Party Claim, the reasonable fees and disbursements of one counsel of the Indemnified Party shall be at the expense of the Indemnifying Party. The Indemnifying Party shall not compromise or settle any such Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), unless such settlement or compromise does not subject the Indemnified Party to any monetary liability, will not impose on the Indemnified Party any obligation, admission, restriction

or further Damages and includes a complete, unconditional release of the Indemnified Party from all liability with respect to such Third Party Claim

(d) In all cases the Indemnified Party and the Indemnifying Party shall keep each other reasonably informed as to all matters concerning any Third Party Claim and shall promptly notify the other party in writing of any and all significant developments relating thereto

14.6 Taxes If any indemnity payment pursuant to this Section 14 is determined to be taxable to any Indemnified Party by any Governmental Authority, the indemnity payment shall be increased by such amount as is necessary so that, after taking into account the Tax liability imposed upon such Indemnified Party upon receipt of such indemnity payment, the Indemnified Party receives an amount equal to the amount it would have received had such indemnity payment not been subject to Tax (after taking into account, in accordance with Section 14.8(a), any Tax benefits and/or insurance coverage that may be available to the Indemnified Party) Notwithstanding anything to the contrary herein, property taxes on the Assets for the year of Closing shall be prorated between the Company and the relevant Pan Am System Party as of the Closing Date

14.7 Post-Closure Environmental Claims

The Company shall indemnify and hold harmless the Pan Am Indemnified Parties and the NSR Indemnified Parties from and against any suit or claim growing out of any nuisance, use, storage, Release or threatened Release or disposal of Hazardous Materials, hazardous waste, toxic materials or waste materials, upon the Line or other real property assets, including without limitation Laws controlling air, water, noise, solid wastes and other pollution, provided that the Company shall not indemnify and hold harmless the Pan Am Indemnified Parties to the extent that any such suit or claim is based upon any act or omission prior to Closing. The Company shall install and bear the expense of any and all pollution control structures, devices or equipment which are required under any applicable Laws, provided that such pollution control structures, devices or equipment are necessitated by events occurring after the Closing

14.8 Other Limits on Indemnification

(a) The amount of any Damages sustained by an Indemnified Party shall be reduced (i) by any amount received by such Indemnified Party with respect thereto under any insurance coverage relating thereto or from any other party alleged to be responsible therefore, or from any other party with any contribution commitment therefor (including, without limitation, contribution from state or federal Cleanup funds) and (ii) by the amount of any Tax benefit actually realized with respect to the Damages. An Indemnified Party shall use its commercially reasonable efforts to collect any amounts available under such insurance coverage and from such other party alleged to have responsibility or other contribution commitment and to realize any Tax benefit with respect to the Damages. If an Indemnified Party realizes a Tax benefit or receives an amount under insurance coverage or from such other party with respect to Damages sustained at any time subsequent to any indemnification provided pursuant to this Section

14, then such Indemnified Party shall promptly reimburse the applicable Indemnifying Party for any payment made by such Indemnifying Party in connection with providing such indemnification up to such amount realized or received by the Indemnified Party. Nothing in this Section 14.8(a) shall limit in any way the ability of any of the Pan Am System Parties, NSR or the Company to (i) take (or refrain from taking, as the case may be) any reasonable position for Tax purposes that that Pan Am System Party, NSR or the Company determines to take (or refrain from taking) in its sole discretion or (ii) refrain from pursuing any third party insurance recovery that the Pan Am System Party, NSR or the Company, as the case may be, determines would be commercially inadvisable to pursue.

(b) Each Indemnified Party shall use its commercially reasonable efforts to mitigate any claim or liability that an Indemnified Party asserts or may assert under this Section 14. In the event that an Indemnified Party shall fail to make such commercially reasonable efforts to mitigate any such claim or liability, then notwithstanding anything contained in this Agreement to the contrary, the Indemnifying Party shall not be required to indemnify any Indemnified Party for that portion of any Damages that would reasonably be expected to have been avoided if the Indemnified Party had made such efforts.

14.9 Indemnification Coverage

As part of the consideration hereof, each Party hereby agrees that all of its indemnity commitments in this Transaction Agreement in favor of the other Party shall also extend to and indemnify the parent corporation, the subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees.

15. Termination.

15.1 Termination by Mutual Consent This Agreement may be terminated at any time prior to the Closing by the mutual agreement, in writing, of each of NSR and Pan Am.

15.2 Termination by Final Order This Agreement may be terminated by NSR or Pan Am upon written notice to the other Parties that any final, non-appealable Law shall have been enacted, entered, promulgated or enforced by any Governmental Authority of competent jurisdiction which prohibits, restricts or makes illegal the consummation of the Closing or any of the material transactions contemplated thereby, or by the Company Agreement or any of the other Ancillary Agreements.

15.3 Termination by NSR NSR may (but shall not be obligated to) terminate this Agreement prior to the Closing by giving written notice to the other Parties if

(a) there has been a material violation or breach by any of the Pan Am System Parties of any of its respective agreements or covenants contained in this Agreement or there has been a material violation or breach by any of the Pan Am System

Parties of any of their respective representations or warranties contained in this Agreement, and such violation or breach shall not have been cured or corrected within twenty days after receipt of notice thereof,

(b) the Closing does not occur on or prior to December 1, 2008 (the "Outside Date"), or such later date as may be agreed to in writing by the Parties, provided that the non-occurrence is not due to a breach by NSR of any condition or covenant hereunder.

(c) there has been imposed by a Governmental Authority a condition to any Required Governmental Consent, which condition is not acceptable to NSR, in its sole discretion,

(d) there has been a Material Adverse Effect on Pan Am which shall not have been cured or corrected within twenty (20) days after receipt of notice thereof, provided that such Material Adverse Effect is not due to a breach by NSR of any condition or covenant hereunder, or

(e) there has been a Pan Am Change in Control

15.4 Termination by Pan Am Pan Am may (but shall not be obligated to) terminate this Agreement prior to the Closing by giving written notice to the other Parties if

(a) there has been a material violation or breach by NSR of any of its respective agreements or covenants contained in this Agreement or there has been a material violation or breach by NSR of any of its representations or warranties contained in this Agreement, and such violation or breach shall not have been cured or corrected within twenty days after receipt of notice thereof,

(b) the Closing does not occur on or prior to the Outside Date, or such later date as may be agreed to in writing by the Parties, provided that the non-occurrence is not due to a breach by any of the Pan Am System Parties of any condition or covenant hereunder,

(c) there has been imposed by a Governmental Authority a condition to any Required Governmental Consent, which condition is not acceptable to Pan Am, in its sole discretion, or

(d) there has been a Material Adverse Effect on NSR which shall not have been cured or corrected within twenty days after receipt of notice thereof, provided that such Material Adverse Effect is not due to a breach by any of the Pan Am System Parties

15.5 Effect of Termination In the event of the termination of this Agreement as permitted by this Section 15, no Party shall have any obligation under, or liability to any other in respect to, this Agreement, except with respect to any willful breach of this Agreement that gives rise to such termination and except for the provisions of the Confidentiality Agreement and the confidentiality obligations contained in Section 12.2(a) and this Section 15.5, which shall survive the termination of this Agreement

16. Dispute Resolution.

16.1 Reference to Senior Management

Any dispute, controversy or claim between NSR, on the one hand, and any of the Pan Am System Parties, on the other hand, arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be referred, in writing, to the senior management of NSR and Pan Am for resolution

16.2 Reference for Formal Dispute Resolution

Any Dispute not resolved within sixty (60) days after receipt by any of the involved Parties of written notice of reference of such Dispute to the senior management pursuant to Section 16.1, shall be submitted, by either Member for formal dispute resolution pursuant to Section 16.3

16.3 Formal Dispute Resolution

(a) **Submission to Jurisdiction** NSR and each of the Pan Am System Parties hereby (i) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 16.3(b) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) waives any objection based on forum non conveniens or any other objection to venue thereof

(b) **Dispute Resolution** NSR and each of the Pan Am System Parties hereby stipulates and agrees that any Dispute that is not resolved pursuant to Section 16.1 will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "Rules"), under the following terms and conditions

(i) **Selection of Arbitrator** A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator

(ii) Conduct of Arbitration The arbitration shall be held and the award shall be issued in Washington, D C In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement

(iii) Replacement of Arbitrator Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator

(iv) Findings and Conclusions The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award

(v) Time is of the Essence The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding

(vi) Temporary Equitable Relief By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect

(vii) Consolidation The parties are committed to the prompt and efficient resolution of Disputes Accordingly, if more than one Dispute arise under this Agreement and/or any Ancillary Agreement, such Disputes may be brought in a single arbitration If more than one arbitration is brought with respect to Disputes under this Agreement and/or any Ancillary Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or the Ancillary be consolidated into any prior arbitration The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration, (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration Any order of consolidation issued by such arbitrator shall be final and binding upon the parties Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration The parties waive any right they have to appeal or to seek interpretation, revision or

annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(viii) Discovery. Recognizing the express desire of the parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(ix) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 16.3(b) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(x) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

17. Miscellaneous

17.1 Notices. All notices, requests, demands and other communications (collectively, "Notices") given pursuant to this Agreement shall be in writing, and shall be delivered by personal service, courier, overnight delivery service, facsimile transmission (which must be confirmed) or by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

(i) if to NSR, to

Mike R. McClellan
Vice President – Intermodal & Automotive Marketing
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

with a copy to

Vice President Law
Norfolk Southern Corporation
Three Commercial Place

Norfolk, VA 23510

(ii) if to any of the Pan Am System Parties, to

David A. Fink
President
Pan Am Railways, Inc.
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

with a copy to

Robert Culliford
Vice President Law
Pan Am Systems
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

Any Notice, other than a Notice sent by registered or certified mail, shall be effective when received. A Notice sent by registered or certified mail, postage prepaid return receipt requested, shall be effective on the earlier of when received or the third day following deposit in the United States mails. Any Party may from time to time change its address for further Notices hereunder by giving notice to the other Parties in the manner prescribed in this Section.

17.2 Entire Agreement This Agreement, including any attached exhibits, appendices and schedules, contain the sole and entire agreement and understanding of the Parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are hereby merged herein. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto any rights or remedies under or by way of this Agreement.

17.3 Assignment No Party may assign its rights or obligations under this Agreement, and any attempted or purported assignment or any delegation of any Party's duties or obligations arising under this Agreement to any third party or entity shall be deemed to be null and void, and shall constitute a material breach by such Party of its duties and obligations under this Agreement.

17.4 Extension, Waiver and Amendment At any time prior to the Closing, NSR may (a) extend the time for the performance of any of the obligations or other acts of any other Party hereto, (b) waive any inaccuracies in the representations and warranties of any other Party hereto contained herein or in any document delivered pursuant hereto, and (c) waive compliance by any other Party hereto with any of the agreements or conditions contained herein. At any time prior to the Closing, Pan Am may (a) extend the time for the performance of any of the obligations or other acts of NSR, (b) waive any inaccuracies in the representations and warranties of NSR contained herein or in any document delivered pursuant hereto, and (c) waive compliance by NSR with any of the agreements or conditions contained herein. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid if set forth in writing in an instrument signed by or on behalf of such Party. The waiver by any Party hereto of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach. This Agreement may be amended only by a written agreement executed by all of the Parties to this Agreement.

17.5 Confidentiality

Except as provided in Section 12.2 or otherwise by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, upon the execution of this Agreement and for a period of three (3) years after the Closing Date or the termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by any Party to any Person other than members, officers, employees, and attorneys of such Party, without the prior written approval of the other Parties. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority or as otherwise required by applicable law.

17.6 Governing Law

THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS

17.7 Judicial Interpretation Should any provision of this Agreement require judicial interpretation, it is agreed that a court or other tribunal interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any Person by reason of the rule of construction that a document is to be construed more strictly against the Person who itself or through its agent prepared the same, it being agreed that all Parties have participated in the preparation of this Agreement

17.8 No Third Party Beneficiaries Except as expressly provided in this Agreement, this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto, provided, however, that this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns

17.9 Captions The various captions of this Agreement are for reference only and shall not be considered or referred to in resolving questions of interpretation of this Agreement

17.10 Counterparts This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument

17.11 Costs and Attorneys' Fees Whether or not the transactions contemplated hereby are consummated, each of the parties shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of
the date first above written

**NORFOLK SOUTHERN RAILWAY
COMPANY**

By C. W. Moorman
Name

Title
**BOSTON AND MAINE
CORPORATION**

PAN AM RAILWAYS, INC.

By _____
Name

Title
**SPRINGFIELD TERMINAL
RAILWAY COMPANY**

By _____
Name
Title

By. _____
Name
Title

IN WITNESS WHEREOF, the parties have executed this Agreement as of
the date first above written

**NORFOLK SOUTHERN RAILWAY
COMPANY**

By _____
Name
Title:
**BOSTON AND MAINE
CORPORATION**

By David G. Fink
Name **DAVID A. FINK**
Title **President**

PAN AM RAILWAYS, INC.

By David G. Fink
Name **DAVID A. FINK**
Title **President**
**SPRINGFIELD TERMINAL
RAILWAY COMPANY**

By David G. Fink
Name **President**
Title **DAVID A. FINK**

Schedule 1 1(a) – The Assets

Owned and Maintained Lines

Freight Main Line

- Between Engineering Station 122+53.1 and Engineering Station 215+89 (between Willows and CPF 312)
- Between Engineering Station 2619+12.4 and Engineering Station 9942+14 (between Fitchburg and Mechanicville)

Connecticut River Main Line

- Between Engineering station -2+25 and Engineering Station 2607+50.7 (between Springfield and East Northfield)

Worcester Main Line

- Between Engineering Station 1341+50 and Engineering Station 1484.26.2 (between Harvard Station and Ayer)

Rotterdam Branch (collectively between Crescent and Rotterdam Junction)

- Between Engineering Station 10450+60.4 and Engineering Station 10994+60.8
- Between Engineering Station 3108+55 and Engineering Station 3225+49

Adams Industrial Track

- Between Engineering Station 739+20 and Engineering Station 981+45 (between North Adams and Adams)

East Deerfield Loop Track

- Between Engineering Station 0+00 and Engineering Station 54+81 (between CPR 35 and East Deerfield)

Heywood Industrial Track

- Between Engineering Station 1383+05 and Engineering Station 1444+15 (between Gardner and Heywood)

Waterbury Branch (between Berlin and Waterbury)

- Between Engineering Station 0+00 and Engineering Station 135+10.15

- Between Engineering Station 6679+37.35 and Engineering Station 7881+34.04
- Between Engineering Station 1442+01.89 and Engineering Station 1428.00

Canal Industrial Track (between Southington and Plainville)

- Between Engineering Station 1251+20 and Engineering Station 1414+10
- Between Engineering Station 0+00 and Engineering Station 75+32.4

Trackage Rights

On MBTA (between Littleton and Littleton)

- Between Engineering Station 1660+00 and Engineering Station 2619+12.44

On Canadian Pacific/D&H (between Mechanicville and Mohawk Yard)

- Between Engineering Station 9942+14 and Engineering Station 10450+60.4
- Between Milepost 10.35 and Milepost 11.0

On NECR (between East Northfield and White River Junction)

- Between Milepost 49.67 and Milepost 13.4

On Amtrak (between New Haven and Springfield)

- Between Milepost 7.0 and Milepost 62.0

On Metro North/ConnDOT (between Waterbury and Derby)

- Between Milepost 8.4 and Milepost 27.0

On CSXT (at the Cedar Hill Connection between North Haven and Cedar Hill Yard)

- Between Milepost 0.00 and Milepost 3.65

On the Greenville Industrial Track (between Ayer and Groton)

- Between Engineering Station 0+00 and Engineering Station 263+75

All real estate contiguous to the above

All of the interest of Pan Am Railways, Inc. in that Option to Purchase Agreement dated as of February 29, 2008, by and between DiSiena Associates LPA and Pan Am Railways, Inc. concerning an option to purchase certain property located in the Towns of Halfmoon and Stillwater and the City of Mechanicville

Schedule 1 1(b) – Material Adverse Effects

None

Schedule 1 1(c) – Permitted Liens

None

Schedule 2 2(a) – The NSR Contribution

Except as provided below, the portion of the NSR Contribution made up of cash and commitments to contribute cash shall be One Hundred Thirty Five million dollars (\$135,000,000) consisting of

- Sixty million dollars (\$60,000,000) in cash and in-kind contribution (such in-kind contribution to be pre-construction engineering services for the Mechanicville Intermodal and Automotive Facility not to exceed \$500,000 in value) payable and contributable within 30 days of the Closing Date, and
- Thirty five million dollars (\$35,000,000) in a demand note callable no sooner than the first anniversary of the Closing, of which the amount described in item 2 of Schedule 3 of this Agreement will be paid no later than on the date the Company must make the payment described in item 2 of Schedule 3 of this Agreement (if any), and
- Thirty million dollars (\$30,000,000) in a demand note callable no sooner than the second anniversary of the Closing, and
- Ten million dollars (\$10,000,000) in a demand note callable no sooner than the third anniversary of the Closing

If any of the Pan Am System Parties or the Company receives any public funding for infrastructure improvements to the Assets, or for the construction of the improvements (including modifications to the associated track) required for the Mechanicville Intermodal and Automotive Facility (the “Mechanicville Improvements”), before all of the NSR Contribution is paid, then the amount of the NSR Contribution shall be reduced by the same and the reduction shall be against the next demand note to be paid and, to the extent necessary, to the subsequent demand notes in the order in which they are to be paid.

Schedule 2 4 – Assumed Liabilities

None

Schedule 2.5 – Capital Infrastructure Plan

The Pan Am Member and the NSR Member, each as defined in the Company Agreement, shall cause the Company to expend \$87,500,000 on (a) the Mechanicville Improvements, on the defined construction schedule, (b) the Sarvel Automotive Improvements, on the defined construction schedule, and (c) such other Capital Improvements as may from time to time be approved by the Capital Projects Committee, as defined in the Company Agreement (“Other Capital Improvements”) with the goal of the Other Capital Improvements to cause the main line of the Line to achieve timetable speed, as reflected in (a) the timetable attached hereto (being the timetable effective as of the date first appearing above) as Schedule 2.5 - A, and (b) as is guided by the project list attached hereto as Schedule 2.5 - B

Schedule 2.5 - A – Timetable

Separately Attached

Schedule 2.5 - B – Project List

Separately Attached

Schedule 3 – Asset Purchase and Sale Consideration

The consideration the Company pays to exercise the Option Agreement shall be Fifty-Two Million Five Hundred Thousand Dollars (\$52,500,000) (the “Purchase Price”) The Purchase Price shall be payable as follows

- 1 On the Exercise Date, the Five Million Dollars (\$5,000,000) NSR paid for the Option Agreement shall be credited toward the Purchase Price and the Company shall pay Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000),
- 2 After the Exercise Date, but before the first anniversary of the Exercise Date, the Company shall pay an amount equal to the amount of public funding the Company actually receives for improving the Line on the date the Company receives the public funding but such amount in the aggregate shall not exceed Ten Million Dollars (\$10,000,000), and
- 3 On the first anniversary of the Exercise Date, the Company shall pay the amount of any remaining unpaid Purchase Price

There shall be no penalty for any prepayment of the Purchase Price

Schedule 10.2(c) - Other Required Pan Am System Party Authorizations or Consents

None

Schedule 10 4(b) Pan Am System Parties' Material Contracts

Separately Attached

Schedule 10 5 – Litigation and Proceedings

Separately Attached

Schedule 10 6(a)(i) Pan Am Environmental Law Disclosure

Separately Attached

Schedule 10 6(a)(ii) -- Pan Am Environmental Notice Disclosure

Separately Attached

Schedule 10 6(b) – Pan Am Environmental Retention Disclosure

Separately Attached

Schedule 10 6(c) -- Pan Am Environmental Release Disclosure

Separately Attached

Schedule 10 7 Pan Am Labor Relations Disclosure

Separately Attached

Schedule 10 9(a) – Pan Am Real Property

Separately Attached

Schedule 10 9(b) – Property Leased from Pan Am

Separately Attached

Schedule 10 9(c) – Proceedings Involving the Property

Separately Attached

Schedule 10 9(d) – Property Leased by Pan Am

Separately Attached

Schedule 10 11 – Compliance with Laws and Other Matters

Separately Attached

Schedule 10 13 – Insurance Covering the Assets

Separately Attached

Schedule 11 2(c) – Other Required NSR Authorizations or Consents

None

Schedule 12 1 – Exceptions to Operations of the Line Prior to Closing

None

Appendix A – The Map

Separately Attached

Appendix B – The Company Agreement

Separately Attached

Appendix C – The NSR Joint Use Agreement

Separately Attached

Appendix D – Assignment and Assumption Agreement Regarding Passenger Rail Operations

[To be supplied]

Appendix E – Miscellaneous Assignment and Assumption Agreement

Separately Attached

Appendix F – Bill of Sale

[To be supplied Not to include terms and conditions inconsistent with Agreement]

Appendix G – Transportation Agreement Assignment and Divisions Allocation Agreement

Separately Attached

Appendix H – The Ayer Switching Agreement

Separately Attached

Appendix I – The Springfield Terminal Joint Use Agreement

Separately Attached

Appendix J – The Capital Projects and Facility Management Agreement

Separately Attached

Appendix K – The Railroad Operating Agreement

Separately Attached

Appendix L – The Springfield Terminal Haulage Agreement

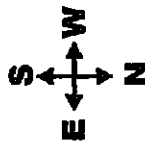
[To be supplied]

Appendix M – Judgment Lien Indemnification Agreement

[To be supplied]

Keag to CPF467

The mileage shown between CPF-WL and Fitchburg is Boston mileage and will be used for operations between the stated points. The mileage shown in "()" is for information only.



119.3: Routing of Automobile Rack Cars and Doublestack Container

Cars. Note: Clearance must not exceed 19 feet 3 inches.

Automobile Rack Cars and Doublestack Container Cars must not be moved on No 1 track between Easterly Crossover at CPFAY and CPF335

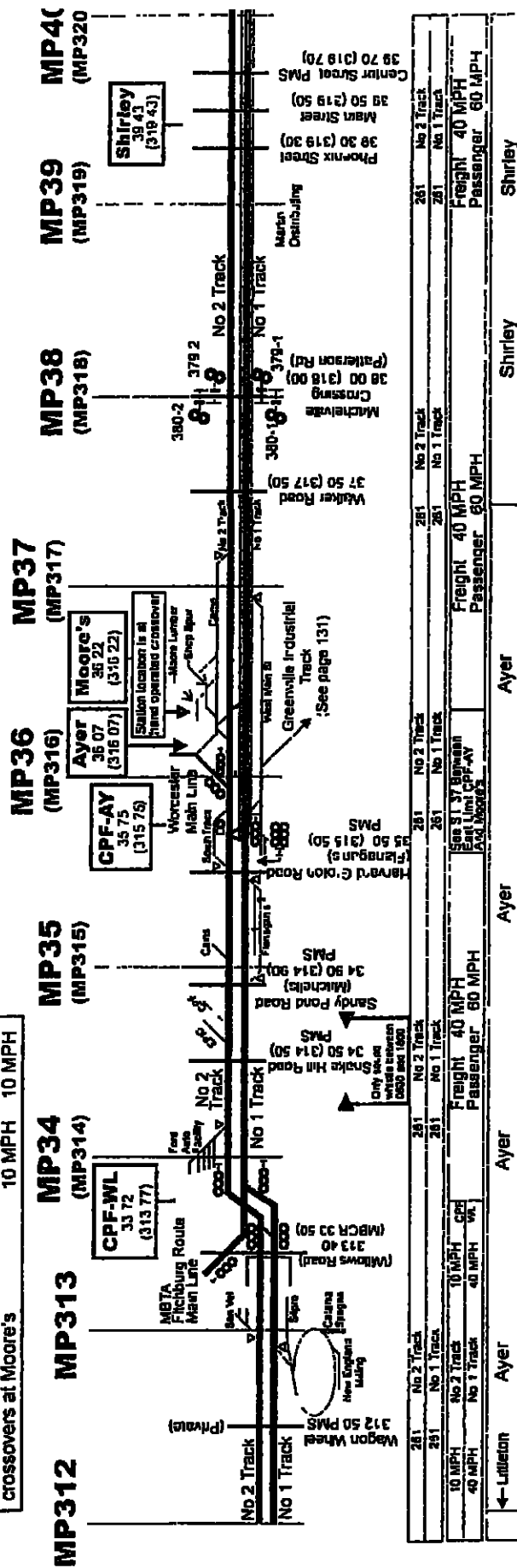
119.1: Maximum Car Weights.

The maximum car weight allowed for the route between CPF-WL and CPF-FG is increased to 286,000 pounds

121: Intervening Tracks at Passenger Stations

In accordance with NORAC Rule 121, paragraph C, the stations listed below have intervening tracks at station platforms

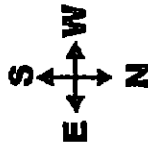
Ayer, Shirley



Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West



The mileage shown between CPF-WL and Fitchburg is Boston mileage and will be used for operations between the stated points. The mileage shown in "() " is for information only

37: Maximum Speed and Permanent Speed Restrictions:			
Between	Frt	Psg	
No. 1 Track: Curve, MP43 and Mileage 43 54	40 MPH	45 MPH	
No. 2 Track: Curve, MP43 and Mileage 43 54	40 MPH	50 MPH	

119.3: Routing of Automobile Rack Cars and Doublestack Container

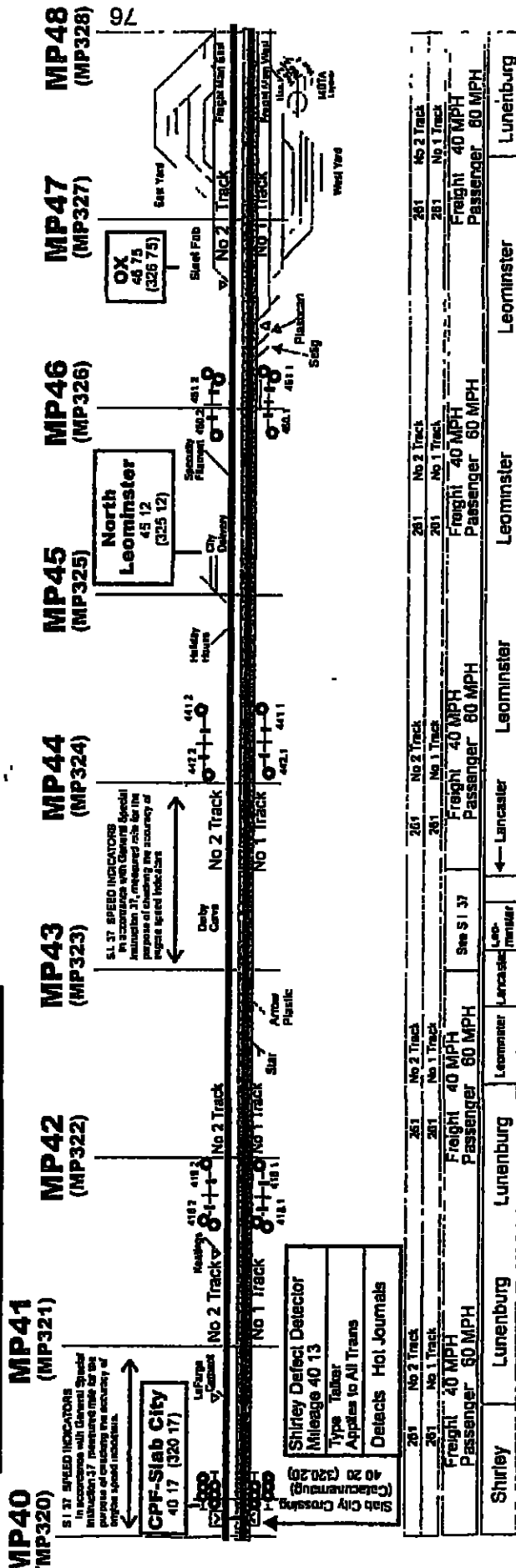
Cars. Note: Clearance must not exceed 19 feet 3 inches.
Automobile Rack Cars and Doublestack Container Cars must not be moved on No 1 track between Easterly Crossover at CPFAY and CPF335

119.1: Maximum Car Weights.

The maximum car weight allowed for the route between CPF-WL and CPF-FG is increased to 286,000 pounds

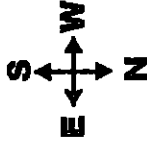
121: Intervening Tracks at Passenger Stations

In accordance with NORAC Rule 121, paragraph C, the station listed below has intervening tracks at station platforms
North Leominster



Keag to CPF467

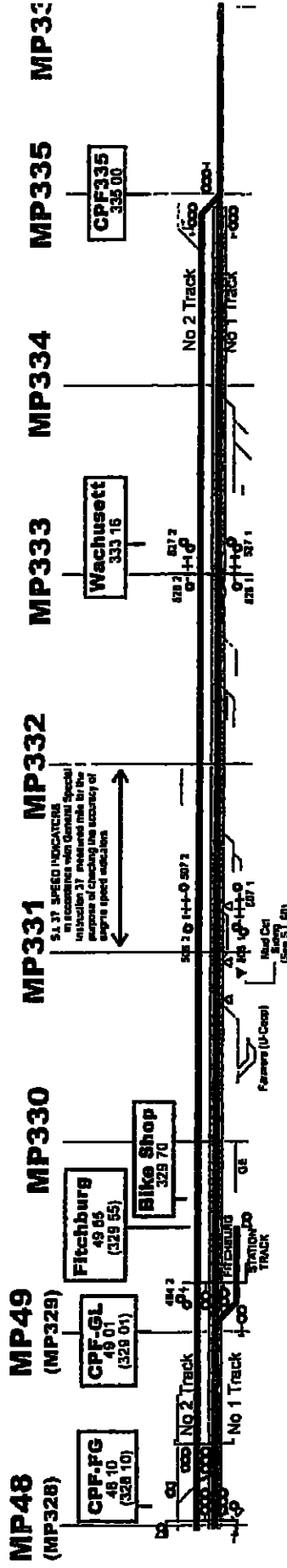
The mileage shown between CPF-WL and Fitchburg is Boston mileage and will be used for operations between the stated points. The mileage shown in "()" is for information only.



A track skate is provided for use on Mud Cut Siding to insure that cars left on the siding will not move from the position in which they have been left. When work is completed, the skate must be placed beneath the last wheel of the last Easterly car on the siding in such a way that the wheel is on the tongue of the skate

Cars. Note: Clearance must not exceed 19 feet 3 inches.
Automobile Rack Cars and Doublestack Container Cars must not be moved
on No 1 track between Easterly Crossover at CPFAY and CPF335

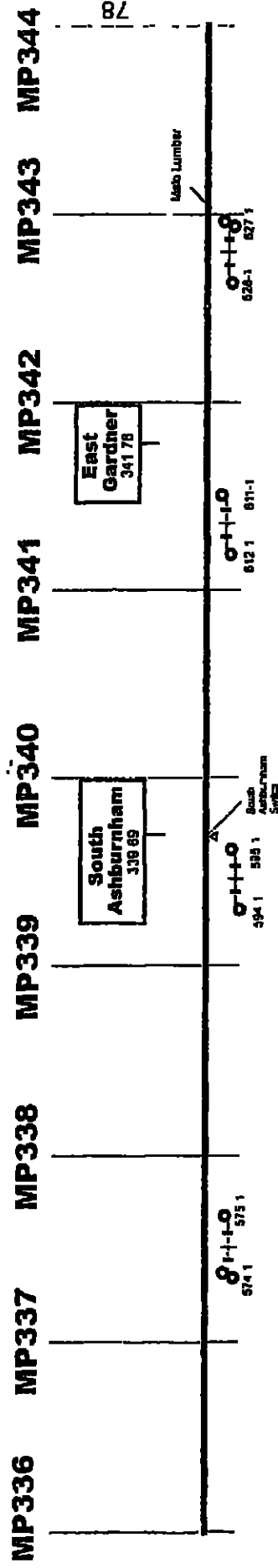
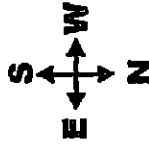
The maximum car weight allowed for the route between CPF-WL and CPF-FG is increased to 286,000 pounds

[illegible]

Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West

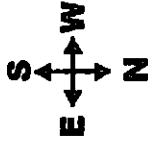


261	Single Track	261	Single Track	261
30 MPH	30 MPH	30 MPH	40 MPH	40 MPH
Westminster	Westminster	Gardner	Ashburnham	Gardner

Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West



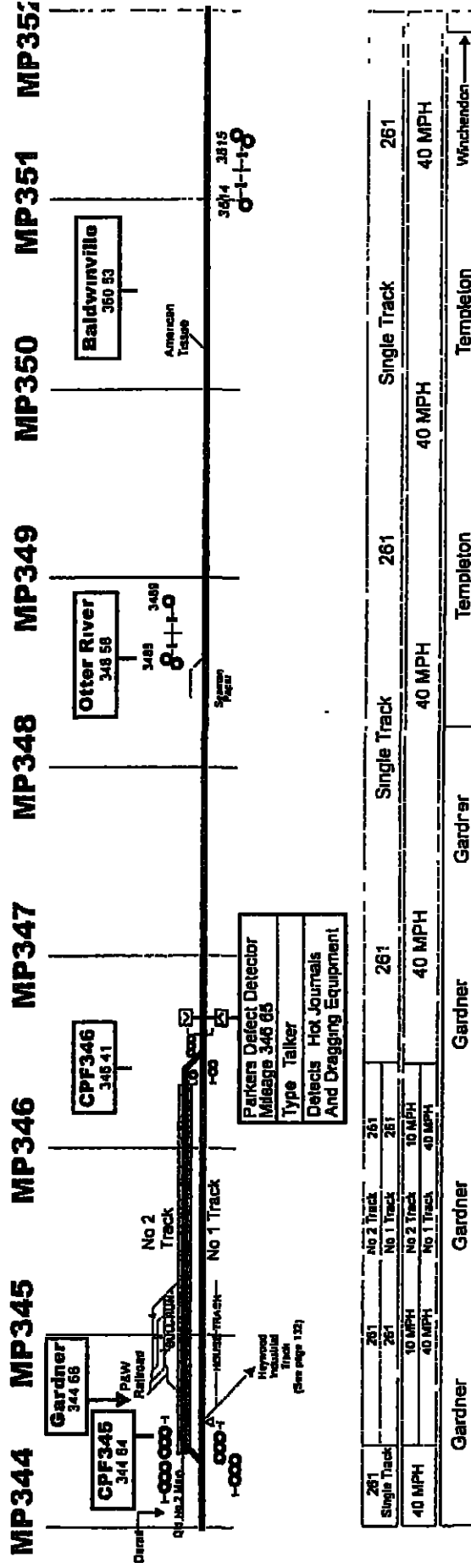
Gardner Yard:

Providence and Worcester Railroad crews must request permission of the Springfield Terminal Railway District 3 TOM on Channel One (A A R 94/70) before operating in Gardner Yard

119.3: Routing of Automobile Rack Cars and Doublestack Container

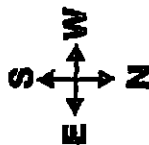
Cars. Note: Clearance must not exceed 19 feet 3 inches.

Automobile Rack Cars and Doublestack Container Cars must not be moved On No 2 track between CPF345 and CPF346



Keag to CPF467

The Direction from Keag to CPF467 is West



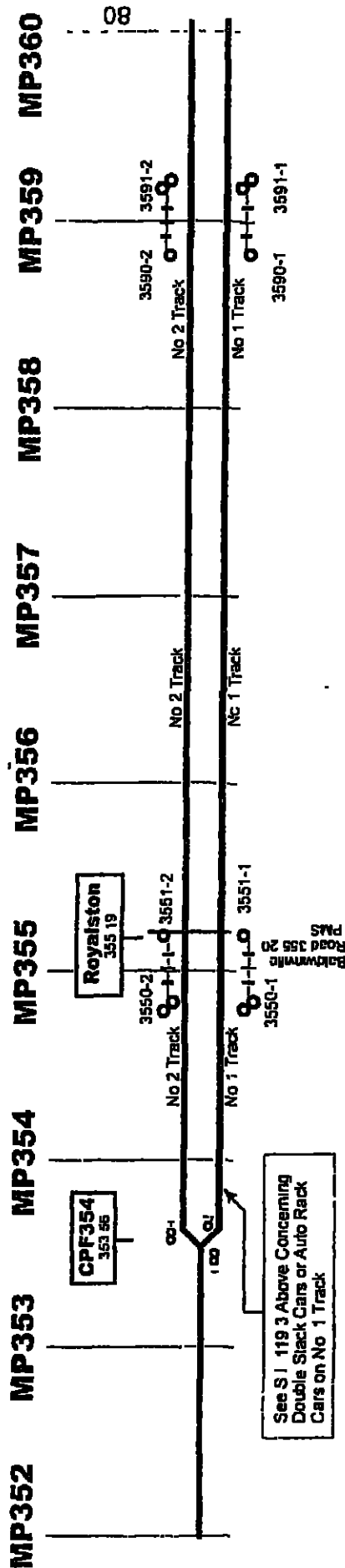
261: Equilateral Turnouts

In regards to equilateral turnouts, the normal route is to the right, and the diverging route is to the left. Equilateral turnouts in regards to this special instruction are located at CPF354

119.3: Routing of Automobile Rack Cars and Doublestack Container

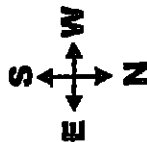
Cars. Note: Clearance must not exceed 19 feet 3 inches.

Automobile Rack Cars and Doublestack Container Cars must not be moved on No 1 track between MP 361 and MP 362

[illegible]

Keag to CPF467

The Direction from Keag to CPF467 is West



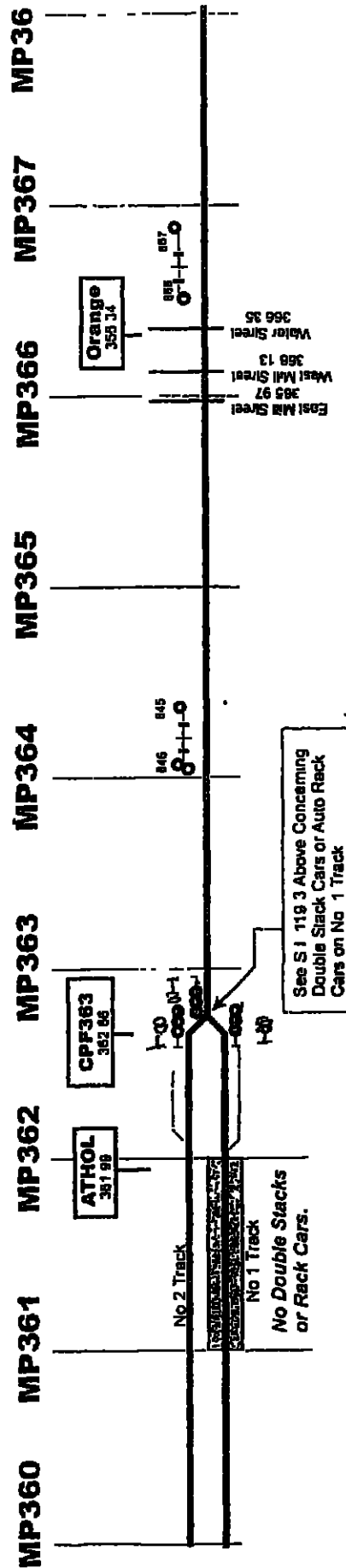
261: Equilateral Turnouts

In regards to equilateral tumours, the normal route is to the right, and the diverging route is to the left. Equilateral tumours in regards to this special instruction are located at CPF363

119.3: Routing of Automobile Rack Cars and Double Stack Container Cars

Note: Clearance must not exceed 19 feet, 3 inches.

Automobile Rack Cars and Doublestack Container Cars must not be moved on No 1 track between MP 361 and MP 362

[illegible]

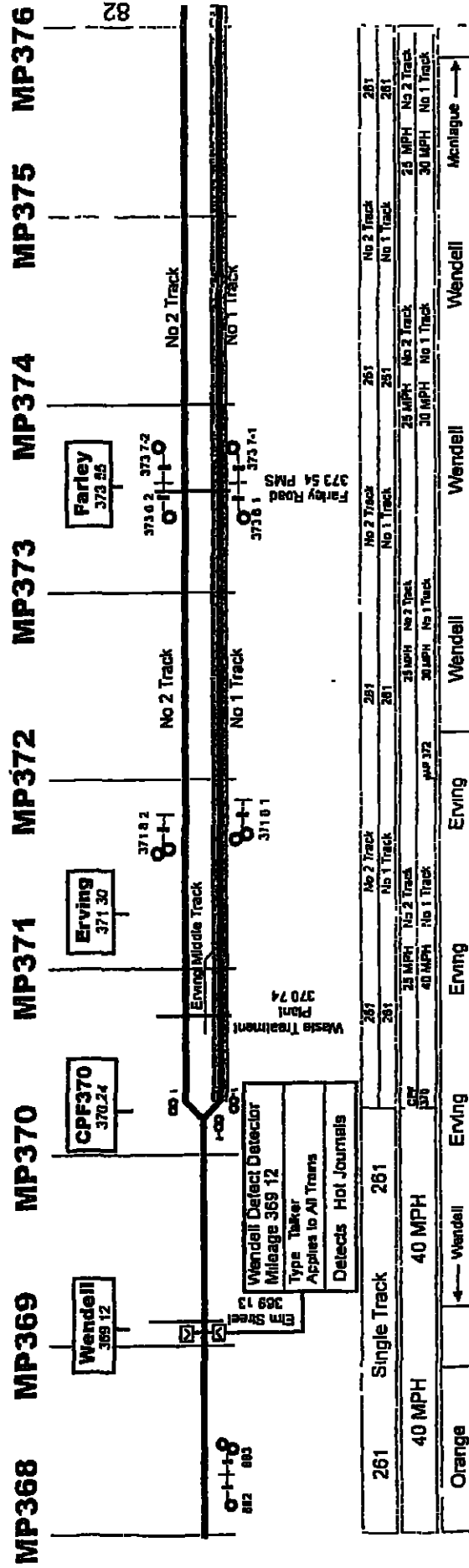
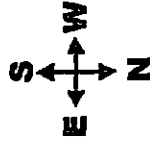
Keag to CPF467

261: Equilateral Turnouts

In regards to equilateral turnouts, the normal route is to the right, and the diverging route is to the left. Equilateral turnouts n regards to this special instruction are located at **CBE170**

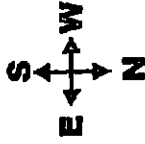
119.3: Routing of Automobile Rack Cars and Double Stack Container Cars
Note: Clearance must not exceed 19 feet, 3 inches.

Automobile Rack Cars and Doublestack Container Cars must not be moved on No 1 track between CPF370 and CPF381



Freight Main Line

Keag to CPF467

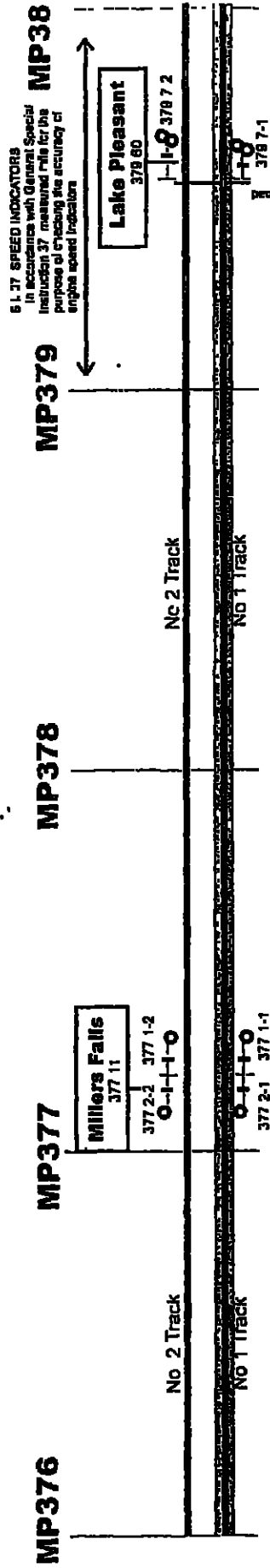


The direction from Keag to CPF 467 is West

119.3: Routing of Automobile Rack Cars and Double Stack Container Cars

Note: Clearance must not exceed 19 feet, 3 inches.

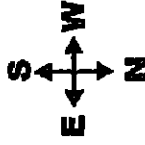
Automobile Rack Cars and Doublestack Container Cars must not be moved on No 1 track between CPF370 and CPF381



261	No 2 Track	261	No 2 Track	261
261	No 1 Track	261	No 1 Track	261
25MPH	No 2 Track	25MPH	No 2 Track	No 2 Track
30MPH	No 1 Track	30MPH	No 1 Track	No 1 Track
25MPH	No 2 Track	25MPH	No 2 Track	No 2 Track
30MPH	No 1 Track	30MPH	No 1 Track	No 1 Track
Erving	Montague	Montague	Montague	Montague

Freight Main Line

Keag to CPF467



The direction from Keag to CPF 467 is West

97: MONTAGUE RUNNING TRACK

The Montague Running Track is on the North side of the Single Track and extends from CPF381 to CPF383. It is under the control of the District 4 Train Operations Manager

700.3: East Deerfield Hump Radio Channel

The crew assigned to work the East Deerfield Hump will operate on the MEC Road Channel (34/34)

612: SWITCHING, CPF383 AND CPF384; R AND D YARD LEADS

The interlocking dwarf signals governing Eastward and Westward movements on the R and D Leads are controlled by the District 4 Train Operations Manager and are part of the respective control points. These signals display Red (Rule 290) continuously unless set to STOP (Rule 292). Except in case of emergency, before setting signals to STOP, the Train Operations Manager must confer with the East Deerfield yard clerk on duty if applicable. When non-diverging switching movements are made on the R and D Lead which involve said signals, Rule 612 will not apply

119.3: Routing of Automobile Rack Cars and Double Stack Container Cars

Note: Clearance must not exceed 19 feet, 3 inches.

Automobile Rack Cars and Doublestack Container Cars must not be moved on No 1 track between CPF370 and CPF381

Automobile Rack Cars and Doublestack Container Cars may be moved on the Greenfield and Montague Running Tracks. See SI 119 above when moving said cars on the Montague Running Track

MP380

MP381

CPF381
380 97

MP382

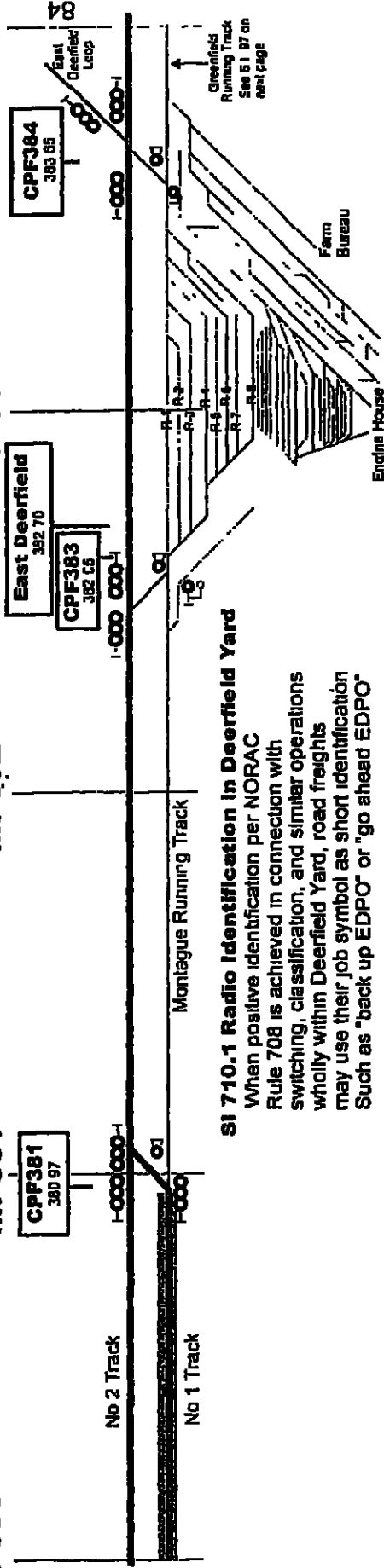
East Deerfield
392 70

MP383

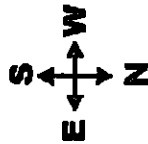
CPF383
382 65

MP384

CPF384
383 85



261	No 2 Track	261	Single Track		261	261
261	No 1 Track	261	Single Track		261	261
25 MPH	No 2 Track	25 MPH	40 MPH		10 MPH	10 MPH
40 MPH	No 1 Track	40 MPH	40 MPH		10 MPH	10 MPH
Montague		Montague	Montague		Deerfield	Deerfield
Montague		Montague	Montague		Deerfield	Deerfield



Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West

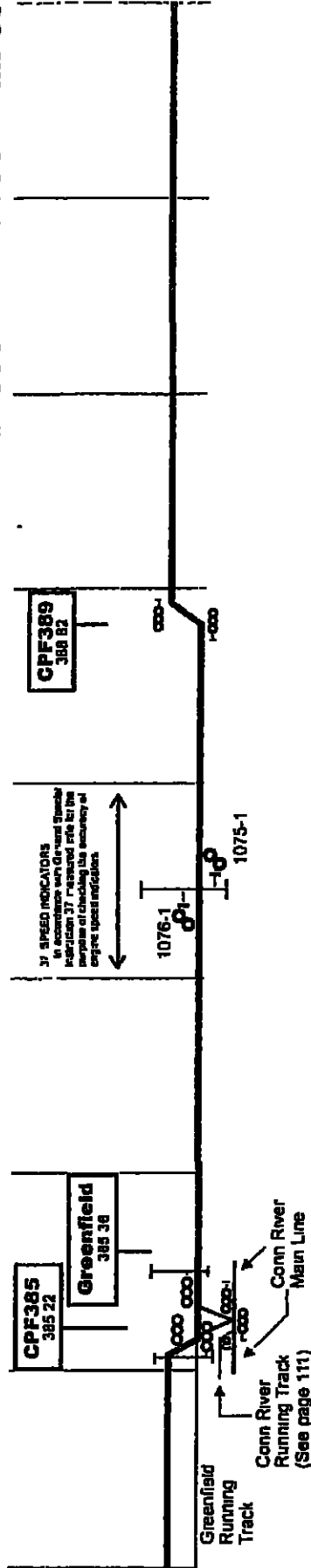
SI 710.1 Radio Identification in Deerfield Yard
When positive identification per NORAC Rule 708 is achieved in connection with switching, classification, and similar operations wholly within Deerfield Yard, road freights may use their job symbol as short identification Such as "back up EDPO" or "go ahead EDPO"

700.3: East Deerfield Hump Radio Channel
The crew assigned to work the East Deerfield Hump will operate on the MEC Road Channel (34/34)

97: Greenfield Running Track
The Greenfield Running Track is on the North side of the Single Track and extends from CPF384 to CPF385. It is under the control of the District 4 Train Operations Manager

119-3: Routing of Automobile Rack Cars and Double Stack Container Cars
Automobile Rack Cars and Doublestack Container Cars may be moved on the Greenfield and Montague Running Tracks See SI 119.3 on page 83 when moving said cars on the Montague Running Track

MP384 MP385 MP386 MP387 MP388 MP389 MP390 MP391 MP392

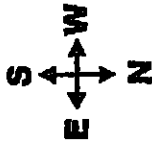


261	Single Track	261	Single Track	261	Single Track	261
MP 384	30 MPH	30 MPH	40 MPH	40 MPH	35 MPH	MP392
Greenfield	Greenfield	Greenfield	Deerfield	Deerfield	Deerfield	Deerfield

Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West



600: Special Requirements Applicable to Designated Automatic

Block Signals.

In order to avoid obstructing crossing at grade, when the specified train (based on 30 foot cars) encounter an Approach (Rule 285) or a Stop and Proceed indication (Rule 291) on the following Automatic Block Signals, they must be stopped at the signal and the Train Operations Manager advised. Movement must not be resumed until the Train Operations Manager advises that it is Permissible to proceed or a more permissive signal indication is received.

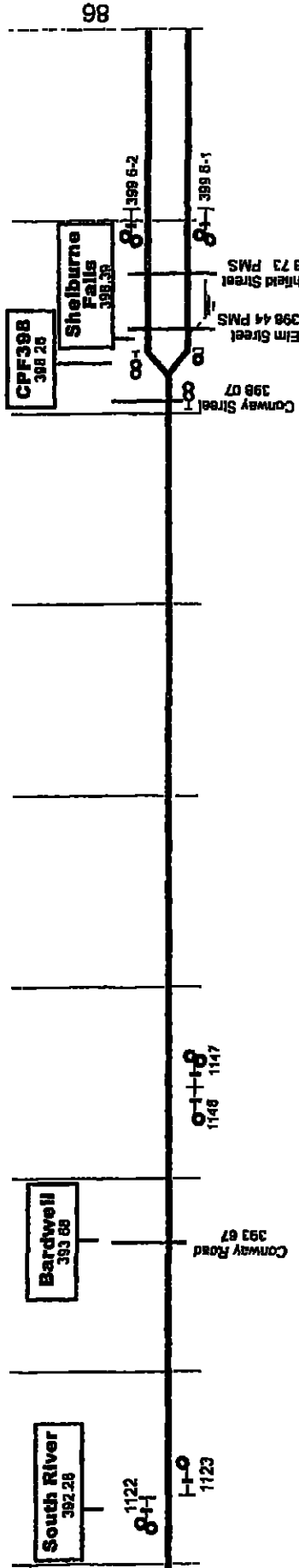
Location: (City or Town)	ABS Signal No.	Applies to	TOM
Shelburne Falls	No 399 6-2	Eastward Trains	4
Shelburne Falls	No 399 6-1	Eastward Trains	4

261: Equilateral Turnouts

In regards to equilateral turnouts, the normal route is to the right, and the diverging route is to the left. Equilateral turnouts in regards to this special instruction are located at

CPF398

MP392 MP393 MP394 MP395 MP396 MP397 MP398 MP399 MP400

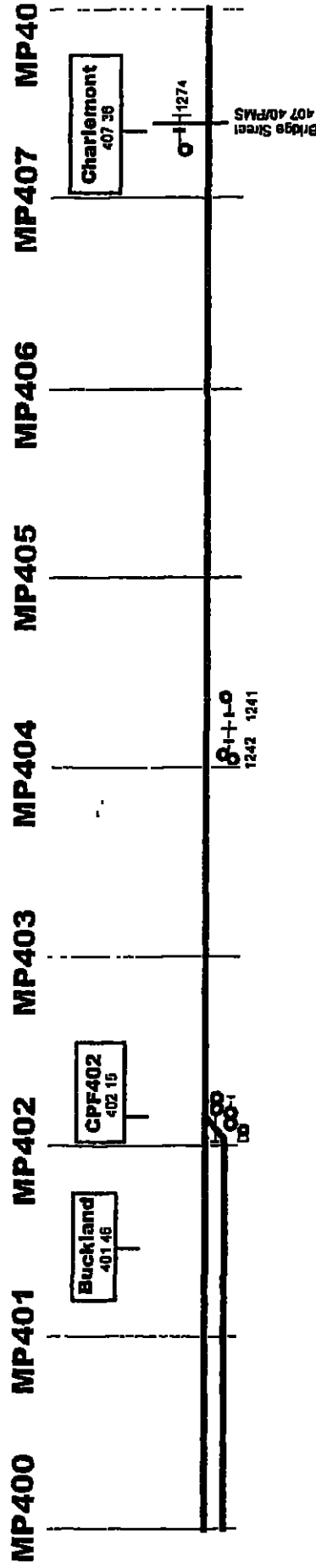
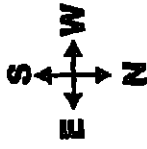


Location	Track	Speed	Direction
261	Single Track	261	Single Track
30 MPH	30 MPH	30 MPH	30 MPH
Deerfield	Shelburne	Conway	Buckland

Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West



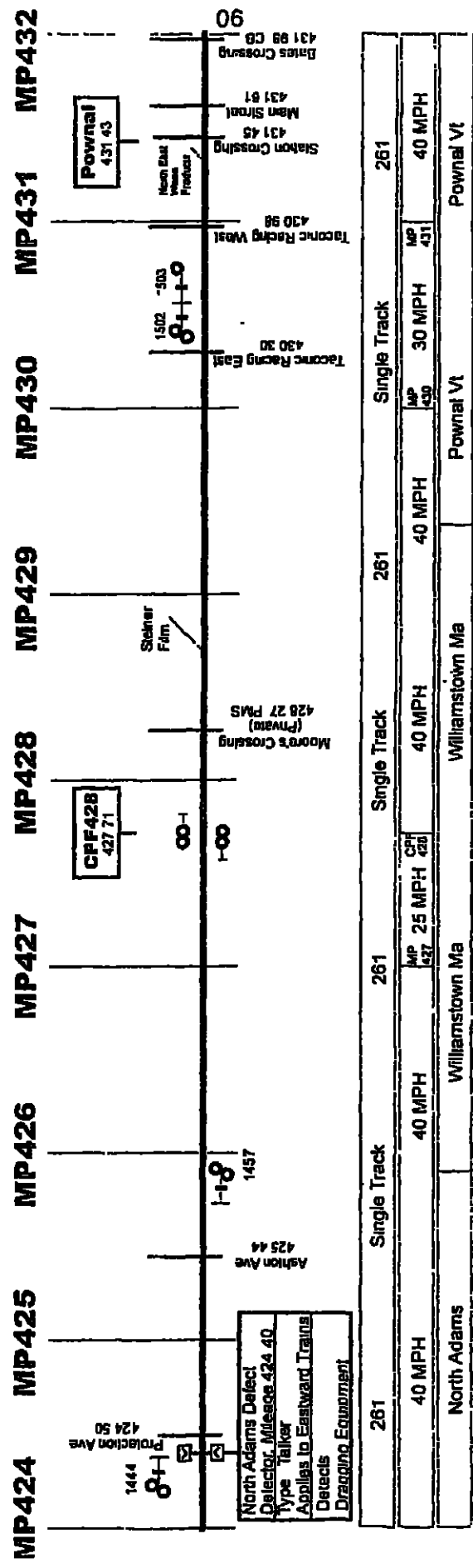
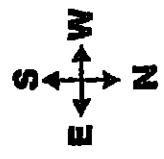
Buckland		Buckland		Buckland		Charlton		Charlton	
No 2 Track	No 1 Track	No 2 Track	No 1 Track	No 2 Track	No 1 Track	No 2 Track	No 1 Track	No 2 Track	No 1 Track
261	261	261	261	261	261	261	261	261	261
No 2 Track 30 MPH	No 1 Track 10 MPH	No 2 Track 30 MPH	No 1 Track 10 MPH	No 2 Track 30 MPH	No 1 Track 10 MPH	No 2 Track 30 MPH	No 1 Track 10 MPH	No 2 Track 30 MPH	No 1 Track 10 MPH
Buckland		Buckland		Buckland		Charlton		Charlton	
Single Track		Single Track		Single Track		Single Track		Single Track	
35 MPH		35 MPH		35 MPH		35 MPH		35 MPH	
Charlton		Charlton		Charlton		Charlton		Charlton	

261	Single Track	261	Single Track	261	No 2 Track	261	No 2 Track	261	No 2 Track	261	Single Track
				261	No 1 Track	261	No 1 Track	261	No 1 Track	261	Single Track
35 MPH	35 MPH	35 MPH	35 MPH	10 MPH	No 2 Track	10 MPH	No 2 Track	10 MPH	No 2 Track	35 MPH	30 MPH
				35 MPH	No 1 Track	35 MPH	No 1 Track	35 MPH	No 1 Track	35 MPH	30 MPH
Charlmont	Charlmont	Charlmont	Charlmont	Rowe		Rowe		Rowe		Rowe	Florida

Freight Main Line

Keag to CPF467

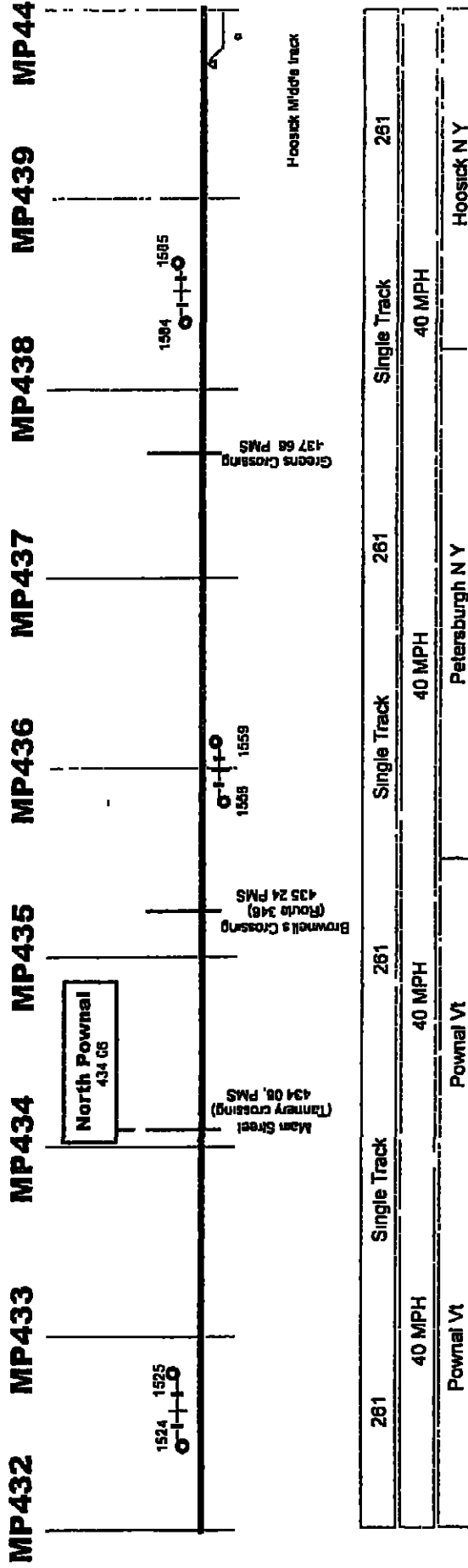
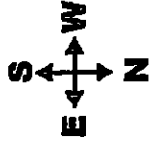
The Direction from Keag to CPF467 is West



Freight Main Line

Keag to CPF467

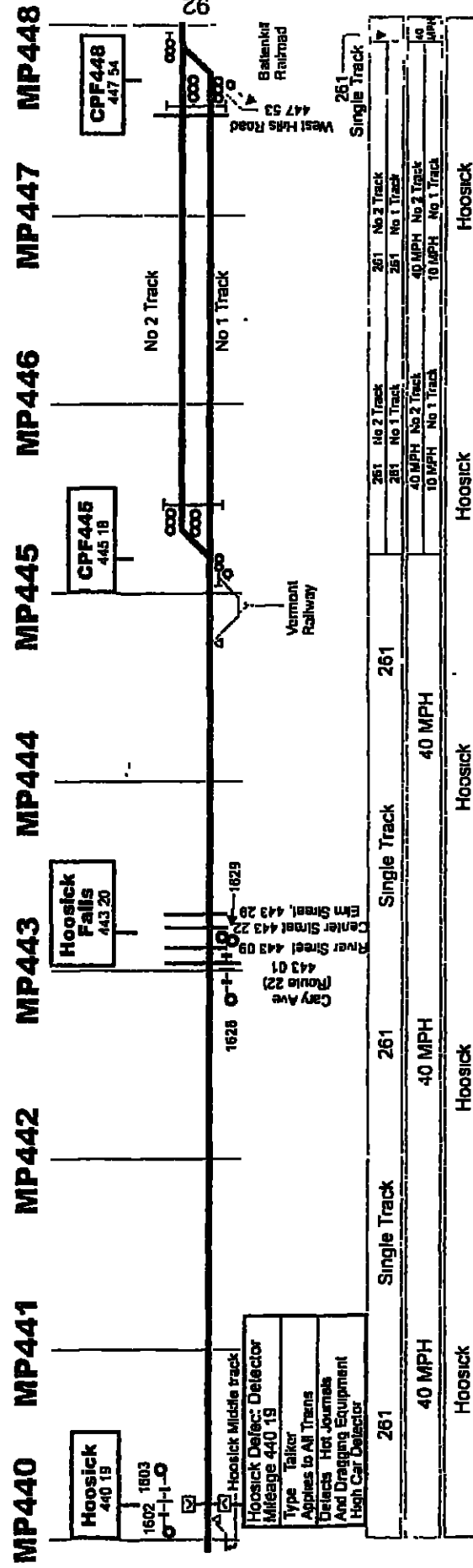
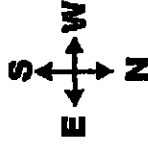
The Direction from Keag to CPF467 is West



Freight Main Line

Keag to CPF467

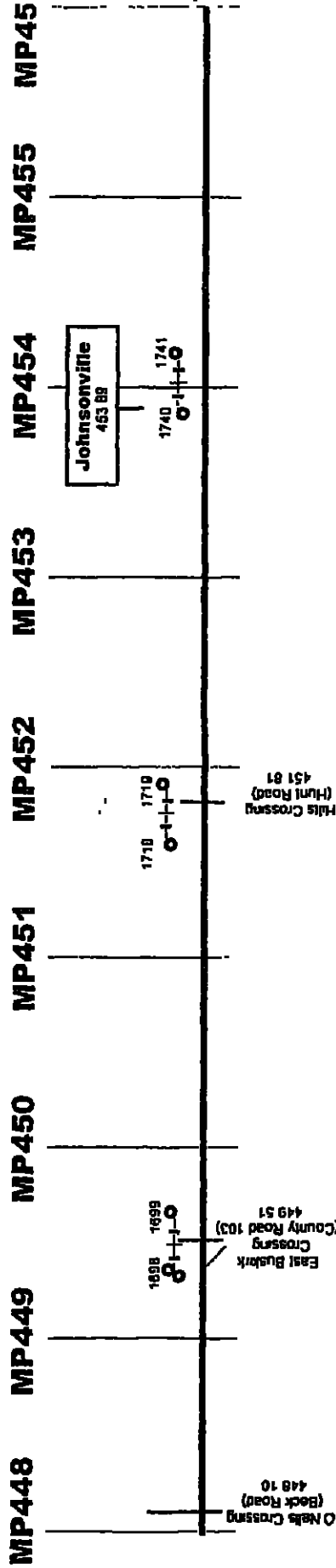
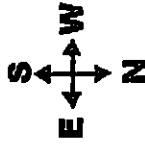
The Direction from Keag to CPF467 is West



Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West

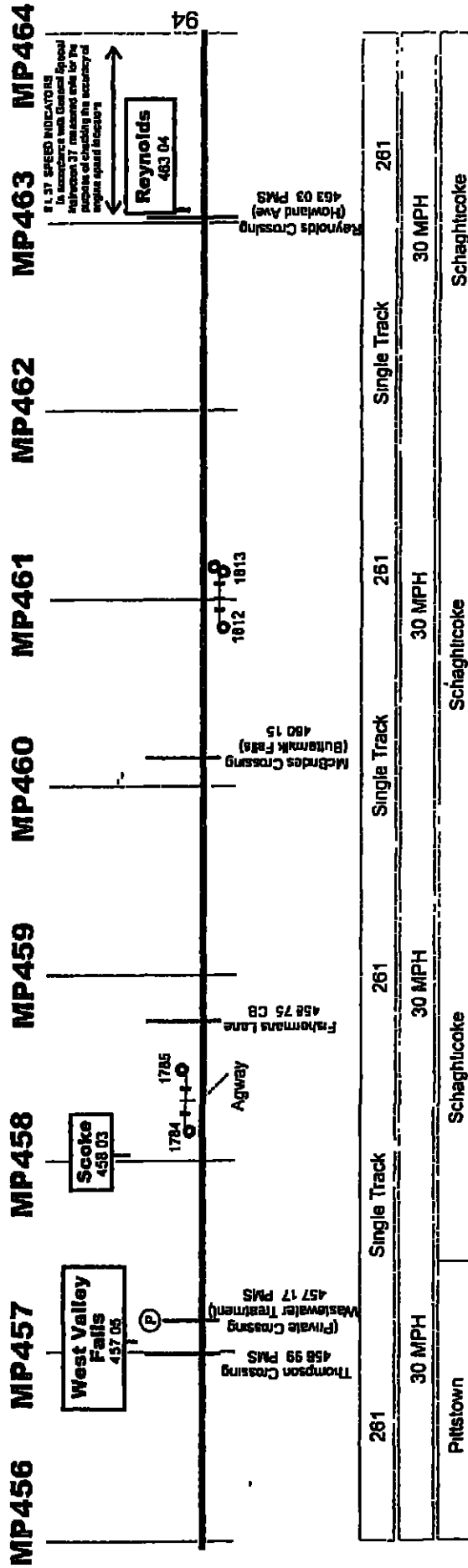
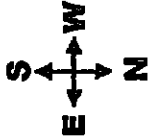


261	Single Track	261	Single Track	261
40 MPH	40 MPH	40 MPH	30 MPH	30 MPH
Hoosick	Hoosick	Pittstown	Pittstown	Pittstown

Freight Main Line

Keag to CPF467

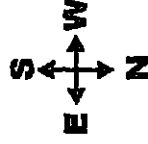
The Direction from Keag to CPF467 is West



Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West

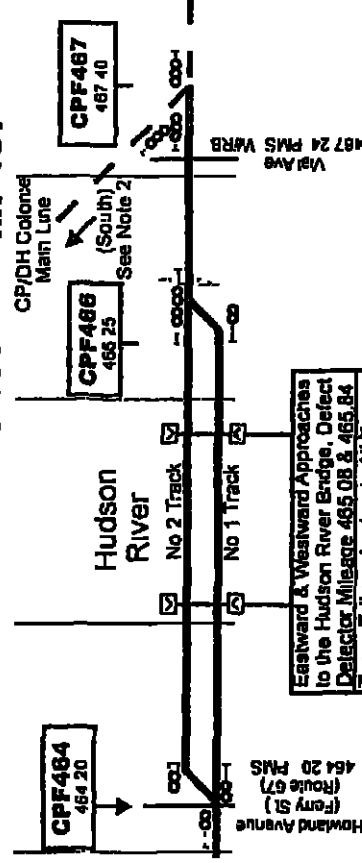


600.1: CPF467, EASTWARD TRAINS.
Eastward trains, consisting of 50 cars or more, encountering an Approach indication at CPF467 must stop west of CPF467 and remain there until an indication less restrictive than Approach (Rule 285) is displayed at the interlocking signal

600.2: CPF467.
The District 4 Train Operations Manager must not display a permissive signal at CPF467 or authorize a movement to pass a stop indication, in accordance with Rule 241 onto the CP/DH Colonie Main Line or CP/DH Freight Main Line without first obtaining permission from the CP/DH North End Dispatcher

905: CPF467
The District 4 Train Operations Manager must apply blocking devices as requested by the CP/DH North End Train Dispatcher. A record must be made on the train sheet for BDA and SDR times. ST Train Operation Managers will not be required to copy CP/DH written authorities

MP464 MP465 MP466 MP467

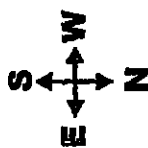


Eastward & Westward Approaches to the Hudson River Bridge. Defect Detector Mileage 465.08 & 465.84
Type Talker Applies to All Trains
Detects Draggings Equipment

Signal	261	No 2 Track	261	No 2 Track	Single Track	261
Track	261	No 1 Track	261	No 1 Track		
MP	464.20	No 2 Track 10 MPH	465.25	No 1 Track 10 MPH	10 MPH	10 MPH
MP	467.40	No 1 Track 10 MPH	467.40	No 1 Track 10 MPH		
	Schaghticoke		Stillwater			Mechanicville

Note 1
Between Westerly limit of CPF467 and Schenectady is the CP/DH Freight Main under the control of the CP/DH North End Train Dispatcher. Minneapolis MN Movements are governed by CP/DH operating rules, special instructions and authorities issued by the CP/DH North End Dispatcher. ST crews before operating over this must check with the CP/DH North End dispatcher and ascertain that they have all necessary information regarding Bulletin Orders and Temporary Speed Restrictions. ST crews are required to carry, and are governed by, Canadian Pacific Railway (DH) Timetable Monthly Bulletin Orders (MBO) and Daily Operating Bulletin (DOB)

Note 2
The Main Track on the Colonie Main Line between CPF467 and CPO17 is designated "Single Track" and the method of operation is "261 Territory". It is under the control of the CP/DH North End Dispatcher



Rotterdam Branch

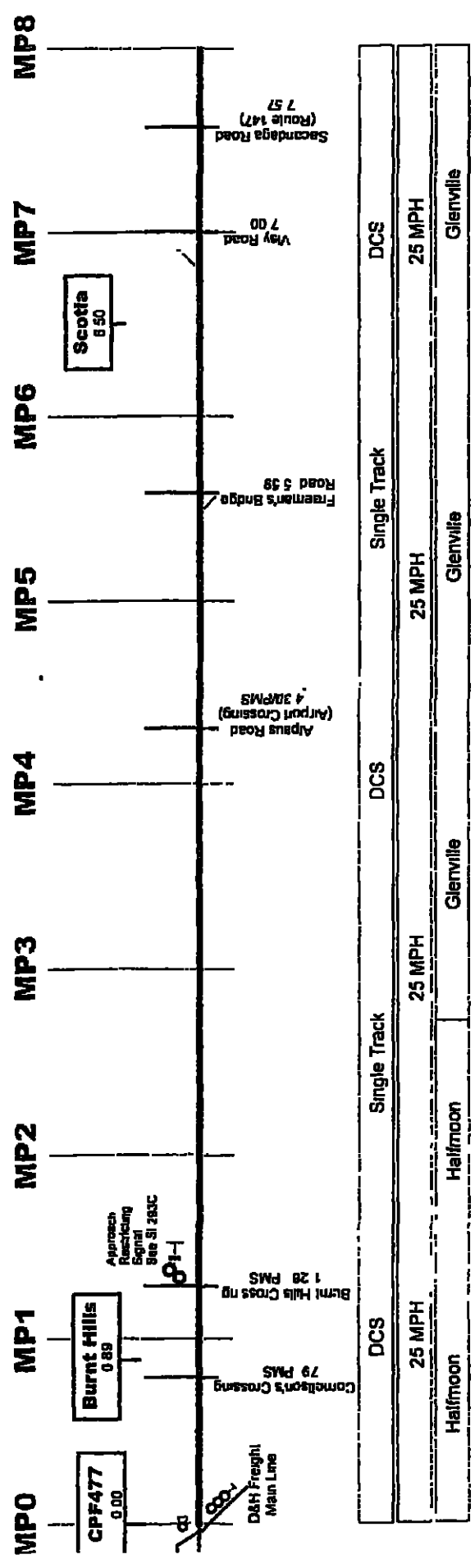
CPF477 to CPRJ

The direction from CPF477 to CPRJ is West

293C: Obstructing Public Crossing At Grade.

Eastward trains of more than 50 cars must not pass the Approach Restricting signal (Rule 293c) at mileage 1 50 without permission of the D&H North End Dispatcher

96



0150508

PROPOSED CAPITAL EXPENDITURE PLAN

REVIEWED BY PAN AM FLIGHTS

[illegible]

Notes:

Rehabilitation Budget does not provide any funds for Core Capacity Improvements or Trackwork related to Intermodal Facility construction

Budget allocation for items highlighted in Tan based on work task / service to be performed by NGR forces or contractors

Budget allocation for items highlighted in Blue based on work task / service being performed by Pan Am Railways forces or contractors

Transaction Agreement Appendices

Section 10 Disclosure Statement is omitted from the filed copy of the Transaction Agreement

The Appendices to the Transaction Agreement are included below except for the following, which are included elsewhere in the Application, as noted below

Transaction Agreement		Reference to Application
Appendix A	Map	See, Volume 1, Exhibit 1
Appendix B	Company Agreement	See, Volume 2, Exhibit 2B
Appendix C	NSR Joint Use Agreement	See, Volume 2, Exhibit 2E
Appendix G	Divisions Agreement	See, Volume 2, Exhibit 2F
Appendix I	STC Terminal Joint Use Agreement	See, Volume 2, Exhibit 2G
Appendix J	Capital Projects and Facility Management Agreement	See, Volume 2, Exhibit 2D
Appendix K	Railroad Operating Agreement	See, Volume 2, Exhibit 2C
Appendix L	Springfield Terminal Haulage Agreement	See, Volume 2, Exhibit 2G

**MISCELLANEOUS ASSIGNMENT AND
ASSUMPTION AGREEMENT**

THIS MISCELLANEOUS ASSIGNMENT AND ASSUMPTION

AGREEMENT (this "Agreement") is made and entered into as of [], 2008, by and among Pan Am Southern L.L.C. a Delaware limited liability company ("Pan Am Southern" or the "Assignee"), Pan Am Railways, Inc. on behalf of itself and its subsidiaries ("Pan Am"), Boston and Maine Corporation ("B&M"), and Springfield Terminal Railway Company ("Springfield Terminal"). Each of Pan Am Southern, Pan Am, B&M, and Springfield Terminal shall hereinafter be referred to as a "Party" or collectively as the "Parties." Pan Am, B&M, and Springfield Terminal shall hereinafter be referred to as the "Pan Am System Group" or the "Assignors."

RECITALS:

WHEREAS, on the terms and conditions set forth in the Transaction Agreement, as hereinafter defined, each member of the Pan Am System Group has agreed to contribute, transfer and assign to Pan Am Southern all of their respective right, title and interest in, to and under, and Pan Am Southern has agreed to assume, observe and perform, all contracts, agreements, leases and licenses pursuant to which third parties have rights with respect to the Assets, including, without limitation, the lateral and perpendicular fiber and wire agreements, pipeline agreements, rental agreements, clearance agreements and other agreements set forth on Exhibit A and Exhibit B, and agreements concerning the performance of any grade crossing facility maintenance, repair and inspection obligation arising from the creation or maintenance of any public highway-railroad grade crossing or private grade crossing set forth on Exhibit C (the "Ancillary Agreements"), excluding (i) the portions thereof that relate to and affect assets that are not included in the Assets and (ii) the agreements listed on Exhibit D,

WHEREAS, on the terms and conditions set forth in the Transaction Agreement, each member of the Pan Am System Group has agreed to contribute, transfer and assign to Pan Am Southern all of their respective right, title and interest in, to and under, and Pan Am Southern has agreed to assume, observe and perform, all (1) Permits, (2) architectural, mechanical, engineering and other plans and specifications relating to the Assets and in the possession and control of any member of the Pan Am System Group, (3) all deposits under all contracts, agreements, leases and licenses included in or otherwise related to the Assets and (4) all warranties, guarantees, contract rights and miscellaneous rights with respect to the Assets (the "Intangibles"), in each case excluding (i) the portions thereof that relate to and affect assets that are not included in the Assets and (ii) the intangibles listed on Exhibit E

NOW, THEREFORE, the Parties hereto, for and in consideration of the premises, the mutual covenants and agreements contained herein and in the Transaction Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, agree as follows

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally

Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry. Each definition in this Agreement includes the singular and the plural. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the words "include" or "including" also include the words "without limitation" when the context is appropriate, and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency. All capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to such terms in the Transaction Agreement by and among Norfolk Southern Railway Company and the Pan Am System Group, dated _____. 2008 (the "Transaction Agreement")

(b) Construction of Certain Terms and Phrases

Unless the context otherwise requires, (a) words of any gender include each other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) the terms "Article" or "Section" refers to the specified Article or Section of this Agreement, (d) the terms "and" and "or" include the term "and/or" when the context is appropriate, and (e) the phrases "ordinary course of business" and "ordinary course of business consistent with past practice" refer to the business and practice of the Person specified or, in the case of the operation of the Line, the business and practice of Pan Am and its Subsidiaries with respect to the Assets. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. Unless the context otherwise requires, whenever this Agreement refers to an Appendix, Exhibit or Schedule, it is a reference to an Appendix, Exhibit or Schedule attached hereto, and the referenced Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference.

SECTION 2. ASSIGNMENTS.

Subject to the terms of the Transaction Agreement, and for value received, Assignors do hereby transfer and assign (as to the Ancillary Agreements listed on Exhibits A and C), or partially transfer and assign (as to the Ancillary Agreements listed on Exhibit B) unto Assignee, to the fullest extent that they lawfully may, all of Assignors' rights, titles and interests in those various Ancillary Agreements listed on Exhibit A, Exhibit B and Exhibit C. Assignors further transfer or partially transfer and assign unto Assignee, to the fullest extent that they lawfully may, the respective rights, titles and interests of Assignors, if any, in the Intangibles other than those listed on Exhibit E. Notwithstanding anything to the contrary in this Agreement, Assignors withhold from assignment each and every agreement listed on Exhibit D hereto and each and every intangible listed on Exhibit F.

SECTION 3. ASSUMPTION.

Subject to the terms of the Transaction Agreement, Assignee does hereby accept and assume, to the extent of the interest hereby assigned, all of the rights, titles and interests of Assignors contained within the Ancillary Agreements (other than those listed on Exhibit D hereto) and the Intangibles, in each case to the extent assigned pursuant to Section 2, and agrees to pay, observe, perform and discharge the future obligations under the Ancillary Agreements and Intangibles, in each case in accordance with their respective terms and to the extent assigned

SECTION 4. DELIVERY OF ASSIGNED AGREEMENTS.

Within a reasonable time from the date of this Agreement, Assignors will deliver to Assignee copies of the documents indicated on Exhibit A, Exhibit B, Exhibit C and Exhibit E

SECTION 5. ERRONEOUS ASSIGNMENT.

It is the intent of Assignors to assign their interest in only those instruments affecting, and only to the extent that they affect, the Assets. Should any instruments that do not affect the Assets be included on the instruments provided herein to Assignee, notwithstanding anything to the contrary herein, this Agreement shall be void and of no effect as to those instruments

SECTION 6. AFTER-DISCOVERED AGREEMENTS AND INTANGIBLES.

The instruments listed on the exhibits hereto constitute all of such instruments known to Assignors affecting the Assets. If subsequent to the effective date of this Agreement, Assignors discover any additional instruments which affect the Assets, said instruments shall be automatically assigned as if included herein

SECTION 7. THE TRANSACTION AGREEMENT.

This Agreement is subject to the terms and conditions of the Transaction Agreement. Nothing herein shall be deemed to amend, modify, alter, expand or diminish the terms and conditions of the Transaction Agreement, including the covenants, representations, warranties and indemnity obligations contained therein

SECTION 8. GOVERNING LAW.

THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS

SECTION 9. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument

SECTION 10. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any rights, interests, benefits or remedies of any nature whatsoever under or by reason of this Agreement

SECTION 11. FURTHER ASSURANCES.

Assignors shall, from time to time upon the reasonable request of Assignee, execute and deliver all such further documents and instruments, and take all such further acts as shall be reasonably necessary or desirable to give full effect to the intent and meaning of this Agreement

The effective date of this Agreement is _____, 2008

DATED this ____ day of _____, 2008

PAN AM SOUTHERN LLC

PAN AM RAILWAYS, INC.

By _____
Name
Title

By _____
Name
Title

**BOSTON AND MAINE
CORPORATION**

**SPRINGFIELD TERMINAL
RAILWAY COMPANY**

By _____
Name
Title

By _____
Name
Title

APPENDIX H - REDACTED

AYER SWITCHING AGREEMENT

THIS SWITCHING AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2008, by and between Springfield Terminal Railway Company ("Springfield Terminal"), a Vermont corporation, and Pan Am Southern LLC ("Pan Am Southern"), a Delaware limited liability company. Each of Springfield Terminal and Pan Am Southern shall be a "Party" to this Agreement and collectively they shall be referred to as the "Parties"

WITNESSETH:

WHEREAS, Norfolk Southern Railway Company ("Norfolk Southern"), Pan Am Railway, Inc. ("Pan Am"), for itself and its subsidiaries, Boston and Maine Corporation ("B&M") and Springfield Terminal, (together with Pan Am and B&M, the "Pan Am System Parties") entered into a Transaction Agreement (the "Transaction Agreement"), dated as of [], 2008, which provides, among other things, for Norfolk Southern and B&M to form Pan Am Southern, and

WHEREAS, the Transaction Agreement provides for B&M and other Pan Am System Parties to sell in part, and contribute in part, certain railroad lines and trackage rights owned or operated by B&M generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the "Line", as more specifically defined in the Transaction Agreement) and certain other related assets to Pan Am Southern (the "Contribution"), and

WHEREAS, the Transaction Agreement anticipates that, pursuant to a Railroad Operating Agreement, Pan Am Southern initially will hire Springfield Terminal, a wholly-owned subsidiary of Pan Am, to perform as the designated operator (in its role pursuant to that Railroad Operating Agreement, "Railroad Operator") for all railroad operations on behalf of Pan Am Southern, including the Pan Am Southern railway operations required pursuant to this Agreement, and

WHEREAS, the Transaction Agreement provides for Pan Am Southern to provide to Springfield Terminal certain switching services for the movement of certain traffic that moves in Springfield Terminal's own revenue waybill account ("Springfield Terminal Traffic") between the rail lines remaining to Springfield Terminal immediately following the completion of the Contribution that lie north and east of Willows ("Remaining Pan Am"), and certain industrial locations in Ayer, and

WHEREAS, Norfolk Southern and the Pan Am System Parties obtained the prior consent of the Surface Transportation Board to consummate the transactions set forth in the Transaction Agreement, and

WHEREAS, Norfolk Southern and B&M formed Pan Am Southern in accordance with the Transaction Agreement, and

WHEREAS, Pan Am Southern now wishes to provide Springfield Terminal switching services for Springfield Terminal Traffic as provided herein, and

WHEREAS, given the structure of Pan Am Southern, the Parties desire to grant Norfolk Southern third-party beneficiary status to enforce this Agreement on behalf of Pan Am Southern. and

WHEREAS, the Parties desire to set forth the terms and conditions upon which Pan Am Southern will provide switching services to Springfield Terminal,

NOW, THEREFORE, the Parties hereto do mutually agree as follows

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally

(i) Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry

(ii) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(iii) Unless the context requires otherwise, a reference to Pan Am Southern shall be a reference to Pan Am Southern and its Railroad Operator. When Springfield Terminal is operating on its own behalf pursuant to this Agreement, its actions shall not be considered to be those of the Railroad Operator.

(b) Capitalized Terms

All capitalized terms shall have the defined meaning set forth below.

"Agreement" shall have the meaning given to that term in the introductory paragraph.

"AAR" shall mean the Association of American Railroads.

“B&M” shall have the meaning given to that term in the Recitals

“Cars” means each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment

“Contribution” shall have the meaning given to that term in the Recitals

“Delaware Courts” shall have the meaning given to that term in Section 15(c)(1)

“Dispute” shall have the meaning given to that term in Section 15(a)

“Effective Date” shall have the meaning given to that term in Section 12(a)

“Equipment” shall mean and be confined to hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon

“Foreign Railroad” shall mean a railroad that is not a party to this Agreement

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB

“Indemnified Persons” shall have the meaning given to that term in Section 5(b)

“Industry Location” shall have the meaning given to that term in Section 2(a)

“Intermodal Traffic” shall refer to rail cars loaded with intermodal containers and trailers

“JOC” shall mean that Joint Operating Committee established pursuant to the LLC Agreement

“JV Transaction Agreement” shall have the meaning given to that term in the LLC Agreement

“Line” shall have the meaning given to that term in the Recitals

"LLC Agreement" shall mean that Limited Liability Company Agreement of Pan Am Southern LLC, by and between Norfolk Southern and B&M, and dated as of [], 2008

"Loss or Damage" shall have the meaning given to that term in Section 10

"Management Committee" shall mean the Management Committee of Pan Am Southern as provided in the LLC Agreement

"Monthly Statement" shall have the meaning given to that term in Section 7(a)

"Norfolk Southern" shall have the meaning given to that term in the Recitals

"Pan Am" shall have the meaning given to that term in the Recitals

"Pan Am Southern" shall have the meaning given to that term in the introductory paragraph

"Pan Am System Parties" shall have the meaning given to that term in the Recitals

"Parties" shall have the meaning given to that term in the introductory paragraph

"Party" shall have the meaning given to that term in the introductory paragraph

"Person" shall mean an individual or partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity

"Railroad Operator" shall have the meaning given to that term in the Recitals

"Remaining Pan Am" shall have the meaning given to that term in the Recitals

"Rules" shall have the meaning given to that term in Section 15(c)(ii)

"Springfield Terminal" shall have the meaning given to that term in the Recitals

"Springfield Terminal Cars" shall mean Cars and Equipment in the revenue and/or car hire account of Pan Am

"Springfield Terminal Traffic" shall have the meaning given to that term in the Recitals

"STB" shall mean the Surface Transportation Board or any successor entity thereto

"Subject Traffic" shall have the meaning given to that term in Section 10(a)

"Transaction Agreement" shall have the meaning given to that term in the Recitals

"Use Invoice" shall have the meaning given to that term in Section 7(a)

(c) Successor Laws

A reference to any particular statute or regulation shall include a reference to any successor statute or regulation

SECTION 2. INDUSTRY SWITCHING

(a) Pan Am Southern will perform switching of Springfield Terminal Traffic to and from the industry locations specified in Section 2(b) (each hereinafter referred to as an "Industry Location"), located at Ayer, Massachusetts, and certain Intermodal Traffic, described in Section 2(b), in either case for the account of Springfield Terminal, and provide services as necessary to handle such traffic between said Industry Location and CPF 312 near Willows, Massachusetts. Pan Am Southern will use its own crews and locomotives, or those of its contract operator (initially to be Springfield Terminal) to perform said services.

(b) The Industrial Locations are all those industrial and commercial locations served by rail on the attached Ayer Customer Map between CPF 312, Ayer and Shirley line, and Ayer and Harvard line (Appendix B), other than the Sanvel Automotive Facility and the Ayer Automotive Facility (as such terms are defined in the Transaction Agreement"). By way of clarification only, and without intending to modify the immediately preceding sentence, the Parties intend that Springfield Terminal shall have access, pursuant to this Agreement, to all current and future shipping customers located at the Industrial Locations, and that access is not to be restricted to shipping customers existing as of the date of this Agreement, but that Springfield Terminal shall not have, pursuant to this Agreement, access to the intermodal facility at Ayer, MA other than for Intermodal Traffic (if delivered to the Ayer Intermodal Facility) having a prior movement over the Remaining Pan Am and (if received from the Ayer Intermodal Facility) having a subsequent movement over the Remaining Pan Am.

(c) For revenue purposes, Cars switched under this Agreement shall remain in the account of Springfield Terminal, and Pan Am Southern shall not be entitled to any line haul revenue for the handling of such Cars, nor appear in any rates, routes or divisions pertaining to

any Cars in the account of Pan Am Southern, except as specified otherwise herein

(d) Springfield Terminal Pan Am shall assume its own car hire expenses, and Pan Am Southern shall assess and collect all related demurrage charges

SECTION 3. DELIVERY AND RECEIPT OF CARS

(a) Cars handled under this Agreement shall be considered as having been delivered by one Party to the other when placed on mutually agreed upon trackage designated for such deliveries, accompanied or preceded by the necessary data for forwarding and to insure delivery and acceptance by the designated representative of the receiving road. Should movements pursuant to this Agreement take the form of an uninterrupted movement of a train operating by Springfield Terminal, in part over the Remaining Pan Am and in part over the lines of Pan Am Southern, Cars handled under this Agreement shall be considered as having been delivered by one Party to the other when the loaded or empty Cars pass CPF 312

(b) Springfield Terminal and Pan Am Southern shall provide each other with suitable information (which may be transferred by paper documents, facsimiles, or electronic means, or by other means, as mutually agreed) necessary for the handling of Cars switched under this Agreement, which will identify for each Car

- (1) Car initial and number
- (2) Loaded or empty
- (3) Destination station and consignee on inbound movements
- (4) All required hazardous materials information
- (5) Any other information as agreed between the Parties to be necessary or convenient for the safe, efficient movements of Cars switched under terms of this Agreement

For so long as Springfield Terminal is the Railroad Operator, this information shall have been deemed to have been provided when assembled by Springfield Terminal

(c) Pan Am Southern may make repairs to Cars switched under terms of this Agreement as may be necessary for safe transit, and Pan Am Southern may make adjustments to or transfers of lading from crippled, defective or overloaded Cars, as in its determination may be necessary to safely move said Cars. Springfield Terminal shall reimburse Pan Am Southern its full cost for repairs, adjustments and lading transfers promptly upon receipt of billing therefore

(d) With recognition to the limited capacity of the Ayer Intermodal Facility, Pan Am Southern agrees that all capacity at said facility will be dedicated to Norfolk Southern for Intermodal Traffic originating or terminating at points west of the facility, and to Springfield Terminal for Intermodal Traffic originating or terminating at points on Remaining Pan Am or otherwise east of the facility

(c) In the event that Springfield Terminal ceases to be the Railroad Operator to Pan Am Southern, Pan Am Southern commits to switching a customer facility within forty-eight (48) hours after Pan Am Southern receives notice that the customer has released Cars for movement hereunder, on outbound movements, and within forty-eight (48) hours after Pan Am Southern receives notice of placement for interchange and provision of the information required by Section 3(b), on inbound movements. Pan Am Southern shall reimburse Springfield Terminal for any car hire expenses incurred as a result of failure to provide such switch within said time frame.

SECTION 4. INSPECTION

Pan Am Southern shall not be responsible for making any mechanical inspection of Cars in the account of Springfield Terminal switched to and from the Industrial Locations.

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS AND RULES

(a) Each of Pan Am Southern and Springfield Terminal shall comply, and Pan Am Southern shall cause its Railroad Operator to comply, with all applicable federal, state and local laws, rules, regulations and orders promulgated by any Governmental Authority that relate to the *operations contemplated hereunder*. If any fine, penalty, cost or charge is imposed or assessed on or against either of them by reason of the other Party's non-compliance (or, in the case of Pan Am Southern, the non-compliance of the Railroad Operator, for which Pan Am Southern shall be responsible) with any such laws, rules, regulations or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, cost, or charge, and all expenses and attorney's fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge or expense to that other Party.

(b) Without affecting the generality of the foregoing Section 5(a), each of Pan Am Southern and Springfield Terminal shall comply, and Pan Am Southern shall cause its Railroad Operator to comply, with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, Cars and Equipment while such trains, locomotives, Cars, and Equipment are being operated over the Subject Trackage. Each of those Parties shall indemnify, protect, defend, and save harmless the other from and against all fines, penalties and liabilities imposed upon such Party under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable solely to the failure of the indemnifying Party (or, in the case of Pan Am Southern, the failure of the Railroad Operator, for which Pan Am Southern shall be responsible) to comply with its obligations in this regard.

(c) Traffic switched pursuant to this Agreement shall not include locomotives, Cars or Equipment which exceed the width, height, weight or other restrictions or capacities of the

Subject Trackage as contained in the clearance file maintained by Pan Am Southern, and no train shall contain locomotives, Cars or Equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Pan Am Southern's operating rules and regulations, without the prior consent of Pan Am Southern. The JOC shall make proper accommodation for exceptions, should that be reasonable, necessary, and practicable.

SECTION 6. INTENTIONALLY OMITTED

SECTION 7. INVOICES AND PAYMENT OF BILLS

(a) On or before the 15th day of each calendar month during the term of this Agreement, the Railroad Operator shall prepare on behalf of Pan Am Southern a monthly statement setting forth the number of Springfield Terminal Cars switched during the month (the "Monthly Statement") and an invoice (the "Use Invoice"). The Monthly Statement shall be in electronic format, and shall contain a detailed list of the Springfield Terminal Cars that were switched during the subject month, which list shall include, for each Car, information relating to such Cars that Pan Am Southern may reasonably request in connection with accounting for the use of the services and rights provided hereunder. The Monthly Statement and the Use Invoice shall be delivered to Springfield Terminal and Springfield Terminal shall make payment to Pan Am Southern within thirty (30) days after the date of receipt of such Use Invoice, provided, however, that for so long as Springfield Terminal is the Railroad Operator, the Monthly Statement and the Use Statement shall be considered delivered when prepared.

(b) Any dispute regarding the details of a Monthly Statement or amount of a Use Invoice shall be reconciled between the Parties pursuant to Section 15, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If Springfield Terminal disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full subject to adjustment upon resolution of the dispute, provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefore is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(c) Pan Am Southern and Springfield Terminal shall each have the right, at its own expense, to audit the records of any other Party pertaining to the use of the Subject Trackage under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by Pan Am Southern pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to this

Agreement All such audits shall be conducted at reasonable intervals, locations, and times All such audits shall be prosecuted with reasonable due diligence Each Party agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant this Agreement or as required by applicable law) Any adjustment resulting from an audit conducted pursuant to this Section 7(c) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice

(d) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices, shall include direct labor and material costs, together with the surcharges, overhead percentages, and Equipment rentals as specified by Pan Am Southern at the time any work is performed by Pan Am Southern for Springfield Terminal, or shall include actual costs and expenses, upon mutual agreement of the Parties

SECTION 8. INTERRUPTION; RERAILING

(a) Interruption, Delay In the event the use of trackage in performing the referenced switching services shall be interrupted or traffic delayed at any time from any cause, neither Party shall have any claim against the other Party for liability of any kind from such interruption or delay

(b) Rerailing, Wrecking, Bad Orders and Repairs

(1) Whenever one or more Cars and/or locomotives in the account of Springfield Terminal requires rerailing, wrecking service or wrecking train service, Pan Am Southern shall arrange for the provision of such service, including the repair and restoration of roadbed, the trackage and structures Pan Am Southern shall promptly inform Springfield Terminal of its intent to proceed with wrecking service or wrecking train service, and shall permit a Springfield Terminal representative to be present on the scene, to work in concert with the employees of its Railroad Operator to manage such wrecking service or wrecking train service, provided, however, for so long as Springfield Terminal is the Railroad Operator, no such notice need be provided to Springfield Terminal and no additional Springfield Terminal representatives need be present on the scene The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom shall be apportioned in accordance with the provisions of Section 10 hereof All locomotives, Cars, Equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by Springfield Terminal at the time of such wreck, shall be promptly delivered to it

(11) If any Cars or locomotives of Springfield Terminal are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those Cars or locomotives

shall, after being repaired, be picked up by Pan Am Southern, or if agreed upon by the Parties, Pan Am Southern will transport them to a mutually acceptable location to be picked up by Springfield Terminal. Pan Am Southern may, upon request of Springfield Terminal and at the expense of Springfield Terminal, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered Cars or locomotives safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

SECTION 9. COMPENSATION; MILEAGE AND CAR HIRE

(a) Springfield Terminal shall pay Pan Am Southern the amount set forth in Appendix A hereto for each revenue waybilled railcar handled by Pan Am Southern for the account of Springfield Terminal to or from the Industrial Locations pursuant to this Agreement.

(b) All mileage and car hire charges accruing on Springfield Terminal Cars moved pursuant to this Agreement shall be assumed by Springfield Terminal and reported and paid by it directly.

SECTION 10. LIABILITY

As between the Parties hereto, responsibility for all claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages, costs (including without limitation reasonable attorney's fees) and expenses of every character, including any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever (including employees of the Parties or the Railroad Operator), resulting from, arising out of, incidental to or occurring in connection with this Agreement ("Loss or Damage"), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise specifically provided for hereinafter):

(a) Springfield Terminal Cars moving pursuant to this Agreement shall, for the purposes of this Section 10, be referred to as "Subject Traffic". Otherwise, for the purposes of assigning responsibility for Loss or Damage under this Section 10 (including but not limited to Section 10(d)) as between the Parties, the trains, Cars and Equipment of a Foreign Railroad shall be considered to be the trains, Cars and Equipment of Pan Am Southern. By way of illustration only, if, for example, Pan Am Southern were to grant D&H trackage rights pursuant to a trackage rights agreement, then traffic moving pursuant to that D&H trackage rights agreement would be considered Pan Am Southern traffic.

(b) Springfield Terminal shall be responsible for (1) Loss or Damage to Equipment in its revenue waybill and the lading therein, and (2) to the extent not allocated pursuant to Section 10(c)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors, or employees, either solely or in

conjunction with a third party

(c) Pan Am Southern shall be responsible for (1) Loss or Damage to Equipment in its revenue waybill and the lading therein, and (2) to the extent not allocated pursuant to Section 10(b)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors (including the Railroad Operator), or employees, either solely or in conjunction with a third party

(d) Loss or Damage arising from or growing out of the negligence or willful misconduct of both Springfield Terminal and Pan Am Southern (or their respective officers, agents, contractors or employees) shall be borne by the Parties in proportion to their fault

(e) To the extent responsibility for Loss or Damage is not allocated pursuant to Section 10(b), Section 10(c), and Section 10(d) such responsibility for Loss or Damage shall be (i) borne solely by Springfield Terminal if the involved trains are handling only Subject Traffic, or (ii) borne by each of Pan Am Southern and Springfield Terminal in proportion to the number of Cars in such trains that are moving in that Party's revenue waybill or car hire account

(f) Notwithstanding anything to the contrary in Section 10(b), Section 10(c), Section 10(d), and Section 10(e) above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, or to third parties from substances transported in Cars or contained in locomotives occurs with one or more trains handling Subject Traffic Cars being involved, then, as between themselves, (i) Pan Am Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Pan Am Southern Cars and/or contained in a Pan Am Southern locomotive which was released, (ii) Springfield Terminal shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Subject Traffic Cars and/or contained in a Springfield Terminal locomotive which was released, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in Cars, Equipment or locomotives in the revenue waybill and car hire accounts of both Springfield Terminal and Pan Am Southern which was (or were) released shall be borne by the Parties in proportion to the total number of such Cars, Equipment or locomotives in that Party's revenue waybill or car hire account from which there was (or were) such a release

(g) Notwithstanding anything to the contrary in this Section 10, if (i) Loss or Damage occurs with one or more trains being involved, (ii) one or more of the involved trains is handling (A) only Subject Traffic Cars or (B) both Subject Traffic Cars and Pan Am Southern Cars, (iii) such Loss or Damage is attributable solely to the Gross Negligence or Willful or Wanton Misconduct of only one of the Parties to this Agreement (or of Springfield Terminal in its role as the Railroad Operator for Pan Am Southern), and (iv) such Gross Negligence or Willful or Wanton Misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such Gross Negligence or Willful or Wanton Misconduct is attributable shall assume all

liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Section 10(g), (1) "Gross Negligence or Willful or Wanton Misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness" and shall include, by definition, acts or omissions of any its employees while under the influence of drugs or alcohol, and (2) Subject Traffic Cars being handled in haulage shall be considered Pan Am Southern Cars

(h) If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of another Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 10

(i) In every case of death or injury suffered by an employee of one of the Parties, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid

(j) Whenever any liability, cost or expense is assumed by or allocated to a Party under this Section 10, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the Party indemnified, or their directors, officers, agents or employees, and (ii) defend such Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the Indemnified Party

(k) Each of Pan Am Southern and Springfield Terminal shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709

(l) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Section 10, provided, however, that salaries or wages of full-time agents, full-time attorneys and

other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party

(m) No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U S C Section 11706 or 49 C F R Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U S C Section 10709) for which another Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000) The foregoing amount of Thirty-Five Thousand Dollars (\$35,000) shall be adjusted annually in accordance with the provisions of Section (b) of Appendix A

SECTION 11. EMPLOYEE CLAIMS

Each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement *It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees* Similarly, each Party agrees to indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement

SECTION 12. TERM AND TERMINATION

(a) This Agreement shall become effective following the latter of (a) the date first written above, (b) receipt of any required regulatory approvals or exemptions, and (c) the expiration of any time periods required by the issuance of labor notices by Springfield Terminal and/or Pan Am Southern, should such labor notices be required ("Effective Date") The Parties shall determine the Effective Date through an exchange of written correspondence

(b) This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement

(c) Termination of this Agreement shall not relieve or release any Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof, nor shall it terminate any

underlying right of commercial access to the Industrial Locations

SECTION 13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. Third party beneficiary status shall inure to the benefit of Norfolk Southern and each of its successors and permitted assigns. Neither Party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm or corporation without obtaining the prior written consent of the other Party.

SECTION 14. MISCELLANEOUS

(a) Notices. Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally to the Person or to an officer of the Person to whom the same is directed or (ii) when the same is actually received, if sent either by express delivery service or registered or certified mail, postage and charges prepaid and return receipt requested, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent promptly thereafter by registered or certified mail, postage and charges prepaid, addressed as follows or to such other address as such Person may from time to time specify, by notice to the other Party:

If to Pan Am Southern	Chairman Pan Am Southern LLC c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
--------------------------	---

With a copy to Norfolk Southern	Mike R. McClellan Vice President – Intermodal and Automotive Marketing Norfolk Southern Corporation Three Commercial Place Norfolk, Virginia 23510-2191
------------------------------------	--

and

Vice President – Law
Norfolk Southern Corporation
Three Commercial Place

Norfolk, VA 23510
(757) 629-2374
(757) 533-4872 (fax)

If to Springfield
Terminal

David A. Link
President
Pan Am Railways
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

With a copy to

Robert Culliford
Vice President Law
Pan Am Systems
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

(b) Headings Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof

(c) Prior Agreements This Agreement supersedes all prior agreements among the Parties hereto, written or oral, with respect to the subject matter hereof

(d) Severability Every provision of this Agreement is intended to be severable, and, if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement

(e) Incorporation by Reference Every exhibit and other appendix attached to this Agreement and referred to herein is incorporated in this Agreement by reference unless this Agreement expressly otherwise provides

(f) Counterpart Execution This Agreement may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement

(g) Third Party Beneficiaries Except as provided in this Section 14(g), this Agreement shall not benefit or create any right or cause of action in or on behalf of any person

other than the Parties hereto Norfolk Southern shall have third party status solely for the purpose of enforcing this Agreement, and not by way of recovery for damages hereunder

(h) GOVERNING LAW THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER

(k) Confidentiality Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or in connection with an audit by the Internal Revenue Service or other tax authority, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the term of this Agreement, and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than members, officers, employees, independent auditors, and attorneys, without the prior written approval of the other Party Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority or as otherwise required by applicable law

(l) Amendment, Consent and Waiver No term or provisions of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder

(m) Interpretation All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry

(n) The records of each Party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party

SECTION 15. DISPUTE RESOLUTION

(a) Reference to JOC Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be referred to the JOC (for Pan Am Southern) for resolution and if the Parties

are unable to resolve the dispute, it will be referred, in writing, to the Management Committee (for Pan Am Southern) to resolve

(b) Reference for Formal Dispute Resolution Any Dispute not resolved within sixty (60) days after receipt by any of the involved parties of written notice of reference of such Dispute to the Management Committee pursuant to Section 15(a), shall be submitted for formal dispute resolution, if at all, by either Party for formal dispute resolution pursuant to Section 15(c)

(c) Formal Dispute Resolution

(i) Submission to Jurisdiction Each of the Parties hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 15(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (B) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof

(ii) Dispute Resolution Each of the Parties stipulates and agrees that any Dispute that is not resolved pursuant to Section 15(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D C , by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "Rules"), under the following terms and conditions

(A) Selection of Arbitrator A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator

(B) Conduct of Arbitration The arbitration shall be held and the award shall be issued in Washington, D C In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement

(C) Replacement of Arbitrator Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator

(D) Findings and Conclusions The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award

(E) Time is of the Essence The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding

(F) Temporary Equitable Relief By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect

(G) Consolidation The parties are committed to the prompt and efficient resolution of Disputes Accordingly, if more than one Dispute arise under this Agreement and/or any JV Transaction Agreement, such Disputes may be brought in a single arbitration If more than one arbitration is brought with respect to Disputes under this Agreement and/or any other JV Transaction Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or any other JV Transaction Agreement be consolidated into any prior arbitration The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration, (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration Any order of consolidation issued by such arbitrator shall be final and binding upon the parties Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration The parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding

(H) Discovery Recognizing the express desire of the parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances

(I) Costs and Attorneys' Fees Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 15(c)(11) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(J) Miscellaneous The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(c) As a third party beneficiary, Norfolk Southern may initiate and prosecute arbitration pursuant to Section 15(b) on behalf of Pan Am Southern. Pan Am Southern and Springfield Terminal shall cooperate with Norfolk Southern in the Pan Am Southern preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

SECTION 16. INDEMNITY COVERAGE

As part of the consideration hereof, each Party hereby agrees that all of its indemnity commitments in this Agreement in favor of the other Party shall also extend to and indemnify the parent corporation, the subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees.

SECTION 17. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (consisting of flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, accident, wreck, derailment, washout, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, Federal Railroad Administration orders, or governmental laws, orders or regulations, or governmental laws, orders or regulations and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all commercially reasonable measures to restore performance of its obligations in a timely manner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written

PAN AM SOUTHERN LLC

By
Title
Date

**SPRINGFIELD TERMINAL
RAILWAY COMPANY**

By
Title
Date

APPENDIX A. COMPENSATION

(a) The Switching Charge shall initially be set at [REDACTED] for each revenue waybilled railcar, other than a Car bearing Intermodal Traffic, by Pan Am Southern for the account of Springfield Terminal to or from the Industrial Locations, plus any applicable surcharge, as provided in Section (c) of this Appendix A. [REDACTED]

(b) Switching Charge Adjustment

(1) The Switching Charge shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July 2009, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East – Materials, prices, wage rates and supplements combined (excluding fuel)" (the "Cost Index"). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(2) The Switching Charge shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Switching Charge. In computing the adjusted Switching Charge, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(3) In the event the base for the Cost Index shall be changed from that in effect at the effective date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

(4) In the event that the Cost Factor is a negative number, no adjustment to the Trackage Rights Charge will take place for that calendar year. Said negative Cost Factor will be taken into consideration in calculating subsequent years' Cost Factor. Specifically, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor goes negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account, and so on.

APPENDIX B. AYER CUSTOMER MAP

EXHIBIT 2B

**LIMITED LIABILITY
COMPANY AGREEMENT
OF**

PAN AM SOUTHERN LLC

**BY AND BETWEEN
NORFOLK SOUTHERN RAILWAY COMPANY
AND
BOSTON AND MAINE CORPORATION
AS OF**

[], 2008

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**LIMITED LIABILITY COMPANY AGREEMENT
OF
PAN AM SOUTHERN LLC**

This Limited Liability Company Agreement (this "Agreement") of Pan Am Southern LLC, a Delaware limited liability company (the "Company"), is entered into pursuant to and in accordance with the Delaware Limited Liability Company Act (the "Act") and shall be effective as of [], 2008 (the "Effective Date"), by and between Norfolk Southern Railway Company, a Virginia corporation (such corporation or any Permitted Transferee thereof, the "NS Member"), and Boston and Maine Corporation, a Delaware corporation ("B&M" and, together with any Permitted Transferee thereof, the "Pan Am Member"), as the Members pursuant to the provisions of the Act.

RECITALS

WHEREAS, the NS Member, Pan Am Railways, Inc. ("Pan Am"), B&M, a wholly-owned subsidiary of Pan Am, and Springfield Terminal Railway Company, a wholly-owned subsidiary of Pan Am ("Springfield Terminal", and together with Pan Am and B&M, the "Pan Am System Parties") have entered into a Transaction Agreement (the "Transaction Agreement"), dated as of [], 2008, which provides, among other things, for B&M to contribute an undivided interest in the railroad lines originally owned or operated by B&M or its Subsidiary, the Vermont & Massachusetts Railway, generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the "Line") and certain other related assets (together with the Line, the "Assets"), in each case described in Schedule 1.1 to the Transaction Agreement, to the Company and for the NS Parent to cause the NS Member to make capital contributions to the Company as described in Schedule 2.2 of the Transaction Agreement, in each case in accordance with the provisions thereof,

WHEREAS, by executing this Agreement and the related Certificate of Formation and filing the Certificate of Formation with the Secretary of State of the State of Delaware, the parties hereto are hereby and thereby forming the Company, and

WHEREAS, the parties hereto desire to enter into this Agreement to set forth their rights and obligations as members of the Company

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

DEFINITIONS

Capitalized words and phrases used in this Agreement have the following meanings:

"AAA" means the American Arbitration Association.

"Acceptance Agreement" shall have the meaning set forth in Section 10 2(d).

“Acceptance Period” shall have the meaning set forth in Section 10.2(c)

“Act” shall have the meaning set forth in the Recitals.

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is deemed to be obligated to restore pursuant to the penultimate sentences in Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith

“Affiliate” means, with respect to any specified Person, (i) any other Person who, directly or indirectly, controls, is under common control with, or is controlled by, such specified Person, (ii) any other Person who is a director, officer, manager, member, partner or trustee of the specified Person or a Person described in clause (i) of this definition or any spouse of the specified Person or any such other Person, (iii) any relative of the specified Person or any other Person described in clause (ii) of this definition, or (iv) any Person of which the specified Person and/or any one or more of the Persons specified in clause (i), (ii) or (iii) of this definition, individually or in the aggregate, beneficially own 10% or more of any class of Voting Securities.

“Agreement” shall have the meaning set forth in the Preamble. Words such as “herein,” “hereinafter,” “hereof,” “hereto” and “hereunder” refer to this Agreement as a whole, unless the context otherwise requires.

“Assets” shall have the meaning set forth in the Recitals

“Assignment and Assumption Agreement Regarding Passenger Rail Operations” means that agreement dated as of [], 2008 by and between Springfield Terminal and the Company generally providing for the partial assignment of the Springfield Terminal operating rights over the tracks of Massachusetts Bay Transportation Authority

“Auditors” means the independent registered public accounting firm from time to time engaged by the Company to audit its financial statements and results of operations. The Auditors shall initially be Gray, Gray and Gray, LLP. Successor Auditors shall be appointed by the Management Committee in accordance with Section 5.6.

“Ayer Switching Agreement” means that Ayer Switching Agreement, dated as of the date hereof, between Springfield Terminal and the Company, generally governing the switching by the Company of certain railcars of Springfield Terminal.

“B&M” shall have the meaning set forth in the Introductory Paragraph

“Bankruptcy” means, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy (as each such term is defined herein)

“Bill of Sale” shall mean that bill of sale generally providing for the contribution to the Company by the Pan Am System Parties of all personal property included in the Assets.

“Budget” shall have the meaning set forth in Section 5.7(a).

“Business” means the business conducted by the Company, including owning, managing and maintaining the Assets, and making certain capital improvements to the same, and performing certain haulage and other freight railroad transportation services, generally as a private carrier

“Business Day” means a day of the year on which banks are not required or authorized to close in New York City.

“Business Plan” shall have the meaning set forth in Section 5.7(a).

“Capital Account” means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions

(a) To each Member’s Capital Account there shall be credited (1) such Member’s Capital Contributions, (2) such Member’s distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 3.3 and (3) the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2)

(b) To each Member’s Capital Account there shall be debited (1) the amount of money and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this Agreement, (2) such Member’s distributive share of Losses and any items in the nature of expenses, deductions or losses which are specially allocated pursuant to Section 3.3 and (3) the amount of any liabilities of such Member assumed by the Company or which are secured by any Property contributed by such Member to the Company

(c) In the event a Membership Interest is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Membership Interest.

(d) In determining the amount of any liability for purposes of subparagraphs (a) and (b) above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Management Committee shall determine that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or any Members), are computed in order to comply with such Regulations, the Management Committee may make such modification, provided that it is not likely to have a material effect on the amounts distributed to any Person pursuant to Section 11 upon the dissolution of the Company. The Management Committee also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

"Capital Contribution" means, with respect to any Member, the amount of money and the initial Gross Asset Value of any Property (other than money) contributed to the Company with respect to the Membership Interest in the Company held or purchased by such Member

"Capital Project" means those capital expenditures relating to the Line as set forth in the Budgets (including any Rollover Budgets) approved in accordance with this Agreement.

"Capital Project Process" shall have the meaning set forth in Section 5.3(b).

"Capital Projects and Facility Management Agreement" means that Capital Projects and Facility Management Agreement, dated as of the date hereof, by and among the Company, Springfield Terminal, B&M and NSR, generally concerning the construction of the Capital Projects and the hiring of the initial operators for certain specified facilities

"Capital Recovery Contributed Book Items" means Depreciation attributable to the Assets contributed to the Company as described in Section 2.3 of the Transaction Agreement

"Capital Recovery Contributed Tax Deductions" means depreciation and amortization that are allowed as a deduction for federal income-tax purposes and that relate solely to the tax basis of the Assets contributed to the Company as described in Section 2.3 of the Transaction Agreement as determined on the date of their contribution to the Company.

"Capital Recovery Purchased Book Items" means (i) Depreciation attributable to the Assets purchased by the Company as described in Section 3 of the Transaction Agreement and attributable to the first \$87,500,000 of Capital Projects to the extent such \$87,500,000 is not

allowed as a deductible expense for federal income-tax purposes, and (ii) expenses (including any and all deductions associated with Rev. Proc. 2002-65) attributable to the first \$87,500,000 of Capital Projects allowed as a deductible expense for federal income-tax purposes.

“Capital Recovery Purchased Tax Deductions” means expenses, depreciation, amortization, and other cost recovery deductions (including any and all deductions associated with Rev. Proc. 2002-65) that are allowed as a deduction for federal income-tax purposes and that relate solely (i) to the Assets purchased by the Company as described in Section 3 of the Transaction Agreement and (ii) to the first \$87,500,000 of Capital Projects.

“Capital Transaction” shall mean any of the following (i) a sale, exchange, transfer, assignment or other disposition of all or substantially all of the Company’s Property or all or substantially all of the rights in the Company’s Property; (ii) any condemnation or decding in lieu of condemnation of all or substantially all of the Company’s Property; (iii) any financing or refinancing of the Company’s Property, (iv) any fire or other casualty to all or substantially all of the Company’s Property to the extent that such funds are not paid to a lender or used to restore, rebuild or repair the Company Property, and (v) any other transaction the proceeds of which, in accordance with generally accepted accounting principles, are considered capital in nature.

“Certificate of Formation” means the Certificate of Formation filed with the Secretary of State of the State of Delaware pursuant to the Act to form the Company, as originally executed and amended, modified, supplemented or restated from time to time, as the context requires.

“Claims” shall have the meaning set forth in Section 5 9(a).

“Closing Date” shall be the date the initial Capital Contributions are made under Section 2 1(a)

“CN” shall mean Canadian National Railway Company

“CoC Trackage Rights” shall have the meaning given to that term in Section 6.11.

“Code” means the United States Internal Revenue Code of 1986, as amended from time to time.

“Committee Representative” shall have the meaning set forth in Section 5.2(b).

“Company” means the limited liability company formed pursuant to this Agreement and the Certificate of Formation and the limited liability company continuing the business of this Company in the event of dissolution of the Company as herein provided.

“Company Minimum Gain” has the same meaning as the term, “partnership minimum gain.” in Regulations Section 1.704-2(b)(2) and 1.704-2(d).

“CSX” shall mean CSX Transportation, Inc

“Damages” shall have the meaning set forth in Section 10 2(b).

“Default Sale Notice” shall have the meaning set forth in Section 10.2(c)

“Delaware Courts” shall have the meaning set forth in Section 13 3(a).

“Depreciation” means, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Management Committee.

“Dispute” shall have the meaning set forth in Section 13.1

“Dissolution Event” shall have the meaning set forth in Section 11 1.

“Effective Date” shall have the meaning set forth in the Introductory Paragraph

“Exchange Act” means the Securities Exchange Act of 1934

“Facility Development Agreement” means an agreement executed by the Members any time from the Execution Date (as defined in the Transaction Agreement) to, and including, December 31, 2012, to develop an 810 bay automotive terminal at the location commonly known as the San Vel property on Willow Road, in Ayer, Massachusetts, conforming to plans reflected in Exhibit [INSERT] attached hereto.

“Fair Value” means the fair market value as determined by unanimous mutual agreement reached by the Members, or in the event the Members are unable to agree, as determined by an independent investment banking firm or firms or, in the case of any asset or other item not customarily valued by an investment banking firm, a qualified independent appraiser of the type customarily engaged in the valuation thereof (a “Qualified Appraiser”), in accordance with the following procedure. In the case of any event which gives rise to a requirement to determine “Fair Value” hereunder, the Management Committee shall be responsible for initiating the process by which Fair Value shall be determined as promptly as practicable, but in any event within twenty (20) days following such event and if the procedures contemplated herein in connection with determining Fair Value have not been complied with fully, then any such determination of Fair Value for any purpose hereunder shall be deemed to be preliminary and subject to adjustment pending full compliance with such procedures. Upon the occurrence of an event requiring the determination of Fair Value, the Management Committee shall give each Member notice of such event, and the Members shall engage in direct good faith discussions to arrive at a mutually agreeable determination of Fair Value. In the event the Members are unable to arrive at a mutually agreeable determination within thirty (30) days of the notice, an independent investment banking firm of national standing or Qualified Appraiser of

national standing, as the case may be, selected by unanimous agreement of the Members shall make such determination and render such opinion. The determination so made shall be conclusive and binding on the Members. The fees and expenses of the investment banking firm or Qualified Appraiser retained for such purpose shall be paid by the Company.

“Fiscal Quarter” means any of the following:

(a) the period commencing on the date hereof and ending on the earliest to follow the Closing Date of March 31, June 30 and September 30 of the year in which the Closing Date occurs,

(b) any subsequent three (3) month period commencing on each of January 1, April 1, July 1 and October 1 and ending on the last date before the next such date, and

(c) the period commencing on the immediately preceding January 1, April 1, July 1, or October 1, as the case may be, and ending on the date on which all Property is distributed to the Members pursuant to Section 11

“Fiscal Year” means any of the following:

(a) the period commencing on the date hereof and ending on December 31 of the year in which the Closing Date occurs,

(b) any subsequent twelve (12) month period commencing on January 1, and

(c) the period commencing on the immediately preceding January 1, and ending on the date on which all Property is distributed to the Members pursuant to Section 11

“Freight Rail Common Carrier” shall mean Springfield Terminal, NSR, or such other freight rail common carrier that the Company, in accordance with the Agreement, admits to the entirety or any portion of the Line by way of haulage or trackage rights

“GAAP” means generally accepted accounting principles as in effect in the United States of America, consistently applied.

“General Manager” means that individual so designated and appointed by the Railroad Operator who shall be responsible for directing the day-to-day operations, management and supervision of the Railroad Operator and shall be the single point of contact for the Members with respect to all such matters.

“Gross Asset Value” means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of contribution as determined by the Management Committee.

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as determined by the Management Committee as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (B) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (C) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(i)(g), provided that an adjustment described in clauses (A) and (B) of this paragraph shall be made only if the Management Committee reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution as determined by the Management Committee

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted tax basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)-(2)(iv)(m) and subparagraph (f) of the definition of "Profits" and "Losses", provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (d) to the extent that an adjustment pursuant to subparagraph (c) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (a), (b) or (c), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses

"Harvard Trackage Rights" shall mean the trackage rights granted pursuant to the Springfield Terminal Joint Use Agreement.

"Indemnified Parties" shall have the meaning set forth in Section 10.2(f)

"Indemnified Persons" shall have the meaning set forth in Section 5.9.

"Investment Policies" shall have the meaning set forth in Section 5.7(b)

"Industrial Development Project" shall mean a modification to the trackage owned or operated by the Company in order to permit new or expanded access to rail service by one or more new or potential rail service customer(s), which modification takes place on the property owned or operated by the Company, provided, however, that no bulk transload, intermodal, and an auto distribution facility shall be considered an Industrial Development Project.

"Involuntary Bankruptcy" means, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement,

composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against such Person which petition shall not be dismissed within ninety (90) days, or without the consent or acquiescence of such Person, the entering of any order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the Property of such Person which order shall not be dismissed within ninety (90) days.

“IRS” means the Internal Revenue Service

“Issuance Items” shall have the meaning set forth in Section 3 3(h)

“Items” shall have the meaning set forth in Section 3 4.

“Joint Operating Committee” or **“JOC”** shall have the meaning set forth in Section 5 3(c).

“JV Transaction Agreements” means, collectively, (i) the Transaction Agreement (ii) this Company Agreement, (iii) the NSR Joint Use Agreement, (iv) the Assignment and Assumption Agreement Regarding Passenger Rail Operations, (v) the Miscellaneous Assignment and Assumption Agreement, (vi) the Bill of Sale, (vii) the Transportation Agreement Assignment and Divisions Allocation Agreement, (viii) the Ayer Switching Agreement, (ix) the Springfield Terminal Joint Use Agreement, (x) the Capital Projects and Facility Management Agreement, (xi) the Railroad Operating Agreement, and (xii) the Option Agreement.

“Line” shall have the meaning set forth in the Recitals

“Liquidation Period” shall have the meaning set forth in Section 11 7.

“Liquidator” shall have the meaning set forth in Section 11 9(a)

“Losses” shall have the meaning set forth in the definition of “Profits ”

“Major Decision” shall have the meaning set forth in Section 5 6.

“Management Committee” shall have the meaning set forth in Section 5 2(a).

“Members” means the Persons (i) who are referred to as such in the opening paragraph of this Agreement or who have become a new or substituted Member by acquisition of a Membership Interest pursuant to the terms of this Agreement and (ii) who have not ceased to be a Member.

“Member Nonrecourse Debt” has the same meaning as the term “partner nonrecourse debt” in Section 1.704-2(b)(4) of the Regulations.

“Member Nonrecourse Debt Minimum Gain” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if

such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations

"Member Nonrecourse Deductions" has the same meaning as the term "partner nonrecourse deductions" in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

"Membership Interest" means an ownership interest in the Company or any portion of or interest in such interest, including any and all benefits to which the holder of such interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement, the number of such Membership Interests being reflected on Exhibit C hereto.

"Miscellaneous Assignment and Assumption Agreement" means the Assignment and Assumption Agreement, dated the date hereof, by and between Pan Am. on behalf of itself and its subsidiaries, including B&M and Springfield Terminal, and the Company

"Net Cash Flow" means for any period the gross cash proceeds of the Company for such period (excluding Capital Contributions) less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Management Committee. "Net Cash Flow" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this definition.

"Net Cash Flow Forecast" shall have the meaning set forth in Section 5.7(a)

"Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

"Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

"Notice" shall have the meaning set forth in Section 12.1.

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

"NS Member" shall have the meaning set forth in the Preamble.

"NS Member's Membership Interests" shall have the meaning set forth in Section 3.8.

"NS Parent" means Norfolk Southern Corporation, a Virginia corporation and the ultimate parent of the NS Member.

"NSR" means Norfolk Southern Railway Company, a Virginia corporation and an operating subsidiary of the NS Parent

"NSR Joint Use Agreement" shall mean the Joint Use Agreement, dated as of the date hereof, by and between NSR, Springfield Terminal and the Company, generally providing for certain haulage and trackage rights

"Officers" means Persons designated as officers of the Company by the Management Committee for so long as any such Person remains an Officer in accordance with the terms of this Agreement

"Option Agreement" shall mean that agreement dated as of May 1, 2008 by and among NSR, B&M and Pan Am generally concerning the grant of an option to NSR to acquire a certain percentage interest in the Assets

"Pan Am" shall have the meaning set forth in the Recitals

"Pan Am Change in Control" shall mean: (1) the establishment of a voting trust as described in 49 C.F.R. Part 1013 – Guidelines for the Proper Use of Voting Trusts, or any subsequent regulation, with regard to the acquisition of a controlling block of voting securities of the Pan Am Member, Pan Am, B&M or Springfield Terminal, or any entity having direct or indirect control over any of the same, including but not limited to the Pan Am Parent; (2) the submission to the STB of any application, petition for exemption, or notice of exemption seeking approval, or exemption from approval, to effect a change in control of the Pan Am Member, Pan Am, B&M or Springfield Terminal or any entity having direct or indirect control over any of the same; (3) any Permitted Transfer as described in Section 9.2 clauses (f) or (g); or (4) not taking into account the Pan Am Member's membership interest in the Company, the sale, transfer or other distribution of all or substantially all of the assets of the Pan Am Member, Pan Am, B&M or Springfield Terminal

"Pan Am Member" shall have the meaning set forth in the Recitals

"Pan Am Member's Membership Interests" shall have the meaning set forth in Section 3.8

"Pan Am Parent" shall mean Pan Am Systems, Inc., a Florida corporation, and the ultimate parent of the Pan Am Member

"Pan Am Sanvel Construction Contribution" shall have the meaning set forth in Section 2.3(a)

"Pan Am Sanvel Construction Contribution Return" shall have the meaning set forth in Section 4.2(a).

"Pan Am System Parties" shall have the meaning set forth in the Recitals.

"Permitted Transfer" shall have the meaning set forth in Section 9.2

"Permitted Transferees" means a transferee pursuant to a Permitted Transfer

"Person" means an individual or a partnership, corporation, trust, association, limited liability company or other entity.

"Priority Distribution" shall have the meaning set forth in Section 4.2(a).

"Profit and Loss Allocation Percentage Interest" shall be each Member's Membership Interest as reflected on Exhibit A

"Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, deduction or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation,

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustments shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses, and

(g) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 3.3 shall not be taken into account in computing Profits or Losses

The amounts of the items of Company income, gain, loss, deduction or credit available to be specially allocated pursuant to Section 3.3 shall be determined by applying the rules analogous to those set forth in subparagraphs (a) through (g) above.

"Property" means all real and personal property acquired by the Company, including cash, and any improvements thereto, and shall include both tangible and intangible property.

"Proposed Capital Projects" means those capital expenditures anticipated to be constructed over the three (3) year period commencing on the date hereof, as identified more specifically in Exhibit B.

"Qualified Appraiser" shall have the meaning set forth in the definition of "Fair Value".

"Rail Carrier" means a Freight Rail Common Carrier or a passenger rail carrier

"Railroad Operating Agreement" means the Railroad Operating Agreement, dated as of the date hereof, between the Company and Springfield Terminal, generally concerning the railroad operating and administrative services provided by Springfield Terminal for the Company

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

"Regulations" means the Treasury Regulations, including temporary and proposed Regulations, promulgated under the Code, as such regulations are amended from time to time.

"Rollover Budget" shall have the meaning set forth in Section 5.7(a).

"Rules" shall have the meaning set forth in Section 13.3(b).

"Securities Act" means the Securities Act of 1933.

“Springfield Terminal” shall have the meaning set forth in the Recitals.

“Springfield Terminal Joint Use Agreement” means the trackage rights agreement, dated as of the date hereof, among NSR, Springfield Terminal and the Company, generally providing for the grant, by the Company to Springfield Terminal, of certain trackage rights.

“Tax Matters Partner” shall mean the “tax matters partner,” as that term is defined in Section 6231(a)(7) of the Code of the Company, with all of the rights, duties and powers provided for in Sections 6221 through 6234 of the Code.

“Transaction Agreement” shall have the meaning set forth in the Recitals.

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

“Transportation Agreement Assignment and Divisions Allocation Agreement” means that agreement dated as of [] generally providing for the assignment of existing customer transportation agreements and setting forth the respective divisions for transportation services to be provided by the Company under certain existing and future contract and tariff movements.

“Voluntary Bankruptcy” means, with respect to any Person, any of the following:

- (a) the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors
- (b) the filing of any petition or answer by such Person seeking to adjudicate itself as bankruptcy or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to, or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its Property, or
- (c) corporate action taken by such Person to authorize any of the actions set forth above.

“Voting Securities” shall mean any securities of any Person which vote generally in the election of directors

“Wholly-Owned Affiliate” of any Person means

- (a) an Affiliate of such Person one hundred percent (100%) of the voting stock or beneficial ownership of which is owned by such Person, or by any Person who, directly

or indirectly, owns one hundred percent (100%) of the voting stock or beneficial ownership of such Person,

(b) an Affiliate of such Person who, directly or indirectly, owns one hundred percent (100%) of the voting stock or beneficial ownership of such Person, and

(c) any Wholly-Owned Affiliate of any Affiliate described in clause (a) or clause (b)

SECTION 1

THE COMPANY

1.1 **Formation and Continuation.** The Members hereby agree to organize the Company as a limited liability company under and pursuant to the provisions of the Act and upon the terms and conditions set forth in this Agreement. The rights and liabilities of the Members shall be as provided under the Act, the Certificate of Formation and this Agreement.

1.2 **Name.** The name of the Company shall be Pan Am Southern LLC and all business of the Company shall be conducted in such name or, in the discretion of the Management Committee, under any other name.

1.3 **Purpose, Powers.**

(a) **Generally.**

(i) The purpose of the Company is to engage in the Business and in any other lawful activity for which a limited liability company may be organized under the Act.

(ii) The Company has the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or in furtherance of the purposes of the Company set forth in Section 1.3(a) and has, without limitation, any and all powers that may be exercised on behalf of the Company by the Management Committee pursuant to Section 5.

(b) **Carrier Status**

(i) Notwithstanding the generality of Section 1.3(a), the Members intend that the Company shall be a rail carrier, as that term is defined in 49 U.S.C. § 10101(5), that performs transportation services over the Line.

(ii) The Company may participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and over the Line, and shall be entitled to or responsible for any freight charges relating to such freight traffic. The Company may quote or establish any rate and service terms applicable to freight transportation services to, from or over the Line, enter into transportation contracts with persons, provide for freight transportation services to, from or over the

Line, and undertake to perform any for-hire transportation services directly, in its own name or for its own account, for any person, subject to Section 5.6(xxi)

1.4 Principal Place of Business, Chief Executive Office and Registered Office.

The principal place of business and chief executive office of the Company shall be located at the offices of Pan Am Railways, Iron Horse Park, North Billerica, MA 01862-1692, or in such other place as the Management Committee may determine from time to time. The registered office of the Company in the State of Delaware initially is located at c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801

1.5 Term The term of the Company commenced on the date the Certificate of Formation was filed in the office of the Secretary of State of the State of Delaware in accordance with the Act and shall continue until the winding up and liquidation of the Company and its business is completed following a Dissolution Event, as provided in Section 11

1.6 Filings; Agent for Service of Process.

(a) The Members shall promptly after the execution of this Agreement cause the Certificate of Formation to be filed in the Office of the Secretary of State of the State of Delaware in accordance with the provisions of the Act. The Management Committee shall take, or cause to be taken, any and all actions reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of Delaware, including the preparation and filing of such amendments to the Certificate of Formation and such other assumed name certificates, documents, instruments and publications as may be required by law, including, without limitation, action to reflect.

(i) A change in the Company name,

(ii) A correction of false or erroneous statements in the Certificate of Formation or the desire of the Members to make a change in any statement therein in order that it shall accurately represent the agreement among the Members, or

(iii) A change in the time for dissolution of the Company if approved by the Members as evidenced by an amendment to this Agreement (approved as provided herein).

(b) The Members and the Management Committee shall execute and cause to be filed original or amended certificates and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company or similar type of entity under the laws of any other jurisdictions in which the Company engages in business

(c) The registered agent for service of process on the Company in the State of Delaware shall be The Corporation Trust Company or any successor as appointed by the Members in accordance with the Act

(d) Upon the dissolution and completion of the winding up and liquidation of the Company in accordance with Section 11, the Management Committee (and, if

necessary and requested by the Management Committee, the Members) shall promptly execute and cause to be filed certificates of cancellation, statements of intent to dissolve and articles of dissolution in accordance with the Act and the laws of any other jurisdictions in which the Management Committee deems such filing necessary or advisable.

1.7 Title to Property All Property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such Property in its individual name, and each Member's Membership Interests in the Company shall be personal property for all purposes. At all times after the date hereof, the Company shall hold title to all of its Property in the name of the Company and not in the name of any Member.

1.8 Payments of Individual Obligations. The Company's credit and assets shall be used solely for the benefit of the Company and no asset of the Company shall be Transferred or encumbered for, or in payment of, any individual obligation of any Member.

SECTION 2

MEMBERS' CAPITAL CONTRIBUTIONS

2.1 Initial Capital Contributions

(a) Pursuant to the Transaction Agreement and simultaneously with the execution of this Agreement, (i) the NS Member has made the initial Capital Contribution described in Section 2.2(a) of the Transaction Agreement and (ii) the Pan Am Member has made an initial Capital Contribution described in Section 2.3(a) of the Transaction Agreement.

(b) Pursuant to the Transaction Agreement and simultaneously with the execution of this Agreement, the Pan Am Member has also contributed or caused to be contributed to the Company, and the Company has assumed, the Assumed Liabilities (as such term is defined in Section 2.4 of the Transaction Agreement).

2.2 Initial Capital Accounts The Company shall establish an individual Capital Account for each Member. The Company shall determine and maintain each Capital Account in accordance with Regulations Section 1.704-1(b)(2)(iv). The initial Capital Accounts of the Members as of the date hereof are as reflected in Exhibit 2.2.

2.3 Subsequent Capital Contributions

(a) If the Members execute a Facility Development Agreement, the Pan Am Member shall contribute to the Company the amount(s) contemplated in such Facility Development Agreement (the "Pan Am Sanvel Construction Contribution").

(b) If the Pan Am Member is entitled to a priority distribution of Net Cash Flow under Section 4.2(a) in an amount that exceeds the Net Cash Flow for a given year, then the NS Member shall contribute an amount necessary for the Company to pay the full amount of the Priority Distribution for that year.

2.4 Withdrawal and Return of Capital. No Member shall withdraw any of its capital without the consent of the other Members, except upon the dissolution or liquidation of the Company to the extent provided in this Agreement. Under circumstances requiring or permitting a return of any Capital Contribution, no Member shall have the right to receive property other than cash except as may be specifically provided in Section 11.2(d).

SECTION 3 **ALLOCATIONS**

3.1 Profits After giving effect to the special allocations set forth in Section 3.3, Profits for any Fiscal Year shall be allocated to the Members as follows:

(a) First, Profits shall be allocated to each Member in an amount necessary to offset any previous allocations of Loss to such Member pursuant to Section 3.4.

(b) Second, Profits less any amounts allocated under Section 3.1(a) shall be allocated to the Members in proportion to their respective Profit and Loss Allocation Percentage Interests.

3.2 Losses. After giving effect to the special allocations set forth in Section 3.3 and subject to Section 3.4, Losses for any Fiscal Year shall be allocated to the Members in proportion to their Profit and Loss Allocation Percentage Interests.

3.3 Special Allocations The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Section 3, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 3.3(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Section 3, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4).

Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 3.3(b) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 3.3(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 3 have been tentatively made as if this Section 3.3(c) were not in the Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amount such Member is deemed obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 3.3(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 3 have been made as if Section 3.3(c) and this Section 3.3(d) were not in the Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in proportion to their respective Profit and Loss Allocation Percentage Interests.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Sections 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their Percentage Interests in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) Allocations Relating to Taxable Issuance of a Membership Interest

Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of a Membership Interest by the Company to a Member (the "Issuance Items") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

(i) Guaranteed Payments. To the extent any compensation paid to any Member by the Company, including any fees payable by the Company to any Member, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in its capacity as a partner (Member) within the meaning of Code Section 707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation

(j) Capital Recovery Contributed Book Items. The Capital Recovery Contributed Book Items shall be specially allocated ninety-nine (99) percent to the Pan Am Member and one (1) percent to the NS Member

(k) Capital Recovery Purchased Book Items. The Capital Recovery Purchased Book Items shall be specially allocated one (1) percent to the Pan Am Member and ninety-nine (99) percent to the NS Member.

(l) Special Allocations of Gain from Capital Transactions. Gain for each item of Property arising from a Capital Transaction (computed by reference to Gross Asset Value) in excess of any gain allocated pursuant to Sections 3.3(a) and (b) above shall be allocated to a Member up to and in proportion to the excess of (i) the amounts allocated to the Member pursuant to Sections 3.3(j) and (k) above, over (ii) the sum of (A) amounts previously allocated to such Member pursuant to this Section 3.3(l), (B) the amount of gain allocated to the Member pursuant to Sections 3.3(a) and (b) above, and (C) such Member's remaining share of Company Minimum Gain and Member Nonrecourse Minimum Gain. Any remaining gain from a Capital Transaction shall be allocated between the Members pursuant to Section 3.1. Gain for tax purposes shall be consistent with the allocations under this Section 3.3(l) and Section 3.6.

(m) Special Allocation of Income Related to Priority Distributions. In each Fiscal Year of the Company, the Company shall allocate to the Pan Am Member an amount of gross income equal to the Pan Am Sanvel Construction Contribution Return.

3.4 Loss Limitation. Losses allocated pursuant to Section 3.2, together with Capital Recovery Contributed Book Items and Capital Recovery Purchased Book Items allocated pursuant to Sections 3.3(j) and 3.3(k) (the "Items"), shall not exceed the maximum amount of Losses and Items that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses and Items pursuant to Section 3.2 and Sections 3.3(j) and 3.3(k), the limitation set forth in this Section 3.4 shall be applied on a Member by Member basis and Losses and Items not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance

with the positive balances in such Member's Capital Accounts (including the adjustment described in subparagraphs (a) and (b) of the definition of "Adjusted Capital Account Deficit") so as to allocate the maximum permissible Losses and Items to each Member under Regulations Section 1.704-1(b)(2)(ii)(d). Subsequent Profits shall be specially allocated hereunder to charge back any Losses and Items disproportionately allocated to the Members pursuant to this Section 3.4, pro rata in accordance with the amount of such excess Losses and Items allocated hereunder and not charged back hereby.

3.5 Other Allocation Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Management Committee using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Section 3 and hereby agree to be bound by the provisions of this Section 3 in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company Profits are in proportion to their Percentage Interests.

(d) To the extent permitted by Regulations Section 1.704-2(h)(3), the Management Committee shall endeavor to treat distributions of Net Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

(e) In the event the IRS adjusts the amount of any fees, interest, or other amounts paid to a Member or an Affiliate of a Member pursuant to this Agreement or any other agreement between the Company and such Member or Affiliate, and such amounts are or were treated as deductible by the Company, whether in reliance upon Section 162, 163, 707(a) or 707(c) of the Code or otherwise, then

(i) In the case of an upward adjustment, there shall be allocated to the Member who received (or whose Affiliate received) or is treated as having received such payments an amount of loss or deduction for the taxable year in or with respect to which such fees, interest or other amounts were adjusted equal to the amount of the increase of such fees, interest, or other amounts, and

(ii) In the case of a downward adjustment, there shall be allocated to the Member who received (or whose Affiliate received) or is treated as having received such payment an amount of gross income for the taxable year in or with respect to which such fees, interest, or other amounts were adjusted equal to the amount of the decrease of such fees, interest, or other amounts.

3.6 Tax Allocations; Code Section 704(c).

In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, deduction and credit with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the traditional method set forth in Regulations Section 1.704-3(b)

3.7 Revaluation of Capital Accounts Capital Accounts shall not be revalued in connection with the Capital Contributions described in Schedule 2.2(a) of the Transaction Agreement and described in Section 2.1(a) and 2.3(a) and (b) of this Agreement.

3.8 Membership Interests The NS Member and the Pan Am Member shall have the Membership Interests reflected in Exhibit C, and such Membership Interests shall be referred to as the "NS Member's Membership Interests" and the "Pan Am Member's Membership Interests", respectively.

3.9 Special Election

The Company shall elect on its federal income tax return for its first Fiscal Year to use the safe harbor method of accounting for track structure expenditures provided in Rev. Proc. 2002-65 and follow such safe harbor method of accounting until the Members unanimously agree otherwise.

**SECTION 4
DISTRIBUTIONS**

4.1 Distributions Except as otherwise provided in this Section 4 or Section 11, and after distribution of the cumulative amounts contemplated by Section 4.2 of this Agreement, remaining Net Cash Flow, if any, shall be distributed upon the approval of the Management Committee.

4.2 Priority Distributions.

(a) Once all the improvements constructed under the Facility Development Agreement are determined by the Management Committee to have been placed in service, seven equal annual priority distributions from annual Net Cash Flow (each a "Priority Distribution" or in the aggregate, "Priority Distributions") shall be made to the Pan Am Member with the first annual priority distribution to be made on the date that the Management Committee determines all the improvements are placed in service. The amount of each annual Priority Distribution shall be determined by calculating the payment on a seven-year self-amortizing six-year loan on the difference between the Pan Am Sanvel Construction Contribution and the amount of the first annual Priority Distribution using an interest rate of six percent (6%), which interest rate may be

adjusted to the smallest extent possible only if necessary to achieve seven equal annual Priority Distributions. For example, if the amount of the Pan Am Sanvel Construction Contribution were Two Million Dollars (\$2,000,000) and all the improvements constructed under the Facility Development Agreement were placed in service on January 1, 2010, then each of the seven annual Priority Distributions (the first Priority Distribution being made on January 1, 2010 and the seventh Priority Distribution being made on January 1, 2016) would be Three Hundred Thirty-Eight Thousand Dollars (\$338,000), calculated by reducing the Pan Am Sanvel Construction Contribution of Two Million Dollars (\$2,000,000) by Three Hundred Thirty-Eight Thousand Dollars (\$338,000) and computing the annual payment on a six-year self-amortizing (\$1,662,000) loan with a six and one thousandth percent (6.001%) interest rate, which would have six annual payments of Three Hundred Thirty-Eight Thousand Dollars (\$338,000) each. The portion of each of the last six Priority Distributions that would constitute interest under the self-amortizing loan calculation shall be known as the "Pan Am Sanvel Construction Contribution Return," which in the example would be Three Hundred Sixty-Six Thousand Dollars (\$366,000) in the aggregate. If Net Cash Flow is insufficient to support any such annual priority distribution, the Company will distribute the difference from readily available funds.

(b) The Company shall distribute simultaneously to each Member an amount equal to that Member's reasonable fees incurred incident to the organization of the Company, such as legal fees related to negotiation and preparation of this Agreement, accounting fees for services incident to the organization of the Company, and filing fees. Such distribution, which is for the purpose of reimbursing the Members for such costs, shall not exceed [\$INSERT] for the Pan Am Member and shall not exceed [\$INSERT] for the NS Member.

(c) Notwithstanding anything to the contrary in Section 4.1, for each Fiscal Year of the Company, Net Cash Flow shall be distributed on at least an annual basis. Such distribution of Net Cash Flow shall be made pro rata to the Members in accordance with each Member's Profit and Loss Allocation Percentage Interest after taking into account the priority distribution described in Section 4.2(a).

4.3 Amounts Withheld All amounts withheld pursuant to the Code or any provision of any state, local or foreign tax law with respect to any payment, distribution or allocation to the Company or the Members shall be treated as amounts paid or distributed, as the case may be, to the Members with respect to which such amount was withheld pursuant to this Section 4.3 for all purposes under this Agreement. The Company is authorized to withhold from payments and distributions, or with respect to allocations to the Members, and to pay over to any federal, state and local government or any foreign government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law or any foreign law, and shall allocate any such amounts to the Members with respect to which such amount was withheld. The withholdings by the Company referred to in this Section 4.3 shall be made at the appropriate applicable statutory rate under the applicable tax as determined by the Management Committee.

4.4 Limitations on Distributions. The Company shall make no distributions to the Members except (i) as provided by and in accordance with this Section 4 and Section 11 or as agreed to by all of the Members and (ii) in conformance with the Act.

4.5 Distributions and Allocations in Respect of a Transferred Membership Interest. If any Membership Interest is Transferred during any Fiscal Year in compliance with the provisions of Section 9 or Section 10 or additional Members are admitted to the Company after the date hereof on different dates during any Fiscal Year, Profits, Losses, each item thereof, and all other items attributable to the Transferred Membership Interest or the newly issued Membership Interest, as the case may be, for such Fiscal Year shall be divided and allocated among the Members by taking into account their varying Profit and Loss Allocation Percentage Interests during the Fiscal Year in accordance with Code Section 706(d), using the interim-closing-of-the-books method unless the Members agree otherwise in writing. In the case of a Transferred Interest, all distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that, if the Company is given notice of a Transfer at least ten (10) Business Days prior to the Transfer, the Company shall recognize such Transfer as of the date of such Transfer, and provided further that if the Company does not receive a notice stating the date such Membership Interest (or portion thereof) was Transferred and such other information as the Management Committee may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the Membership Interest on the last day of such Fiscal Year.

SECTION 5

MANAGEMENT

5.1 Manner of Operations The Members each agree to act in good faith to operate the Company in a manner reasonably designed to maximize the long-term value of the Company as a whole

5.2 Management Committee.

(a) *Management by the Management Committee.* Subject to the provisions of this Agreement, the business, property and affairs of the Company shall be managed, and all powers of the Company shall be exercised, by or under the direction of a management committee (the "Management Committee"). Without limiting the generality of the foregoing, but subject to the express limitations set forth elsewhere in this Agreement, the Management Committee shall have all necessary powers to manage and carry out the purpose, business, property and affairs of the Company. Notwithstanding anything to the contrary herein, the Management Committee shall cause the Company to effectuate Section 9 of the Transaction Agreement.

(b) *Composition of Management Committee.* The Management Committee shall consist of: (i) prior to a Pan Am Change in Control, six (6) committee representatives, three (3) of whom shall be designated by the Pan Am Member and three (3) of whom shall be designated by the NS Member, and alternates appointed by the Pan Am Member and the NS Member, respectively, to serve in the absence or unavailability of a committee representative, or (ii) upon and after a Pan Am Change in Control, immediately and without the

need for any action of any Member or any other Person, five (5) committee representatives, two (2) of whom shall be designated by the Pan Am Member and three (3) of whom shall be designated by the NS Member, in each case with alternates appointed by the Pan Am Member and the NS Member, respectively, to serve in the absence or unavailability of a committee representative (each, including alternates, a "Committee Representative"). Each Committee Representative shall serve at the pleasure of the Member or Members who designated such Committee Representative. The initial Committee Representatives are identified in Exhibit 5.2(b) attached hereto. Any Committee Representative may resign upon written notice to the Member who designated such Committee Representative and to the Company. The resignation of any such Committee Representative shall take effect upon receipt of such notice, or at such later time as shall be specified in such notice. A Committee Representative may be removed at any time with or without cause by the Member who originally designated such Committee Representative. Except as governed by Section 10 for an Event of Default by a Member, any vacancy occurring for any reason in the number of Committee Representatives shall be filled by the Member who originally designated the Committee Representative whose position has become vacant. A Member shall provide written notice to all other Members of the identity of a new Committee Representative when that new Committee Representative is designated, provided, however, that the provision of said written notice shall not be a prerequisite to said designation nor the ability of said Committee Representative to participate in the governance of the Company. The Chairman of the Management Committee shall be appointed by the Pan Am Member in all even numbered calendar years and by the NS Member in all odd numbered calendar years, provided that, upon and after a Pan Am Change in Control, the Chairman of the Management Committee shall be appointed by the NS Member.

(c) *Independent Activities*. Except as otherwise restricted by the provisions of this Agreement or any other agreement between the Company and the Person acting as Committee Representative, each Committee Representative in his capacity as a Committee Representative shall be required to devote such time to the affairs of the Company as may be necessary to serve the Company in such capacity and shall be free to serve any other Person or enterprise in any capacity that such Committee Representative may deem appropriate in his discretion.

5.3 Committees of, or reporting to, the Management Committee.

(a) *Creation of Committees*. Subject to Section 5.6, the Management Committee shall have the power and right (but not the obligation) to create and disband committees and to determine the duties, responsibilities, activities and composition thereof. Except as otherwise provided herein, prior to a Pan Am Change in Control, the Pan Am Member and the NS Member shall each be entitled to equal representation on any such committee, and, upon and after a Pan Am Change in Control, the NS Member shall be entitled to a majority of the representation on any such committee.

(b) *Capital Project Committee*. The Members hereby agree that there shall be created a Capital Project Committee consisting of: (1) prior to a Pan Am Change in Control, four Committee Representatives, two of whom shall be designated by the Pan Am Member and two of whom shall be designated by the NS Member; and (2) upon and after a Pan Am Change in Control, three Committee Representatives, two of whom shall be designated by

the NS Member and one of whom shall be designated by the Pan Am Member. The Capital Project Committee shall establish a process (the "Capital Project Process") utilizing capacity modeling and field input to determine capacity needs and capital expenditures with respect to Capital Projects. The Capital Project Process will specify that the engineering specifications and instructions applicable to any particular Capital Project shall conform to the then-current NSR internal specifications and instruction for constructing a similar capital project. The Capital Project Committee shall be responsible for (i) determining the optimum use of capital expenditures provided for in the Company's Budget (including any Rollover Budget) or Business Plan in accordance with the Capital Project Process and (ii) performing the functions allocated to it pursuant to the Capital Projects and Facility Management Agreement. The initial designees to the Capital Project Committee shall be those persons identified in Exhibit 5.3(b)(i) hereto. Except as provided in Section 5.12, the Capital Project Committee shall follow any protocols approved by the Management Committee in accordance with Section 5.6 to guide capital expenditures decisions.

(c) *Joint Operating Committee.* The Members hereby agree that there shall be created a Joint Operating Committee (the "Joint Operating Committee" or the "JOC") consisting of the Chief Operations Officer, Chief Marketing Officer and one other appointed representative, or their respective designees, of Springfield Terminal and NSR. Prior to a Pan Am Change in Control, the Joint Operating Committee shall make decisions by the unanimous vote of its members. Upon and after a Pan Am Change in Control, the NS Member shall have the right to appoint an additional member to the Joint Operating Committee, and the Joint Operating Committee shall make decisions based upon a majority vote. The Joint Operating Committee shall have responsibility for (i) having direct, day-to-day interface with the General Manager, (ii) monitoring such matters as operations, performance and scheduling, (iii) seeking the resolution of disputes with respect to such matters, (iv) reviewing the operating efficiencies of the East Deerfield repair shops on or before the three-year anniversary of the Closing Date and (v) reviewing the operation of Springfield Terminal as the Railroad Operator, and overall railroad operations and business, by focusing on the following five (5) key performance areas, which review shall be based upon specific performance metrics that the Joint Operating Committee shall develop: (A) safety metrics, including injury ratios and accident ratios; (B) service metrics, including on-time train and service performance; (C) engineering and maintenance quality, including miles slow-ordered; (D) performance to budget, including operating ratio; and (E) commercial metrics, including revenue growth and customer satisfaction.

(d) The Capital Project Committee and the Joint Operating Committee may meet by telephone or in any manner or place as shall be agreeable to its members. If, prior to a Pan Am Change in Control, the Capital Project Committee and the Joint Operating Committee is unable to reach a unanimous vote on any matter, it shall refer that matter to the Management Committee for resolution.

5.4 Meetings of Management Committee.

(a) *Notices.* Meetings of the Management Committee shall be held at least once each calendar quarter and may be called by any Committee Representative. All meetings shall be held upon fifteen (15) Business Days' notice by mail or four (4) Business Days' notice delivered personally or by telephone, e-mail or facsimile stating the business to be

transacted at such meeting, provided, that at least thirty (30) Business Days' notice shall be provided for any meeting in which approval of any action of the type set forth in clauses (xxi) or (xxii) of Section 5.6 is sought. The Committee Representatives present may adjourn any meeting to another time and place. Notice of any adjourned meeting shall be given to the Committee Representatives who are not present at the time of the adjournment thereof in accordance with the second sentence of this Section 5.4. Meetings of the Management Committee shall be held at the offices of the Company unless another location shall have been designated in the notice of the meeting or at such place as may be approved by the Management Committee. Members of the Management Committee may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Committee Representatives participating in such meeting can hear one another. Participation in a meeting in such manner constitutes presence in person at such meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all of the Committee Representatives. Any Committee Representative may authorize in writing any Person to act for it by proxy on all matters on which a Committee Representative is entitled to act, including waiving notice of, or voting or participating at, any meeting.

(b) *Quorum.* The presence in person of a majority of the Committee Representatives (at least one of whom shall be a Committee Representative appointed by the NS Member if a Major Decision is to be made) shall constitute a quorum for the transaction of business at a meeting of the Management Committee duly called in accordance with Section 5.4(a), provided that, upon and after a Pan Am Change in Control, the presence of at least two Committee Representatives appointed by the NS Member shall be required so as to constitute a quorum.

(c) *Vote.* Each Committee Representative shall have one vote to cast in person or by proxy.

(d) *Action of the Committee.* Except to the extent that this Agreement expressly requires otherwise (including as provided in Section 5.6), every action or resolution done or made by the majority approval of the Management Committee at a duly noticed meeting at which a quorum is present is the action of the Management Committee.

5.5 Action by Unanimous Written Consent. Any action required or permitted to be taken by the Management Committee may be taken by the Committee Representatives without a meeting without prior notice and without a vote, but only if a consent or consents in writing shall be signed by all of the Committee Representatives.

5.6 Management Committee Decisions. Notwithstanding anything to the contrary contained in this Agreement (other than Section 5.11), the following actions are reserved and require the approval of the Management Committee, including the approval of at least one of the Committee Representatives appointed by the NS Member, and no committee thereof, nor any officer, agent or other representative of the Company shall be entitled to authorize or effect any such action absent such approval (each such action, a "Major Decision"):

(i) Repealing, modifying or amending this Agreement or any of the JV Transaction Agreements to which the Company is a party, or waiving

compliance with any provision of this Agreement or any of the JV Transaction Agreements to which the Company is a party;

(ii) Repealing, modifying or amending the Investment Policies,

(iii) Entering into any agreement with respect to or consummating any (A) acquisition, divestiture, spin-off, merger, consolidation, business combination or similar transaction involving equity interests or assets of the Company, (B) sale, transfer, lease, sublease, license or other disposition of any property or asset to a third party other than in the ordinary course of business, or (C) formation of, investment of the funds or assets of the Company in or other participation in any joint venture or partnership,

(iv) Entering into any transactions with any Member or any Affiliate of any Member, other than as contemplated by the Capital Projects and Facility Management Agreement, the distributions contemplated in Section 2.4 or Section 4 or pursuant to the JV Transaction Agreements;

(v) Approving the Budget or the Business Plan or any changes in, amendments to or deviations from, the Budget (including any Rollover Budget) or the Business Plan, provided, however, in the event the Management Committee cannot agree on (A) a Capital Project or (B) the Operating or Maintenance Budgets, the prior year's budget shall roll forward as provided in Section 5.7(a);

(vi) Appointing, setting the rate of compensation of, approving bonuses for, or terminating any employees or Officers of the Company, if any;

(vii) Approving any change in the number of members of the Management Committee,

(viii) Declaring, making or paying any dividend or any other distribution (whether in cash, securities or other property) on any equity interests of the Company, other than the distributions contemplated in Section 4,

(ix) Incurring any indebtedness, guarantee or lien or making any loans (including any Notes), advances or capital contributions to, or investments in, any Person, except (A) as provided in the Budget or Rollover Budget, (B) purchase money financing of assets used in the conduct of the business of the Company, and (C) as may be reasonable or necessary, in light of force majeure events or other eventualities, to maintain operations of the Company and, if any, NSR, on the Line,

(x) Creating any employee equity option, structured equity, employee stock option plan or other similar plan, making any grants under any such plan or materially modifying any employee benefit plan;

(xi) Requiring any Capital Contribution beyond those contributions specified in this Agreement, the JV Transaction Agreements and any Budget (including any Rollover Budget) adopted pursuant to the terms of this Agreement,

(xii) Initiating or consenting to the filing of any petition to place the Company in insolvency, bankruptcy or similar proceedings;

(xiii) Admitting new Members to the Company;

(xiv) Approving any changes in the Profit and Loss Allocation Percentage Interests of the Members other than as contemplated by Section 2.3;

(xv) Commencing, settling or disposing of any litigation against the Company or any of its assets or properties, except any settlement or disposition not exceeding \$250,000;

(xvi) Except as contemplated by the Capital Projects and Facility Management Agreement, entering into any agreement, license, program or arrangement pursuant to which the Company is obligated to make or receive payments or forgive debt, or amending, terminating or failing to renew any such contract other than those specified in the Budget (including any Rollover Budget), other than as may be reasonable or necessary, in light of force majeure events or other eventualities, to maintain operations of the Company and, if any, NSR, on the Line,

(xvii) Approving the formation and composition of any committees of the Management Committee (other than self-electing changes in such composition pursuant to this Agreement) and the formation and composition of the boards or equivalent governing bodies of any subsidiary of the Company,

(xviii) Making any material change in the Company's accounting practices or policies (other than as required by GAAP) or, prior to a Pan Am Change in Control, any change in the Auditors,

(xix) Taking any of the actions set forth in clauses (i) through (xviii) above with respect to any entity of which the Company owns, directly or indirectly, securities or other ownership interests having the power to elect a majority of the board of directors or other persons performing similar functions, or otherwise having the power to direct, manage or control the conduct of business of such entity or otherwise owning at least ten percent (10%) of the outstanding ownership interests of such entity;

(xx) Making operating expenses or capital expenditures beyond those contained in the Budget (including any Rollover Budget), except as may be reasonable or necessary, in light of force majeure events or other eventualities, to maintain operations of the Company and, if any, NSR, on the Line;

(xxi) Entering into an agreement, program or other arrangement pursuant to which the Company grants or provides to any Person any operating, haulage, trackage or any other rights that allow access over the Line, or otherwise expands any such current access rights; or

(xxii) Permitting any Freight Rail Common Carrier to perform haulage for any rail carrier, whether such Freight Rail Common Carrier is operating over the Line in haulage or on trackage rights

5.7 Budget and Business Plan, Investment Policies.

(a) Attached as Exhibit 5.7(a) to this Agreement is a forecast of the budget (the "Budget") for the first Fiscal Year, a forecast of a business plan (a "Business Plan") for the first Fiscal Year, and a forecast of net cash flow (which, by definition, will reflect any reasonably necessary cash reserve requirements) (a "Net Cash Flow Forecast") for the first Fiscal Year. On or prior to the date which is sixty days before the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2008, the Management Committee shall review, and, if acceptable, approve, a Budget, Business Plan and Net Cash Flow Forecast for the following Fiscal Year, in each case to be prepared by the Railroad Operator. The Budget shall consist of a Maintenance Budget and an Operating Budget (which such Operating Budget shall be prepared in conformance with the Operating Expense Accounting Plan attached as Appendix D to the Railroad Operating Agreement), and the Business Plan shall consist of a Maintenance Plan and an Operating Plan. The Budget, Business Plan and Net Cash Flow Forecast for the next succeeding Fiscal Year shall upon approval of the Management Committee in accordance with Section 5.6 become the Budget, Business Plan and Net Cash Flow Forecast for such Fiscal Year. If the Management Committee does not approve a Budget, Business Plan or Net Cash Flow Forecast for any Fiscal Year prior to the commencement of such year, then the Budget, Business Plan or Net Cash Flow Forecast for that Fiscal Year shall be the Budget, Business Plan or Net Cash Flow Forecast, as the case may be, from the prior Fiscal Year (excluding the prior Fiscal Year's extraordinary and nonrecurring items, but including any contractually obligated or legally required commitments or expenditures for the current year), as the case may be, adjusted, in the case of the Budget based on the "AAR Railroad Cost Indexes – Table A – Annual indexes of charge-out prices and wage rates (1977 = 100) -- East – Materials prices, wage rates and supplements combined (excluding fuel)," together with any adjustment of contractual commitments in accordance with their terms (a "Rollover Budget"). Notwithstanding anything to the contrary set forth herein, the Budget (including any Rollover Budget), Business Plan and Net Cash Flow Forecast for any Fiscal Year shall take into account the capital expenditures for such Fiscal Year set forth in Schedule 2.5 to the Transaction Agreement and any reserves the Management Committee deems to be reasonably necessary to conduct the business of the Company as reflected in the Budget and Business Plan.

(b) Attached as Exhibit 5.7(b) to this Agreement are the investment policies (the "Investment Policies") pursuant to which the initial Capital Contribution of the NS Member described in Section 2.1(a), any additional cash Capital Contributions to the Company, and any other funds shall be invested by the Company. The Company shall provide a monthly report to the NS Member and the Pan Am Member detailing the investments made by the Company and the extent of such holdings.

5.8 Officers

(a) Officers. Subject to Section 5.6, the Management Committee shall have the authority to appoint and terminate Officers of the Company and retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such Officers, employees, agents and consultants as the Management Committee deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties. The setting and modifications of compensation levels (including bonuses and benefits, if any) for any such Officers, employees, agents or consultants shall be set by the approval of the Management Committee in accordance with Section 5.6.

(b) General Manager. Subject to Section 5.6, the Management Committee shall have the authority to ratify the appointment of the General Manager, such appointment to be made by the Railroad Operator.

5.9 Exculpation and Indemnification

(a) Indemnified Persons. The Committee Representatives, the Officers (if any) and each Member and its Affiliates, and the partners, members, shareholders, officers, directors, advisory directors, managers, employees and control persons (as such term is defined in the Securities Act) of each Member and its Affiliates (collectively, the "Indemnified Persons") shall not be liable, directly or indirectly, to the Company, any other Member or any other Person who has an interest in the Company for any act or omission (in relation to the Company or this Agreement) taken or omitted by such Indemnified Person in good faith in their capacity as such, provided that such act or omission did not constitute gross negligence, fraud or willful violation of the law, this Agreement or the fiduciary duties set forth in Section 5.10(a). To the fullest extent permitted by applicable law, the Company shall indemnify and hold harmless each Indemnified Person and may indemnify any other Person subject to approval and designation of such person for such indemnification by approval of the Management Committee against all claims, damages, losses, liabilities and expenses of whatever nature (including reasonable attorneys' fees and disbursements) ("Claims") relating to activities undertaken in connection with the Company in their capacity as such, including, but not limited to, amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees and expenses reasonably incurred in connection with the investigation, defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative body in which such Indemnified Person may be or may have been involved as a party or otherwise, or with which such Indemnified Person may be or may have been threatened, while acting as such Indemnified Person; provided that no indemnity shall be payable hereunder against any liability incurred by such Indemnified Person by reason of gross negligence, fraud, a willful violation of the law or a breach of this Agreement or the fiduciary duties set forth in Section 5.10(a). No Indemnified Person shall settle or compromise any Claim without the written consent, which consent shall not be unreasonably withheld, of the Management Committee, subject to Section 5.6.

(b) Advance of Expenses. Expenses incurred by an Indemnified Person in defense or settlement of any Claim that may be subject to a right of indemnification

hereunder may be advanced (and must be advanced to Members, the Committee Representatives and Officers, if any, of the Company) by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall ultimately be determined that the Indemnified Person is not entitled to be indemnified by the Company

(c) Non-Exclusivity. The right of any Indemnified Person to the indemnification provided herein shall be cumulative of and in addition to any and all rights to which such Indemnified Person may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Indemnified Person's successors, assigns and legal representatives.

(d) Satisfaction from Company Assets. All judgments against the Company or an Indemnified Person, in respect of which such Indemnified Person is entitled to indemnification, shall only be satisfied from Company assets and no other Person shall have any liability with respect thereto

(e) Expenses. The Company is authorized to pay expenses, fees, withholding taxes and other costs reasonably incurred by the Company, including, without limitation, expenses incurred in connection with acquisitions or investments and expenses incurred under this Section 5.9

(f) Report to the Management Committee. The Company shall report in writing to the Management Committee details of any payments made pursuant to Section 5.9(d) or Section 5.9(e).

5.10 Fiduciary Duty, Exculpation

(a) Notwithstanding any other provisions of this Agreement, whether express or implied, or applicable law, the Members agree that, except as to the matters set forth in Section 5.12(b), to the fullest extent permitted by Section 18-1101(c) of the Act, no Member shall owe any duties at law or in equity (including fiduciary duties) to the Company or any other Member, provided, that an Indemnified Person who is a Committee Representative and who shall also be an employee of a Member shall have a fiduciary duty to such Member and not to the Company. Notwithstanding the foregoing, nothing in this Section 5.10 shall eliminate any implied covenant of good faith and fair dealing between any Member and the Company or the other Members. With regard to matters set forth in Section 5.12(b), the Members shall require their respective Committee Representatives to act in the best interests of the Company.

(b) The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity, are agreed by the Members hereunder to replace such other duties and liabilities of such Indemnified Person.

5.11 Interparty Matters. Notwithstanding anything to the contrary contained in this Agreement, in the event of any disagreement, dispute or controversy between any Member or any of its Affiliates (other than the Company), on the one hand, and the Company, on the other hand, arising out of or relating to this Agreement or any of the JV Transaction Agreements

to which the Company is a party or is subject or the breach, termination or validity thereof, the Committee Representatives designated by the other Member shall control (on behalf of the Company) the conduct or settlement of any such disagreement, dispute or controversy or any proceedings relating thereto.

5.12 Industrial Development Projects

(a) Notwithstanding anything to the contrary herein, each Member, acting in its individual capacity and not as a Member or otherwise on behalf of the Company, shall have the right to directly contract with any new or existing customer of that Member so as to induce said customer to locate or expand facilities on the Line

(b) The Company shall construct and maintain one or more Industrial Development Projects if said Industrial Development Project(s) are in the Company's best interest, giving due consideration to costs, revenues, contributions, safety, security, and capacity needs of current and projected expansions of existing or authorized traffic.

5.13 Public Funds.

The Company shall solicit public funding for the capital projects appearing on Exhibit B hereto, provided, however, that nothing in this Section 5.13 shall require the Company to receive, without an affirmative vote of the Management Committee, public funding that would require the Company to provide third party access to the Company's facilities

SECTION 6 **ROLE OF MEMBERS**

6.1 Rights or Powers The Members in their capacity as Members shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. A Member shall cease to be a Member at the time such Member ceases to own any Membership Interests.

6.2 Voting Rights No Member has any voting right except with respect to those matters specifically reserved for a Member vote which are set forth in this Agreement and as required in the Act.

6.3 Meetings of the Members.

(a) Meetings of the Members may be called upon the written request of any Member. The call shall state the location of the meeting and the nature of the business to be transacted. Notice of any such meeting, including any meeting that has been adjourned, shall be given to each Member not less than fifteen (15) Business Days (or four (4) Business Days if delivered personally or by telephone, email or facsimile) nor more than forty-five (45) days prior to the date of such meeting. Members may vote in person, by proxy or by telephone at such meeting and may waive advance notice of such meeting. Whenever the vote or consent of

Members is permitted or required under the Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in Section 6.3(f). No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all of the Members entitled to vote thereat.

(b) For the purpose of determining the Members entitled to vote on, or to vote at, any meeting of the Members or any adjournment thereof, the Management Committee or the Member requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) days nor less than ten (10) days before any such meeting, unless between the setting of the record date and the record date there is a Pan Am Change in Control. If between the setting of the record date and the record date there is a Pan Am Change in Control, the NS Member shall be given notice and the opportunity to set a new record date, which record date may be a date following the acquisition of any Governmental Approvals as may be reasonable or necessary for the NS Member to acquire and exercise control of the Company.

(c) Each Member may authorize any Person or Persons to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

(d) Each meeting of Members shall be conducted by an individual Person selected by the Member entitled to appoint the Chairman of the Management Committee for the calendar year in which the meeting is held. Except as otherwise required by law, the presence in person or by proxy of Members able to appoint more than fifty-nine percent (59%) of the voting members of the Management Committee shall constitute a quorum for the transaction of business at a meeting of the Members duly called in accordance with Section 6.3(a). In case a quorum shall not be present at any meeting, any Member present thereat, in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite number of Members shall be present.

(e) At a meeting, any proposal shall be approved if it receives the affirmative vote of the Members able to appoint more than fifty-nine percent (59%) of the voting members of the Management Committee.

(f) Notwithstanding this Section 6.3, any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by each and every Member.

6.4 Required Member Consents Notwithstanding any other provision of this Agreement no action may be taken by the Company (whether by the Management Committee, or otherwise) in connection with any of the following matters without the written consent of all of the Members.

- (a) Any act in contravention of this Agreement, or
- (b) Any transaction to liquidate or dissolve the Company

6.5 Member Compensation No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account or for services rendered on behalf of the Company, or otherwise, in its capacity as a Member, except as otherwise provided in this Agreement, any of the JV Transaction Agreements or in another agreement among the Company and a Member that received approval by the Management Committee in accordance with Section 5.6.

6.6 Members' Liability. No Member shall be liable under a judgment, decree or order of a court, or in any other manner for the debts or any other obligations or liabilities of the Company. A Member shall be liable only to make its Capital Contributions and shall not be required to restore a deficit balance in its Capital Account or to lend any funds to the Company or, after its Capital Contributions have been made, to make any additional contributions, assessments or payments to the Company, provided that a Member may be required to repay distributions made to it as provided in Section 4 or the Act. A Committee Representative shall not have any personal liability for the repayment of any Capital Contributions of any Member.

6.7 Partition. While the Company remains in effect or is continued, each Member agrees and waives its rights to have any Company Property partitioned, or to file a complaint or to institute any suit, action or proceeding at law or in equity to have any Company Property partitioned, and each Member, on behalf of itself, its successors and its assigns hereby waives any such right.

6.8 Transactions Between a Member and the Company. Except as otherwise provided by applicable law and the provisions of this Agreement or as contemplated by the Transaction Agreement, subject to the Management Committee's approval in accordance with Section 5.6, any Member or any Affiliate of any Member may, but is not required to, enter into, directly or indirectly, any transaction, agreement, joint enterprise or arrangement, guarantee, loan, advance or investment with the Company provided the same is on an arms length basis and at fair market value. No Member may, without the approval of the other Member, enter into, directly or indirectly, any transaction, agreement, joint enterprise or arrangement, guarantee, loan, advance or investment with the Company other than on an arms length basis and at fair market value. The existence of these relationships and acting in such capacities will not result in the Member being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member.

6.9 Other Instruments. Each Member hereby agrees to execute and deliver to the Company within five days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Management Committee deems necessary, useful or appropriate to comply with any laws, rules or relations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

6.10 Advise of Changes Each Member hereby agrees to notify the other Members as soon as practicable of any event, circumstance or fact of which it has knowledge which has had, or is reasonably likely to have, a material adverse effect on such Member's ability to fulfill its obligations under this Agreement.

6.11 NS Change in Control.

Notwithstanding anything to the contrary herein, in the event of a NS Change in Control, the Company shall enter into an agreement with Springfield Terminal granting to Springfield Terminal overhead trackage rights ("CoC Trackage Rights") between: (a) CPF 312 and Mechanicville for the sole purpose of interchanging traffic with Canadian Pacific Railway Company, or its wholly-owned subsidiary, at Mohawk Yard, NY, (b) CPF 312 and a connection with Vermont Railway at Hoosick Junction; (c) New England Central Railway at East Northfield, MA, or, should the Company's connection with New England Central Railway be moved to Millers Falls, MA, at Millers Falls; and (d) CSXT at Rotterdam Junction, NY. The agreement shall have the same general terms and conditions as that governing the Harvard Trackage Rights, except that: (1) the compensation shall be the \$0.24 per car mile (indexed beginning the Effective Date in the same manner as the compensation for the Harvard Trackage Rights); (2) the route will be over the main line of the Company between CPF 312 and the relevant entry-exit locations (Mechanicville, Hoosick Junction, East Northfield (or Millers Falls) and Rotterdam Junction); and (3) operations will be limited to two train pairs per day – one for carrying out the interchange with CP and CSXT and one for carrying out the interchange with Vermont Railway and New England Central. Further, the Company and Springfield Terminal shall amend the Springfield Terminal Joint Use Agreement to permit an unlimited number of cars to move via those trackage rights, in all other ways the Springfield Terminal Joint Use Agreement shall be unmodified. In addition, the Company shall agree to invest up to \$5 million in a capital improvement as may be reasonably necessary to facilitate the use of the Harvard Trackage Rights under the amended agreement.

SECTION 7
ACCOUNTING BOOKS AND RECORDS

7.1 Accounting Books and Records.

(a) The Company shall keep on site at its principal place of business, or in such other place as the Management Committee may determine from time to time (which such location shall be immediately communicated to each Committee Representative), each of the following.

(i) Separate books of account for the Company which shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Company and the operation of the Business in accordance with this Agreement, and, where costs and expenses, or costs and expenses inputs, are derived by taking a ratio of Springfield Terminal's costs, the Company shall show a true and accurate record of Springfield Terminal's total costs subject to the ratio, as well as true and accurate records of the metrics from which the applicable ratio is generated,

(ii) A current list of the full name and last known business, residence or mailing address of each Member and Committee Representative, both past and present,

(iii) A copy of the Certificate of Formation and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed,

(iv) Copies of the Company's federal, state, and local income tax returns and reports, if any, until one year after the period of limitations for auditing the return by the federal government or by any applicable state or local government expires,

(v) Copies of this Agreement (including any amendments thereto),

(vi) Copies of any writings permitted or required under the Act regarding the obligation of a Member to perform any enforceable promise to contribute cash or property or to perform services as consideration for such Member's Capital Contribution, and

(vii) Any written consents obtained from Members pursuant to the Act regarding action taken by Members without a meeting.

(b) The Company shall use the accrual method of accounting in preparation of its financial reports and for tax purposes and shall keep its books and records accordingly. Any Member or its designated representative has the right to access and audit, inspect and copy the contents of such books or records and shall also have access during normal business hours to such additional financial information, documents, books and records as may be reasonably requested (including in order to comply with any reporting requirements of such Member under applicable laws or stock exchange regulations). The rights granted to a Member pursuant to this Section 7.1 are expressly subject to compliance by such Member with the safety, security and confidentiality procedures and guidelines of the Company, as such procedures and guidelines may be established from time to time.

(c) The accounting period of the Company shall be the Fiscal Year.

7.2 Reports.

(a) In General. The Railroad Operator shall be responsible for causing the preparation of financial reports of the Company and the coordination of financial matters of the Company with the Company's accountants.

(b) Periodic and Other Reports. The Company shall cause to be delivered to each Member the financial statements listed in clauses (i) and (ii) below, prepared, in each case (other than with respect to Member's Capital Accounts, which shall be prepared in accordance with this Agreement) in accordance with GAAP consistently applied (and, if required by any Member or its Affiliates for purposes of reporting under the Exchange Act Regulation S-

X), including any reports as may be required in accordance with the Company's or any of its Members' status as a rail carrier, and such other reports, representations and certifications as any Member may reasonably request from time to time, provided that, if the Management Committee so determines within 30 days thereof, such other reports shall be provided at such requesting Member's sole cost and expense. The monthly and quarterly financial statements referred to in clause (ii) below may be subject to normal year-end audit adjustments.

(i) As soon as practicable following the end of each Fiscal Year (and in any event not later than [120] days after the end of such Fiscal Year) the Company shall cause to be delivered to each Member, an income statement and a balance sheet of the Company as of the end of such Fiscal Year and the related statements of operations, Members' Capital Accounts and changes therein, and cash flows for such Fiscal Year, together with appropriate notes to such financial statements and supporting schedules, all of which shall be audited and certified by the Auditors, and in each case, to the extent the Company was in existence, setting forth in comparative form the corresponding figures for the immediately preceding Fiscal Year end (in the case of the balance sheet) and the two immediately preceding Fiscal Years (in the case of the statements), and

(ii) As soon as practicable following the end of each month and following the end of the first eleven months of each Fiscal Year (and in any event not later than 30 days after the end of each month and the end of each such month), the Company shall cause to be delivered to each Member, a balance sheet of the Company as of the end of each such month and each such Fiscal Quarter and the related statements of operations and cash flows for each such month and each such Fiscal Quarter and for the Fiscal Year to date, in each case, to the extent the Company was in existence, setting forth in comparative form the corresponding figures for the prior Fiscal Year's month and for the prior Year's Fiscal Quarter and the interim period corresponding to the month and the interim period just completed.

The periodic statements described in clause (ii) above shall be accompanied by a written certification of the General Manager that such statements have been prepared in accordance with GAAP consistently applied or this Agreement, as the case may be. The Company and the Management Committee shall also distribute to all Members, at the same time such reports are circulated, delivered or distributed internally, each and every internal management report prepared by, for or circulated among senior management of the Company relating to the business or financial performance of the Company.

7.3 Tax Matters.

(a) **Partnership Status.** It is the intent of the Members that the Company be classified as a partnership for U.S. federal, state and local income tax purposes. The Members hereby agree not to elect to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar state statute.

(b) **Company Tax Returns.** The Tax Matters Partner (as defined in Section 7.3(d)) shall prepare (or cause to be prepared) the U.S. federal and state income tax

returns and information returns (including, but not limited to, employment tax returns and various Forms 1099) and all other tax and information returns of the Company in a manner consistent with this Agreement. The federal income tax return shall contain an election under Section 6231(a)(1)(B)(ii) of the Code and the regulations thereunder to treat the Company as a partnership to which the provisions of Sections 6221 through 6234 of the Code, inclusive, apply. The Tax Matters Partner shall cause the Company's accountants to prepare and review the necessary federal and state income tax returns and information returns for the Company, always reporting in a manner that legally produces the lowest Company taxable income (e.g., reporting depreciation under the accelerated method rather than under the straight-line or alternative depreciation system or electing any bonus depreciation that may be allowed in the future). Each Member shall provide such information, if any, as may be needed by the Company for purposes of preparing such tax and information returns, provided that such information is readily available from regularly maintained accounting records. Prior to April 1st of each year, or sooner as applicable, the Tax Matters Partner shall deliver to the other Member for its review a copy of the Company's federal and state income tax returns and information returns in the form proposed to be filed for each Fiscal Year, and shall reasonably consider and take into account all reasonable comments to such proposed tax returns and information returns provided by the other Member at least ten (10) days prior to the filing date for such returns. After taking into account any such comments, the Tax Matters Partner shall cause the Company to timely file such tax returns. Within two (2) Business Days after filing such federal and state income tax returns and information returns, the Tax Matters Partner shall cause the Company to deliver to each Member a copy of the Company's federal and state income tax returns and information returns as filed for each Fiscal Year, together with any additional tax-related information in the possession of the Company that such Member may reasonably and timely request in order to properly prepare its own income tax returns.

(c) Tax Information The U.S. federal and state income tax returns for the Company (and other tax information if reasonably required by a Member, including a detailed calculation of each Member's Adjusted Capital Account for purposes of section 704(b) of the Code) shall be delivered to each Member as soon as practicable after the end of each Fiscal Year of the Company but not later than five months after the end of each Fiscal Year. Tax information needed by each Member for financial reporting purposes shall be delivered to each Member within three (3) days after the end of each Fiscal Quarter.

(d) Tax Audits.

(i) At all times prior to a Pan Am Change in Control, the Pan Member shall be the "tax matters partner," as that term is defined in Section 6231(a)(7) of the Code (the "Tax Matters Partner"), at all times upon and after a Pan Am Change in Control, the NS Member shall be the Tax Matters Partner. The Tax Matters Partner is hereby directed and authorized to take whatever steps the Tax Matters Partner, in its sole discretion, deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the IRS and taking such other action as from time to time is required under the Regulations.

(ii) The Tax Matters Partner, in consultation with the other Member, shall direct the defense of any claims made by the IRS (or by any other taxing

authority) to the extent that such claims relate to the adjustment of Company items at the Company level and, in connection therewith, shall cause the Company to retain and to pay the fees and expenses of counsel and other advisors chosen by the Tax Matters Partner with the consent of the other Member. The Tax Matters Partner shall promptly deliver to each other Member a copy of all notices, communications, reports and writings received from the IRS relating to or potentially resulting in an adjustment of Company items, shall promptly advise the other Member of the substance of any conversations with the IRS in connection therewith, and shall keep the other Member advised of all developments with respect to any proposed adjustments which come to its attention. In addition, the Tax Matters Partner shall (A) provide in a timely manner the other Member with a draft copy of any correspondence or filing to be submitted by the Company in connection with any administrative or judicial proceedings relating to the determination of Company items at the Company level reasonably in advance of such submission, (B) incorporate all reasonable changes or comments to such correspondence or filing requested by the other Member and (C) provide the other Member with a final copy of correspondence or filing. The Tax Matters Partner will provide the other Member with notice reasonably in advance of any meetings or conferences with respect to any administrative or judicial proceedings relating to the determination of Company items at the Company level (including any meetings or conferences with counsel or advisors to the Company with respect to such proceedings), and the other Member shall have the right to participate, at its sole cost and expense, in any such meetings or conferences.

(iii) Notwithstanding anything in this Section 7.3, the Tax Matters Partner shall not (A) extend the period of limitations for any tax year for Federal, state, and local income tax purposes, (B) enter into any settlement agreement that is binding upon the Members with respect to the determination of Company items at the Company level, (C) file a petition under Section 6226(a) of the Code for the readjustment of Company items, or (D) appeal any judicial decision with respect to any Company item, without the prior consent of the other Member which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 8

AMENDMENTS

8.1 Amendments Amendments to this Agreement may be proposed by any Committee Representative or any Member. Following such proposal, the Management Committee shall submit to the Members a verbatim statement of any proposed amendment, and the Management Committee shall include in any such submission a recommendation as to the proposed amendment. The Management Committee shall seek the written consent of the Members pursuant to Section 6.3(f) on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. A proposed amendment shall be adopted and be effective as an amendment hereto only if it receives the affirmative vote of each of the Members.

SECTION 9

TRANSFERS

9.1 Restrictions on Transfers Except as provided in Section 9.2 of this Agreement, no Member shall Transfer all or any portion of its Membership Interest.

9.2 Permitted Transfers. Subject to the conditions and restrictions set forth in Section 9.3, a Member may at any time Transfer all or any portion of its Membership Interest to (a) any Wholly-Owned Affiliate of either the NS Parent or Pan Am Parent, (b) subject to the prior written consent of all other Members, any Person, (c) any Person that (i) is the surviving Person as a result of any merger or consolidation of the NS Parent with or into any such Person or (ii) acquires all or substantially all of the assets of the NS Parent, (d) any other Member, (e) any administrator, trustee or other Person to whom the NS Member or the NS Member's Membership Interest is transferred involuntarily by operation of law, (f) any Person that (i) is the surviving Person as a result of any merger or consolidation of the Pan Am Parent with or into any such Person or (ii) acquires all or substantially all of the assets of the Pan Am Parent, (g) any administrator, trustee or other Person to whom the Pan Am Member or the Pan Am Member's Membership Interest is transferred involuntarily by operation of law (any such Transfer being referred to in this Agreement as a "Permitted Transfer"). Any "Permitted Transfer" described in clauses (a) through (c) shall not constitute a Pan Am Change in Control and shall not effect a modification of the rights or obligations of the Members. Any "Permitted Transfer" described in clauses (f) or (g) (even if such transfer also is described in clause (a)) shall constitute a Pan Am Change in Control and shall effect a modification of the rights or obligations of the Members as further set forth herein.

9.3 Conditions to Permitted Transfers. A Transfer of a Membership Interest shall not be treated as a Permitted Transfer under Section 9.2 unless and until the following conditions are satisfied:

(a) Except in the case of a Transfer involuntarily by operation of law, the transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be reasonably necessary or appropriate in the opinion of counsel to the Company to effect such Transfer. In the case of a Transfer of a Membership Interest involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Company. In all cases, the transferor and/or transferee shall reimburse the Company for all costs and expenses that the Company reasonably incurs in connection with such Transfer.

(b) The transferor and transferee shall furnish the Company with the transferee's taxpayer identification number and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information, statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Membership Interest until it has received such information.

(c) Except in the case of a Transfer of a Membership Interest involuntarily by operation of law, either (i) such Membership Interest shall be registered under the Securities Act and any applicable state securities laws or (ii) the transferor shall provide (unless waived by the Management Committee) an opinion of counsel which opinion and

counsel shall be reasonably satisfactory to the Management Committee to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

(d) Prior to any such Transfer, the Transferee shall deliver to each Member a written commitment from such Transferee to be bound by this Agreement and to comply with the applicable provisions of Section 9.6.

(e) Prior to any such Transfer, the transferor delivers to all other Members a written explanation about why or why not the Transfer would not cause the Company to terminate under Section 708(b)(1)(B) of the Code and the Regulations thereunder as a result of such Transfer.

(f) Prior to any such Transfer, each other Member delivers to the transferor either

(i) The Member's written agreement that the Transfer would not cause the Company to terminate under Section 708(b)(1)(B) of the Code and the Regulations thereunder solely as a result of such Transfer, or

(ii) The Member's written consent for the Transfer.

9.4 Prohibited Transfers. Any purported Transfer of a Membership Interest that is not permitted by the terms of this Agreement shall be null and void and of no force or effect whatever, provided that, if the Company is required as a matter of law to recognize a Transfer that is not a Transfer permitted by the terms of this Agreement (unless the Management Committee, in its sole discretion and by unanimous action or consent, elects to recognize a Transfer that is not a Transfer permitted by the terms of this Agreement), the Membership Interest Transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Membership Interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of such Membership Interest may have to the Company.

In the case of a Transfer or attempted Transfer of a Membership Interest that is not a Transfer permitted by the terms of this Agreement, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify, and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified Person may incur (including, without limitation, incremental tax liabilities, attorneys' fees, fees of experts and accountants, and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

9.5 Rights of Unadmitted Assignees. A Person who acquires a Membership Interest, but who is not admitted as a substituted Member pursuant to Section 9.6 shall be entitled only to allocations and distributions with respect to such Membership Interest in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement but shall succeed to all of

the obligations of the Member who purported to transfer a Membership Interest in violation hereof including without limitation the obligation of the transferee under this Section 9 with respect to any subsequent transfers

9.6 Admission of New and Substituted Members Subject to the other provisions of this Section 9, a transferee or acquirer of a Membership Interest shall be admitted to the Company as a new or substituted Member upon satisfaction of the conditions set forth in this Section 9 6.

(a) The Membership Interest with respect to which the transferee is being admitted was acquired by means of a Transfer permitted by the terms of this Agreement.

(b) The transferee of the Membership Interest (other than, with respect to clauses (i) and (ii) below, a transferee that was a Member or a Wholly-Owned Affiliate of a Member prior to the Transfer) shall, by written instrument in form and substance reasonably satisfactory to the Management Committee (and, in the case of clause (iii) below, the transferor Member), (i) make customary representations and warranties to each non-transferring Member as to its due organization, authority to become a party to this Agreement, litigation and required consents, (ii) accept and adopt the terms and provisions of this Agreement, including Section 5 2(c), this Section 9 and Section 10, and (iii) assume the obligations of the transferor Member under this Agreement with respect to the transferred Membership Interest. Upon unanimous agreement of all Members, a transferor Member transferring all but not less than all of its Membership Interest to any Permitted Transferee shall be released from all such assumed obligations except (x) those obligations or liabilities of the transferor Member arising out of a breach of this Agreement, and (y) in the case of a Transfer to any Person other than a Member or any of its Affiliates, those obligations or liabilities of the transferor Member based on events occurring, arising or maturing prior to the date of Transfer.

(c) A new Member acquiring a Membership Interest from the Company shall by written instrument in form and substance reasonably satisfactory to the Management Committee (i) make representations and warranties to the Members equivalent to those set forth in Section 9 6(b)(i) and (ii) accept and adopt the terms and provisions of this Agreement

(d) The transferee or acquirer pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee or acquirer as a Member with respect to the Transferred Membership Interest.

(e) Except in the case of a Transfer involuntarily by operation of law, if required by the Management Committee, the transferee (other than a transferee that was a Member or a Wholly-Owned Affiliate of a Member prior to the Transfer) shall deliver to the Company evidence of the authority of such Person to become a Member and to be bound by all of the terms and conditions of this Agreement, and the transferee and transferor shall each execute and deliver such other instruments as the Management Committee reasonably deems necessary or appropriate to effect, and as a condition to, such Transfer, including amendments to the Certificate or any other instrument filed with the State of Delaware or any other state or

governmental authority. In the event of an involuntary Transfer by operation of law the transferee shall succeed to all of the obligations of the transferring Member under this Agreement but shall not have any rights (including rights with respect to Management Committee membership or under Section 9) other than with respect to allocations or distributions under this Agreement.

9.7 Representations Regarding Transfers; Legend Each Member hereby represents and warrants to the Company and the Members that such Member's acquisition of a Membership Interest hereunder is made as principal for such Member's own account and not for resale or distribution of such Membership Interest. Each Member further hereby agrees that the following legends may be placed upon any counterpart of this Agreement, the Certificate of Formation, or any other document or instrument evidencing ownership of a Membership Interest.

The Membership Interest represented by this document has not been registered under any securities laws and the transferability of such Membership Interest is restricted. Such Membership Interest may not be sold, assigned, or transferred, nor will any assignee, vendee, transferee, or endorsee thereof be recognized as having acquired any such Membership Interest by the issuer for any purposes, unless (1) a registration statement under the United States Securities Act of 1933, as amended, with respect to such Membership Interest shall then be in effect and such transfer has been qualified under all applicable state securities laws or (2) the availability of an exemption from such registration and qualification shall be established to the satisfaction of counsel to the Company; and

The Membership Interest represented by this document is subject to, and is transferable only upon compliance with, the provisions of a limited liability company agreement, dated as of [], 2008. A copy of the above-referenced agreement is on file at the principal office of the Company.

SECTION 10 **EVENTS OF DEFAULT**

10.1 Events of Default. The following acts shall constitute an Event of Default hereunder:

- (a) A Transfer by any Member that is not a Permitted Transfer;
- (b) Failure of any Member to materially comply with any material covenant or agreement hereunder in accordance with its terms within thirty (30) days after receipt of notice thereof, or
- (c) The Bankruptcy of any Member.

10.2 Remedies Upon an Event of Default. If an Event of Default has occurred and is continuing:

(a) The non-defaulting Members may seek specific performance of any covenant or agreement contained herein, and may seek to enjoin the breach of any covenant or agreement. It is acknowledged that in such event it would be impossible to measure in money the damages that would be suffered if the parties hereto fail to comply with any of the obligations imposed herein on them and that, in the event of any such failure, an aggrieved party hereto will be irreparably damaged and will not have an adequate remedy at law. In addition to being entitled to exercise all rights granted by law, any such party shall therefore, be entitled to equitable relief from any court having jurisdiction over such dispute, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties shall raise the defense that there is an adequate remedy at law; and

(b) Each non-defaulting Member shall be entitled to recover from the defaulting Member in an appropriate proceeding any and all claims, damages, losses, liabilities and expenses of whatever nature (including reasonable attorneys' fees and disbursements) (collectively, "Damages") suffered or incurred by the Company or the non-defaulting Members as a result of such Event of Default. No punitive damages shall be awarded as a result of an Event of Default hereunder.

(c) If the Event of Default arises from the Bankruptcy of a Member, no less than five Business Days after the commencement of a Bankruptcy proceeding, whether Voluntary or Involuntary, such Member shall provide notice of its offer to sell to all non-defaulting Members (the "Default Sale Notice") all but not less than all of the Membership Interest of the Company held by such defaulting Member. Each non-defaulting Member shall have the option within forty-five days of receiving the Default Sale Notice (the "Acceptance Period") to purchase all, but not less than all, of its pro rata share (based on the number of Membership Interests held by such non-defaulting Member as compared to the total number of Membership Interests held by all non-defaulting Members) of the Membership Interests offered. The price of the Membership Interests offered by the defaulting Member shall be the Fair Value of such Membership Interests less any Damages incurred by the non-defaulting Member that are recoverable pursuant to Section 10.2(b). If such offer to purchase is accepted such that all of the Membership Interests of the defaulting Member are purchased, and at least two Members remain, such Bankruptcy shall not be a Dissolution Event.

(d) Each non-defaulting Member shall if it so desires, exercise its rights under Section 10.2(c) by delivering to the defaulting Member written notice of election (the "Acceptance Agreement") prior to 5:00 p.m., Eastern standard time, on or before the last day of the Acceptance Period. By delivering the Acceptance Agreement, the non-defaulting Member agrees to purchase, and the defaulting Member agrees to sell, that portion of the defaulting Member's Membership Interests which corresponds to the defaulting Member's pro rata share. The Acceptance Agreement shall identify the committed source of financing for such purchase or provide evidence that the non-defaulting Member is able to effect the purchase.

The completion of the sale pursuant to Section 10.2(c) shall occur on a date to be mutually agreed between the defaulting Member and the non-defaulting Member(s), but in no event later than five Business Days after the latter of (i) the delivery date of the Acceptance Agreement or (ii) the date on which the last of any required regulatory approvals in connection with such transaction is received. All payments of the purchase price for a

transaction pursuant to Section 10 2(c) shall be made by wire transfer of immediately available funds to an account or accounts designated by the defaulting Member for such purpose.

(e) If the Event of Default arises from a Transfer that is not a Permitted Transfer, the transferring Member shall take or cause to be taken all action necessary to reverse such Transfer

(f) In addition to the foregoing remedies, each defaulting Member hereby agrees to indemnify, defend and hold harmless each non-defaulting Member, the Company, their Affiliates and their respective partners, officers, directors, agents, representatives, employees and trustees ("Indemnified Parties") from and against all Damages arising out of or related to such Event of Default

SECTION 11

DISSOLUTION AND WINDING UP

11.1 Dissolution Events The Company shall dissolve and shall commence winding up and liquidating upon the first to occur of any of the following (each a "Dissolution Event"):

(i) The unanimous vote of the Members to dissolve, wind up, and liquidate the Company; or

(ii) A judicial dissolution under Section 18-802 of the Act.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event. The Members acknowledge that, prior to a Pan Am Change in Control, the Management Committee has the potential to be deadlocked on certain decisions, and it is the intent of the Members that such deadlock shall not constitute grounds for a judicial dissolution under Section 18-802 of the Act

11.2 Winding Up Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs, provided that all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding upon the Members until such time as the Property has been distributed pursuant to this Section 11 2 and the Certificate of Formation has been canceled pursuant to the Act. The Liquidator shall be responsible for overseeing the winding up and dissolution of the Company, which winding up and dissolution shall be completed within ninety days of the occurrence of the Dissolution Event. The Liquidator shall take full account of the Company's liabilities and Property and shall cause the Property or the proceeds from the sale thereof, to the extent sufficient therefor, to be applied and distributed, to the maximum extent permitted by law, in the following order.

(a) First, to creditors (including Members and Committee Representatives who are creditors, to the extent otherwise permitted by law) in satisfaction of all

of the Company's debts and other liabilities (whether by payment or the making of reasonable provision for payment thereof), other than liabilities for which reasonable provision for payment has been made,

(b) Second, except as provided in this Agreement, to Members and former Members of the Company in satisfaction of liabilities for distribution under the Act,

(c) The balance, if any, to the Members in accordance with their positive Capital Account balances (after taking into account all adjustments thereto for contributions, distributions and allocations for the year of dissolution and all prior periods)

(d) Notwithstanding the foregoing, in the event of a Dissolution Event, the holder(s) of the NS Member's Membership Interests shall have a right to in-kind distribution of the Line upon payment of an amount equal to the difference between the Fair Value of the Line and the amount the NS Member would otherwise be entitled to after giving effect to Section 11.2(a) through Section 11.2(c) above

(e) Members or Committee Representatives may receive reasonable compensation for any services performed pursuant to this Section 11.

11.3 Compliance With Certain Requirements of Regulations, Deficit Capital Accounts In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), and any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the company or to any other Person for any purpose whatsoever. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Section 11 may be:

(a) Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 11.2, or

(b) Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable

11.4 Distributions in Kind Any non-cash asset distributed to one or more Members shall first be valued at its Fair Value to determine Profit and Loss that would have resulted if such asset were sold for such value. Such Profit or Loss shall then be allocated to reflect such allocation.

11.5 Rights of Members. In the event of any distribution of Property in accordance with Section 11 hereof, except as provided in Section 11.2(d), no Member shall have the right or power to demand or receive Property other than cash from the Company. If the assets of the Company remaining after payment or discharge of the debts or liabilities of the Company are insufficient to return such Capital Contributions, the Members shall have no recourse against the Company or any other Member or Committee Representative.

11.6 Notice of Dissolution/Termination.

(a) In the event a Dissolution Event occurs, the Management Committee shall promptly, but in no event later than seven (7) days thereafter, provide written notice thereof to each of the Members.

(b) Upon completion of the distribution of the Company's Property as provided in this Section 11, the Company shall be terminated, and the Liquidator shall cause the filing of the Certificate of Cancellation pursuant to the Act and shall take all such other actions as may be necessary to terminate the Company.

11.7 Allocations During Period of Liquidation During the period commencing on the first day of the Fiscal Year during which a Dissolution Event occurs and ending on the date on which all of the assets of the Company have been distributed to the Members pursuant to Section 11.2 (the "Liquidation Period"), the Members shall continue to share Profits, Losses, gain, loss and other items of Company income, gain, loss or deduction in the manner provided in Section 3.

11.8 Character of Liquidating Distributions All payments made in liquidation of the interest of a Member in the Company shall be made in exchange for the interest of such Member in Property pursuant to Section 736(b)(1) of the Code, including the interest of such Member in Company goodwill.

11.9 The Liquidator.

(a) **Definition.** The "Liquidator" shall mean a Person appointed by the unanimous vote of the Members to oversee the liquidation of the Company.

(b) **Fees.** The Company is authorized to pay a reasonable fee to the Liquidator for its services performed pursuant to this Section 11 and to reimburse the Liquidator for its reasonable costs and expenses incurred in performing those services.

(c) **Indemnification** The Company shall indemnify, save harmless, and pay all judgments and claims against such Liquidator or any officers, directors, agents or employees of the Liquidator relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Liquidator, or any officers, directors, agents or employees of the Liquidator in connection with the liquidation of the Company, including reasonable attorneys' fees incurred by the Liquidator, officer, director, agent or employee in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred, except to the extent such liability or damage is caused by the fraud,

intentional misconduct of, or a knowing violation of the laws by the Liquidator which was material to the cause of action.

SECTION 12

MISCELLANEOUS

12.1 **Notices.** Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement (each a "Notice") shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally to the Person or to an officer of the Person to whom the same is directed or (ii) when the same is actually received, if sent either by express delivery service or registered or certified mail, postage and charges prepaid and return receipt requested, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent promptly thereafter by registered or certified mail, postage and charges prepaid, addressed as follows or to such other address as such Person may from time to time specify, by notice to the Members and Committee Representatives.

If to the Company	Chairman Pan Am Southern LLC c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
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With a copy to the
NS Member and the
Pan Am Member

If to NS Member:	Mike R. McClellan Vice President – Intermodal and Automotive Marketing Norfolk Southern Corporation Three Commercial Place Norfolk, Virginia 23510-2191
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With a copy to	Vice President – Law Norfolk Southern Corporation Three Commercial Place Norfolk, VA 23510 (757) 629-2374 (757) 533-4872 (fax)
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If to the Pan Am
Member. David A. Fink
President
Pan Am Railways
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

With a copy to. Robert Culliford
Vice President Law
Pan Am Systems
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

12.2 Certificates.

(a) Right of the Management Committee to Issue Certificates. If at any time the Management Committee determines that it is in the best interests of the Company to issue certificates attesting to the ownership of Membership Interest in the Company by its Members, the provisions of this Section shall thereafter apply (and prior to such determination by the Management Committee, if any, this Section shall have no force or effect)

(b) Form of Certificates. Certificates attesting to the ownership of interests in the Company shall be in such form as shall be approved unanimously by the Management Committee and shall state that the Company is a limited liability company formed under the laws of the State of Delaware, the name of the Member to whom such certificate is issued and that the certificates represent limited liability company interests within the meaning of the Act. Each such certificate shall be signed by one Committee Representative appointed by the Pan Am Member and one Committee Member appointed by the NS Member and shall include the legends referred to in Section 9.7.

(c) Register. The transfer register or transfer books and blank share certificates shall be kept by the Secretary of the Company or by any transfer agent or registrar designated by the Management Committee for that purpose.

(d) Issuance. The certificates of the Company shall be numbered and registered in the share register or transfer books of the Company as they are issued.

(e) Transfer. Subject to all provisions hereof relating to Transfers of Membership Interest, if the Company shall issue certificates in accordance with the provisions of this Section, Transfers of Membership Interests shall be made on the register or transfer books of the Company upon surrender of the certificate therefor, endorsed by the Person named in the certificate or by an attorney lawfully constituted in writing.

(f) Record Holder. Except to the extent that the Company shall have received written notice of an assignment of a Membership Interest in the Company, the Company shall be entitled to treat the Person in whose name any certificates issued by the Company stand on the books of the Company as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such Membership Interest on the part of any other Person.

(g) Lost Destroyed or Mutilated Certificates. The holder of any certificates issued by the Company shall promptly notify the Company of any loss, destruction or mutilation of such certificates, and the Management Committee may cause a new certificate or certificates to be issued to such holder, in case of mutilation of the certificate upon the surrender of the mutilated certificate or, in case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction and, if the Management Committee shall so determine, the granting of an indemnity and/or the deposit of a bond in such form and in such sum, and with such surety or sureties, as the Management Committee may direct

12.3 Binding Effect. Except as otherwise provided in this Agreement every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors, transferees and assigns

12.4 Time. In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included, but the time shall begin to run on the next succeeding day. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day.

12.5 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof

12.6 Prior Agreements. This Agreement, the JV Transaction Agreements and the Certificate of Formation supersede all prior agreements among the parties hereto, written or oral, with respect to the operation of the Company or the transactions referred to herein and specifically any and all term sheets prepared in respect of such transactions

12.7 Severability. Except as otherwise provided in the succeeding sentence, every provision of this Agreement is intended to be severable, and, if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement. The preceding sentence of this Section 12.7 shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any Member to lose the material benefit of its economic bargain.

12.8 Incorporation by Reference. Every exhibit and other appendix attached to this Agreement and referred to herein is incorporated in this Agreement by reference unless this Agreement expressly otherwise provides

12.9 Variation of Terms. All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, similar or plural, as the identity of the Person or Persons may require.

12.10 Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

12.11 Third Party Beneficiaries. Except for Indemnified Persons, this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto.

12.12 GOVERNING LAW. THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING THEREUNDER.

12.13 Confidentiality. Any information obtained by any Member, its respective Affiliates and respective employees in connection with this Agreement or the JV Transaction Agreements shall be subject to the confidentiality provision set forth in Section 17.5 of the Transaction Agreement. Notwithstanding anything herein to the contrary, any Member may share this Agreement and related information with its external auditors, the IRS or any other tax authority or as may otherwise be required by applicable law.

SECTION 13 DISPUTE RESOLUTION

13.1 Reference to JOC

Subject to Sections 5.6 and 5.11 hereof, any dispute, controversy or claim between or among any two or more of the Company, the NS Member and the Pan Am Member and arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be referred to the JOC for resolution and if the JOC is unable to resolve the dispute, it will be referred, in writing, to the Management Committee to resolve.

13.2 Reference for Formal Dispute Resolution

Any Dispute not resolved within sixty (60) days after receipt by any of the involved parties of written notice of reference of such Dispute to the Management Committee pursuant to Section 13.1, shall be submitted, by either Member for formal dispute resolution pursuant to Section 13.3.

13.3 Formal Dispute Resolution

(a) Submission to Jurisdiction. Each of the Company, the NS Member and the Pan Am Member hereto hereby (i) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any

action to enforce or in aid of the agreement to arbitrate in Section 13.3(b) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) waives any objection based on forum non conveniens or any other objection to venue thereof.

(b) Dispute Resolution. Except as provided in Section 10.2, each of the Company, the NS Member and the Pan Am Member hereto stipulates and agrees that any Dispute that is not resolved pursuant to Section 13.1 will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D C , by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "Rules"), under the following terms and conditions.

(i) Selection of Arbitrator. A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator.

(ii) Conduct of Arbitration. The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement.

(iii) Replacement of Arbitrator. Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator.

(iv) Findings and Conclusions. The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(v) Time is of the Essence. The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding.

(vi) Temporary Equitable Relief. By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant

provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect.

(vii) Consolidation. The parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this Agreement and/or any JV Transaction Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under this Agreement and/or any JV Transaction Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or the JV Agreement be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration; (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(viii) Discovery. Recognizing the express desire of the parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(ix) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 13.3(b) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(x) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

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IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the day first above set forth.

By: _____
Name
Title.

By: _____
Name:
Title:

Schedule 1.1
Description of the Assets, including the Line

EXHIBIT B

PROPOSED CAPITAL PROJECTS

Exhibit C

Membership Interests of the Members

Norfolk Southern Railway Company	50 Membership Interests
Boston and Maine Corporation	50 Membership Interests

Exhibit 2.2

Initial Capital Accounts of the Members

Norfolk Southern Railway Company	\$65,000,000*
Boston and Maine Corporation	\$140,000,000

*If, before the NS initial contribution is made, Pan Am receives public funding to improve the Line, then the NS amount shall be adjusted downward by the amount of such public funding.

Exhibit 5.2(b)

Initial Management Committee Representative

Exhibit 5.3(b)(i)

Initial Members of Capital Project Committee

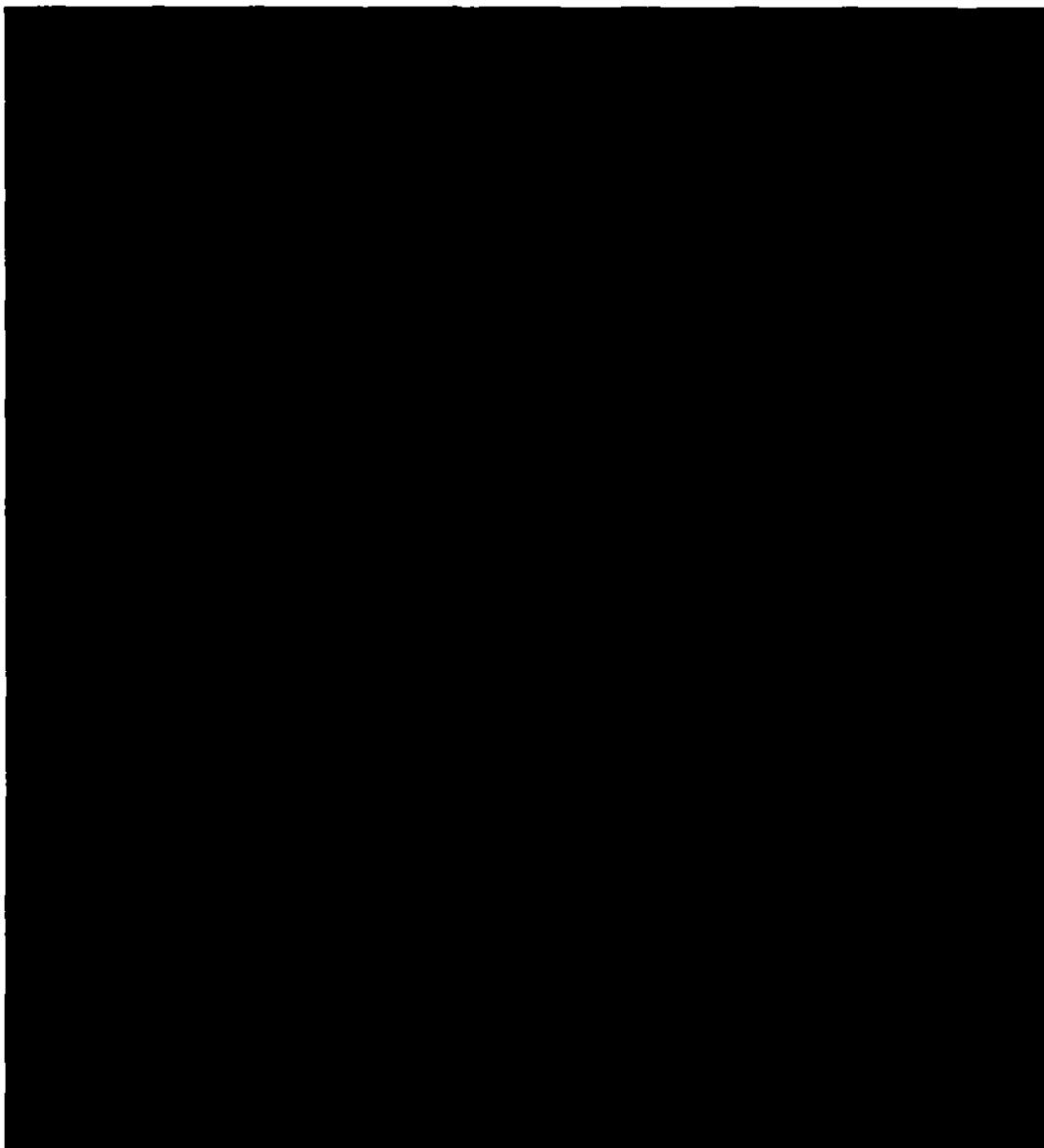
Exhibit 5.7(a)

Approved Budget and Business Plan

Pan Am Southern 2008 Pro Forma Operating Expenses

Springfield Terminal Cost Category	Cost Description	Annual Amount	Direct Cost	Indirect Cost
---------------------------------------	------------------	---------------	----------------	------------------

Patriot Corridor



[Redacted line of text]

[Redacted line of text]

[Redacted line of text]

Exhibit 5.7(b)

Approved Investment Policies

The Person designated by the Management Committee (which initially shall be the Railroad Operator) is authorized to purchase and sell from time to time on behalf of the Company the classes of United States dollar securities, described herein, subject to the specified limitations and ratings, and subject to any limitations that may be fixed from time to time by the Management Committee of the Company

Securities in the short-term portfolio will consist of those maturing not later than one year from date of purchase. Securities in the intermediate-term portfolio will consist of those maturing from one to five years from date of purchase.

I. SHORT-TERM PORTFOLIO

Investments and Credit Quality (See Item 11 this section)

1. U.S. Treasury obligations
2. Federal Agency obligations
3. Bank obligations (Domestic and Eurodollar)
 - U.S. and foreign banks Time deposits, money market demand accounts, certificates of deposit, bankers' acceptances, letter of credit-backed paper, and commercial paper issued by domestic bank holding companies and foreign bank owned funding subsidiaries
 - Minimum equity of \$500 million for U.S. banks; \$1 billion for foreign banks.
 - Thompson Financial Services rating of B/C (domestic banks) or II/III (foreign banks)
 - Moody's Aa long-term deposit rating, or Moody's Aa or S&P AA or Fitch long-term debt ratings. A1/P1 ratings on short-term deposits and commercial paper. In the absence of long-term ratings, Thompson Financial Services' ratings are acceptable
4. Commercial Paper (U.S. and non-U.S.) Asset-backed and non asset-backed
 - Long-term debt ratings of Aa/AA, short-term ratings of A1/P1. If an issuer does not have a long-term debt rating, S&P common stock rating of A or better may be substituted for this debt requirement. In the case of asset-backed paper, the issuer may be backed by a letter of credit from a financial institution with a long-term debt rating of AA or better
5. Repurchase Agreements
 - Overnight or term repos up to 30-day maturity
 - Collateral coverage of not less than 102% (based upon current market value plus accrued interest), using Government, federal agencies and obligations of banks which otherwise meet the criteria of this policy
6. Overnight Institutional Money Market Funds
 - a. Minimum equity of \$1 billion

- b Money market mutual funds organized under the laws of the United States or any state thereof which have daily pricing and daily redemption features and invest at least ninety percent (90%) of their assets in the investments described in the investment policy
- 7. Tax-exempt and taxable municipal securities –
 - a General obligation notes; state and municipal authorities, school districts and other revenue notes and bonds; variable rate demand/Put notes and bonds; and Daily, Weekly, Monthly Floaters.
 - Long-term debt ratings of Aa by Standard & Poor's, Moody's or Fitch
 - Short-term debt ratings of MIG-1/VMIG-1 or SP-1/A-1
 - Long-term ratings of Aa and AA on issues insured by Municipal Bond Insurance Association (MBIA); Financial Guaranty Insurance Company (FVIC), and Bond Investors Guaranty Insurance Company (BIG).
 - In the case of variable rate/Put bonds, underlying issuer must be rated A by at least one of the rating agencies. If the underlying issuer's rating is no higher than A, then the issue must be supported by an irrevocable letter of credit issued by a bank qualifying under the above credit quality standards.
 - b Tax-exempt commercial paper
 - Long-term debt ratings of Aa or AA, or backed by a letter of credit from a financial institution rated AA, commercial paper ratings of A1 or P1.
- 8. Variable Rate Preferred Stock
 - Issuer's equity must meet minimum standards outlined above.
 - Long-term debt ratings of Aa/AA.
- 9. Corporate Obligations
 - Floating and fixed rates credit rating by at least one rating agency of AA.
- 10. Broker LLC private investment funds rated AAA.
- 11. Credit Quality Exception-
 - Long-term rating requirements as stated above are Aa by Moody's and/or AA by Standard and Poor's. This requirement is modified to the extent that up to 25% of total securities in short and intermediate-term portfolios may carry a rating of A by Moody's and/or A by Standard and Poor's or Fitch.

II. INTERMEDIATE-TERM PORTFOLIO

- Credit requirements for these issues must adhere to the same standards as short-term issues. If the total of the short-term and intermediate-term portfolios exceeds \$100 million, then no more than 50% of the total investments may be placed in the intermediate-term portfolio

INVESTMENTS

1. All instruments included in the short-term portfolio
2. Corporate Notes and Bonds, both Fixed and Floating rates.
3. Corporate Notes and Bonds with Put Features
 - Puts must be at par and unconditional, date thereof to be considered final maturity date.
4. Eurodollar and Yankee Notes and Bonds.
5. Term Certificates of Deposit issued by U S and foreign banks
6. Floating Rate Instruments –
 - a. Domestic and Eurodollar certificates of deposit and notes
 - b. Variable Coupon Renewable Notes.
7. Asset-backed securities, defined as
 - a. Government National Mortgage Association (GNMA) Pass-Through Certificates.
 - b. Federal National Mortgage Association (FNMA) Mortgage-Backed Securities.
 - c. Federal Home Loan Mortgage Corporation (FHLMC) Participation Certificates.
 - d. Collateralized Mortgage Obligations (CMOs) issued by Federal Home Loan Mortgage Corporation and Wall Street dealer-sponsored special purpose corporations
 - e. Auto Loan or Credit Card-backed Notes issued by various finance companies.

III PORTFOLIO LIMITS

1. U S Treasury obligations – no limits.
2. Federal Agency obligations – not more than 50% of the total portfolio.
3. Bank obligations
 - a. Any single issuer is limited to 10% of total portfolio
 - b. Total bank related obligations may not exceed 50% of total portfolio
 - c. Foreign bank obligations may not exceed 25% of the total portfolio.
4. Commercial Paper
 - a. Any single issuer is limited to 10% of the total portfolio
 - b. Not more than 50% of the total portfolio may be invested in commercial paper.
 - c. Not more than 25% of the total portfolio may be invested in foreign commercial paper (excluding foreign bank related commercial paper)
5. Repurchase Agreements
 - a. No limits on total repurchase agreements.
 - b. Any approved dealer is limited to 10% of total portfolio.
6. Tax-exempt and taxable securities
 - a. Any single issuer is limited to 10% of total portfolio.
 - b. Total tax-exempt obligations shall not exceed 2%
7. Variable Rate Preferred Stock

- a. Any single issuer is limited to 5% of the total portfolio, with a maximum of 5% of any single issue
 - b. Total Variable Rate Preferred Stock may not exceed 10% of the total portfolio.
- 8. Corporate obligations (other than bank obligations)
 - a. Any single issue is limited to 10% of total portfolio
 - b. Corporate obligations may not exceed 50% of total portfolio.
- 9. Miscellaneous
 - a. Obligations of any one industry shall not exceed 25% of the total Portfolio, with the exception of 50% limitation for bank related obligations.
 - b. Not more than 5% of the total portfolio may be invested in any category or obligation of any issuer not covered by the limitations or credit standards established above, provided the investment within this limitation are consistent with the objectives of the portfolio.
 - c. The total of all securities issued by foreign governments and agencies, foreign supra-national corporations, U.S. subsidiaries of foreign corporations, and foreign banks (including U S subsidiaries) shall not exceed 50% of the total portfolio with no more than 10% of the total portfolio invested in any one country
 - d. The total limitations on Federal Agency, Commercial Paper, bank obligations and corporate obligations will not apply when the total of the short-term and intermediate portfolios \$200 million or less
 - e. Any single issuer cannot exceed the lesser of \$50 million or 10% of the portfolio.

RAILROAD OPERATING AGREEMENT

THIS RAILROAD OPERATING AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 2008, by and among Pan Am Southern LLC, a Delaware limited liability company ("Pan Am Southern"), Springfield Terminal Railway Company ("Springfield Terminal"), Pan Am Railways, Inc. ("Pan Am") and Norfolk Southern Railway Company ("NSR"). Each of Pan Am Southern, Springfield Terminal, Pan Am and NSR is sometimes referred to as a "Party" and collectively as "Parties."

RECITALS

WHEREAS, Pan Am, on behalf of itself and its subsidiaries, Boston and Maine Corporation ("B&M"), Springfield Terminal (collectively with Pan Am and B&M, the "Pan Am System Parties") and NSR entered into a Transaction Agreement (the "Transaction Agreement"), dated as of [], 2008, which provides, among other things, for NSR and B&M to form Pan Am Southern pursuant to a Limited Liability Company Agreement of Pan Am Southern between NSR and B&M, dated as of [], 2008 (the "LLC Agreement"), and

WHEREAS, prior to Closing, as defined in the Transaction Agreement, Springfield Terminal was responsible for performing the administrative and railroad maintenance and operating tasks involved in the rail transportation system for the then-existing Springfield Terminal system (the portion of such system as is not included in the Pan Am Southern Assets (as hereinafter defined) being defined as "Remaining Springfield Terminal Assets"), and

WHEREAS, the Transaction Agreement provides for B&M and the other Pan Am System Parties to sell in part and contribute in part certain railroad lines and trackage rights constituting a portion of the Springfield Terminal system and owned or operated generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the portions of which that are to be sold and contributed being the "Line", as more specifically defined in the Transaction Agreement) and certain other related assets, all of which were previously operated in a unified manner with other railroad lines and trackage rights by one or more of the Pan Am System Parties (together with the Line, the "Pan Am Southern Assets", as more specifically defined as the Assets in the Transaction Agreement) to Pan Am Southern (the "Pan Am Contribution"); and

WHEREAS, as a result of the Pan Am Contribution, the Pan Am Southern Assets previously operated in a unified manner will, after Closing, be operated by two entities, Pan Am Southern (as to the Pan Am Southern Assets) and Springfield Terminal (as to the Remaining Springfield Terminal Assets); and

WHEREAS, the Transaction Agreement contemplates that railroad operations over the Line, including the quoting of Rates and Allowances (as defined in the Transportation Agreement Assignment and Division Allocation Agreement, hereinafter

defined), initially will be performed on behalf of Pan Am Southern by a railroad operator (the "Railroad Operator") and that the initial Railroad Operator shall be Springfield Terminal; and

WHEREAS, NSR, Pan Am Southern and Springfield Terminal have entered into an agreement (the "Transportation Agreement Assignment and Division Allocation Agreement") pursuant to which, among other things, the Railroad Operator will quote Rates and Allowances, and allocate revenues to be collected, on behalf of Pan Am Southern and Springfield Terminal, and

WHEREAS, the Pan Am System Parties and Pan Am Southern have entered into an agreement (the "Miscellaneous Assignment and Assumption Agreement") pursuant to which, among other things, each member of the Pan Am System Parties has assigned to Pan Am Southern all of their respective rights and obligations to certain contracts, agreements, leases and licenses pursuant to which third parties have rights with respect to the Pan Am Southern Assets, including, without limitation, the lateral and perpendicular fiber and wire agreements, pipeline agreements, rental agreements, clearance agreements, agreements concerning the performance of any grade crossing facility maintenance, repair and inspection obligations (such agreements as assigned and as entered into after the date hereof pursuant to Section 4(b), the "Ancillary Agreements"); and

WHEREAS, Pan Am Southern and NSR have entered into an agreement (the "NSR Joint Use Agreement") pursuant to which, among other things, Pan Am Southern will provide certain haulage services to NSR and has committed to certain service standards with regard to the provision of those haulage services, and

WHEREAS, NSR, Pan Am, B&M and Springfield Terminal obtained the prior consent of the Surface Transportation Board to consummate the transactions set forth in the Transaction Agreement, including the authority to enter into, and perform pursuant to, this Agreement;

WHEREAS, the Parties desire to enter into this Agreement to, among other things, set forth (i) the obligations of Springfield Terminal as the Railroad Operator and (ii) the compensation to be paid to Springfield Terminal therefor;

WHEREAS, the Parties desire that Springfield Terminal incur certain operating expenses on behalf of Pan Am Southern and be reimbursed therefor in the manner described in Appendices C and D and that Springfield Terminal pay all of Pan Am Southern's other operating expenses out of Pan Am Southern's accounts and using Pan Am Southern's funds, provided that certain of such expenses may be subject to indemnification from Springfield Terminal as provided in this Agreement, the Transaction Agreement or other agreements contemplated by the Transaction Agreement,

NOW, THEREFORE, with reference to the foregoing facts and in consideration of the mutual agreements and understandings set forth herein, the Parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS

(a) Interpretation Generally

Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry

(b) Capitalized Terms

Appendix D contains several terms that are defined therein. All other capitalized terms shall have the defined meaning set forth below:

“Additional Repair Item” shall have the meaning given to that term in Section 3(a)(ii)(A).

“Administrative Services” shall have the meaning given to that term in Section 2(a)(i).

“Agreement” shall have the meaning given to that term in the introductory paragraph

“Ancillary Agreements” shall have the meaning given to that term in the Recitals

“Ayer Switching Agreement” shall mean that switching agreement by and between Springfield Terminal and Pan Am Southern, dated as of [], pursuant to which Pan Am Southern provides to Springfield Terminal certain switching services generally between CPT 312 and Ayer, MA, as is more definitively set forth therein and in the schematic attached thereto

“B&M” shall have the meaning given to that term in the Recitals

“Claim” or “Claims” shall mean any and all claims, demands, losses (including the loss of use), costs (including investigation, remedial and clean-up costs), expenses (including attorneys’, consultants’ or experts’ fees and expenses), judgments, awards, penalties, governmental action (including fines and liens), causes of action, liens, suits or liability of every kind and nature suffered, including for exemplary, special or consequential damages

“Cleanup” shall mean all actions, including investigations, required by Law to: (1) cleanup, remove, treat or remediate Hazardous Materials in the environment, (2) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or welfare or the environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring and care, or (4) respond

to any government requests for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Hazardous Materials in the environment

“Delaware Courts” shall have the meaning given to that term in Section 17(c)(1)

“Designated Engineer” shall mean, as to each of NSR and Springfield Terminal, the engineering representative that is a designated contact for matters relating to this Agreement

“Dispute” shall have the meaning given to that term in Section 17(a).

“Effective Date” shall have the meaning given to that term in Section 11(a)

“Environmental Claim” means any fine, claim, action, lien, cause of action, investigation or notice by any Person alleging potential liability (including potential liability for Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, manufacture, processing, distribution, use, treatment, storage, Release or threatened Release, disposal, transport or handling, of any Hazardous Materials, or (b) circumstances forming the basis of any violation of any Environmental Law

“Environmental Laws” means all Laws relating to pollution or protection of human health or the environment, including all Laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, disposal, transport or handling of Hazardous Materials, all Laws relating to record keeping, notification, disclosure and reporting requirements respecting Hazardous Materials and all Laws relating to endangered or threatened species of fish, wildlife and plants and natural resources

“Financial Activities” shall have the meaning given to that term in Section 4(c)

“Freight Railroad Service” shall have the meaning given to that term in Section 2(a)(1)

“General Manager” shall have the meaning given to that term in Section 2(b)

“Governmental Action” shall mean any applicable law, rule, regulation or ordinance promulgated by any Governmental Authority having jurisdiction.

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB

“Grade Crossing Facility Maintenance and Repair” shall have the meaning given to that term in Section 3(a)(iii)

“Hazardous Materials” shall mean all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law

“Invoiced Party” shall have the meaning given to that term in Section 14(a)

“Invoicing Party” shall have the meaning given to that term in Section 14(a).

“JOC” shall mean the Joint Operating Committee established by Section 5.3(c) of the LLC Agreement

“Law” shall mean any U.S. federal, state or local or foreign statute, law, rule, regulation, ordinance, order, code, policy or rule of common law, now or hereafter in effect and, in each case, as amended, any binding judicial or administrative interpretation thereof by a Governmental Authority or otherwise, including any judicial or administrative order, consent, decree or judgment

“Lien” shall have the meaning given to that term in Section 9(h)(1).

“Line” shall have the meaning given to that term in the Recitals

“LLC Agreement” shall have the meaning given to that term in the Recitals

“Local Services” shall mean those local services not necessary for completion of the line haul transportation, including, without limitation, loading or unloading, weighing of cars, intra-plant switching, storage or warehousing. The weighing of cars for the purpose of assessing transportation charges shall be a Local Service

“Local Service Charge” shall mean charges assessed for the provision of Local Services

“Main Line” shall mean that portion of the Line between Mechanicville, NY at Milepost 467.40, and a connection with Remaining Springfield Terminal Assets at CPF 312 at Milepost 311.97

“Maintenance and Inspection” shall have the meaning given to that term in Section 3(a)(i)(A).

“Maintenance Item” shall have the meaning given to that term in Section 3(a)(i)(A)

“Management Committee” shall mean the management committee of Pan Am Southern as provided for in the LLC Agreement

“MBTA” shall mean the Massachusetts Bay Transportation Authority

“Miscellaneous Assignment and Assumption Agreement” shall have the meaning given to that term in the Recitals

“Monthly Statement” shall have the meaning given to that term in Section 14(a)

“NSR” shall have the meaning given to that term in the introductory paragraph

“NSR Joint Use Agreement” shall have the meaning given to that term in the Recitals.

“Operating Fee Additive Element” shall have the meaning ascribed to that term in Section 2 of Appendix C

“Operating Fee Base Element” shall have the meaning ascribed to that term in Section 1 of Appendix C

“Option Agreement” shall mean that agreement dated May 1, 2008 by and among Pan Am, B&M and NSR, concerning the acquisition of an option to purchase a certain undivided interest in the Assets, as defined therein, among other things

“Pan Am” shall have the meaning given to that term in the introductory paragraph

“Pan Am Change in Control” shall mean (1) the establishment of a voting trust as described in 49 C.F.R. Part 1013 – Guidelines for the Proper Use of Voting Trusts, or any subsequent regulation, with regard to the acquisition of a controlling block of voting securities of the Pan Am Member, Pan Am, B&M or Springfield Terminal, or any entity having direct or indirect control over any of the same, including but not limited to the Pan Am Parent, (2) the submission to the STB of any application, petition for exemption, or notice of exemption seeking approval, or exemption from approval, to effect a change in control of the Pan Am Member, Pan Am, B&M or Springfield Terminal or any entity having direct or indirect control over any of the same, (3) any Permitted Transfer as described in Section 9.2 clauses (f) or (g) of the LLC Agreement, or (4) not taking into account the Pan Am Member’s membership interest in Pan Am Southern, the sale, transfer or other distribution of all or substantially all of the assets of the Pan Am Member, Pan Am, B&M or Springfield Terminal

“Pan Am Contribution” shall have the meaning given to that term in the Recitals

“Pan Am Member” shall mean B&M or any permitted transferee of its membership interest in Pan Am Southern under the LLC Agreement.

"Pan Am Parent" shall mean Pan Am Systems, Inc., a Florida corporation, and the ultimate parent of the Pan Am System Parties

"Pan Am Southern" shall have the meaning given to that term in the introductory paragraph

"Pan Am Southern Assets" shall have the meaning given to that term in the Recitals.

"Pan Am System Parties" shall have the meaning given to that term in the Recitals

"Party" or **"Parties"** shall have the meaning given to that term in the introductory paragraph

"Person" shall mean an individual or a partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity.

"Railroad Operator" shall have the meaning given to that term in the Recitals.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, or leaching into the environment (including ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property of any Hazardous Material, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property

"Remaining Springfield Terminal Assets" shall have the meaning given to that term in the Recitals

"Required Personnel and Tools" shall have the meaning given to that term in Section 9(d)(ii)

"Rules" shall have the meaning given to that term in Section 17(c)(ii)

"Springfield Terminal" shall have the meaning given to that term in the introductory paragraph

"Springfield Terminal Joint Use Agreement" shall mean that joint use agreement by and among Pan Am Southern, Springfield Terminal and NSR, dated as of [], pursuant to which, among other things, Pan Am Southern granted to Springfield Terminal certain overhead trackage rights generally between CPF 312 and Harvard, MA for the purpose of interchange with CSX Transportation, Inc. and for service to both existing and future customers on Springfield Terminal trackage south of Harvard.

"STB" shall mean the Surface Transportation Board or any successor entity thereto

"Swapped-out Property" shall have the meaning given to that term in Section 9(c)

"Transaction Agreement" shall have the meaning given to that term in the Recitals

"Transportation Agreement Assignment and Division Allocation Agreement" shall have the meaning given to that term in the recitals

"Work" shall mean all tasks, duties, obligations, services, requirements and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by Springfield Terminal pursuant to this Agreement

(c) Construction of Certain Terms and Phrases

Unless the context otherwise requires, (i) words of any gender include each other gender, (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement, (iv) the terms "Article" or "Section" refers to the specified Article or Section of this Agreement, (v) the terms "and" and "or" include the term "and/or" when the context is appropriate, (vi) the terms "include" or "including" also include the words "without limitation" when the context is appropriate. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. All dollar amounts set forth herein are in United States currency. Whenever this Agreement refers to an Appendix, Exhibit or Schedule attached hereto, the Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference. References herein to any agreement or contract mean such agreement or contract as amended.

SECTION 2. DESIGNATED RAILROAD OPERATOR

(a) Engagement of Springfield Terminal as Designated Railroad Operator

(1) Pan Am Southern hereby retains and engages Springfield Terminal, and Springfield Terminal agrees, to become and act as the designated Railroad Operator for the Line, to manage, administer, supervise, perform and provide all railroad services over the Line (the "Freight Railroad Service") on behalf of Pan Am Southern, including but not limited to Local Services, maintaining, dispatching and providing transportation rail services over the Line, and to provide all of the management, administration, supervision and performance of all general and administrative services necessary or appropriate to the conduct of the business of Pan Am Southern ("Administrative Services"), including, but not limited to accounting, treasury and tax services, legal services, claims handling, information technology services, ancillary agreement management, human resources and labor relations services, and, pursuant to the Transportation Agreement Assignment and Divisions Allocation Agreement, the

billing and collection of all Local Service Charges and revenues for railroad transportation, and the quotation of rates, on behalf of Pan Am Southern. The Administrative Services also include the performance of all functions assigned to the Railroad Operator under the LLC Agreement, including without limitation (i) the preparation of the Budget and the Business Plan (each as defined in the LLC Agreement) as provided in Section 5.7(a) of the LLC Agreement and (ii) the performance of accounting functions and preparation and delivery of financial reports as provided in Section 7 of the LLC Agreement.

(ii) It is the intention of the Parties that Section 2(a)(i) be read expansively in order to effectuate the intention of this Agreement as set forth in the Recitals. Notwithstanding the generality of the foregoing, the Freight Railroad Service shall include, among other things, the specific items set forth in Appendix A – Specific Freight Railroad Service Obligations.

(iii) Springfield Terminal shall be authorized to negotiate and pay, on behalf of Pan Am Southern, certain costs, invoices and claims (such as payment for freight claims, taxes, or leases or other expenses that Pan Am Southern is initially obligated to pay). Nothing in this Agreement (pursuant to which Springfield Terminal acts as a contractor to Pan Am Southern) is meant to modify the allocation of liability, costs or obligations pursuant to the Transaction Agreement or any other JV Transaction Agreement (as defined in the LLC Agreement), entered into contemporaneously with this Agreement or otherwise. By way of illustration only, and without intending to modify the foregoing, pursuant to the NS Joint Use Agreement, Pan Am Southern is not to settle without NSR input certain claims for which NSR provides an indemnification pursuant to that agreement. The provisions of Section 4(a)(iii) of this Agreement dictate the responsibilities that Springfield Terminal has with regard to freight claim settlement vis a vis Pan Am Southern. If, as is the case under the NS Joint Use Agreement, Pan Am Southern has an obligation to consult with NSR with regard to certain claims, the provisions of this Agreement are not meant to modify that consultation requirement, and Springfield Terminal, as Pan Am Southern's contractor, is required to comply with that consultation requirement. Similarly, and by way of further illustration only, any requirement set forth herein for Springfield Terminal to pay, as a contractor hereunder but using Pan Am Southern funds, invoices for certain claims shall have no effect upon any requirement found in the Transaction Agreement or other JV Transaction Agreement for indemnification of Springfield Terminal.

(iv) Springfield Terminal shall not, by reason of this Agreement, have any right to permit any rail carrier access to operate or use the Line or the other Pan Am Southern Assets.

(b) General Manager

(i) Springfield Terminal shall appoint an individual ("General Manager") who shall manage and supervise the operation, maintenance and use of the Pan Am Southern Assets in accordance with this Agreement and directives and policies

of Pan Am Southern Pan Am Southern acknowledges that the General Manager also shall have responsibilities with regard to Pan Am operations Notwithstanding the foregoing, Springfield Terminal agrees that the General Manager shall perform his or her responsibilities on an impartial and non-discriminatory basis as between Pan Am Southern and Pan Am Springfield Terminal shall promptly appoint a new General Manager to fill any vacancy caused by the retirement, removal or otherwise long-term unavailability of the then-current General Manager

(ii) Pan Am Southern may require that Springfield Terminal remove, and Springfield Terminal shall promptly remove, the current General Manager at any time for serious misconduct, which shall mean conduct that would make it unreasonable to retain the General Manager as manager of Pan Am Southern's business, including but not limited to conduct such as: (A) violation of applicable alcohol or drug use policies, (B) fraud, (C) embezzlement or other act of dishonesty against Pan Am Southern, Pan Am or NSR or any of their customers or suppliers, (D) activities willfully undertaken by the General Manager which reflect adversely upon the reputation of Pan Am Southern, Pan Am or NSR, (E) refusal to perform or substantial neglect of the responsibilities assigned to the General Manager, (F) failure to perform his or her responsibilities on an impartial and non-discriminatory basis as between Pan Am Southern and Pan Am after 45-days' written notice from Pan Am Southern or Pan Am describing such failure, (G) any violation of law or rule or regulation of any Governmental Authority which results in serious adverse consequences to Pan Am Southern, Pan Am or NSR, or (H) any material violation of any directive or policy of Pan Am Southern

SECTION 3. MAINTENANCE OF THE RAILROAD PREMISES

(a) Without intending to limit the provisions of Section 2(a)(i), the Parties intend that the Freight Railroad Services that Springfield Terminal shall provide and perform include the following

(i) Maintenance and Inspection

(A) Springfield Terminal shall provide inspection and maintenance and repair (the "Maintenance and Inspection," any specified item of which may be referred to as a "Maintenance Item") of the Line's right-of-way, track, structures, communications and signals fixtures and appurtenances.

(B) Springfield Terminal and Pan Am Southern shall quarterly meet to review the maintenance program, and Springfield Terminal and Pan Am Southern shall mutually determine any adjustments thereto

(ii) Additional Maintenance and Repair

(A) Springfield Terminal shall provide, or cause to be provided, any repair or upgrade item that is not a Maintenance Item (an "Additional Repair Item") that is required in order to keep the Assets (including the Line) in good operating condition

(B) Such Additional Repair Items include, but are not limited to, any capital maintenance, or other maintenance, repair, upgrade or other additional maintenance items caused by: (u) an unforeseen or unanticipated condition, (v) a casualty loss or damage, including but not limited to a derailment involving any carrier operating on the Line or third-party events such as an automobile accident damaging any portion of a grade crossing, the associated gates, signalization or warning devices, (w) a force majeure event as described in Section 18, (x) a Governmental Action (including a change in regulatory compliance requirements), mandate, order, judgment or award by a Governmental Authority with jurisdiction over the Line or rail transport thereover, (y) environmental investigation, cleanup or remediation required by Governmental Action or by the performance of the Freight Rail Services and Maintenance and Inspection or the Additional Repair Items pursuant to this Agreement, or (z) other like condition or occurrence, but in any event the Additional Repair Items shall not include those items that are Capital Projects (as defined in the LLC Agreement).

(iii) Grade Crossing Facility Maintenance and Repair

Springfield Terminal shall fulfill, or cause to be fulfilled, any grade crossing facility maintenance, repair and inspection obligation ("Grade Crossing Facility Maintenance and Repair") of Pan Am Southern arising from the creation or maintenance of any public highway-railroad grade crossing or private grade crossing, including any present or future obligations that may arise as a result of the receipt of funding or other support from a Governmental Authority for the grade crossing warning devices or other highway-railroad grade crossing facility such as those assigned pursuant to the Miscellaneous Assignment and Assumption Agreement and listed in Appendix B – Assigned Grade Crossing Agreements or otherwise governing such facilities regardless of the fact that said agreement(s) may not have been assigned to Pan Am Southern

(b) Minimum Standards.

Springfield Terminal shall keep and maintain the Pan Am Southern Assets, including any buildings or other structures in current use or leased or occupied by Springfield Terminal on the Closing Date (as defined in the Transaction Agreement), (a) in good operating condition and repair in a manner consistent with sound, accepted engineering principles and maintain the Main Line of the Line at least to a minimum condition existing as of the Effective Date hereof until the completion of the certain capital improvement projects described in Schedule 2.5 of the Transaction Agreement that would permit Federal Railroad Administration Class 3 standards (or any successor standard thereto), capable of handling cars of 286,000 lbs., after which Springfield Terminal shall keep and maintain the Pan Am Southern Assets in good operating condition and repair in a manner consistent with sound, accepted engineering principles and maintain the Main Line of the Line at least to a minimum existing as of the Effective Date hereof until the completion of the certain capital improvement projects described in Schedule 2.5 of the Transaction Agreement that would permit Federal Railroad Administration Class 3 standards (or any successor standard thereto), capable of handling

cars of 286,000 lbs. Springfield Terminal shall provide Freight Railroad Services reasonably capable of satisfying the services standards committed to NSR in the Joint Use Agreement.

SECTION 4. SPECIFIC ADMINISTRATIVE SERVICES

Without intending to limit the provisions of Section 2(a)(1), the Parties intend that the Administrative Services that Springfield Terminal shall provide and perform include the following:

(a) **Claims Handling Services**

(i) Springfield Terminal shall provide a claims handling service including but not limited to claims intake and classification, fraud screening, investigation, review and settlement, and litigation support. Pan Am Southern shall be responsible for amounts owed to third parties with respect to third party claims for which Pan Am Southern is responsible and Springfield Terminal shall cause the payment of such amounts from Pan Am Southern's accounts as and when due.

(ii) The Parties agree to cooperate in the defense of claims to the extent reasonable and necessary, and to execute all documents reasonably required to enable the other Party to recover amounts paid by or on behalf of that Party on account of such claims to persons other than the Parties hereto.

(iii) Springfield Terminal shall have the authority to settle, on behalf of Pan Am Southern, claims handled under the claims handling service provided such settlement does not exceed \$100,000 per incident. In all other cases, Springfield Terminal shall consult with, and receive approval of, Pan Am Southern, prior to settling any claim pursuant to this Section 4(a).

(b) **Ancillary Agreement Management**

Springfield Terminal shall negotiate new pipe, wire and other such Ancillary Agreements, and shall manage all existing Ancillary Agreements. Pan Am Southern, and not Springfield Terminal, shall be a party to new Ancillary Agreements. Springfield Terminal shall report periodically (but no less often than quarterly) to Pan Am Southern the nature and status of newly proposed and executed Ancillary Agreements. Springfield Terminal shall manage the Ancillary Agreements (those existing on the Effective Date, as well as those entered into following the Effective Date) on behalf of Pan Am Southern, which such management shall include the collection and payment of such rents and fees as required under such Ancillary Agreements, the providing and receipt of notices and other communications as required or advisable under such Ancillary Agreements, the performance and receipt of the performance of such other acts including renewals or terminations as may be required or advisable under such Ancillary Agreements, all in accordance with the terms and conditions thereof.

(c) Accounting

Springfield Terminal shall keep proper books of record and account in which full and correct entries shall be made of all Pan Am Southern transactions, costs, expenses and revenues ("Financial Activities"), including but not limited to those associated with the management of the Ancillary Agreements, the provision of Local Services, the assessment and collection of demurrage, and the assessment and collection of transportation revenues. Such books of record and account shall be in accordance with then-current generally accepted accounting principles, but in any case shall be maintained for a period not less than seven (7) years from its creation. All Financial Activities shall be readily identifiable by distinct accounting codes and be reported in a manner that allows Pan Am Southern to comply with its election under Rev. Proc. 2002-65. The books of record and account shall be owned by Pan Am Southern.

(d) MBTA and Other Passenger Service Interface.

Springfield Terminal, through the General Manager, shall constitute the primary communications and negotiations interface between MBTA and other passenger service operators, on the one hand, and Pan Am Southern, on the other hand. The General Manager shall report from time to time, but no less than on a monthly basis, on matters of significant interest to Pan Am Southern regarding the relationship and negotiations pursued under this Section 4(d), including but not limited to matters identified by any member of the Management Committee.

(e) Trackage/Operating Rights Review

Springfield Terminal, through the General Manager, shall constitute the primary communications and oversight interface between Pan Am Southern, on the one hand, and the trackage/operating rights landlord, on the other hand. The General Manager shall report from time to time, but no less than on a monthly basis, on matters of significant interest to Pan Am Southern regarding the relationship and oversight pursued under this Section 4(e), including but not limited to matters identified by any member of the Management Committee.

SECTION 5. [INTENTIONALLY OMITTED]

SECTION 6. CONTRACTOR INDEMNIFICATION

Springfield Terminal shall indemnify, defend and hold harmless Pan Am Southern, its members, and each of the affiliated and subsidiary companies of the foregoing (except Springfield Terminal itself), and each of their respective directors, officers, employees and agents (collectively, the "Indemnified Parties") from and against any and all claims, fines, penalties, demands, suits, liability, damages, losses, costs (including, but not limited to, attorneys' fees) and expenses arising from or in connection with

(a) (i) any alleged loss of life of or personal injury to the officers, employees or agents of Springfield Terminal or the damage to or loss of the property of Springfield Terminal, its officers, employees or agents, arising from, incident to or occurring in connection with the performance by Springfield Terminal of its obligations under this Agreement or the presence of the officers, employees or agents of Springfield Terminal on or around the Line and the other Pan Am Southern Assets,

(ii) except with respect to persons and property covered by subsection (a)(i) above, any alleged loss of life of or personal injury to any person or the loss of or damage to any property arising from, incident to or in connection with the negligent acts or omissions or willful misconduct of Springfield Terminal,

(b) any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) that results in whole or in part, directly or indirectly, from the activities of Springfield Terminal or its officers, agents, employees or subcontractors related in any way to this Agreement or from any other act or omission of Springfield Terminal, its officers, agents, employees or subcontractors contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Pan Am Southern without actual knowledge that it might violate any such law, statute, code, ordinance or regulation

SECTION 7. RELATIONSHIP TO TRANSPORTED TRAFFIC

(a) Except pursuant to the Springfield Terminal Joint Use Agreement and the Ayr Switching Agreement, no freight rail traffic transported over all or any portion of the Pan Am Southern Assets pursuant to this Agreement shall move in the revenue waybill of Springfield Terminal

(b) Springfield Terminal shall not, pursuant to this Agreement, on its own account or behalf

- (i) participate or appear in any rates, routes or divisions,
- (ii) establish rates, charges, service terms, routes or divisions, or enter into any transportation contracts, or
- (iii) collect freight revenues or demurrage or detention charges

relating to any freight traffic whatsoever that is transported over all or any portion of the Pan Am Southern Assets, though nothing in this Section 7(b) shall limit its rights or responsibilities under either the Transportation Agreement Assignment and Divisions Allocation Agreement or the Springfield Terminal Joint Use Agreement

(c) Springfield Terminal shall not, pursuant to this Agreement, have any right to require shippers or carriers to provide to it the nature, level or existence of any rates or

charges levied against, charged to or otherwise applicable to shippers for traffic that moves over all or any portion of the Pan Am Southern Assets pursuant to the NSR Joint Use Agreement

SECTION 8. ENVIRONMENTAL MATTERS

In performance of its obligations hereunder, Springfield Terminal shall comply with all applicable laws, ordinances, rules, and regulations and all lawful orders of any Governmental Authority including, without limitation, the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.) and the Toxic Substances Control Act (15 USC § 2601 et seq.) and all other laws pertaining to the generation, handling, transportation, treatment, release, storage and disposal of municipal, solid, and hazardous materials, substances and wastes, pollutants and contaminants. Springfield Terminal shall establish and maintain and, upon request of Pan Am Southern, Pan Am or NSR, furnish to Pan Am Southern, Pan Am and NSR appropriate records, receipts and documents, papers and any other data or information covering or pertaining to the generation, handling, transportation, treatment, release, storage and disposal of any municipal, solid or hazardous materials, substances and wastes, pollutants and contaminants.

SECTION 9. MISCELLANEOUS PROVISIONS APPLICABLE TO ALL WORK PERFORMED

(a) Right(s) of Entry for Freight Railroad Operations

Pan Am Southern hereby provides Springfield Terminal with access to and use of the Pan Am Southern Assets, under the terms and conditions of this Agreement, for the purposes of providing the Freight Railroad Services and the Administrative Services. Pan Am Southern, its members, or their respective designated representatives, shall have the right to enter upon the Pan Am Southern Assets upon reasonable notice at any time for the purpose of inspecting and examining the property, the facilities, and the performance of the obligations of Springfield Terminal hereunder.

(b) Right(s) of Entry for Administrative Services

Springfield Terminal grants to each of Pan Am Southern, Pan Am and NSR access, during normal business hours, to inspect and make copies of any and all books of record and accounts relating to this Agreement, all of which shall be maintained by Springfield Terminal at its headquarters in North Billerica, MA, or such other location as Springfield Terminal shall specify to Pan Am Southern, Pan Am and NSR from time to time.

(c) Ownership of Materials

Any rails, ties and other items of track, signaling equipment or other materials that Springfield Terminal installs into the Line in furtherance thereof shall become the property of Pan Am Southern. Any rails, ties and other items of track, signaling equipment or other materials that Springfield Terminal removes from the Line in furtherance thereof ("Swapped-out Property") shall remain the property of Pan Am Southern. Notwithstanding the foregoing, Springfield Terminal may retain such Swapped-out Property in partial payment for the services provided hereunder, valued at market value, provided that Springfield Terminal shall provide a full accounting thereof in accordance with Section 9(g).

(d) Provision of Equipment, Labor and Materials

(i) Springfield Terminal shall furnish, and/or shall cause to be furnished, all labor, materials, supplies, tools and equipment needed to perform the Work.

(ii) Springfield Terminal shall be responsible at its own risk and expense for providing, training, maintaining, fueling, servicing, licensing and replacing all employees, equipment and facilities (employees, training facilities for its employees, locomotives, rolling stock maintenance equipment, office space, computer facilities and equipment, licenses, rail yards (other than those included in the Pan Am Southern Assets)), repair facilities, engineering design and planning, customer service operations and dispatch operations center and other such personnel, equipment, licenses and property as may be reasonable or required for Springfield Terminal's provision of the Freight Railroad Service and the Administrative Services hereunder ("Required Personnel and Tools"). Notwithstanding that these Required Personnel and Tools may be leased, licensed or otherwise held by Springfield Terminal, as between Pan Am Southern and Springfield Terminal, these Required Personnel and Tools shall be considered the personnel and property of Springfield Terminal. Springfield Terminal shall receive no additional compensation for the provision of the same other than as is set forth in Section 10.

(iii) All equipment provided by Springfield Terminal to perform the Work shall be in good operating condition and shall conform to any and all applicable standards prescribed by the Association of American Railroads and the Federal Railroad Administration for such type of equipment.

(iv) Springfield Terminal shall cooperate with Pan Am Southern to maintain and meet the metric goals established by the JOC pursuant to Section 5.3(c) of the I.I.C. Agreement.

(e) Condition of the Line and the Other Pan Am Southern Assets.

Springfield Terminal accepts the Pan Am Southern Assets in a "where is, as is" condition, without recourse to Pan Am Southern, for the purposes of fulfilling its obligations hereunder. Pan Am Southern makes no representation or warranty as to the physical condition of the Line and the other Pan Am Southern Assets, or the condition of

the legal title thereto, nor does Pan Am Southern make any representation or warranty as to the suitability or fitness of the Line and the other Pan Am Southern Assets for railroad operating purposes or any other purpose

(I) Performance of the Work

(i) Springfield Terminal shall use its best efforts to conduct the Freight Railroad Service and the Administrative Services in a manner that meets or exceeds the highest standards attained by competitive services

(ii) In performing its obligations under this Agreement, Springfield Terminal shall, at all times.

(A) act in accordance with its then-current collective bargaining agreements as if the Pan Am Southern Assets were an integral part of the Springfield Terminal railroad network;

(B) observe and comply with any and all requirements of the constituted public authorities and with all applicable federal, state and local statutes, ordinances, regulations and standards applicable to Springfield Terminal or its operation of the Pan Am Southern Assets;

(C) obtain all applicable approvals, authorizations, franchises, licenses and permits of any Governmental Authority as may be required;

(D) use no less than the degree of care, skill, accuracy, quality, completeness and effort as it uses in performing the same or similar services on its own behalf,

(E) effectively guard against all accidents on or damages to the Pan Am Southern Assets and its and others' employees, agents and contractors,

(F) ensure that all of its employees, agents and contractors are familiar with, and comply with, all applicable operating, safety and roadway worker rules, and

(G) cooperate with, and permit inspection by, members of the JOC in order to review compliance with this Agreement

(iii) Safety and Operating Rules

Springfield Terminal shall use the utmost diligence in the prosecution of the Work to effectively guard against all accidents on or damages to the Pan Am Southern Assets in its performance of the Work. Springfield Terminal shall comply with all applicable Pan Am Southern operating, safety and roadway worker rules when performing the Work. The Springfield Terminal Designated Engineer shall ensure that

all persons engaged in the Work are familiar with all applicable Pan Am Southern operating, safety and roadway worker rules. Springfield Terminal shall require its employees and/or contractors, if any, to comply with all applicable safety requirements contained in the laws, ordinances, rules and regulations of any Governmental Authority having jurisdiction over the Work.

(g) Accounting

Springfield Terminal shall keep proper books of record and account in which full and correct entries shall be made of all Springfield Terminal Financial Activities that arise from the rights and obligations of Springfield Terminal pursuant to this Agreement. Such books of record and account shall be in accordance with then-current generally accepted accounting principles. All Financial Activities shall be readily identifiable by distinct accounting codes.

(h) Liens

(i) Springfield Terminal shall not create, permit to be created, or permit to remain undischarged, any contingent or actual lien, encumbrance or charge (each a "Lien") as to any of the Pan Am Southern Assets that (x) arise out of the obligations it has undertaken pursuant to this Agreement; (y) involve services, materials and/or supplies furnished and/or delivered by Springfield Terminal or its permitted subcontractors, or (z) arise out of any mortgage, conditional sale, security agreement or chattel mortgage.

(ii) Springfield Terminal shall, within ten (10) days after acquiring knowledge thereof, provide notice to Pan Am Southern, Pan Am and NSR of any Lien against the Line, any part thereof, or any of the Pan Am Southern Assets. Springfield Terminal shall, within ten (10) days after demand from Pan Am Southern, Pan Am or NSR, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

SECTION 10. COMPENSATION

Pan Am Southern shall pay to Springfield Terminal an Operating Fee Base Element and an Operating Fee Additive Element as provided in Appendix C – Operating Fee and Appendix D – Operating Expense Accounting Plan.

SECTION 11. TERM AND TERMINATION

(a) Effective Date

This Agreement shall become effective following the latest date of: (i) the date first written above; (ii) following receipt of any required regulatory approvals or exemptions, and (iii) following the expiration of any time periods required by the issuance of labor notices by any of the Parties, should such labor notices be required.

("Effective Date") The Parties shall determine the Effective Date through an exchange of written correspondence

(b) Term.

This Agreement shall commence on the Effective Date, and shall continue until terminated by mutual agreement. This Agreement may be terminated by Pan Am Southern, without penalty or payment to any Party, upon a Pan Am Change of Control. This Agreement shall be terminated, without penalty or payment to any Party, should Pan Am Southern abandon its common carrier rights over all or substantially all of the Line. This Agreement may be terminated immediately by Pan Am Southern upon a material breach of this Agreement by Springfield Terminal.

(c) No Release.

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

SECTION 12. INDEMNIFICATION

(a) Springfield Terminal shall reimburse and indemnify Pan Am Southern, Pan Am and NSR for or on account of:

(i) any breach of this Agreement, and

(ii) any fine, penalty, cost, or charge, and all expenses incurred in connection therewith, that is imposed or assessed on, or against, such Parties by reason of Springfield Terminal's non-compliance with any applicable federal, state or local law, rule, regulation or order promulgated by any Governmental Authority that relates to the provision of services hereunder.

without regard as to any contributory actions of Pan Am Southern, Pan Am or NSR. Except as provided in Section 12(b), no expenditure made pursuant to this Section 12(a) shall be included in the Operating Fee Base Element, as defined in Appendix C, for reimbursement or payment by Pan Am Southern pursuant to Section 10.

(b) To the extent feasible, Springfield Terminal shall defend the interests of Pan Am Southern in any related legal proceeding arising out of the matters referenced in Section 12(a)(ii), and the cost of the conduct of the legal proceedings, including attorneys' fees, shall be an expenditure that may be included in the Operating Fee Base Element for reimbursement or payment by Pan Am Southern pursuant to Section 10.

(c) Springfield Terminal agrees to indemnify, defend and hold harmless Pan Am Southern, Pan Am and NSR from and against Claims arising from its failure, or

alleged failure, to comply with any applicable collective bargaining agreement, without regard as to any contributory actions of Pan Am Southern, Pan Am and NSR

(d) Notwithstanding anything herein to the contrary, the Parties agree that to the extent that there is an Environmental Claim, the Parties will jointly pursue indemnification from third parties and to the extent that the effort to obtain such third party indemnification is not successful, Springfield Terminal shall indemnify Pan Am Southern, Pan Am and NSR to the extent provided under Section 12(a) as if there is no third party indemnification

(e) As a part of the consideration hereof, Springfield Terminal hereby agrees that each and every one of its indemnity commitments in this Agreement in favor of any other Party hereto shall extend to and indemnify the parent or members (including, as to Pan Am Southern, Pan Am and NSR), Norfolk Southern Corporation (on whose behalf, with regard to this Agreement, the Parties agree that NSR may act), subsidiaries (except, as to Pan Am, Springfield Terminal) and affiliates of such other Party (except, as to Pan Am Southern and Pan Am, Springfield Terminal), and all of their respective directors, officers, agents and employees

(f) Each of the Parties shall indemnify and hold harmless the other Parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of lawsuits, claims or grievances brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that each of the Parties shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement

SECTION 13. INSURANCE

Springfield Terminal shall name each of Pan Am Southern, Pan Am and NSR as an additional named insured under any comprehensive general liability, federal employer's liability act, cargo legal liability, automotive liability, railroad hazards, or terrorism insurance policies carried by Springfield Terminal that would cover Springfield Terminal in its operations or activities related to, on or over the Line or the other Pan Am Southern Assets pursuant to this Agreement.

SECTION 14. INVOICES AND PAYMENT OF BILLS

(a) On or before the 15th day of each calendar month during the term of this Agreement, the Party seeking to provide an invoice to another Party (the "Invoicing Party") shall prepare and deliver to the other Party (the "Invoiced Party") and NSR a statement setting forth the charges to be invoiced, the basis for the charges, and any other information relating to such charges that the Invoiced Party may reasonably request in connection with accounting for the use of the services and rights provided hereunder (the "Monthly Statement"). The Invoicing Party shall deliver the Monthly Statement to the Invoiced Party's designee in electronic format, with a copy thereof to Pan Am and NSR. The Invoiced Party shall make payment to Invoicing Party within sixty (60) days after the date of such Monthly Statement, with confirmation of such payment provided to Pan Am and NSR.

(b) Any dispute regarding the amount of a Monthly Statement shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Monthly Statement. If the Invoiced Party disputes any portion of a Monthly Statement, it shall nevertheless pay such Monthly Statement in full (unless such dispute involves a material amount in relation to the total amount of such Monthly Statement), subject to adjustment upon resolution of the dispute, provided, however, that (i) no exception to any charge in a Monthly Statement shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Monthly Statement, and (ii) no invoice shall be rendered more than three (3) years (A) after the last day of the calendar month in which the expense covered thereby is incurred, or (B) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement.

SECTION 15. AUDIT

Pan Am Southern, Pan Am and NSR shall each have the right, at its own expense, to audit the records of any other Party pertaining to the subject matter of this Agreement, and any invoice issued by Springfield Terminal pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant invoice. All such audits shall be conducted at reasonable intervals, locations and times. All such audits shall be prosecuted with reasonable due diligence. Each agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant to this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 15 with respect to which Springfield Terminal, Pan Am Southern, Pan Am and NSR are in concurrence shall be reflected in a subsequent invoice.

SECTION 16. STATUS OF SPRINGFIELD TERMINAL

(a) In the performance of the services described herein, Springfield Terminal shall be an independent contractor of Pan Am Southern. Springfield Terminal shall have managerial control with respect to the provision of the Freight Railroad Services and Administrative Services provided hereunder. All personnel of Springfield Terminal shall be subject to the direction, supervision and control of Springfield Terminal and not Pan Am Southern, Pan Am or NSR. Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between Springfield Terminal and Pan Am Southern.

(b) For the services provided by Springfield Terminal, including the provision of equipment, Springfield Terminal may engage the services of subcontractors or agents to the extent consistent with Springfield Terminal's collective bargaining agreements.

SECTION 17. DISPUTE RESOLUTION

(a) Reference to JOC

Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be referred to the JOC (for Pan Am Southern) for resolution and if the parties are unable to resolve the dispute, it will be referred, in writing, to the Management Committee (for Pan Am Southern) to resolve.

(b) Reference for Formal Dispute Resolution

Any Dispute not resolved within sixty (60) days after receipt by any of the involved Parties of written notice of reference of such Dispute to the senior management pursuant to Section 17(a), shall be submitted for formal dispute resolution, if at all, by either Party for formal dispute resolution pursuant to Section 17(c).

(c) Formal Dispute Resolution.

(i) Submission to Jurisdiction

Each of the Parties hereby (i) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 17(b) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) waives any objection based on forum non conveniens or any other objection to venue thereof.

(ii) Dispute Resolution

Each of the Parties hereby stipulates and agrees that any Dispute that is not resolved pursuant to Section 17(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "Rules"). under the following terms and conditions:

(iii) Selection of Arbitrator

A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator.

(iv) Conduct of Arbitration

The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement.

(v) Replacement of Arbitrator

Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator.

(vi) Findings and Conclusions

The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(v) Time is of the Essence

The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding.

(vi) Temporary Equitable Relief

By agreeing to arbitration, the Parties do not intend to deprive any

Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect.

(vii) Consolidation

The Parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this Agreement and/or any Ancillary Agreement and/or the Transaction Agreement or any other agreement contemplated by the Transaction Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under such agreements, then any Party may request that any arbitration or any new Dispute arising under this Agreement or the Ancillary be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration, (y) no Party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the Parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The Parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(viii) Discovery

Recognizing the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(ix) Costs and Attorneys' Fees

Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 17(c) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing Party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the Party resisting enforcement.

(x) Miscellaneous

The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(d) As a third party beneficiary, NSR may initiate and prosecute arbitration pursuant to Section 17(b) on behalf of Pan Am Southern. Pan Am Southern and Springfield Terminal shall cooperate with NSR in the Pan Am Southern preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

SECTION 18. FORCE MAJEURE

The obligations, other than payment obligations, of Springfield Terminal under this Agreement shall be subject to force majeure (including flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, wreck, derailment, washout, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, or governmental laws, orders or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs Springfield Terminal's ability to fulfill its obligations to the other Parties under this Agreement, Springfield Terminal shall take all commercially reasonable measures to restore performance of its obligations in a timely manner.

SECTION 19. MISCELLANEOUS

(a) Notices

All notices, requests, demands and other communications (collectively, "Notices") given pursuant to this Agreement shall be in writing, and shall be delivered by personal service, courier, overnight delivery service, facsimile transmission (which must be confirmed) or by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to Pan Am
Southern Chairman
Pan Am Southern LLC
c/o Pan Am Railways, Inc
Iron Horse Park
North Billerica, MA 01862-1692

With a copy to NSR
and Pan Am

If to NSR Mike R. McClellan
Vice President – Intermodal and
Automotive Marketing
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

With a copy to Vice President – Law
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2374
(757) 533-4872 (fax)

If to Pan Am David A. Fink
President
Pan Am Railways, Inc.
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

With a copy to: Robert Culliford
Vice President Law
Pan Am Systems, Inc
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

If to Springfield
Terminal David A Fink
President
Springfield Terminal Railway Company
c/o Pan Am Railways, Inc
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

With a copy to Robert Culliford
Vice President Law
Pan Am Systems, Inc
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

Any Notice, other than a Notice sent by registered or certified mail, shall be effective when received; a Notice sent by registered or certified mail, postage prepaid return receipt requested, shall be effective on the earlier of when received or the third day following deposit in the United States mails. Any Party may from time to time change its address for further Notices hereunder by giving notice to the other Parties in the manner prescribed in this Section.

(b) Entire Agreement.

This Agreement, including any attached exhibits and schedules, contain the sole and entire agreement and understanding of the Parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are hereby merged herein. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto any rights or remedies under or by way of this Agreement.

(c) Assignment

Springfield Terminal may not assign its rights or obligations under this Agreement, and any attempted or purported assignment or any delegation of Springfield Terminal's duties or obligations arising under this Agreement to any third party or entity shall be deemed to be null and void, and shall constitute a material breach by Springfield Terminal of its duties and obligations under this Agreement.

(d) Extension, Waiver and Amendment

Any agreement on the part of a Party hereto to any extension or waiver shall be

valid if set forth in writing in an instrument signed by or on behalf of such Party. The waiver by any Party hereto of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach. This Agreement may be amended only by a written agreement executed by all of the Parties to this Agreement.

(c) Confidentiality

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by any Party to any person other than members, officers, employees, and attorneys, without the prior written approval of the other Parties. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

(f) Governing Law

THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

(g) Judicial Interpretation.

Should any provision of this Agreement require judicial interpretation, it is agreed that a court or other tribunal interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any Person by reason of the rule of construction that a document is to be construed more strictly against the Person who itself or through its agent prepared the same, it being agreed that all Parties have participated in the preparation of this Agreement.

(h) No Third Party Beneficiaries.

Except as expressly provided in this Agreement, this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto, provided, however, that this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns.

(i) Captions

The various captions of this Agreement are for reference only and shall not be

considered or referred to in resolving questions of interpretation of this Agreement.
Counterparts This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument

(j) Costs and Attorneys' Fees.

Whether or not the transactions contemplated hereby are consummated, each of the parties shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel

(k) Good Faith and Fair Dealing.

The Parties agree to deal with one another on matters related to this Agreement fairly, honestly, and in good faith "Good Faith" means honesty in fact and observance of reasonable commercial standards and customs of fair dealing in the transportation industry generally and of the intermodal, automotive and railroad transportation industry in particular

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written

**NORFOLK SOUTHERN RAILWAY
COMPANY**

PAN AM RAILWAYS, INC.

By _____
Name
Title

PAN AM SOUTHERN LLC

By: _____
Name
Title:

**SPRINGFIELD TERMINAL
RAILWAY COMPANY**

By _____
Name
Title.

By. _____
Name
Title.

INDEX TO APPENDICES

Appendix A	Specific Freight Railroad Service Obligations
Appendix B.	Assigned Grade Crossing Agreements
Appendix C	Operating Fee
Appendix D	Operating Expense Accounting Plan

APPENDIX A – SPECIFIC FREIGHT RAILROAD SERVICE OBLIGATIONS

Without intending to limit the provisions of Section 2(a)(1), the Freight Railroad Service shall include, among other things, the following specific items

- (a) the provision of haulage services and access for trackage rights as required of Pan Am Southern pursuant to the NSR Joint Use Agreement,
- (b) consultation with the JOC,
- (c) the development and provision of schedules and timetables for regularly scheduled trains operating over the Line, as well as any proposed modifications thereto,
- (d) keep and maintain the Assets including the Line in good operating condition and repair in a manner consistent with sound, accepted engineering principles and in reasonably good condition for the use herein contemplated, taking all reasonable steps to ensure that any interruptions in service will be kept to a minimum,
- (e) perform full customer accountability services (tracking services) for freight rail shipments moved by Springfield Terminal pursuant to this Agreement, including but not limited to car accounting and tracing, and claims handling services, to the same extent the same is provided on the Remaining Springfield Terminal Assets rail system,
- (f) at its sole risk and expense, provide any and all training to its employees, contractors or agents as is necessary and advisable for Springfield Terminal to perform its obligation under this Agreement;
- (g) provide dispatching, scheduling and traffic movement control, switching and yard services, for all trains over the Line, without discrimination at any time in favor of or against any Party except as may be set forth in the NSR Joint Use Agreement or the Springfield Terminal Joint Use Agreement, or otherwise as is set forth in accordance with written policies and priorities of freight, type of railcar, size of train and train destinations as may be established from time to time by the General Manager in consultation and with the approval of Pan Am Southern, and
- (h) weigh railcars which require weighing and fuel, sand and service locomotives requiring fueling, sanding and/or servicing;
- (i) provide such labor and materials as may be required to perform, and perform, light repairs on bad ordered railcars as may be necessary to make such railcars legal and safe for movement, or, for any such bad ordered railcars that cannot reasonably be made legal and safe for movement, and arrange for the appropriate removal of the affected railcar in accordance with Pan Am Southern's instructions,
- (j) provide special services from time to time as is requested by Pan Am Southern with respect to trains, locomotives and railcars; and

(k) provide rerailling, wrecking service or wrecking train service as may be required, including the repair and restoration of roadbed, track, structures and the environment, as promptly as possible.

APPENDIX B ASSIGNED GRADUATE CROSSING AGREEMENTS

[To be completed at Closing.]

APPENDIX C – OPERATING FEE

The Operating Fee shall consist of the following two elements

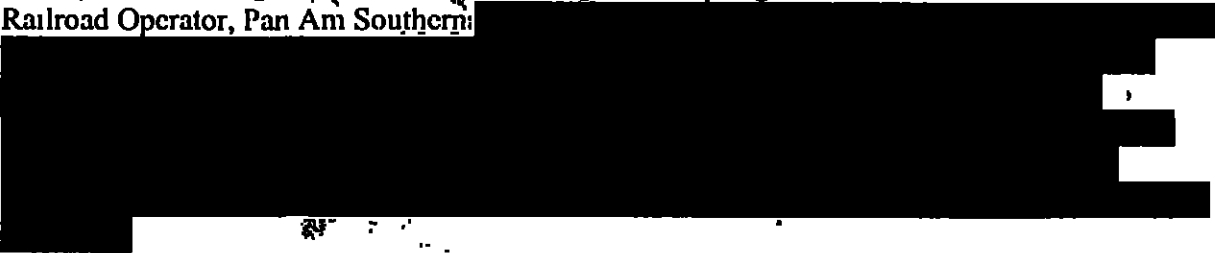
1. Operating Fee Base Element

As partial progress payments for the payment of the annual Operating Fee Base Element, Pan Am Southern shall make monthly payments to Springfield Terminal in each calendar year equal to

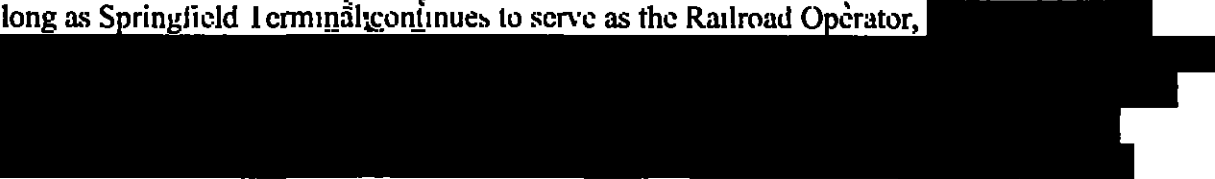


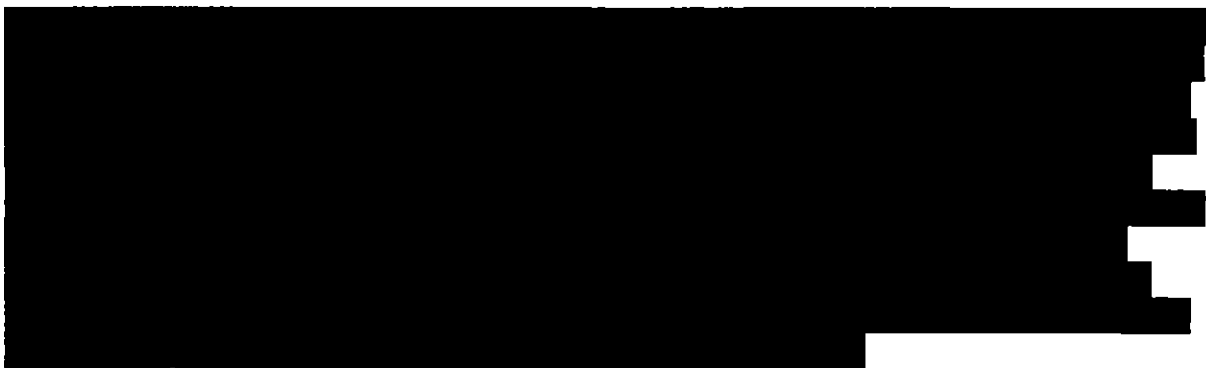
2. Operating Fee Additive Element

For the first full fiscal year, and separately for any partial fiscal year prior to the first full fiscal year, following the Effective Date during which Springfield Terminal serves as the Railroad Operator, Pan Am Southern



For each fiscal year after the first full fiscal year following the Effective Date, and for so long as Springfield Terminal continues to serve as the Railroad Operator,





APPENDIX D – OPERATING EXPENSE ACCOUNTING PLAN

This Appendix D sets forth the methodology for determining (1)

[REDACTED]

[REDACTED]

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Reports, Audit Rights and General Principles

Springfield Terminal shall be responsible for generating the data called for by this Appendix and shall update and provide to NSR and Pan Am Southern copies of all tables as of the end of each calendar year to reflect changes applicable thereto for each such calendar year. All such data, including without limitation underlying data used to calculate ratios and any and all financial data of Springfield Terminal from which any such data is derived, shall be subject to audit by NSR and by Pan Am Southern.

[REDACTED]

EXHIBIT 2D

CAPITAL PROJECTS AND FACILITY MANAGEMENT AGREEMENT

This CAPITAL PROJECTS AND FACILITY MANAGEMENT AGREEMENT (this "Agreement") is entered into as of this ____ day of _____, 2008, by and among Pan Am Southern LLC, a Delaware limited liability company ("Pan Am Southern"), Springfield Terminal Railway Company, a Vermont company ("Springfield Terminal"), Pan Am Railways, Inc., a Delaware corporation ("Pan Am"), and Norfolk Southern Railway Company, a Virginia corporation ("Norfolk Southern") Pan Am Southern, Springfield Terminal, Pan Am and Norfolk Southern are referred to individually herein as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, Pan Am, Boston and Maine Corporation ("B&M"), Springfield Terminal (collectively with Pan Am and B&M, the "Pan Am System Parties"), and Norfolk Southern entered into a Transaction Agreement (the "Transaction Agreement"), dated as of [], 2008, which provides, among other things, for Norfolk Southern and B&M to form Pan Am Southern pursuant to a Limited Liability Company Agreement of Pan Am Southern between Norfolk Southern and B&M, dated as of [], 2008 (the "LLC Agreement"); and

WHEREAS, the Transaction Agreement provides for B&M and the other Pan Am System Parties to sell in part, and contribute in part, certain railroad lines and trackage rights owned or operated generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the "Line", as more specifically defined in the Transaction Agreement) and certain other related assets to Pan Am Southern; and

WHEREAS, as contemplated by the Transaction Agreement, the Parties now wish to set forth the terms and conditions on which (i) the performance and oversight of Capital Projects and Mechanicville Projects (as hereinafter defined) will be allocated and (ii) Norfolk Southern will oversee the hiring of the operators of Pan Am Southern's intermodal facility in Ayer, MA, automotive facility in Ayer, MA (upon the expiration of the lease thereof to CSX Transportation, Inc.), automotive facility to be constructed in Sanvel and intermodal/automotive facility to be constructed in Mechanicville, NY (each a "Facility" and collectively the "Facilities"); and

WHEREAS, the Parties wish to have equal rights to observe the work performed in connection with the Capital Projects; and

WHEREAS, Norfolk Southern can use its remedies under the Master Norfolk Southern Joint Use Agreement (as hereinafter defined) to terminate the Facility Operating Agreements (as hereinafter defined) that are entered into pursuant to this Agreement.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally

Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry

(b) Capitalized Terms.

All capitalized terms shall have the defined meaning set forth below

“Agreement” shall have the meaning given to that term in the introductory paragraph.

“B&M” shall have the meaning given to that term in the Recitals.

“Capital Improvement Agreement” shall mean any agreement pursuant to which a third party contractor shall effect one or more Capital Projects for Pan Am Southern, which such agreement shall in all cases include the Capital Project Specifications applicable to the Capital Project.

“Capital Projects” shall mean those capital expenditures relating to the Line as approved in accordance with the LLC Agreement, other than a Mechanicville Project.

“Capital Project Specifications” shall mean the specifications and instructions applicable to a Capital Project or a Mechanicville Project, as approved by the CPC in accordance with the LLC Agreement.

“CPC” shall mean the Capital Project Committee of Pan Am Southern established pursuant to the LLC Agreement

“Construction Bid Process” shall have the meaning given to that term in Section 2(c)

“Delaware Courts” shall have the meaning given to that term in Section 11(c)(1).

“Dispute” shall have the meaning given to that term in Section 11(a).

“Effective Date” shall have the meaning given to that term in Section 8(a).

“Facility” and **“Facilities”** shall have the meaning given to those terms in the Recitals

“Facility Operating Agreement” shall have the meaning given to that term in Section 4(b).

“Indemnified Party” shall have the meaning given to that term in Section 6(a)

“Indemnifying Party” shall have the meaning given to that term in Section 6(a)

“JOC” shall mean the Joint Operating Committee of Pan Am Southern established pursuant to the LLC Agreement.

“JV Transaction Agreement” shall have the meaning given to that term in the LLC Agreement.

“Line” shall have the meaning given to that term in the Recitals

“LLC Agreement” shall have the meaning given to that term in the Recitals

“Master Norfolk Southern Joint Use Agreement” shall mean the Master Norfolk Southern Joint Use Agreement, dated as of the date hereof, by and among Pan Am Southern, Springfield Terminal and Norfolk Southern

“Mechanicville Bid Process” shall have the meaning given to that term in Section 2(d).

“Mechanicville Construction Agreement” shall have the meaning given to that term in Section 2(d)

“Mechanicville Project” shall mean a project related to the construction of an intermodal/automotive facility in Mechanicville, New York as approved in accordance with the LLC Agreement

“Norfolk Southern” shall have the meaning given to that term in the introductory paragraph.

“NS Entity” shall have the meaning given to that term in Section 2(b)

“NS Option Project” shall have the meaning given to that term in Section 2(b)

“NS Project” shall have the meaning given to that term in Section 2(b)

“Operator Bid Process” shall have the meaning given to that term in Section 4(b).

“Pan Am” shall have the meaning given to that term in the introductory paragraph

“Pan Am Entity” shall mean Pan Am or an affiliated company of Pan Am.

“Pan Am System Parties” shall have the meaning given to that term in the Recitals

“Party” and **“Parties”** shall have the meaning given to those terms in the introductory paragraph

“Pan Am Southern” shall have the meaning given to that term in the introductory paragraph

"Railroad Operating Agreement" shall mean the Railroad Operating Agreement, dated as of the date hereof, by and among Pan Am Southern, Pan Am, Norfolk Southern and Springfield Terminal, generally concerning the railroad operating and administrative services provided by Springfield Terminal for Pan Am Southern.

"Rules" shall have the meaning given to that term in Section 11(c)(11).

"Springfield Terminal" shall have the meaning given to that term in the introductory paragraph.

"ST Facility Operation" shall have the meaning given to such term in Section 4(a).

"ST Option Project" shall have the meaning given to such term in Section 2(a).

"ST Project" shall have the meaning given to such term in Section 2(a).

"Transaction Agreement" shall have the meaning given to that term in the Recitals.

(c) Construction of Certain Terms and Phrases.

Unless the context otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article" or "Section" refers to the specified Article or Section of this Agreement; (v) the terms "and" and "or" include the term "and/or" when the context is appropriate; (vi) the terms "include" or "including" also include the words "without limitation" when the context is appropriate. Whenever this Agreement refers to a number of days, such number shall refer to calendar days. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. All dollar amounts set forth herein are in United States currency. Whenever this Agreement refers to an Appendix, Exhibit or Schedule attached hereto, the Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference. References herein to any agreement or contract mean such agreement or contract as amended.

SECTION 2. CAPITAL PROJECT BID PROCESS

(a) To the extent that Springfield Terminal's collective bargaining agreements (subject to applicable law) would have, assuming the transaction contemplated by the Transaction Agreement had not occurred, required that Springfield Terminal employees perform certain services required in connection with a Capital Project or a Mechanicville Project (an "ST Option Project"), then Springfield Terminal shall perform such services unless it obtains a waiver, which Springfield Terminal may, but shall not be obligated to, pursue in its sole discretion, of such requirements under its collective bargaining agreements. Pan Am Southern shall give Springfield Terminal notice of each ST Option Project at least sixty (60) days prior to the anticipated commencement thereof, and Springfield Terminal shall have no less than thirty

(30) days within which to provide written notice to Pan Am Southern and Norfolk Southern to the effect that it will perform such ST Option Project or has obtained a waiver under its collective bargaining agreements as referred to above. If Springfield Terminal is to perform any such ST Option Project (an "ST Project"), its performance thereof shall be governed by the terms and conditions set forth in Appendix A

(b) To the extent that a Capital Project is not an ST Project (an "NS Option Project"), Norfolk Southern shall have the option, but not the obligation, to perform, either directly or through an affiliated company (an "NS Entity"), some or all of the services required in connection therewith. Pan Am Southern shall give Norfolk Southern notice of each NS Option Project within thirty (30) days following receipt of the notice from Springfield Terminal referred to in Section 2(a), and Norfolk Southern shall have fifteen (15) days within which to exercise its option to perform such NS Option Project by written notice to Pan Am Southern. If an NS Entity elects to perform any such NS Option Project (an "NS Project"), its performance thereof shall be governed by the terms and conditions set forth in Appendix A.

(c) To the extent that a Capital Project is not an ST Project or an NS Project, Springfield Terminal shall manage the bid process for the selection of one or more contractors to perform such Capital Projects pursuant to the procedures set forth in Appendix B (the "Construction Bid Process"). No NS Entity or Pan Am Entity shall be permitted to bid to perform such Capital Projects. Springfield Terminal shall determine a preliminary bid winner in accordance with the requirements of the Construction Bid Process and shall submit a related Capital Improvement Agreement between such preliminary bid winner and Pan Am Southern to the CPC for its consideration. Norfolk Southern and Pan Am shall cause their respective representatives on the CPC to approve any Capital Improvement Agreement submitted for its approval by Springfield Terminal hereunder unless Springfield Terminal shall have failed to comply with the requirements of this Section 2(c).

(d) Norfolk Southern shall develop all specifications and instructions for each Mechanicville Project. To the extent that a Mechanicville Project is not an ST Project, Norfolk Southern shall manage the bid process, pursuant to competitive bidding in accordance with Norfolk Southern's corporate procedures for similar bidding processes that it conducts on its own behalf, for the selection of one or more third party contractors to perform the Mechanicville Project (the "Mechanicville Bid Process"). No NS Entity or Pan Am Entity shall be permitted to bid to perform such Mechanicville Projects with the exception of the provision of materials for use in connection therewith. Norfolk Southern shall determine a preliminary bid winner in accordance with the Mechanicville Bid Process and shall submit one or more related agreements governing the construction projects to be performed by such contractors (a "Mechanicville Construction Agreement") to the CPC for its consideration. Unless Norfolk Southern shall have failed to comply with the Mechanicville Bid Process, Norfolk Southern and Pan Am shall cause their respective representatives on the CPC to approve each such Mechanicville Construction Agreement.

SECTION 3. CAPITAL PROJECT MANAGEMENT

(a) Each of the Parties shall have the equal right, at its own expense, to observe all aspects of the applicable third party contractor's performance of each Capital Project or Mechanicville Project to ensure compliance with the applicable Capital Improvement Agreement or Mechanicville Construction Agreement. Such right shall include without limitation the right to appoint qualified representatives to personally observe the third party contractor's day-to-day performance on-site at the work location. Pan Am Southern shall provide each of Springfield Terminal, Pan Am and Norfolk Southern with (i) such information as may be reasonably available to Pan Am Southern, (ii) site access at the relevant property of Pan Am Southern and (iii) such other cooperation, in each case as may be reasonably required to facilitate the exercise of the rights granted under this Section 3(a).

(b) With respect to Capital Projects where a third party is the contractor, Springfield Terminal shall be responsible for the oversight and direction of the project on behalf of Pan Am Southern to ensure compliance with the applicable Capital Improvement Agreement. Notwithstanding the foregoing, Norfolk Southern shall have the right to cause Springfield Terminal to provide specific direction to the third party contractor that is not inconsistent with the applicable Capital Improvement Agreement. To the extent that action by Pan Am Southern is deemed, by either Norfolk Southern or Springfield Terminal, necessary or desirable to enforce Pan Am Southern's rights with respect to any Capital Project where a third party is the contractor, Springfield Terminal shall have the affirmative obligation to take such action on behalf of Pan Am Southern and Norfolk Southern shall have the right, but not the affirmative obligation, to cause Springfield Terminal to take such action. Springfield Terminal acknowledges that it may not abrogate its affirmative obligations under the preceding sentence by relying on the right of Norfolk Southern to cause it to take such action. Springfield Terminal shall be compensated for its performance under this Section 3(b) under the terms of the Railroad Operating Agreement.

(c) Norfolk Southern shall be responsible for the oversight and direction of each Mechanicville Project on behalf of Pan Am Southern to ensure compliance with the applicable Mechanicville Construction Agreement. To the extent that action by Pan Am Southern is deemed, by either Norfolk Southern or Springfield Terminal, necessary or desirable to enforce Pan Am Southern's rights with respect to any Mechanicville Project, Norfolk Southern shall have the affirmative obligation to take such action on behalf of Pan Am Southern and Springfield Terminal shall have the right, but not the affirmative obligation, to cause Norfolk Southern to take such action. Norfolk Southern acknowledges that it may not abrogate its affirmative obligations under the preceding sentence by relying on the right of Springfield Terminal to cause it to take such action.

(d) Norfolk Southern shall have the right to observe and inspect any work done in furtherance of ST Projects on behalf of Pan Am Southern to ensure compliance with Appendix A. To the extent that action by Pan Am Southern is deemed necessary or desirable by Norfolk Southern to enforce Pan Am Southern's rights with respect to any such project, Norfolk Southern shall have the right, but not the affirmative obligation, to take such action on behalf of Pan Am Southern.

(e) Springfield Terminal shall have the right to observe and inspect any work done in furtherance of NS Projects on behalf of Pan Am Southern to ensure compliance with Appendix A. To the extent that action by Pan Am Southern is deemed necessary or desirable by Springfield Terminal to enforce Pan Am Southern's rights with respect to any such project, Springfield Terminal shall have the right, but not the affirmative obligation, to take such action on behalf of Pan Am Southern.

(f) A copy of any notice delivered by any Party with respect to a Capital Project or a Mechanicville Project shall be sent contemporaneously to each of the other Parties.

SECTION 4. FACILITY OPERATION BID PROCESS

(a) To the extent that Springfield Terminal's collective bargaining agreements would have, assuming the transaction contemplated by the Transaction Agreement had not occurred, required that Springfield Terminal employees perform certain services required in connection with the operation of the Facilities (such as switching, security, maintenance and other similar services), Springfield Terminal shall perform such services unless it obtains a waiver which Springfield Terminal may, but shall not be obligated to, pursue in its sole discretion, under its collective bargaining agreements, (such services as Springfield Terminal elects to perform the "ST Facility Operation") Springfield Terminal's performance of the ST Facility Operation shall be governed by the terms and conditions of the Railroad Operating Agreement.

(b) Except with respect to the ST Facility Operation, Norfolk Southern shall manage the bid process for the selection of the initial operator and each subsequent operator of each Facility pursuant to competitive bidding in accordance with its corporate procedures for similar bidding processes that it conducts on its own behalf (the "Operator Bid Process"). No NS Entity or Pan Am Entity shall be permitted to bid to become the operator of any Facility. After evaluating all bids submitted by prospective operators of a Facility pursuant to the Operator Bid Process, Norfolk Southern shall select the winning bidder and present a related agreement governing the operation of such Facility (a "Facility Operating Agreement") to the JOC for approval on behalf of Pan Am Southern. Norfolk Southern and Pan Am shall cause their respective representatives on the JOC to approve any such Facility Operating Agreement unless Norfolk Southern shall have failed to comply with the Operator Bid Process.

(c) Each Facility Operating Agreement shall include, without limitation, the following: (i) a requirement that the operator of the respective Facility submit invoices to Pan Am Southern and to each user of such Facility, with the invoices that are sent to users reflecting a pro rata allocation of the Facility operator's fees in accordance with the usage of such Facility by each such user and (ii) a provision stipulating that Pan Am Southern be required to pay all such invoices, but that payment received from Facility users shall be applied toward satisfaction of Pan Am Southern's payment obligation.

SECTION 5. OVERSIGHT BY PAN AM SOUTHERN

Pan Am Southern (through the CPC as to Sections 2 and 3 and through the JOC as to Section 4), shall have the right, at its own expense, to oversee, observe and review all aspects of

the performance of Springfield Terminal and Norfolk Southern under Sections 2, 3 and 4 hereof, to ensure compliance with the terms thereof. Such right shall be exercised through reasonable means and shall include, without limitation, the right to audit, at reasonable intervals, locations and times, the related records of Springfield Terminal and Norfolk Southern pertaining to such performance.

SECTION 6. INDEMNIFICATION FOR THIRD PARTY CONSTRUCTION OVERSIGHT

(a) Each of the Parties (as applicable, the "Indemnifying Party") shall indemnify, defend and hold harmless the other Parties and their respective affiliated and subsidiary companies and its and their directors, officers, employees and agents (as applicable, the "Indemnified Parties") from and against any and all claims, demands, suits, judgments, liability, damages, losses, costs (including reasonable attorneys' fees) and expenses, arising from or in connection with:

(i) any alleged loss of life of or personal injury to the officers, employees or agents of the Indemnifying Party or damage to or loss of the property of the Indemnifying Party or its officers, employees or agents, that occurred during and in the course of the observance, oversight or direction of third party contractors under Section 3 hereof, unless such injury, death, loss or damage was caused solely by the negligence or intentional misconduct of one or more of the Indemnified Parties; provided, however, that if under the law applicable to enforcement of this Agreement an agreement to indemnify a party against its own negligence is invalid, then the Indemnifying Party's obligation to indemnify the Indemnified Party shall be reduced in proportion to the negligence of the Indemnified Party, if any, that proximately contributed to such loss of life, personal injury or property loss or damage, and

(ii) except to the extent governed by subsection (a)(i) above, any alleged loss of life of or personal injury to any person or the loss of or damage to any property that occurred during and in the course of the observance, oversight or direction of third party contractors under Section 3 hereof, to the extent caused by the Indemnifying Party's negligence or intentional misconduct

(b) The indemnification obligations set forth in this Section 6 shall be the exclusive remedy of the Parties against each other with respect to personal injuries (including death) and/or property damage or loss to whomsoever or whatsoever that arise from or relate to the observance, oversight or direction of third party contractors under Section 3 hereof

SECTION 7. FORCE MAJEURE

The obligations of Springfield Terminal and Norfolk Southern under this Agreement shall be subject to force majeure (consisting of flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, or governmental laws, orders or regulations, and

other causes or circumstances beyond the control of Springfield Terminal or Norfolk Southern, as the case may be), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations. In the event that force majeure impairs Springfield Terminal's or Norfolk Southern's ability to fulfill its obligations under this Agreement, Springfield Terminal or Norfolk Southern, as the case may be, shall take all commercially reasonable measures to restore performance of its obligations in a timely manner.

SECTION 8. TERM AND TERMINATION

(a) This Agreement shall become effective following the latest date of: (a) the date first written above; (b) receipt of any required regulatory approvals or exemptions, and (c) the expiration of any time periods required by the issuance of labor notices by the Parties, should such labor notices be required (the "Effective Date"). The Parties shall determine the Effective Date through an exchange of written correspondence.

(b) This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement; provided that this Agreement automatically shall terminate upon any termination of the Railroad Operating Agreement.

(c) Termination of this Agreement shall not relieve or release any Party from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof.

SECTION 9. SUCCESSORS AND ASSIGNS.

(a) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. No Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Parties, which consent may be withheld at the discretion of such other Parties.

(b) In the event of a sale of substantially all of the assets or business of a Party, or the merger or consolidation of such Party into or with a firm or corporation not controlled by such Party, such Party may, without the prior consent of the other Parties, assign this Agreement to such firm or corporation acquiring substantially all of its assets or business or merging or consolidating with it; provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of such Party under this Agreement that existed prior to such assignment.

SECTION 10. NOTICE

Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

(a) If to Pan Am Southern:

Chairman
Pan Am Southern LLC
c/o Pan Am Railways
Iron Horse Park
North Billerica, MA 01862-1692

with a copy to:

Vice President Law
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

(b) If to Springfield Terminal

David A. Fink
President
Springfield Terminal Railway Company
c/o Pan Am Railways
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

with a copy to:

Robert Culliford
Vice President Law
Pan Am Systems
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

(c) If to Pan Am

David A. Fink
President
Springfield Terminal Railway Company
c/o Pan Am Railways
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

with a copy to.

Robert Culliford
Vice President Law
Pan Am Systems
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

(d) If to Norfolk Southern:

Mike R. McClellan
Vice President – Intermodal and
Automotive Marketing
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

with a copy to:

Vice President Law
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

Any Party may provide notice of changes in its address listed above to the other Party by personal service or certified mail.

SECTION 11. DISPUTE RESOLUTION

(a) Any dispute, controversy or claim between or among the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be referred to the involved Parties for resolution. Except as otherwise provided in the LLC Agreement, Disputes involving Pan Am Southern shall be handled for Pan Am Southern by the JOC and, if necessary, may be escalated by the JOC to the Management Committee, as defined in the LLC Agreement.

(b) Any Dispute not resolved within sixty (60) days after receipt by a Party of written notice of such Dispute shall be submitted by any Party (by the Management Committee in the case of Pan Am Southern) for formal dispute resolution pursuant to Section 11(c)

(c) Formal Dispute Resolution:

(i) Submission to Jurisdiction. Each of the Parties hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of

Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 11(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (B) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof.

(ii) Dispute Resolution Each of the Parties stipulates and agrees that any Dispute that is not resolved pursuant to Sections 11(a) shall be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "Rules"), under the following terms and conditions:

(A) Selection of Arbitrator A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator.

(B) Conduct of Arbitration The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement.

(C) Replacement of Arbitrator Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator.

(D) Findings and Conclusions The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(E) Time is of the Essence The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding.

(F) Temporary Equitable Relief By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or

preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect.

(G) Consolidation The Parties are committed to the prompt and efficient resolution of disputes. Accordingly, if more than one dispute arise under this Agreement and/or any JV Transaction Agreement, such disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to disputes under this Agreement and/or any JV Transaction Agreement, then any Party may request that any arbitration or any new dispute arising under this Agreement or the JV Agreement be consolidated into any prior arbitration. The new dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration; (y) no Party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The Parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(H) Discovery. Recognizing the express desire of the parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(I) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 11(c) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

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

SECTION 12. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or in connection with an audit by the Internal Revenue Service or other tax authority, or as may be necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this

Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder shall be kept confidential and shall not be disclosed to any person other than its members, officers, employees, independent auditors, and attorneys, without the prior written approval of all affected Parties. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

SECTION 13. MISCELLANEOUS PROVISIONS

(a) This Agreement and each and every provision hereof is for the exclusive benefit of the Parties. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties.

(b) This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties.

(c) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by all Parties.

(d) The division of this Agreement into articles, sections, and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to articles, sections or subsections are to articles, sections or subsections of this Agreement.

(e) This Agreement is the result of mutual negotiations between the Parties, none of whom shall be considered the drafter for purposes of contract construction.

(f) No consent or waiver, expressed or implied, by a Party of any breach or default by any other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(g) If any provision of this Agreement or the application thereof to any Party or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the original terms of this Agreement in all material respects.

(h) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between or among any of the Parties. Springfield Terminal is an independent contractor and shall not be deemed to be an employee or agent of any of the Parties by reason of its obligations under this Agreement.

(i) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware, without regard to application of the choice of law principles thereof

(j) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed
as of the date first above written

WITNESS:

PAN AM SOUTHERN LLC

By _____

As to Pan Am Southern

WITNESS:

SPRINGFIELD TERMINAL RAILWAY
COMPANY

As to Springfield Terminal

By: _____

WITNESS:

PAN AM RAILWAYS, INC.

As to Pan Am

By: _____

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

As to Norfolk Southern

By: _____

INDEX TO APPENDICES

APPENDIX A – CAPITAL PROJECT PERFORMANCE STANDARDS

APPENDIX B -- CONSTRUCTION BID PROCESS

APPENDIX A

CAPITAL PROJECT PERFORMANCE STANDARDS

These Capital Project Performance Standards apply to the performance of ST Projects by Springfield Terminal and to the performance of NS Projects by any NS Entity. As used in this Appendix A, the following terms shall have the following meanings

“Contractor” shall mean, as applicable, Springfield Terminal or the relevant NS Entity performing the applicable Project.

“Contractor Engineer” shall mean a competent and experienced engineering officer (including his or her appointed representatives) of Contractor who shall be appointed by Contractor to set a construction schedule, provide general oversight and coordination of all Work and perform all other responsibilities given thereto with respect to the applicable Project under this Appendix A.

“Indemnified Parties” shall mean and include, collectively and singularly, Pan Am Southern and the Overseer, affiliates and subsidiaries of Pan Am Southern and the Overseer, and its and their officers, directors, employees and agents

“Overseer” shall mean, as applicable, Springfield Terminal or Norfolk Southern in the performance of their respective obligations under Sections 3(c) and 3(d) of the Agreement, as applicable

“Overseer Engineer” shall mean an engineering officer (including his or her appointed representatives) of the Overseer who shall be appointed by the Overseer to perform all responsibilities given thereto with respect to the applicable Project under this Appendix A.

“Project” shall mean the applicable ST Project or NS Project to be performed hereunder.

“Work” shall mean the furnishing of all superintendence, labor, equipment, tools, supplies, signs, transportation and materials and the performance of all services necessary or appropriate to complete the Project.

All capitalized terms used but not otherwise defined in this Appendix A shall have the meaning given to such terms in the Capital Projects and Facility Management Agreement to which this Appendix A is attached. Any deviation from the provisions of this Appendix A shall require the approval of the CPC.

1. **Performance.** Contractor shall give constant and efficient attention to the faithful and diligent prosecution of the Work in strict accordance with the Capital Project Specifications applicable to the Project. Contractor shall, whether or not specified in the Capital Project Specifications, furnish all additional material and perform all additional services reasonably necessary or appropriate to accommodate the occurrence or discovery of unanticipated conditions in connection with the completion of the applicable Project; provided that Contractor is given an opportunity to revise its cost estimates under Section 2 hereof in response to any such

change.. Contractor shall cure any failure to comply with the applicable Capital Project Specifications at Contractor's sole cost and expense without compensation hereunder

2. Costs and Estimates Contractor shall perform the Work at cost plus allowable cost additives intended to approximate internal costs necessary to support the Work, it being acknowledged and understood that Contractor shall not be entitled to profit from the performance of the Work except with respect to materials sourced directly from an affiliate of Contractor. Allowable additives specifically exclude direct costs that would have been incurred by Contractor even if Contractor were not engaged to perform the Work, but do include applicable overheads; provided, however that, where Springfield Terminal is the Contractor, applicable overheads shall not include those for which Springfield Terminal is already compensated under the Railroad Operating Agreement, the express intent of the parties being not to double count any such overheads. Notwithstanding anything to the contrary herein, Contractor shall not be entitled to any compensation for any matter described herein as being at Contractor's sole cost and expense or otherwise payable by Contractor, nor shall Contractor be entitled to reimbursement for any amounts payable under its indemnification obligations hereunder. Together with its written notice to Pan Am Southern indicating that it will perform the Work, Contractor shall submit to Pan Am Southern and the Overseer (a) an estimated schedule for the completion of the Work, including the total time required to complete the Work, and (b) an estimated total cost to complete the Work (including allowable additives), itemized by category including a break-out of material costs separate from labor costs. Contractor shall submit quarterly updates to the foregoing estimates to the Overseer and, before incurring any expense that is inconsistent with the most recently submitted estimates, promptly shall submit revised estimates to the Overseer for approval by Pan Am Southern.

3. Changes. If Contractor determines that a deviation from the applicable Capital Project Specifications is necessary in order to complete the Project, Contractor shall promptly notify Pan Am Southern and the Overseer thereof. The CPC shall then promptly review the details of the requested deviation and, if appropriate, revise the Capital Project Specifications accordingly. Pan Am Southern shall have the right to alter or change the Capital Project Specifications at any time, either before or after commencement of the Work; provided that Contractor is given an opportunity to revise its cost estimates under Section 2 hereof in response to any such change.

4. Workmanship and Material Standards All materials and workmanship of every description furnished by Contractor shall be of the quality specified in the Capital Project Specifications. Contractor shall replace any materials or workmanship failing to comply with the Capital Project Specifications at Contractor's sole cost and expense without compensation hereunder

5. Procurement of Materials for Springfield Terminal Notwithstanding anything to the contrary in this Appendix A, if Springfield Terminal is the Contractor, Norfolk Southern may elect to procure any and all materials necessary for the completion of the Project if it can procure such materials at a lower cost than indicated in Springfield Terminal's cost estimates delivered pursuant to Section 2 of this Appendix A. Risk of loss therefor shall transfer to Springfield Terminal when notice is given by Norfolk Southern that the materials have been placed for unloading or are otherwise available for Springfield Terminal's use. Springfield Terminal shall

unload such materials. Should the materials require further transportation from such delivery point to the work site, such further transportation, and any reloading and subsequent unloading arising out of such further transportation, shall be performed or arranged for by Springfield Terminal; provided that Contractor is given an opportunity to revise its cost estimates under Section 2 hereof in response to any such change..

6. Period for Completion Contractor shall commence the Work on the starting date fixed in the notice from Pan Am Southern delivered pursuant to Section 2(a) or 2(b) of the Agreement, as applicable, and shall complete the Work in strict accordance with the schedule of dates specified in the applicable Capital Project Specifications. Time is of the essence and all applicable dates, deadlines, time limits and schedules must be strictly followed and met. The starting times and hours of the performance of the Work by Contractor's employees may be varied to meet Pan Am Southern's operating and administrative requirements. Night work may be required to complete the Work on schedule. If night work is required to complete the Work on schedule, Contractor shall provide ample and suitable lighting. Contractor shall not be entitled to additional compensation, except for overtime, for work at night, during legal holidays, or at other than regular business or construction hours.

7. Risk of Loss Until completion and acceptance of the Project, (a) the Work shall be performed at the sole risk and responsibility of Contractor in every respect and (b) Contractor shall be responsible for and assumes all risk of loss in connection with material furnished or delivered in connection with the Work. Contractor shall be responsible for the safe and suitable storage of all material at the Work site. Contractor shall receive, tag, warehouse, properly store and distribute all equipment and materials and shall account for all equipment and materials, including equipment and materials furnished or procured by other persons or entities for use by Contractor in connection with the Work. Storage locations and method of storage shall in no way interfere with Pan Am Southern's railroad operations. Pan Am Southern may designate material storage locations and require Contractor to move material from storage locations, provided that designation of material storage locations by Pan Am Southern shall in no way effect the risk of loss applicable thereto.

8. Use of Property Contractor shall have the right and license to enter upon Pan Am Southern's premises to the extent necessary to perform the Work. Before entering upon or making use of any private property in connection with the Work, Contractor shall ensure that Pan Am Southern has obtained the written permission of the owner of such property for such use. Pan Am Southern shall pay any amounts required to be paid to gain access to such properties; provided that Contractor shall be responsible for and shall indemnify Pan Am Southern from and against any access to or use of private property without first ensuring that Pan Am Southern has obtained permission for such access and use. If it shall become necessary or desirable to acquire additional property in connection with the Project, Contractor shall notify Pan Am Southern of such need or desire for consideration by the CPC. Any such acquisition of additional property shall be made, if at all, by Pan Am Southern for Pan Am Southern's benefit.

9. Cooperation with Construction Oversight Contractor shall cooperate with the other Parties to permit the Construction Oversight and shall cooperate with the Overseer and the Overseer Engineer to permit the performance of their obligations with respect to the Project.

Contractor shall designate a Contractor Engineer as its principal contact person for representatives of the Parties, including the Overseer Engineer, with respect to matters related to each Project.

10. Ecology and Hazardous Commodities

(a) In its use and occupancy of Pan Am Southern's premises under this Appendix A, Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances controlling air, water, noise, solid wastes and other pollution or relating to the storage, transport, release or disposal of hazardous materials, substances or waste. Contractor shall, at its own expense, make all modifications, repairs or additions to Contractor's equipment and shall install and bear the expense of any and all structures, devices or equipment that may be required under such laws, rules, regulations or ordinances. Contractor shall furnish Pan Am Southern written notice of any and all releases of hazardous wastes or substances whenever such releases are required to be reported to any federal, state or local authority. Such written notice shall identify the substance released, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, and shall further certify that no contamination remains. Contractor shall also provide Pan Am Southern with copies of any and all reports made to any governmental agency that relate to the use or occupancy of Pan Am Southern's premises.

(b) Regardless of acquiescence by Pan Am Southern, Contractor shall indemnify and hold harmless the Indemnified Parties from and against all liability, fines or penalties resulting from violation of subsection (a) above and shall reimburse the Indemnified Parties for all costs and expenses incurred thereby in eliminating or remedying such violations unless such liability, fines or penalties arise from the negligence of another Party. Regardless of any acquiescence by Pan Am Southern, Contractor also shall reimburse and hold harmless the Indemnified Parties from and against any and all costs, expenses, attorneys' fees and all penalties or civil judgments obtained against the Indemnified Parties as a result of Contractor's use or release onto the ground or into the water or air of any hazardous substance or waste from or upon the premises of Pan Am Southern or any other person or entity, unless resulting from the negligence of another Party. Nothing in this Section 10 shall in any way limit the more general indemnification provisions set forth in Section 26 of this Appendix A.

11. Protection of Pan Am Southern Property, No Interference with Train Operations.

(a) Contractor shall use special care and vigilance to avoid damage to trains, tracks or other facilities of Pan Am Southern and shall conduct its work so as not to interfere with or delay the movement of trains or other operations of Pan Am Southern. Contractor shall not proceed with any work that might endanger or interfere with the movement of trains or operations or other facilities until Contractor submits a proposed method thereof to Pan Am Southern, provided that such approval shall not relieve Contractor from liability for damages caused by such method. Contractor must exercise care when performing the Work near, under or over tracks and structures carrying railway traffic. If trains, tracks or other facilities are or may become endangered by the operations of Contractor, Contractor shall immediately do such work as may be necessary to restore safety and, upon failure of Contractor to carry out such orders

immediately, Pan Am Southern may take whatever steps are necessary to restore safe conditions. The cost and expense to Pan Am Southern of restoring safe conditions or of any damages to trains, tracks or other facilities caused by Contractor's operations shall be charged against and paid by Contractor or may be deducted from any amounts due, or that become due, to Contractor under this Appendix A. The cost of furnishing trainmen or flagmen deemed necessary by Pan Am Southern for continuity and safety of train operations shall be borne by Pan Am Southern; provided, however, that if such protection is required because of Contractor's failure to comply with the applicable Capital Project Specifications, Contractor shall bear the cost of furnishing such protection

(b) Contractor shall not be permitted to transport material along or between Pan Am Southern's tracks except as authorized by Pan Am Southern. No blasting close to or near operated tracks, tunnels, structures, wires, pole lines, and other facilities of Pan Am Southern or of tenants on the right of way or property of Pan Am Southern shall be permitted until authorized by Pan Am Southern and proper precautions have been taken and arrangements made with Pan Am Southern to protect such property and to quickly clear all debris from the track. Blasted material must be controlled and smothered wherever such material may endanger tracks, tunnels, structures, wires, pole lines or other property

12. Safety. Except as provided in Section 11 with respect to train operations, Contractor shall furnish and maintain all requisite watchmen, flagmen, lights, barricades, safeguards, fences and other facilities for the protection of the Work and the safety of the general public and of employees of Pan Am Southern, the Overseer and Contractor. Contractor shall exercise precaution at all times for protection of persons and property. Contractor shall observe the safety provisions of applicable laws and building and construction codes. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the most recent edition of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are consistent with applicable law or regulation

13. Temporary Roads, Structures and Other Changes. Contractor shall construct and maintain all roads necessary for its use in the Work. No separate compensation shall be due to Contractor for any temporary walkways, scaffolds, roads, bridges, trestles, tracks, structures or detours that Contractor may construct for its own use to carry on or facilitate the Work. Whenever it is necessary for material to be transported across operated track, tracks, or structures, the location and character of the crossing must be approved by Pan Am Southern. The material and labor required to install and maintain such crossing shall be furnished, installed and maintained by Contractor. Such crossing shall be operated and protected in accordance with all safety requirements, and shall be removed by Contractor when it has served its intended purpose. If, in the conduct of the Work, any temporary changes or alterations in pipelines, sewers, drains, conduits, fences, tracks, power or communication lines, or other facilities are necessary, either for the convenience of Contractor or for the performance of the Work, the responsibility for making such changes shall rest with Contractor unless otherwise provided elsewhere in this Appendix A.

14 Inspection. All Work, including all materials, tools and supplies, must be at all times open to inspection, acceptance or rejection by the Overseer at the site of the Work or at plant locations removed from the site of the Work. Contractor must provide reasonable and necessary facilities for such inspection, including whatever samples may be required for making tests and examinations, and all labor and tools required for examining material and workmanship.

15. Order of Completion. Contractor shall complete any portion or portions of the Work in such order and according to the schedule specified in the applicable Capital Project Specifications. Pan Am Southern shall have the right to take possession of and use any completed or partially completed portions of the Work, even though the time for completing the entire Work or such portions thereof may not have expired, but such taking possession and use shall not be deemed an acceptance of the Work so taken or used or any part thereof. If such possession and prior use delays the Work, Contractor shall be entitled to a corresponding extension of time.

16 Contiguous Work. Wherever work being performed by Pan Am Southern forces or by other contractors is contiguous to the Work related to a Project, the respective rights of the various interests involved shall be established by Pan Am Southern.

17 Project Termination. Contractor may terminate its obligation to perform a Project by written notice to Pan Am Southern provided that it has secured a waiver of the contractual obligations referred to in Section 2(a) of the Agreement. Pan Am Southern shall have the right to terminate a Project at any time upon written notice to Contractor.

18. Removal of Equipment. Upon completion of the Work, or in case of termination of a Project before completion for any cause whatever, Contractor shall promptly remove all of its equipment, materials, tools and supplies from the premises of Pan Am Southern and shall promptly clean up all premises occupied by Contractor in connection with performing the Work and leave such premises in a neat and orderly condition. If Contractor fails to do so within five (5) days after notice from Pan Am Southern, Pan Am Southern shall have the right to remove such equipment, materials, tools and supplies at the expense of Contractor.

19. Sales and Use Taxes. Unless otherwise specified, Contractor shall be responsible for and pay all sales and use taxes properly assessed, under any federal, state or local law in effect during the term of this Appendix A, against any materials, tools, supplies, services and equipment furnished directly by Contractor and used in carrying out the Work.

20. Monthly Invoices. Except as otherwise provided, payments for the Work shall be made monthly as the Work progresses. Contractor shall submit to Pan Am Southern an invoice by the tenth day of each month for all amounts payable to Contractor hereunder in connection with the Project with respect to the calendar month preceding such invoice. So long as the Work is performed in accordance with the provisions of this Appendix A, and with such progress as may be satisfactory to Pan Am Southern, the undisputed amount of each such invoice, less a retained amount of five percent (5%), shall be paid to Contractor promptly thereafter. Work and material included in such monthly invoices shall be the property of Pan Am Southern. No payment made

under this Appendix A shall be construed as an acceptance of defective work or improper materials.

21. **Final Acceptance.** The Work shall be inspected for acceptance by Pan Am Southern promptly upon receipt of written notice from Contractor that the Work has been completed and is ready for such inspection; provided, however, that Pan Am Southern shall not be obligated to accept any part or parts of the Work until the Work as a whole shall have been completed. Notwithstanding anything to the contrary in this Appendix A, (a) Contractor shall not be relieved by any such acceptance of any unperformed obligation that shall have accrued under this Appendix A prior to such acceptance and (b) acceptance by Pan Am Southern of all or any part of the Work shall not constitute any waiver or relinquishment of any warranty, right or remedy with respect to defects not apparent or discoverable upon reasonable inspection

22. **Final Invoice** Upon acceptance of the Work in accordance with Section 21 above, Contractor shall submit a final invoice for all consideration remaining payable under this Appendix A. The undisputed amount of such invoice shall be paid to Contractor promptly thereafter, including all amounts retained pursuant to Section 20 above.

23. **Charges Against Contractor** Pan Am Southern shall have the right to apply any sums due or to become due to Contractor under this Appendix A in payment of any liabilities of Contractor, or of any of Contractor's permitted subcontractors, to Pan Am Southern for freight charges, rental of equipment, furnishing labor, materials or supplies, or for any other charges originating from or in connection with this Appendix A.

24. **Withholding of Payment** Before any payment is made under this Appendix A, if requested by Pan Am Southern, Contractor shall furnish satisfactory evidence, including but not limited to final releases, waivers of liens and contractor/subcontractor affidavits, that (a) all payrolls and other obligations outstanding for labor, bills for materials and other indebtedness in connection with the Work ("Indebtedness") have been paid, (b) all liens, claims, demands or suits for labor performed or materials or supplies furnished in connection with the Work ("Liens") have been released, dismissed or satisfied and (c) any other claims arising out of or in connection with Contractor's performance under this Appendix A made against Pan Am Southern by any person other than Contractor ("Other Claims") have been released, dismissed or satisfied. Pan Am Southern may withhold from any payment otherwise required under this Appendix A such sums as Pan Am Southern may deem ample to protect it against and assure payment of any Indebtedness, Liens and Other Claims until it receives adequate assurance of the payment, release, dismissal or satisfaction thereof. Alternatively, Pan Am Southern may apply such sums in such manner as Pan Am Southern may deem proper for such protection and assurance. Such application shall be deemed payments for Contractor's account.

25. **Daily Reports and Accounting Information** Contractor shall furnish daily or other periodic statements of labor, material and equipment as to each item of Work performed, showing hours worked and rates for the various classes of labor. Upon completion of the Work, Contractor shall furnish to Pan Am Southern a complete list of unit quantities, unit costs and such other information as may be required by Pan Am Southern to comply with its accounting

requirements If requested, Contractor shall furnish Pan Am Southern "as built" plans of the Work.

26 Indemnification.

Contractor shall indemnify and hold harmless the Indemnified Parties from and against any and all liability, damages, claims, suits, judgments, costs and expenses (including, but not limited to, litigation costs, investigation costs, reasonable attorney fees, environmental clean-up costs), fines, penalties and losses arising from or in connection with:

(a) (i) any alleged loss of life of or personal injury to the officers, employees or agents of Contractor or damage to or loss of the property of Contractor, its officers, employees or agents, arising from, incident to or occurring in connection with the performance by Contractor of the Work or the presence of the officers, employees or agents of Contractor on the property of Pan Am Southern, except to the extent that such loss of life, personal injury or property loss or damage was caused by the negligence or intentional misconduct of the Overseer during and in the course of providing oversight hereunder; provided, however, that if, under the law applicable to enforcement of this Appendix A, an agreement to indemnify a party against its own negligence is invalid, then in that event Contractor's obligation to indemnify the Indemnified Parties under this Section shall be reduced in proportion to the negligence or intentional misconduct, if any, of the Indemnified Parties that proximately contributed to such loss of life, personal injury or property loss or damage:

(ii) except with respect to persons and property covered by subsection (a)(i) above, any alleged loss of life of or personal injury to any person or the loss of or damage to any property arising from, incident to or in connection with the negligent acts or omissions or intentional misconduct of Contractor, except to the extent that the loss of life or personal injury or property loss or damage was caused by the negligent acts or omissions or intentional misconduct of the Overseer during and in the course of providing oversight hereunder

(b) any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) that results in whole or in part, directly or indirectly, from the activities of Contractor or its officers, agents, employees or subcontractors related in any way to this Appendix A or from any other act or omission of Contractor, its officers, agents, employees or subcontractors contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Pan Am Southern without actual knowledge that it might violate any such law, statute, code, ordinance or regulation.

The Parties acknowledge that the Overseer shall not have any liability to any other Party for any loss of life of or personal injury to any person whomsoever or loss of or damage to any property whatsoever alleged to have occurred as a result of, but after, the performance of its obligations as the Overseer under this Appendix A.

27. Compliance With Laws. Contractor shall comply with all laws, statutes, codes, ordinances and regulations of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) in any way relating to the Work. Without limiting the foregoing, Contractor's employees shall use appropriate personal protective equipment whenever they are exposed to one or more potentially harmful airborne contaminants, such as dust, fumes, mists, sprays, gases or vapors in excess of regulatory permissible exposure limits.

28. Permits Contractor shall procure, at Contractor's expense and in a timely manner, all permits, licenses, surveys, inspections, certificates and authorizations, of any description, that may be necessary for the performance and completion of the Work as required by this Appendix A. Contractor shall furnish the Overseer Engineer all certificates of inspection for any part of the Work for which a certificate may be required.

29. Liens If the Work or any part of Pan Am Southern's premises becomes subject to any lien or encumbrance chargeable to or through Contractor, Contractor shall immediately cause such lien or encumbrance to be discharged and released of record without cost to Pan Am Southern

30. Independent Contractor Contractor shall be and remain an original and independent party hereunder, and all matters to be performed by Contractor shall be its own separate business, under its management, supervision and direction Contractor shall employ, pay from his own funds and discharge all persons engaged in the performance of the Work, and all such persons shall be and remain the sole employees of Contractor

31. Subcontractors. Contractor shall not be permitted to subcontract out any of the Work without the express written consent of Pan Am Southern.

32. Records and Audits During any Project and for three years following the completion of each Project, Pan Am Southern and the Overseer, through their duly authorized representatives, shall be permitted access, within a reasonable time after request, to Contractor's books, records, accounts and other related documentation, pertaining to any Work performed by Contractor under this Appendix A for the purpose of auditing and verifying the Work, the cost of the Work and/or any other charges or payments billed hereunder.

33 Applicability of Agreement Provisions. The provisions of Sections 7 through 13 of the Agreement shall apply to this Appendix A as if fully set forth herein.

APPENDIX B

CONSTRUCTION BID PROCESS

All capitalized term used but not otherwise defined in this Appendix B shall have the meaning given to such terms in the Capital Projects and Facility Management Agreement to which this Appendix B is attached. Any deviation from the provisions of this Appendix B shall require the approval of the CPC

1. Competitive Bidding

Competitive bids shall be solicited from construction firms that are qualified to perform the work and capable of securing the necessary bonds to complete the Capital Project. The request for proposals utilized by Springfield Terminal shall allow for a fair comparison of all bids submitted. All bidders shall be given an equal opportunity to participate in the bidding process, including

- Where appropriate for the type work to be performed, all bidders shall be given at least 10 business days' notice of and shall be invited to attend any pre-bid meetings with potential bidders where the particular Capital Project is to be discussed
- All bidders shall be given at least 5 business days following the pre-bid meeting to respond to the bid solicitation.
- For projects that do not require a pre-bid meeting, all bidders shall be given at least 10 business days to respond to the bid solicitation.
- All bidders shall be provided copies of (i) the applicable Capital Project Specifications and (ii) the form of Capital Improvement Agreement that will govern the work (the "Form Agreement"), all of which shall be the same for each bidder and shall be given to each bidder at approximately the same time.
- When technical clarifications are requested by a bidder during the bid process, and the response by Springfield Terminal could potentially affect the bid in a significant way, such information will be provided to all registered bidders.

2. Bid Requirements

In order for a bidder's bid to be considered for selection, the bid must.

- be submitted by the bidding deadline;
- include proposed changes, if any, to the Form Agreement; and
- comply with all Capital Project Specifications applicable to the Capital Project

3. Contractor Qualification

All bidders must include performance and payment bonds, must have adequate insurance and Springfield Terminal shall check each such bidder's references and obtain a Dun & Bradstreet report thereon. Contractors must have all licenses, permits and other approvals required for the performance of the work on the related Capital Project and must submit evidence thereof. Before awarding any bid to any bidder, Springfield Terminal shall ensure that such bidder is not on Norfolk Southern's restricted vendor list

4. Awarding of Contracts

Contracts shall be awarded to the bidder.

- offering the most cost effective proposal taking into account, among other things, itemized unit costs and total bid cost, as well as the out-of-pocket and lost opportunity costs to Polaris associated with the time required to complete the project as proposed;
- meeting all of the requirements set forth in Sections 2 and 3 above; and
- submitting a bid without significant changes to the liabilities and obligations imposed by the Form Agreement

5. Change Orders

Once a contract has been entered into with the winning bidder, Springfield Terminal is not authorized to approve any changes to the price or any significant changes to the other requirements applicable to a Capital Project without first obtaining the approval of the CPC. Once approved by the CPC, all approved changes shall be documented in a writing signed by Polaris and the contractor

**MASTER NORFOLK SOUTHERN
JOINT USE AGREEMENT**

THIS AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 2008, by and among Pan Am Southern LLC, a Delaware limited liability Company ("Pan Am Southern"), Springfield Terminal Railway Company ("Springfield Terminal"), a subsidiary of Pan Am Railways, Inc. ("Pan Am"), and Norfolk Southern Railway Company, a Virginia corporation ("Norfolk Southern"). Each of Pan Am Southern, Springfield Terminal, and Norfolk Southern hereinafter are referred to individually as a "Party" and collectively as the "Parties", and Pan Am Southern and Norfolk Southern hereinafter are referred to individually herein as a "Participant Party" and collectively as the "Participant Parties".

RECITALS:

WHEREAS, Norfolk Southern, Pan Am, on behalf of itself and its subsidiaries, Boston and Maine Corporation, a subsidiary of Pan Am ("B&M"), and Springfield Terminal entered into a Transaction Agreement (the "Transaction Agreement"), dated as of [_____] 2008, which provides, among other things, for Norfolk Southern and B&M to form Pan Am Southern, and

WHEREAS, the Transaction Agreement provides for B&M, and, to the extent necessary, for Pan Am to cause any other subsidiary, to sell in part, and contribute in part, certain railroad lines and trackage rights owned or operated generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the "Line", as more specifically defined in the Transaction Agreement) and certain other related assets to Pan Am Southern (the "Contribution"); and

WHEREAS, Massachusetts Bay Transportation Authority ("MBTA") operates passenger train service over a portion of the Line, and

WHEREAS, MBTA owns a line of railroad between Milepost 313.77±, CPF WL., near Ayer, MA and Milepost 329.55±, near Fitchburg, MA (the "MBTA Segment"), which constitutes a portion of the operating rights included in the Line; and

WHEREAS, MBTA and one or more of the Pan Am System Parties are parties to several agreements that govern the rights and obligations of each relating to the provision of passenger service, including passenger service on the Line that have been assigned to Pan Am Southern; and

WHEREAS, [the Pan Am System Parties] and Norfolk Southern are parties to that Intermodal Agreement dated as of March 30, 1998, as amended ("1998 Intermodal Agreement"), providing for the provision of haulage services for containers and trailers by the Pan Am System Parties between Mechanicville/Mohawk, NY and certain intermodal terminals; and

WHEREAS, the Transaction Agreement anticipates that, pursuant to a Railroad Operating Agreement, Pan Am Southern initially will hire Springfield Terminal to perform as the designated operator ("Railroad Operator") for all railroad operations on behalf of Pan Am Southern, including Pan Am Southern railway operations required pursuant to this Agreement; and

WHEREAS, the Parties desire to terminate [the 1998 Intermodal Agreement] and replace it with a new agreement, among other things, to (1) provide a service guarantee, (2) expand the haulage services thereunder to include haulage for multilevels and other rail cars capable of transporting Automotive Traffic, and (3) permit Norfolk Southern to extend haulage services to Canadian Pacific Railway Company ("CP") and/or CP's Delaware and Hudson Railway Company, Inc. subsidiary ("D&H"), and

WHEREAS, the Transaction Agreement provides for Pan Am Southern to grant to Norfolk Southern certain haulage and overhead trackage rights for the movement of traffic in the revenue waybill account of Norfolk Southern ("Norfolk Southern Traffic") and, under certain circumstances, traffic in the revenue waybill account of CP ("CP Traffic") and/or the revenue waybill account of D&H ("D&H Traffic") over the Line, and

WHEREAS, Norfolk Southern, Pan Am, B&M and Springfield Terminal obtained the prior consent of the Surface Transportation Board to consummate the transactions set forth in the Transaction Agreement, including the grant of rights described herein; and

WHEREAS, Norfolk Southern and B&M formed Pan Am Southern in accordance with the Transaction Agreement; and

WHEREAS, Pan Am Southern now wishes to grant Norfolk Southern certain haulage and trackage rights as provided herein; and

WHEREAS, MBTA has granted consent for Pan Am Southern to grant trackage rights over the MBTA Segment to Norfolk Southern as provided herein, and

WHEREAS, given the structure of Pan Am Southern, the Parties desire to grant B&M third-party beneficiary status to enforce this Agreement on behalf of Pan Am Southern; and

WHEREAS, the Parties desire to set forth the terms and conditions upon which Norfolk Southern may use haulage and trackage rights to transport Norfolk Southern Traffic, CP Traffic and D&H Traffic over the Line;

NOW, THEREFORE, the Parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally

(i) Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry

(ii) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine

where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(iii) Unless the context requires otherwise, a reference to Pan Am Southern shall be a reference to Pan Am Southern and its Railroad Operator. When Springfield Terminal is operating on behalf of Pan Am, its actions shall not be considered to be those of the Railroad Operator.

(b) Capitalized Terms

All capitalized terms shall have the defined meaning set forth below.

"1998 Intermodal Agreement" shall have the meaning given to that term in the Recitals.

"Abandonment Notice Period" shall have the meaning given to that term in Section 16(c).

"Abandonment Segment" shall have the meaning given to that term in Section 16(a).

"Agreement" shall have the meaning given to that term in the introductory paragraph.

"AAR" shall mean the Association of American Railroads.

"Automotive Traffic" means finished automobiles, sport utility vehicles, vans (including minivans), trucks and any other vehicles.

"Ayer Automotive Facility" shall mean that facility for the transfer of Automotive Traffic generally located at approximately MP 314 in Ayer, MA.

"Ayer Intermodal Facility" shall mean that intermodal trailer and container transfer facility generally located in Ayer (Devens), MA, but excluding the warehouse complex owned by Pan Am.

"Ayer Switching Agreement" shall mean that Ayer Switching Agreement, dated as of the date hereof, between Springfield Terminal and Pan Am Southern, generally governing the switching by Pan Am Southern of certain railcars of Springfield Terminal.

"B&M" shall have the meaning given to that term in the Recitals.

"Cars" means each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment.

“Chemicals” shall mean traffic moving on STCC 28-xxx-xx and 29-1xx-xx in carload service, excluding STCC 28-2xx-xx and TIH/PIH

“Contribution” shall have the meaning given to that term in the Recitals

“Corn Starch” shall mean traffic moving on STCC 20-462-xx

“Corn Syrup” shall mean traffic moving on STCC 20-461-xx

“Correction Period” shall have the meaning given to that term in Section 2(b) of Appendix B.

“CP” shall have the meaning given to that term in the Recitals

“CPFMA” shall have the meaning given to that term in Section 1(a) of Appendix B

“CP Haulage Cars” shall mean Haulage Cars moving, pursuant to this Agreement, in the revenue waybill account of CP

“CP Traffic” shall have the meaning given to that term in the Recitals

“CTC” shall have the meaning given to that term in Section 5(a)(iii)

“D&H” shall have the meaning given to that term in the Recitals

“D&H Haulage Cars” shall mean Haulage Cars moving, pursuant to this Agreement, in the revenue waybill account of D&H

“D&H Traffic” shall have the meaning given to that term in the Recitals

“Destination Facilities” shall refer to the Ayer Automotive Facility, the Ayer Intermodal Facility, and the Sanvel Properties

“Destination Terminals” shall refer to the Destination Facilities other than the supporting yards

“Effective Date” shall have the meaning given to that term in Section 11(a)

“End Points” shall mean the “end points” as defined in each of Appendices A, C, D, E and F.

“Equipment” shall mean and be confined to hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such

occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon

“Exercise Notice” shall have the meaning given to that term in Section 16(c)

“Flour” shall mean all traffic moving on STCC 20-411-10

“FMV” shall have the meaning given to that term in Section 16(c)

“FRA” shall mean the U S Federal Railroad Administration

“Foreign Railroad” shall mean a railroad that is not a party to this Agreement

“General Commodities” shall mean Industrial Products other than Hazardous Materials, Plastics, Chemicals, Corn Syrup, Corn Starch and Flour

“GMX” shall have the meaning given to that term in the introductory paragraph.

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB

“Haulage Cars” shall mean Cars moved pursuant to the Haulage Rights

“Haulage Rights” shall have the meaning given to that term in Section 2(b)(1)

“Hazardous Materials” shall mean traffic moving on STCC 49-xxx-xx

“Industrial Products” shall mean all traffic moving by rail, including automotive and truck parts moving in boxcars, except coal, Automotive Traffic and Intermodal traffic.

“Initial Period” shall have the meaning given to that term in Section 2(a) of Appendix B.

“Intermodal” generally shall mean the movement of containers and trailers onto, on and off of rail cars.

“JOC” shall mean that Joint Operating Committee established pursuant to the LLC Agreement.

“JV Transaction Agreements” shall have the meaning given to that term in the LLC Agreement

“Line” shall have the meaning given to that term in the Recitals

“LLC Agreement” shall mean that Limited Liability Company Agreement of Pan Am Southern LLC, by and between Norfolk Southern and B&M, and dated as of [], 2008

“Loss or Damage” shall have the meaning given to that term in Section 8.

“Major Service Standard Failure” shall have the meaning given to that term in Appendix B

“Management Committee” shall mean the Management Committee of Pan Am Southern as provided in the LLC Agreement.

“MBTA” shall have the meaning given to that term in the Recitals.

“MBTA Segment” shall have the meaning given to that term in the Recitals

“Monthly Statement” shall have the meaning given to that term in Section 7(a)

“NECR” shall mean the New England Central Railroad.

“Norfolk Southern” shall have the meaning given to that term in the introductory paragraph.

“Norfolk Southern Haulage Traffic” shall mean the traffic permitted to be moved in accordance with Appendix C, Appendix D, Appendix E and Appendix F

“Norfolk Southern Intermodal/Automotive Traffic” shall have the meaning given to that term in Section 1(b)(iv) of Appendix B

“Norfolk Southern Traffic” shall have the meaning given to that term in the Recitals.

“P&W” shall mean the Providence and Worcester Railroad

“Pan Am” shall have the meaning given to that term in the introductory paragraph.

“Pan Am Southern” shall have the meaning given to that term in the introductory paragraph

“Pan Am System Parties” shall mean Pan Am, B&M and Springfield Terminal.

“Participant Parties” shall have the meaning given to that term in the introductory paragraph.

“Participant Party” shall have the meaning given to that term in the introductory paragraph

“Parties” shall have the meaning given to that term in the introductory paragraph.

“Party” shall have the meaning given to that term in the introductory paragraph

“Person” shall mean an individual or partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity

“Placement” shall have the meaning given to that term in Section 1(b)(iii) of Appendix B

“Plastics” shall mean all traffic moving on STCC 28-2xx-xx

“Qualifying Trains” shall have the meaning given to that term in Section 1(b)(iv) of Appendix B.

“Railroad Operator” shall have the meaning given to that term in the Recitals

“Release” shall have the meaning given to that term in Section 1(b)(ii) of Appendix B.

“Sanvel Properties” shall mean that facility anticipated to be constructed for the transfer of Automotive Traffic to be located east of Willows Road in Ayer, MA as generally identified as Sanvel on the Ayer Switching Agreement schematic

“Service Reports” shall have the meaning given to that term in Section 2(a)(ii)

“Springfield Terminal” shall have the meaning given to that term in the introductory paragraph

“STB” shall mean the Surface Transportation Board or any successor entity thereto

“Subject Trackage” shall mean the certain lines of railroad covered by any of Appendices A and C through F through I, which appendices identify specific haulage or trackage rights arrangements and the trackage covered thereby.

“Subject Traffic” shall have the meaning given to that term in Section 8(a)

“Termination Period” shall have the meaning given to that term in Section 2(d) of Appendix B.

“TIH/PIH” shall mean, as defined by the definition of “material poisonous by inhalation” to be found at 49 CFR Section 171.8, specifically:

(1) A gas meeting the defining criteria of Section 173.115(c) of Subchapter C (which is titled “Hazardous Materials Regulations”) and assigned to Hazard Zone A, B, C or D in accordance with Section 173.116(a) of Subchapter C;

(2) A liquid (other than as a mist) meeting the defining criteria in Section 173 132(a)(1)(iii) of Subchapter C and assigned to Hazard Zone A or B in accordance with Section 173 133 (a) of Subchapter C, or

(3) Any material identified as an inhalation hazard by a special provision in Column 7 of the Section 172.101 table.

“Trackage Rights” shall have the meaning given to that term in Section 2(a)

“Trackage Rights Notification” shall have the meaning given to that term in Section 2(c) of Appendix B

“Transaction Agreement” shall have the meaning given to that term in the Recitals.

“Use Invoice” shall have the meaning given to that term in Section 7(a).

“VTR” shall mean the Vermont Railway Company .

“Waiver Notice” shall have the meaning given to that term in Section 16(e).

(c) Successor Laws

A reference to any particular statute or regulation shall include a reference to any successor statute or regulation

SECTION 2. TRACKAGE AND HAULAGE RIGHTS

(a) Trackage Rights

(i) Pursuant to the Transaction Agreement and subject to the terms set forth in this Agreement, Pan Am Southern hereby grants Norfolk Southern trackage rights (collectively, the “Trackage Rights”) between Mechanicville, NY and the Ayer Intermodal Facility, the Ayer Automotive Facility and the Sanvel Properties for Intermodal traffic, Automotive Traffic and CP Traffic and D&H Traffic as more fully described in Appendix A. Norfolk Southern’s use of the Trackage Rights shall be subject to the limitations and restrictions set forth in this Section 2 and Section 3

(ii) Norfolk Southern shall not exercise its Trackage Rights unless and until a Major Service Standard Failure, as defined in Appendix B to this Agreement, has occurred, and only pursuant to the terms and conditions set forth therein. Pan Am Southern shall provide Norfolk Southern with monthly reports, quarterly reports and annual reports (“Service Reports”) that will provide data to Norfolk Southern sufficient to permit it to determine whether a Major Service Standard Failure has occurred. Failure to exercise its rights under this subsection with respect to any one Major Service Standard Failure time shall not prejudice Norfolk Southern’s rights to exercise its rights with respect to any subsequent Major Service Standard Failure.

(iii) The Trackage Rights shall be for the purpose of Norfolk Southern using the Subject Trackage to operate its trains in overhead movements only and shall not include the right of ingress and egress to any tracks, switches, turnouts, or other track classifications that connect to any point along the Subject Trackage except the End Points

(iv) Except as may otherwise be permitted by this Agreement, Norfolk Southern shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing Cars or Equipment, or the making or breaking up of trains; provided, however, that Norfolk Southern may use such auxiliary trackage as may be designated by the Pan Am Southern as necessary for the handling of locomotives or cars had ordered en route

(v) Norfolk Southern's use of Subject Trackage shall be in common with Pan Am Southern and any other authorized user, and other than as explicitly set forth herein, Pan Am Southern's right to use the Subject Trackage shall not be diminished by this Agreement

(vi) Norfolk Southern may operate trains in either direction over the Subject Trackage.

(b) Haulage Rights

(i) Pursuant to the Transaction Agreement and subject to the terms set forth in this Agreement, Pan Am Southern hereby grants Norfolk Southern haulage rights (collectively, the "Haulage Rights") to the extent described in each of the following Appendices

Appendix C – Haulage Rights between Mechanicville, NY and Gardner, MA to/from an interchange with the P&W, for the movement of any Norfolk Southern Haulage Traffic for which a rate is provided; and

Appendix D – Haulage Rights between Mechanicville, NY and Hoosick Junction for the movement of Norfolk Southern Haulage Traffic to/from an interchange with VTR, for the movement of any Norfolk Southern Haulage Traffic for which a rate is provided; and

Appendix E – Haulage Rights between Mechanicville, NY and East Northfield, MA (and, following reconstruction of the connection at Millers Falls, at Millers Falls, MA), to/from an interchange with the NECR, for the movement of any Norfolk Southern Haulage Traffic for which a rate is provided, and

Appendix F – Haulage Rights between Mechanicville, NY and the Ayer Intermodal Facility, the Ayer Automotive Facility and the Sanvel Properties for

the local delivery of Intermodal traffic, Automotive Traffic and CP Traffic and D&H Traffic

(11) Pan Am Southern's obligation to provide Norfolk Southern the Haulage Rights between Mechanicville, NY and the Ayer Intermodal Facility, the Ayer Automotive Facility and the Sanvel Properties hereunder shall cease in the event that Norfolk Southern initiates its Trackage Rights operations pursuant to Section 2(a)(11) of this Agreement.

SECTION 3. OPERATING AND OTHER RESTRICTIONS

(a) Norfolk Southern Haulage Cars shall at all times remain in the revenue waybill and car hire accounts of Norfolk Southern while moving over the Subject Trackage via the Haulage Rights. CP Haulage Cars shall at all times remain in the revenue waybill and car hire accounts of CP while moving over the Subject Trackage via the Haulage Rights or the Trackage Rights. D&H Haulage Cars shall at all times remain in the revenue waybill and car hire accounts of D&H while moving over the Subject Trackage via the Haulage Rights or the Trackage Rights.

(b) Pan Am Southern shall not be entitled to any line haul revenue for the handling of Norfolk Southern, CP or D&H Haulage Cars, or movement of traffic pursuant to the Trackage Rights, nor shall Pan Am Southern participate in the routing of, nor appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of any of the same.

(c) Norfolk Southern locomotives and crews operating over the Subject Trackage pursuant to the trackage rights grant shall be equipped to communicate with Pan Am Southern on radio frequencies normally used by Pan Am Southern in directing train movements on the Subject Trackage.

(d) Norfolk Southern's operations over the Subject Trackage shall at all times be subject to the direction and control of the Pan Am Southern and comply in all respects with the safety rules, operating rules and other regulations of the Pan Am Southern.

(e) Norfolk Southern shall make such arrangements with Pan Am Southern as may be required to have each of its employees who shall operate its trains, locomotives, Cars and Equipment over any of the routes traversing the Subject Trackage qualified for operation over the specific route that the employee will operate. Pan Am Southern shall provide, and shall cause its Railroad Operator to provide, reasonable cooperation and assistance in the qualification of Norfolk Southern operating (train and engine) crews for service over the Subject Trackage upon request. Norfolk Southern supervisory personnel who have been qualified to operate over the Subject Trackage may qualify other Norfolk Southern employees for operation of trains over the Subject Trackage.

(f) Except as permitted by Section 2(b) of Appendix F hereto, Norfolk Southern may not, pursuant to this Agreement, grant haulage rights, trackage rights, or other operating rights of any nature on or over the Subject Trackage to any other Person.

SECTION 4. INFRASTRUCTURE

(a) Maintenance

(i) Pan Am Southern shall be solely responsible for the maintenance, repair, and renewal of the Subject Trackage. Pan Am Southern shall arrange to keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition (following the upgrading anticipated by the Transaction Agreement) not to be less than Federal Railroad Administration Class III (or any replacement of it), subject to normal slow orders and the like, but Pan Am Southern does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Pan Am Southern shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use commercially reasonable efforts to avoid such interruptions.

(ii) Existing connections or facilities connecting the trackage owned or operated by Norfolk Southern or with connecting carriers with those of the Subject Trackage shall continue to be maintained, repaired, and renewed by and at the expense of the Person or Persons responsible for such maintenance, repair, and renewal under applicable agreements.

(b) Infrastructure Improvements.

Pan Am Southern from time to time may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental entity having jurisdiction, provided that no such retirement shall materially affect operations over the Subject Trackage. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(c) Loss of Use of the Subject Trackage.

(i) Other than as specifically set forth in this Agreement, Norfolk Southern shall not have, pursuant to this Agreement, any claim against Pan Am Southern for liability on account of Loss or Damage of any kind in the event the use of the Subject Trackage by Norfolk Southern is interrupted or delayed at any time by any cause.

(ii) If the Subject Trackage is unavailable for service due to a derailment, line outage or other interruption of service, then Pan Am Southern shall cooperate and consult, and cause its Railroad Operator to cooperate and consult, with Norfolk Southern in order to address any resulting backlog of trains over a period of time following the resolution of such derailment as may be required to reduce such backlog of Norfolk Southern, CP and D&H Traffic or trains. The operation of such trains shall be prioritized according to service standard protocols to be developed by the JOC.

SECTION 5. MANAGEMENT AND OPERATIONS

(a) Dispatching

(i) Pan Am Southern, through its Railroad Operator, shall have exclusive control over the management and dispatching of the Subject Trackage. Dispatching of the Subject Trackage shall be conducted in a manner as to afford each of Pan Am Southern and Norfolk Southern, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the Subject Trackage consistent with the demands and needs of other authorized users. For the purposes of dispatching, trains of the same class shall be treated with equal priority, with the four (4) classes of trains (in order of priority) being

- (1) Passenger,
- (2) Intermodal and Automotive unit trains,
- (3) Regular (other unit and freight trains not scheduled to set off/pick up en route), and
- (4) Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements),

provided, that in the event of a conflict, the dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains

(ii) Norfolk Southern shall have the right to station a Norfolk Southern employee or agent in the dispatch center operated by Pan Am Southern or its Railroad Operator. Said person shall be present solely as an observer, and shall have no authority to control the movement of trains or otherwise interfere with or adjust the operation of trains, Cars or Equipment operating on the Subject Trackage.

(iii) Pan Am Southern shall cause its Railroad Operator to provide Norfolk Southern with read-only access to the Railroad Operator's central traffic control ("CTC") screens for the Subject Trackage in the offices of Norfolk Southern designated by Norfolk Southern. Pan Am Southern shall be responsible for the cost of modifying its system to the extent necessary to provide Norfolk Southern access to its CTC screens, and Norfolk Southern shall be responsible for the cost of the communications link with Norfolk Southern and the costs to use such link incurred in Norfolk Southern's offices.

(b) Dimensional Loads/Excess Clearance Cars

Norfolk Southern shall not have the right to operate dimensional loads and excess clearance railcars for handling over the Subject Trackage.

(c) Compensation

Norfolk Southern shall compensate Pan Am Southern for the use of the Subject Trackage in accordance with Appendix G Compensation

(d) Mileage and Car Hire

Norfolk Southern shall assume, report and pay directly all mileage and car hire charges for traffic moving in its revenue waybill account. Norfolk Southern shall cause CP and D&H to assume, report and pay directly all mileage and car hire charges in their respective revenue waybill accounts

(e) TIH/PIH

Unless the Parties specifically agree to the contrary, no TIH/PIH traffic shall be permitted in Haulage Cars

(f) Transfer to Ayer Automotive Facility

As soon as the Ayer Automotive Facility becomes available upon termination or expiration of the existing lease thereon, the Parties shall cooperate to make the Ayer Automotive Facility operational. Upon reaching operational status (a status that shall be confirmed by an exchange of letters between the Parties) the destination for Automotive Traffic shall be the Ayer Automotive Facility, rather than the Sanvel Properties. Startup costs associated with the transition of Automotive Traffic from the Sanvel Properties to the Ayer Automotive Facility shall be borne by Norfolk Southern. Should there be insufficient capacity at the Ayer Automotive Facility to handle the Norfolk Southern Automotive Traffic, the Sanvel Properties shall remain an automotive distribution facility available to Norfolk Southern pursuant to this Agreement. Pan Am Southern warrants that the Ayer Automotive Facility shall be available for use beginning 2017.

(g) Destination Facility Capacity

In recognition of the limited capacity of the Destination Facilities, Pan Am Southern shall dedicate all capacity at the Destination Facilities as follows: (i) the Ayer Intermodal Facility shall be dedicated to Norfolk Southern for Intermodal traffic originating or terminating at points west of the facility, and to Springfield Terminal for Intermodal traffic originating or terminating at points on Springfield Terminal east of CPF 312, (ii) the Sanvel Properties shall be dedicated to Norfolk Southern for Automotive Traffic and (iii) as soon as it becomes available upon termination or expiration of the existing lease thereon, the Ayer Automotive Facility shall be dedicated to Norfolk Southern for Automotive Traffic.

SECTION 6. COMPLIANCE WITH APPLICABLE LAWS AND RULES

(a) Each of Pan Am Southern and Norfolk Southern shall comply, and Pan Am Southern shall cause the Railroad Operator to comply, with all applicable federal, state and local

laws, rules, regulations and orders promulgated by any government or governmental agency that relate to the operations contemplated hereunder. If any fine, penalty, cost or charge is imposed or assessed on or against either of them by reason of the other Party's non-compliance (or, in the case of Pan Am Southern, the non-compliance of the Railroad Operator, for which Pan Am Southern shall be responsible) with any such laws, rules, regulations or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, cost, or charge, and all expenses and attorney's fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge or expense to that other Party.

(b) Without affecting the generality of the foregoing Section 6(a), each of Pan Am Southern and Norfolk Southern shall comply, and Pan Am Southern shall cause the Railroad Operator to comply, with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, Cars and Equipment while such trains, locomotives, Cars, and Equipment are being operated over the Subject Trackage. Each of those Parties shall indemnify, protect, defend, and save harmless the other from and against all fines, penalties and liabilities imposed upon such Party under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable solely to the failure of indemnifying Party (or, in the case of Pan Am Southern, the failure of the Railroad Operator, for which Pan Am Southern shall be responsible) to comply with its obligations in this regard.

(c) Trains operated pursuant to this Agreement shall not include locomotives, Cars or Equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as contained in the clearance file maintained by Pan Am Southern, and no train shall contain locomotives, Cars or Equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Pan Am Southern's operating rules and regulations, without the prior consent of Pan Am Southern. The JOC shall make proper accommodation for exceptions, should that be reasonable, necessary, and practicable.

(d) If any employee of Norfolk Southern shall neglect, refuse, or fail to abide by Pan Am Southern's rules, instructions and restrictions governing the operation on or along Pan Am Southern's property, such employee shall, upon written request of Pan Am Southern, be prohibited by Norfolk Southern from working on Pan Am Southern's property. If any Person shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of Norfolk Southern, then upon such notice presented in writing, Norfolk Southern shall promptly hold an investigation in which all Parties concerned shall participate, with each Party bearing the expense for its officers', counsel's, witnesses' and employees' participation. Norfolk Southern shall give notice of such investigations to its employees, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between the employer and its employees. If the result of such investigation warrants, such employee shall, upon written request by Pan Am Southern, be withdrawn by Norfolk Southern from service on Pan Am Southern's property and Norfolk

Southern shall release and indemnify Pan Am Southern from and against any and all claims and expenses because of such withdrawal

SECTION 7. INVOICES AND PAYMENT OF BILLS

(a) On or before the 15th day of each calendar month during the term of this Agreement, the Railroad Operator shall prepare on behalf of Pan Am Southern a monthly statement setting forth the number of Cars operated over the Subject Trackage during the month pursuant to this Agreement (the "Monthly Statement") and an invoice (the "Use Invoice"). The Monthly Statement shall be in electronic format, and shall contain a detailed list of the Cars that moved during the subject month, which list shall include, for each Car, information relating to such Cars that Pan Am Southern may reasonably request in connection with accounting for the use of the services and rights provided hereunder. The Monthly Statement and the Use Invoice shall be delivered to Norfolk Southern and Norfolk Southern shall make payment to Pan Am Southern within thirty (30) days after the date of receipt of such Use Invoice

(b) Any dispute regarding the amount of a Monthly Statement or Use Invoice shall be reconciled between the Participant Parties pursuant to Section 14, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If Norfolk Southern disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full subject to adjustment upon resolution of the dispute, provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments

(c) Pan Am Southern and Norfolk Southern shall each have the right, at its own expense, to audit the records of any other Participant Party (including, for operations of Springfield Terminal pursuant to the Railroad Operating Agreement, of Springfield Terminal) pertaining to the use of the Subject Trackage under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by Pan Am Southern pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to this Agreement. All such audits shall be conducted at reasonable intervals, locations, and times. All such audits shall be prosecuted with reasonable due diligence. Each Participant Party and Springfield Terminal agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant to this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 7(c) with respect to which the Participant Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(d) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices, shall include direct labor and material costs, together with the surcharges, overhead percentages, and Equipment rentals as specified by Pan Am Southern at the time any work is performed by Pan Am Southern for Norfolk Southern, or shall include actual costs and expenses, upon mutual agreement of the Participant Parties

SECTION 8. LIABILITY

Except as provided in Section 5(b) of Appendix F, as between the Parties hereto, responsibility for all claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages and expenses of every character, including any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever (including employees of the Participating Parties or Springfield Terminal), resulting from, arising out of, incidental to or occurring in connection with this Agreement ("Loss or Damage"), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise specifically provided for hereinafter):

(a) Norfolk Southern Cars, D&H Cars and CP Cars moving pursuant to this Agreement shall, for the purposes of this Section 8, be referred to as "Subject Traffic". Otherwise, for the purposes of assigning responsibility for Loss or Damage under this Section 8 (including but not limited to Section 8(e)) as between the Participating Parties, the trains, Cars and Equipment of a Foreign Railroad shall be considered to be the trains, Cars and Equipment of Pan Am Southern. By way of illustration only, if, for example, Pan Am Southern were to grant D&H trackage rights pursuant to a trackage rights agreement, then traffic moving pursuant to that D&H trackage rights agreement would be Pan Am Southern traffic.

(b) Pan Am Southern shall be responsible for Loss or Damage arising, in whole or in part, from any conditions involving, or connected with, the Destination Terminals or any trackage within the Destination Terminals that are owned or otherwise controlled by Pan Am Southern, or the operations or conditions therein or thereon. Norfolk Southern shall be responsible for Loss or Damage arising, in whole, or in part, from any condition involving its terminal or any trackage within its terminal that are owned or otherwise controlled by Norfolk Southern.

(c) Except as set forth in Section 8(b), Norfolk Southern shall be responsible for (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein, and (2) to the extent not allocated pursuant to Section 8(d)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors (other than Pan Am Southern, to the extent Pan Am Southern is considered a contractor hereunder, and Springfield Terminal, to the extent Springfield Terminal is a contractor to Pan Am Southern), or employees, either solely or in conjunction with a third party.

(d) Except as set forth in Section 8(b), Pan Am Southern shall be responsible for (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein, and (2) to the extent not allocated pursuant to Section 8(c)(1), Loss or Damage arising from or growing out

of its negligence or willful misconduct or that of its officers, agents, contractors (including the Railroad Operator), or employees, either solely or in conjunction with a third party.

(c) Except as set forth in Section 8(b), and to the extent not allocated pursuant to Section 8(c)(1) or Section 8(d)(1), Loss or Damage arising from or growing out of the negligence or willful misconduct of both Norfolk Southern and Pan Am Southern (or, as to Pan Am Southern, that of the Railroad Operator, and in each case of Norfolk Southern, Pan Am Southern and the Railroad Operator, their respective officers, agents, contractors or employees) shall be borne by the Participating Parties in proportion to their fault.

(f) To the extent responsibility for Loss or Damage is not allocated pursuant to Section 8(b), 8(c), 8(d) or Section 8(e) such responsibility for Loss or Damages shall be (i) borne solely by Norfolk Southern if the involved trains are handling only Subject Traffic, or (ii) borne by each of Pan Am Southern and Norfolk Southern in proportion to the number of Cars in such trains that are moving in that Party's revenue waybill account or car hire account, with Subject Traffic Cars being counted for this Section 8(f) as if they were Norfolk Southern Cars.

(g) Notwithstanding anything to the contrary in Section 8(b), Section 8(c), Section 8(d), Section 8(e) and Section 8(f) above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, or to third parties from substances transported in cars or contained in locomotives occurs with one or more trains handling Subject Traffic Cars being involved, then, as between themselves, (i) Pan Am Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Pan Am Southern Cars and/or contained in a Pan Am Southern locomotive which was released, (ii) Norfolk Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Subject Traffic Cars and/or contained in a Norfolk Southern locomotive which was released, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in Cars, Equipment or locomotives in the revenue waybill account and car hire accounts of both Norfolk Southern and Pan Am Southern which was (or were) released shall be borne by the Participant Parties in proportion to the total number of such Cars, Equipment or locomotives in that Party's revenue waybill account or car hire account from which there was (or were) such a release, with Subject Traffic Cars being counted for this Section 8(g) as if they were in Norfolk Southern's revenue waybill account or car hire account

(h) Notwithstanding anything to the contrary in this Section 8, if (i) Loss or Damage occurs with one or more trains being involved; (ii) one or more of the involved trains is handling (A) only Subject Traffic Cars or (B) both Subject Traffic Cars and Pan Am Southern Cars, (iii) such Loss or Damage is attributable solely to the Gross Negligence or Willful or Wanton Misconduct of only one of the Participant Parties to this Agreement (or of Springfield Terminal in its role as the Railroad Operator for Pan Am Southern), and (iv) such Gross Negligence or Willful or Wanton Misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such Gross Negligence or Willful or Wanton Misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Section 8(h), (1) "Gross Negligence or Willful or Wanton

Misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness" and shall include, by definition, acts or omissions of any its employees while under the influence of drugs or alcohol, and (2) Subject Traffic Cars being handled in haulage shall be considered Pan Am Southern Cars

(i) If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of another Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 8.

(j) In every case of death or injury suffered by an employee of one of the Parties, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

(k) Whenever any liability, cost or expense is assumed by or allocated to a Party under this Section 8, that Party shall: (i) forever protect, defend, indemnify and save harmless the other Party from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the Party indemnified, or their directors, officers, agents or employees, and (ii) defend such Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party

(l) Each of Pan Am Southern and Norfolk Southern shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709

(m) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Section 8, provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party

(n) No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49

C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709) for which another Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000). The foregoing amount of Thirty-Five Thousand Dollars (\$35,000) shall be adjusted annually in accordance with the provisions of Section 2 of Appendix G.

(c) Each Party shall indemnify and hold harmless the other Parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that each Party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

SECTION 9. RERAILING, WRECKING, BAD ORDERS AND REPAIRS

(a) Whenever one or more Cars and/or locomotives in the account of Norfolk Southern requires rerailling, wrecking service or wrecking train service, Pan Am Southern shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage and structures. Pan Am Southern shall promptly inform Norfolk Southern of its intent to proceed with wrecking service or wrecking train service, and shall permit a Norfolk Southern representative to be present on the scene, to work in concert with the employees of Pan Am Southern and its Railroad Operator to manage such wrecking service or wrecking train service. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom shall be apportioned in accordance with the provisions of Section 8 hereof. All locomotives, Cars, Equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by Norfolk Southern at the time of such wreck, shall be promptly delivered to it.

(b) If any Cars or locomotives of Norfolk Southern are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those Cars or locomotives shall, after being repaired, be picked up by Pan Am Southern, or if agreed upon by the Participant Parties, Pan Am Southern will transport them to a mutually acceptable location to be picked up by

Norfolk Southern Pan Am Southern may, upon request of Norfolk Southern and at the expense of Norfolk Southern, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered Cars or locomotives safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR

SECTION 10. FORCE MAJEURE

The obligations, other than payment obligations, of Norfolk Southern and Pan Am Southern under this Agreement shall be subject to force majeure (including flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, wreck, derailment, washout, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, or governmental laws, orders or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs any Party's ability to fulfill its obligations to the other Parties under this Agreement, said Party shall take all commercially reasonable measures to restore performance of its obligations in a timely manner

SECTION 11. TERM AND TERMINATION

(a) This Agreement shall become effective following the latest date of (a) the date first written above; (b) receipt of any required regulatory approvals or exemptions, and (c) the expiration of any time periods required by the issuance of labor notices by the Parties, should such labor notices be required ("Effective Date") The Participant Parties shall determine the Effective Date through an exchange of written correspondence

(b) This Agreement, and each of the rights covered by Appendices A, C, D, E and F shall commence on the Effective Date and shall continue until terminated by mutual agreement. Upon the termination of any one or more particular the rights covered by Appendices A, C, D, E or F, this Agreement and the rights covered by all remaining appendices shall remain in full force and effect

(c) Termination of this Agreement, or termination of the rights covered by any particular Appendices A, C, D, E or F, shall not relieve or release any Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to such termination, nor shall it terminate any underlying right, or contingent right, of movement pursuant to the trackage rights grant

SECTION 12. SUCCESSORS AND ASSIGNS.

(a) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns Third party beneficiary status shall inure to the benefit of Pan Am and each of its successors and permitted assigns

(b) Except as otherwise specifically provided hereinafter, a Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, only with the prior consent in writing of the Participant Parties, which consent may be withheld at the discretion of such Participant Parties

(c) In the event of a sale of substantially all of the assets or business of Norfolk Southern, or the merger or consolidation of Norfolk Southern into or with a firm or corporation not controlled by Norfolk Southern, Norfolk Southern may, without the prior consent of Pan Am Southern, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Norfolk Southern, or merging or consolidating with Norfolk Southern; provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of Norfolk Southern under this Agreement that existed prior to such assignment

(d) In the event of a sale of substantially all of the assets or business of Pan Am Southern, or the merger or consolidation of Pan Am Southern, Pan Am Southern may, without the prior consent of Norfolk Southern, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Pan Am Southern, or merging or consolidating with Pan Am Southern, provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of Pan Am Southern under this Agreement that existed prior to such assignment

SECTION 13. NOTICE

Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows

If to Pan Am Southern	Chairman Pan Am Southern LLC c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
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With a copy to
Norfolk Southern
and Pan Am

If to Norfolk Southern	Mike R. McClellan Vice President – Intermodal and Automotive Marketing
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Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

With a copy to	Vice President – Law Norfolk Southern Corporation Three Commercial Place Norfolk, VA 23510 (757) 629-2374 (757) 533-4872 (fax)
If to Springfield Terminal	David A. Fink President Springfield Terminal Railway Company c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692 (978) 663-1186 (978) 663-6907 (fax)
With a copy to	Robert Culliford Vice President Law Pan Am Systems Iron Horse Park North Billerica, MA 01862-1692 (603) 766-2002 (603) 766-2094 (fax)

Any Party may provide notice of changes in the above addressees to the other Party by personal service or certified mail

SECTION 14. DISPUTE RESOLUTION

(a) Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof (“Dispute”) shall be referred to the JOC (for Pan Am Southern) and Norfolk Southern for resolution and if the JOC and Norfolk Southern are unable to resolve the dispute, it will be referred to the Management Committee (for Pan Am Southern) and Norfolk Southern to resolve

(b) Any Dispute not resolved within sixty (60) days after receipt by a Party of written notice of reference of such Dispute to the Management Committee (for Pan Am Southern) and Norfolk Southern pursuant to Section 14(a), shall be submitted, by either (a) Norfolk Southern or (b) any Member (as defined in the LLC Agreement), for Pan Am Southern, for formal dispute resolution pursuant to Section 14(c)

(c) **Formal Dispute Resolution**

(i) **Submission to Jurisdiction.** Each of the Parties hereto hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 14(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder. (B) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof

(ii) **Dispute Resolution** Each of the Parties hereto stipulates and agrees that any Dispute that is not resolved pursuant to Section 14(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D C , by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "Rules"), under the following terms and conditions

(A) **Selection of Arbitrator.** A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator

(B) **Conduct of Arbitration** The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement

(C) **Replacement of Arbitrator** Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator.

(D) **Findings and Conclusions** The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award

(E) **Time is of the Essence** The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding

(F) **Temporary Equitable Relief** By agreeing to arbitration, the Parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction.

pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect.

(G) Consolidation. The Parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this Agreement and/or any JV Transaction Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under this Agreement and/or any JV Transaction Agreement, then any Party may request that any arbitration or any new Dispute arising under this Agreement or the JV Agreement be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration, (y) no Party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the Parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The Parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(H) Discovery. Recognizing the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(I) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 14(c) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing Party or Parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the Party resisting enforcement.

(J) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(c) As a third party beneficiary, Pan Am may initiate and prosecute arbitration pursuant to Section 14(b) on behalf of Pan Am Southern. Pan Am Southern and Springfield Terminal shall cooperate with Pan Am in the preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

SECTION 15. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or in connection with an audit by the Internal Revenue Service or other tax authority, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by any Party to any person other than members, officers, employees, independent auditors, and attorneys, without the prior written approval of the Participant Parties. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

SECTION 16. ABANDONMENT

(a) Pan Am Southern shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon or discontinue service on the Subject Trackage or any portion thereof (the "Abandonment Segment") during the term of this Agreement. Pan Am Southern shall provide Norfolk Southern no less than ninety (90) days prior notice of its intention to seek to abandon or discontinue service over any Abandonment Segment.

(b) If Pan Am Southern elects to abandon or discontinue service over the Subject Trackage (or any portion thereof) pursuant to Section 16(a), this Agreement shall continue to apply in all respects to any remaining portion of the Subject Trackage not abandoned or subject to discontinuance by Pan Am Southern.

(c) Pan Am Southern shall, not less than sixty (60) days prior to any submission to the STB (or successor agency having jurisdiction over said abandonment or discontinuance) of an application or exemption for authority to abandon or discontinue service over an Abandonment Segment(s), first offer Norfolk Southern the first right to purchase such Abandonment Segment(s) for fair market value ("FMV") of such Abandonment Segment(s), and

on such other terms and conditions as are customary with respect to line sales, which such notice shall specifically identify this Section 16 and the time periods for action hereunder. Norfolk Southern shall have forty-five (45) days ("Abandonment Notice Period") within which to advise Pan Am Southern that it will exercise its right to purchase ("Exercise Notice"). If the Participant Parties are unable to agree upon the FMV of the Abandonment Segment(s) that Norfolk Southern wishes to purchase, either Participant Party may refer the issue to arbitration pursuant to Section 14, which arbitration shall determine all other issues relating to terms and conditions for the sale not then (at the time of the initiation of the arbitration) agreed to by the Participant Parties. Such arbitration shall be conducted on an expedited basis, with selection of the arbitrator within thirty (30) days of the initiation of arbitration, all submissions to be made by the Participant Parties within sixty (60) days of the initiation of arbitration, and a written decision to be rendered within thirty (30) days following the final submissions of the Participant Parties.

(d) The Participant Parties shall consummate the sale contemplated by this Section 16 within forty-five (45) days of the latest of: (i) the rendering of a written arbitration decision, should issues related to the sale proceed to arbitration, (ii) the execution of a purchase and sale agreement, should the Participant Parties execute the same; and (iii) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(e) If Norfolk Southern elects not to purchase the Abandonment Segment, it shall so advise Pan Am Southern within the same forty-five (45) day Abandonment Notice Period by delivering to Pan Am Southern a notice of waiver of right to purchase said segment ("Waiver Notice"). Failure of Norfolk Southern to provide Pan Am Southern (including a copy to Pan Am) with either an Exercise Notice or a Waiver Notice within the aforesaid forty-five (45) day period shall constitute a Waiver Notice.

(f) In the event of a Waiver Notice and Norfolk Southern does not purchase the Abandonment Segment pursuant to its rights in this Agreement, Norfolk Southern shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the Abandonment Segment and for the discontinuance of Norfolk Southern's trackage rights over the Abandonment Segment.

SECTION 17. INDEMNITY COVERAGE

As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Parties shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees.

SECTION 18. INSURANCE

[REDACTED]



SECTION 19. TERMINATION OF 1998 INTERMODAL AGREEMENT

The Parties hereby terminate the 1998 Intermodal Agreement effective as of the Effective Date. If Guilford Motor Express, Inc. remains a party to the 1998 Intermodal Agreement on the date hereof, then Guilford Motor Express, Inc. hereby consents to the termination of the 1998 Intermodal Agreement effective as of the Effective Date. To the extent an action would be required of any of the Pan Am System Parties to give full and complete effect to this Agreement, but this Agreement fails to provide a reference to one of the Pan Am System Parties, each of the Pan Am System Parties nevertheless agrees to perform said action.

SECTION 20. PERSONNEL

(a) Pan Am Southern's relationship to Norfolk Southern hereunder is that of landlord (with regard to the Trackage Rights) or independent contractor (with regard to the Haulage Rights) providing services over Pan Am Southern's railroad and at the Destination Terminals, as defined in the Appendices. Pan Am Southern shall be solely responsible, and shall cause its contractors to be solely responsible, for employing, supervising and directing all personnel reasonably required, in its judgment, to perform its obligations under this Agreement and the Appendices, including, maintaining all appropriate employment and operating records, and for paying and accounting for all wages, salaries, benefits (including without limitation pension benefits or obligations), employer social security contributions, unemployment insurance, and state, local and federal withholding taxes upon such compensation for its employees. Pan Am Southern shall, and shall cause its contractors to, be responsible for all negotiation and other dealings with any labor organization representing its employees, and for any grievances or other labor claims made by its employees or made by a labor organization on their behalf.

(b) Each Party shall each ensure that its employees meet all requirements imposed by law and/or reasonably and uniformly required in connection with the performance of its respective obligations under this Agreement and the Appendices.

SECTION 21. COVENANT OF GOOD FAITH AND FAIR DEALING

The Parties agree to deal with one another on matters related to this Agreement fairly, honestly, and in good faith. "Good Faith" means honesty in fact and observance of reasonable commercial standards and customs of fair dealing in the transportation industry generally and of the intermodal, automotive and railroad transportation industry in particular.

SECTION 22. MISCELLANEOUS PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto. Pan Am shall have third party status solely for the purpose of enforcing this Agreement, and not by way of recovery for damages hereunder.

(b) This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties.

(c) Any term or provision of this Agreement may be changed, waived, discharged, or terminated but only by an instrument signed by both of the Participant Parties, which such instrument need not be served on any other Party to be effective.

(d) The division of this Agreement into articles, sections, and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to articles, sections or subsections are to articles, sections or subsections of this Agreement.

(e) This Agreement is the result of mutual negotiations between the Parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(f) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(g) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(h) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between any of the Parties.

(i) THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE

INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

(j) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument

(k) This Agreement, including the appendices hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous oral or written understandings, agreements, and commitments as to the subject matter hereof. This Agreement and the appendices hereto may not be modified, changed or altered except by written agreement signed by authorized representatives of the Parties. Any Appendix hereto may be amended by the Participant Parties signing a revised version of such Appendix and this Agreement will be deemed to be amended thereby

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

PAN AM SOUTHERN LLC

By _____

As to Pan Am Southern

WITNESS

SPRINGFIELD TERMINAL RAILWAY
COMPANY

By _____

As to Springfield Terminal

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

By _____

As to Norfolk Southern

Solely for the purpose of consent in
accordance with Section 19 hereof:

GUILFORD MOTOR EXPRESS, INC

By _____

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APPENDIX A INTERMODAL AND AUTOMOTIVE TRACKAGE RIGHTS

SECTION 1. SUBJECT TRACKAGE; END POINTS

(a) Subject Trackage The following segments of railroad owned or operated by Pan Am Southern are hereby identified as the "Subject Trackage" for this Appendix A

(i) The line between Mechanicville, NY, at or near Milepost 467.40, and the Ayer Intermodal Facility in Ayer, MA, at or near Milepost [], a distance of approximately [] miles (which distance will be used to determine the compensation due for use of these rights pursuant to Section 5(c) of the Agreement)

(ii) The line between Mechanicville, NY, at or near Milepost 467.40, and the Ayer Automotive Facility in Ayer, MA, at or near Milepost [], a distance of approximately [] miles (which distance will be used to determine the compensation due for use of these rights pursuant to Section 5(c) of the Agreement).

(iii) The main line between Mechanicville, NY, at or near Milepost 467.40, and the Sanvel Properties in Ayer, MA, at or near Milepost [], a distance of approximately [] miles (which distance will be used to determine the compensation due for use of these rights pursuant to Section 5(c) of the Agreement).

The Subject Trackage for this Appendix A is reflected on the attached Map A

(b) End Points The following locations are hereby identified as the "End Points" for this Appendix A: The main line in Mechanicville, NY, at or near Milepost [], the Ayer Intermodal Facility in Ayer, MA, at or near Milepost [], the Ayer Automotive Facility in Ayer, MA, at or near Milepost [], and the Sanvel Properties in Ayer, MA, at or near Milepost []

SECTION 2. ADDITIONAL RESTRICTIONS ON USE

In addition to other restrictions on use described in the Agreement, the Trackage Rights pursuant to this Appendix A may only be used for the movement of loaded or empty Intermodal Cars and Equipment or Automotive Traffic Cars and Equipment

APPENDIX B – DEFINITION OF MAJOR SERVICE STANDARD FAILURE

Section 1. Service Standards.

(a) The Service Standards contained in this Section 1 shall become effective beginning with the start of the calendar year following the earlier of (i) completion of the spending of the Capital Proceeds as defined in the Capital Planning and Facility Management Agreement (“CPFMA”), excluding the two million five hundred thousand dollars (\$2,500,000) for improvements at Ayer, or (ii) the fourth anniversary of the Closing of the Transaction.

(b) For the purpose of this Appendix B, the following definitions shall apply:

(i) The term “End Points” shall mean Mechanicville, on the one hand, and the Ayer Intermodal Facility, the Ayer Automotive Facility or the Sanvel Properties, depending upon the intended origin or destination of the relevant Qualifying Train.

(ii) The term “Release” shall refer to the verified time that the terminal contractor at (1) Mechanicville releases the eastbound train or (2) Ayer releases the westbound train, to the Railroad Operator’s transportation department for furtherance to Ayer and Mechanicville respectively

(iii) The term “Placement” shall be the time that the Norfolk Southern Intermodal/Automotive Traffic railcars are placed on the loading tracks of the relevant intermodal or automotive terminal and blue flags are placed so that the train can be unloaded

(iv) The term “Qualifying Trains” shall be trains carrying primarily Norfolk Southern Haulage Traffic permitted to be moved pursuant to Appendix I to this Agreement (“Norfolk Southern Intermodal/Automotive Traffic”) released within thirty (30) minutes of the scheduled released time. In addition, Qualifying Trains must meet the following criteria to be included in the computation for Service Standards

(A) The train must not have been delayed en route between the End Points directly as a result of.

(1) a crossing accident,

(2) the failure of locomotives in Norfolk Southern’s account on the train, unless said failure is intentionally caused by the acts of the crews, in the case of trains moving Norfolk Southern Intermodal/Automotive Traffic,

(3) trains carrying Norfolk Southern Intermodal/Automotive Traffic that undergo a 1,000 mile inspection between the End Points,

(4) concentrated FRA audits,

(5) a scheduled maintenance of way window where Pan Am Southern has given Norfolk Southern at least thirty (30) days advance notice, and, despite the good faith efforts of the Railroad Operator and Norfolk Southern under the direction of the JOC to resolve potential conflicts in scheduling, said train delays could not be avoided; or

(6) Force Majeure, or

(B) The train must not have begun its transit over the Line on any of the following holidays New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(c) At the time Service Standards become effective, the following transit times for Qualifying Trains will apply

(i) On eastbound services, the Service Standard Transit Time for a Qualifying Train moving Norfolk Southern Intermodal/Automotive Traffic from Release at Mechanicville Yard to Placement at the Ayer Intermodal Facility or Ayer Automotive Facility shall be set forth in a schedule that will specify a transit time of seven (7) hours or less

(ii) On westbound services, the Service Standard Transit Time for a Qualifying Train moving Norfolk Southern Intermodal/Automotive Traffic from Release at, as may be relevant for the affected Norfolk Southern Intermodal/Automotive Traffic, the Ayer Intermodal Facility, the Sanvel Properties or the Ayer Automotive Facility (or, should the Qualifying Train contain both intermodal and automotive rail cars, whichever of the same is later) to Placement in either the yard or on the loading tracks at Mechanicville, whichever the operations manager for that facility directs, shall be set forth in a schedule that will specify a transit time of seven (7) hours or less

(iii) If the Qualifying Train is a mixed train (containing both (x) multilevels and/or unilevels and (y) intermodal cars), then the seven (7) hour service standard set forth in Section 1(c)(i) shall only apply to the Placement of the first of the Norfolk Southern Intermodal/Automotive Traffic to be delivered to the relevant terminal, provided that

(A) Pan Am Southern shall, and shall cause its Railroad Operator and its Terminal Operator to, place first the railcars running closest to scheduled availability, and,

(B) Pan Am Southern shall, and shall cause its Railroad Operator and its Terminal Operator to, take all reasonable efforts to move the remaining railcars to their respective terminals within one (1) hour or less

(iv) In the event that a Qualifying Train requires fueling en route over Pan Am Southern, then a one (1) hour allowance shall be added to the relevant service standard

(d) The Service Standard Transit Times provided for herein will not be amended or modified as a result of a Pan Am Change in Control, as defined in the LLC Agreement

(e) Pan Am Southern shall, or shall cause its contractors to, provide Norfolk Southern a monthly report detailing scheduled release, actual Release and Placement times to support any necessary audit, review and enforcement of the provisions of this Appendix B

(f) If a Qualifying Train length exceeds the available pad tracks at the relevant Terminal, then only the portion of the Qualifying Train that can fit on the available pad tracks is subject to the on-time metric detailed herein.

Section 2. Major Service Standard Failure

(a) A "Major Service Standard Failure" occurs when Qualifying Trains do not operate to the Service Standard Transit Times at least eighty five percent (85%) of the time, measured with a sixty (60) minute leeway, in any given rolling ninety (90) day period (the "Initial Period")

(b) Upon notification to Pan Am Southern of a Major Service Standard Failure, Pan Am Southern shall have three (3) months (the "Correction Period") to make such operational and other adjustments as may be reasonable or necessary to eliminate the causes of the deficiency. During this Correction Period, Pan Am Southern shall provide Norfolk Southern periodic (but no less than every other week) reports as to efforts undertaken. Within the Correction Period, Pan Am Southern shall certify that the causes of the deficiency have been corrected or that the causes of the deficiency cannot be corrected. In the event that Pan Am Southern certifies that the causes of the deficiency have been corrected, this certification shall be validated by Pan Am Southern operations for any thirty (30) consecutive day period within the Correction Period in conformance with the Service Standard Transit Times

(c) If either (a) Pan Am Southern certifies that the causes of the deficiency cannot be corrected or (b) Pan Am Southern is unable to validate (in conformance with the final sentence of Section 2(b) of this Appendix B) that its certification that the causes of the deficiency have been corrected, then Norfolk Southern has the option, but not the obligation, to provide notice ("Trackage Rights Notification") to Pan Am Southern that it will invoke its right to begin to exercise the trackage rights provided by Section 2(a) of this Agreement

(d) Upon service of the Trackage Rights Notification, Pan Am Southern and Norfolk Southern will continue to work to eliminate the causes of the deficiency giving rise to the Major Service Standard Failure, and to return haulage operations to the ninety percent (90%) on time requirement, taking into account the thirty (30) minute tolerance factor described above. Norfolk Southern shall have the right to withdraw its Trackage Rights Notification (without prejudice to service of the same for any future Major Service Standard Failure) during the subsequent ninety (90) day period (the "Termination Period"). Norfolk Southern may, at its option, initiate trackage rights operations at any time following the expiration of the Termination Period.

(e) For calculation purposes, a subsequent Initial Period can overlap with a prior Correction Period and Termination Period, and a subsequent Correction Period can overlap with a prior Termination Period

APPENDIX C – HAULAGE RIGHTS FOR P&W INTERCHANGE

SECTION 1. SUBJECT TRACKAGE; END POINTS

(a) Subject Trackage The following segment of railroad owned or operated by Pan Am Southern is hereby identified as the "Subject Trackage" for this Appendix C: The main line between Mechanicville, NY, at or near Milepost [], and a connection with the P&W in Gardner, MA, at or near Milepost [], a distance of approximately [] miles, each such location being designated as an "End Point" for this Appendix C. The Subject Trackage for this Appendix C is reflected on the attached Map C.

(b) Permitted Traffic In addition to traffic for which a rate is provided in Section 1(c) of this Appendix C, haulage provided to Norfolk Southern for interchange to the P&W shall include movements of the following [] flows.

(1) []

[]; and

(2) []

(c) Compensation For each loaded carload of [], the following per car haulage rates shall apply []

All rates set forth herein shall be subject to rate adjustment and fuel surcharge as set forth in Appendix G

APPENDIX D – HAULAGE RIGHTS FOR VTR INTERCHANGE

SECTION 1. SUBJECT TRACKAGE; END POINTS

(a) Subject Trackage The following segment of railroad owned or operated by Pan Am Southern is hereby identified as the “Subject Trackage” for this Appendix D. The main line between Mechanicville, NY, at or near Milepost [], and a connection with the VTR in Hoosick Junction, at or near Milepost [], a distance of approximately [] miles, each such location of which are hereby identified as “End Points” for this Appendix D. The Subject Trackage for this Appendix D is reflected on the attached Map D.

(b) Compensation For each loaded carload of [REDACTED], the following per car haulage rates shall apply [REDACTED]
[REDACTED]

[REDACTED]

All rates set forth herein shall be subject to rate adjustment and fuel surcharge as set forth in Appendix G

APPENDIX E – HAULAGE RIGHTS FOR NECR INTERCHANGE

SECTION 1. SUBJECT TRACKAGE; END POINTS

(a) Subject Trackage The following segment of railroad owned or operated by Pan Am Southern is hereby identified as the “Subject Trackage” for this Appendix E The main line between Mechanicville, NY, at or near Milepost [], and a connection with the NECR in Brattleboro, VT, and, following construction of a connection at Millers Falls, Millers Falls, at or near Milepost [], a distance of approximately [] miles, each such location of which are identified as “End Points” for this Appendix E The Subject Trackage for this Appendix E is reflected on the attached Map E.

(b) Compensation For each loaded carload of [REDACTED], the following per car haulage rates shall apply [REDACTED]
[REDACTED]
[REDACTED]

All rates set forth herein shall be subject to rate adjustment and fuel surcharge as set forth in Appendix G

APPENDIX F – INTERMODAL AND AUTOMOTIVE HAULAGE RIGHTS

SECTION 1. ADDITIONAL DEFINITIONS

Capitalized terms defined in Section 1 of the Agreement shall have the same meaning in this Appendix F as set forth in that section. The following capitalized terms shall have, for the purposes of this Appendix F, the defined meaning set forth below:

“Auxiliary Services” shall refer to those services described in Schedule C, not included in the line haul rate, requested by and paid for by either a Customer or Norfolk Southern.

“Cause” shall have the meaning given to that term in Section 9 of this Appendix F.

“Customers” shall refer to shippers and consignees and their agents tendering Intermodal trailers and containers, or Automotive Traffic to Norfolk Southern for movement by rail.

“Interchange” shall refer only to the physical exchange of Cars, Intermodal Equipment, Automotive Traffic or trains at Mechanicville, NY and shall not constitute or imply the transfer of any liabilities or obligations not specifically set forth in this Agreement.

“Intermodal Equipment” shall refer to all containers, trailers and chassis transported or used in the provision of the Haulage Services or the Lift Services.

“Haulage Services” shall refer to those services described in Schedule A, provided by Pan Am Southern, included in the rates and paid for solely by Norfolk Southern.

“Lift Services” shall refer to those services described in Schedule B, which Pan Am Southern shall cause to be provided by the Terminal Operator, and for which Norfolk Southern shall pay the Terminal Operator directly as set forth in Schedule D.

“Norfolk Southern Operations Service Representatives” shall refer to the Norfolk Southern employees designated to work with Pan Am Southern and the Terminal Operator to ensure that the service meets the needs of Customers.

“Railcars” shall refer to all flatcars, multilevels and other rail equipment used to provide Haulage Services.

“Terminal Operator” shall refer to that operator performing the Lift Services and the Auxiliary Services at each of the Destination Facilities and the Waterville Facility.

“Waterville Facility” shall refer to the intermodal facility owned by one or more of the Pan Am System Parties and/or one or more of their subsidiary or affiliated companies in Waterville, ME.

SECTION 2. DESCRIPTION OF SERVICES

(a) Haulage, Lift and and Auxiliary Services Subject to the terms and conditions of this Agreement and this Appendix F, Pan Am Southern shall perform the Haulage Services and shall cause its Terminal Operators to perform the Lift Services (at the Ayer Intermodal) and Vehicle Loading/Unloading Services (at the Automotive terminals) and the Auxiliary Services. Norfolk Southern shall (i) pay Pan Am Southern for the performance of the Haulage Services, (ii) pay Pan Am Southern for the performance of the Lift Services and (iii) pay Pan Am Southern for the performance of the Auxiliary Services that are requested by Norfolk Southern, all at the rates set forth or calculable in accordance with Schedule D. For purposes of clauses (ii) and (iii) of this Subsection 2(a), Pan Am Southern directs Norfolk Southern to pay the fee it owes to Pan Am Southern directly to the Terminal Operator, and Pan Am Southern will require the Terminal Operator to report the activity and payments to Pan Am Southern.

(b) Traffic Permitted to be Handled. The Haulage Services, the Lift Services and the Auxiliary Services shall be provided to traffic tendered to Pan Am Southern for the provision of such services under this Appendix F, which traffic shall be limited to loaded or empty Intermodal or Automotive Cars moving in the revenue waybill account of Norfolk Southern, CP or D&H. Without limiting the foregoing, Norfolk Southern need not handle the tendered traffic prior to, or subsequent to the tendering of traffic to Pan Am Southern for the provision of the Haulage Services, the Lift Services or the Auxiliary Services under this Appendix F.

(b) Terminal Schedules and Operating Hours Pan Am Southern shall perform, and shall cause its Terminal Operators to perform, according to the schedules and Destination Terminals' operating hours set forth in Schedule E.

(c) Terminal and Dispatching Holidays Pan Am Southern shall not be obligated to operate any of the Destination Terminals or dispatch trains handling traffic pursuant to this Appendix F on the following holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Notwithstanding the foregoing, the Participant Parties shall review operations and commercial requirements prior to these and other holidays and determine if any adjustments to service or Destination Terminal operating hours are required to accommodate Customer demands.

(d) Provision of Personnel and Equipment Pan Am Southern shall provide, and shall cause its Terminal Operators to provide, all qualified operating and supervisory personnel, locomotives, track, utilities, materials and supplies reasonably necessary for the efficient performance of their respective components of the Haulage Services, the Lift Services and the Auxiliary Services.

(e) Record Keeping Pan Am Southern shall keep, and shall cause its Terminal Operators to keep, all appropriate records and prepare and deliver to Norfolk Southern (or its designee) all reports reasonably required by Norfolk Southern regarding the services listed in Schedule A and Schedule B or as described elsewhere in this Appendix F.

(f) Loading Efficiency. Pan Am Southern shall cause its Terminal Operator to make every effort to load Intermodal Equipment and Automotive Traffic onto Railcars in such a way

that the minimum number of Railcars are used for the given amount, type, size and arrival time of Intermodal Equipment and Automotive Traffic at respective Destination Terminals. For Intermodal Railcars with capacity of two or more units, Pan Am Southern shall cause the Terminal Operator of any Intermodal Destination Facility or the Waterville Facility to make every effort to load each Railcar with the same destination terminal Intermodal Equipment. Pan Am Southern shall follow, and shall cause its Terminal Operator to follow, reasonable Norfolk Southern loading and blocking instructions and restrictions. Norfolk Southern, Pan Am Southern and the Terminal Operator shall periodically discuss loading and possible blocking priorities to best suit market conditions.

(g) Terminal Operation Rules. Pan Am Southern shall cause its Terminal Operator to operate (i) the Ayer Intermodal Facility and the Waterville Facility in accordance with the Norfolk Southern Intermodal Rules Circular, the AAR Intermodal Trailer and Container Securement Manual for Intermodal Cars and Intermodal Equipment, and as detailed in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-Level Manual, for Automotive Cars and Automotive Traffic, and (ii) the Sanvel Properties and the Ayer Automotive Facility in accordance with the Norfolk Southern Conditions of Carriage and the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-Level, for Automotive Traffic, in each case including without limitation with respect to the application of free time and storage charges, provided that Norfolk Southern may make exceptions to the application of such rules with respect to select accounts with the approval of Pan Am Southern and existing exceptions to the application of such rules (with respect to the Ayer Intermodal Facility and the Waterville Facility) shall be respected until requested otherwise by Norfolk Southern.

SECTION 3. RAILCAR AND EQUIPMENT MAINTENANCE

(a) Railcar and Equipment Maintenance Generally. All work on Railcars and Intermodal Equipment shall be performed in accordance with Section 3(d) and Section 3(e) of this Appendix F, as may be relevant to the affected Railcars or Intermodal Equipment. Norfolk Southern shall not have, and shall not be deemed to have, any responsibility for the direct supervision of the Destination Terminal employees engaged in the performance of any such maintenance, cleaning, repair or related services. Any repairs must be authorized in writing by the Norfolk Southern Operations Service Representative.

(b) Pan Am Southern and Terminal Operator Equipment. Pan Am Southern shall be responsible for maintaining and repairing at its own expense (including parts and materials) its own work equipment and machinery, and causing the Terminal Operators to maintain and repair (including parts and materials) any work equipment, tools, and machinery used by the Terminal Operators.

(c) Norfolk Southern Equipment. Without limiting the Participant Parties' responsibilities under various provisions of this Agreement and this Appendix F, the Norfolk Southern Operations Service Representatives shall have overall responsibility to coordinate, order and request from Pan Am Southern (or, if directed by Pan Am Southern, from its Terminal

Operators) maintenance, cleaning, repair and replacement for Intermodal Equipment owned, leased or otherwise controlled by Norfolk Southern (or CP or D&H)

(d) Norfolk Southern Railcars Section 9(b) of the Agreement dictates responsibilities and obligations should a Railcar owned by or in the account of Norfolk Southern (or CP or D&H) require repairs while on the Subject Trackage. For the purpose of implementing Section 9(b), Railcars owned by or in the account of CP or D&H moving pursuant to this Appendix F shall be considered to be, for the purpose of Section 9(b), a Railcar owned by or in the account of Norfolk Southern, and Norfolk Southern shall be principally responsible for the cost of repairs that are performed pursuant to that Section, notwithstanding the acknowledgement of the Parties that Norfolk Southern will request CP and D&H to pay any invoices directly.

(e) Customer Owned Equipment Pan Am Southern shall cause its Terminal Operators to perform maintenance, cleaning, and repair work on Customers' privately owned or leased Intermodal Equipment as requested and authorized by the Customer. Where such services are performed at the request of the Customer, Pan Am Southern shall send, or cause its Terminal Operator to send, the invoice directly to the Customer. Where such services are performed at the request of Norfolk Southern, Pan Am Southern shall send, or shall cause its Terminal Operator to send, the invoices directly to Norfolk Southern. Norfolk Southern shall not be responsible for any cost incurred by a Terminal Operator in performing Customer authorized service work for which the Terminal Operator is not fully reimbursed by the Customer.

(f) Damaged Equipment and Lading. Pan Am Southern shall be responsible for repairing at its own expense or cause the Terminal Operator to repair (including parts and materials) any damage to Intermodal Equipment caused by negligence or abuse by Pan Am Southern or its Terminal Operators, their subcontractors or agents or other parties while said Intermodal Equipment is in the control of Pan Am Southern or its Terminal Operators. Pan Am Southern shall cause its Terminal Operators to report on a regular basis as directed by Norfolk Southern as to any damaged Norfolk Southern (or CP or D&H) Intermodal Equipment and will give Norfolk Southern (and CP and D&H, as the case may be) an opportunity, at Norfolk Southern's option, to inspect such damage prior to any repairs being made. If such damage or destruction is beyond economic repair, Pan Am Southern shall pay Norfolk Southern the depreciated replacement value of the Intermodal Equipment as determined under the AAR Rules. Norfolk Southern may direct that payment be made directly to CP or D&H for CP or D&H Intermodal Equipment. Pan Am Southern shall be liable for damage to the contents of Intermodal Equipment caused by the negligence of Pan Am Southern, its employees, contractors (including Springfield Terminal and the Terminal Operators), or agents, except that Pan Am Southern shall not be liable for any damage that is latent or that cannot be readily ascertained from a visual inspection of the exterior of the Intermodal Equipment. The Participant Party responsible for damage to any lading that is required to be transferred to other Intermodal Equipment shall be responsible for the cost of transferring same. As between Norfolk Southern (or CP or D&H) and Pan Am Southern, liability for Loss or Damage to Intermodal Equipment or its contents or to Automotive Traffic shall be determined on the basis of principles of comparative negligence.

SECTION 4. DESTINATION FACILITIES AND DESTINATION TERMINAL PREMISES

(a) Access to Destination Terminals. Pan Am Southern hereby grants Norfolk Southern and Norfolk Southern's Customers full access to the Destination Facility areas and facilities in Ayer, MA, and Waterville, ME, including yard, loading areas, parking areas and other outdoor areas, for all activities required for normal intermodal and automotive terminal operations subject to all reasonable operations and security limitations. Pan Am Southern hereby grants Norfolk Southern the right to extend that grant of access to CP, D&H, and their respective Customers. Draymen of Customers shall have access to the Destination Terminals only for the purpose of picking up or dropping off Intermodal Equipment and Automotive Traffic.

(b) Maintenance and Repair to Destination Facilities. Pan Am Southern shall cause the Destination Facilities and the Waterville Facility to be kept in good and safe condition for the operations reasonably expected to be performed there. Except as otherwise stated herein, Pan Am Southern shall be responsible for all maintenance and repairs of the Destination Terminals and facilities. Maintenance and repair shall include, but are not limited to, providing utilities, snow removal, security, janitorial services, maintenance and repair of paved or stoned or other surfaces, work equipment and track. Such maintenance and repair services shall be separate from and in addition to the Haulage Services, the Lift Services and the Auxiliary Services and shall not be subject to additional consideration hereunder.

SECTION 5. SPECIAL LOSS OR DAMAGE PROVISIONS

(a) Loss or Damages Generally. The procedures outlined in this Section are intended to allocate on an equitable basis responsibility for Loss or Damage to Intermodal Equipment and loading and to Automotive Traffic. The Participant Parties agree to periodically review these procedures for the purpose of achieving this intent, improving the procedures, and reducing the incidents of loss and damage.

(b) Westbound Loading at Terminal. For all westbound traffic, Pan Am Southern shall be responsible for ensuring that all trailers, containers and vehicles loaded onto Railcars are properly secured, using normal and customary procedures as detailed in the AAR Intermodal Trailer and Container Securement Manual, for Intermodal Cars and Intermodal Equipment, and as detailed in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-level Manual, for Automotive Cars and Automotive Traffic. Notwithstanding the provisions of Section 8(c) of the Agreement, Pan Am Southern shall be responsible for Loss or Damage due to failure to ensure that all trailers, containers and vehicles are so properly secured. With respect to any Railcars delivered to Norfolk Southern (or CP or D&H) at Mechanicville, NY, Norfolk Southern shall be responsible for inspection, or for causing the inspection, of Intermodal Equipment, Automotive Traffic and Railcars delivered by Pan Am Southern, using normal and customary procedures. Forwarding of Intermodal Equipment, Automotive Traffic and Railcars without inspection or exception by Norfolk Southern (or CP or D&H) shall constitute acceptance.

(c) Eastbound Exchange at Mechanicville, NY For all eastbound traffic, Norfolk Southern shall be responsible for ensuring that all trailers, containers and vehicles loaded onto Railcars are properly secured, using normal and customary procedures as detailed in the AAR Intermodal Trailer and Container Securement Manual, for Intermodal Traffic, and as detailed in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section N, Multi-level Manual, for Automotive Traffic. With respect to any Railcars to be delivered to Pan Am Southern by Norfolk Southern (or CP or D&H) at Mechanicville, NY, Pan Am Southern shall be responsible for inspection of Intermodal Equipment, Automotive Traffic and Railcars prior to the departure of the eastbound train from Mechanicville, NY, using normal and customary procedures. Pan Am Southern shall not be responsible for any damage to Intermodal Equipment, Automotive Traffic and Railcars that is reported to Norfolk Southern (or CP or D&H, for that of CP or D&H) prior to departure of the Railcars. Forwarding of Intermodal Equipment, Automotive Traffic and Railcars without inspection or exception by Pan Am Southern shall constitute acceptance.

(d) Security Pan Am Southern shall be responsible for the security of all Intermodal Equipment and Automotive Traffic (i) for west bound moves, from the time the same enters a Destination Terminal gate to the time that it is delivered to Norfolk Southern at Mechanicville, NY and (ii) for east bound moves, from the time such is delivered from Norfolk Southern at Mechanicville, NY to the time the same leaves a Destination Terminal gate. All seal exceptions and associated lading theft or damage will be reported to the other Participating Party within thirty-six (36) hours. If seal exceptions are not noted, any claims arising from damage and theft resulting from seal exceptions will be the responsibility of the terminating carrier.

(e) Additional Security at Destination Facilities. Pan Am Southern may require its Terminal Operator to provide additional security at each or all of the Destination Facilities or the Waterville Facility (including any associated facilities and rail yards) to the extent reasonably required to ensure the integrity and commercial viability of the associated Destination Terminal operation.

(f) Qualified Drayman Pan Am Southern shall only permit, and shall cause its Terminal Operators to only permit, those draymen, to whom the physical possession of containers or trailers are transferred at the respective Destination Terminals, who have signed an interchange agreement with Norfolk Southern to accept Intermodal Equipment and Automotive Traffic in interchange at the Destination Terminals. Norfolk Southern shall be responsible for providing Pan Am Southern's Terminal Operators with a current and updated list of qualified draymen.

SECTION 6. CAR HIRE AND EQUIPMENT PER DIEM

(a) Per Diem Under this Appendix F, all per diem for Intermodal Equipment and Railcars will be maintained in the account of Norfolk Southern, CP or D&H, and the ultimate management of said Intermodal Equipment and Railcars will be the responsibility of Norfolk Southern. Pan Am Southern represents that its accounting and reporting systems are capable of supporting the objectives of this Section 6(a).

(b) Dwell Time Pan Am Southern and Norfolk Southern hereby agree to work toward, and Pan Am Southern shall cause its Terminal Operators to work toward, minimizing the average Car dwell time (the amount of time that the Car is in the possession of Pan Am Southern from the day Pan Am Southern receives the Car until Pan Am Southern returns the Car to Norfolk Southern, CP or D&H). Pan Am Southern shall provide Norfolk Southern a daily inventory of Cars on Pan Am Southern or in the Terminal and such inventory shall include Car initial and number and day and date that Car was delivered by Norfolk Southern, CP or D&H to Pan Am Southern at Mechanicville, NY

(c) All Railcars, Intermodal Equipment and Automotive Traffic exchanged between Norfolk Southern (or CP or D&H) and Pan Am Southern and destined to one or more of the Destination Facilities or the Waterville Facility are to be used solely in this service and are not to be interchanged to another carrier or placed into another Pan Am Southern service without written consent from Norfolk Southern, CP or D&H with respect to Cars interchanged by each with Pan Am Southern. Pan Am Southern will use its best efforts to retrieve or replace any Railcars, Intermodal Equipment or Automotive Traffic so interchanged or placed. If not retrieved or replaced within 15 days of its delivery to Pan Am Southern by Norfolk Southern, CP or D&H, then said Railcars, Intermodal Equipment or Automotive Traffic shall thereafter be considered as in the account of Pan Am Southern.

SECTION 7. PERFORMANCE REQUIREMENTS

(a) Pan Am Southern Performance Requirements Pan Am Southern shall cause its Terminal Operators to not load any Intermodal Equipment that is not in transportable condition. The Participating Parties agree to the train schedules, terminal hours and operating parameters as detailed in Schedule E to this Appendix F, and Pan Am Southern shall operate in accordance with said criteria. The Participating Parties agree to accommodate changes to each other's train schedules, including release cutoff times, provided that such changes are not unreasonable.

(b) Safety Regulations The Participating Parties shall at all times during the term of this Appendix F comply with all applicable federal and state safety laws, regulations and procedures, including, but not limited to, those promulgated under the Occupational Safety and Health Act.

(c) Norfolk Southern Performance Requirements Norfolk Southern is responsible for the spotting of eastbound trains at the appropriate Interchange area and time agreed to with Pan Am Southern and for prompt delivery of billing information to Pan Am Southern.

SECTION 8. SPECIAL DEFAULTS

(a) Terminal Operator Default. Norfolk Southern may require that Pan Am Southern replace a Terminal Operator with the Person it designates for "cause" by giving sixty (60) days written notice to Pan Am Southern. "Cause" shall mean

- (i) Failure of Pan Am Southern to perform or cause its Terminal Operators to perform obligations under Section 7(a) of this Appendix F to Norfolk Southern's satisfaction based upon reasonable commercial standards of performance. For example, damaged containers, where the occurrence of same is more than occasional, would constitute "cause" under this Section 8(a)(i)
- (ii) Failure of Pan Am Southern to correct or cause its Terminal Operators to correct a performance deficiency or other breach of this Appendix F, as it relates to a Destination Terminal, within 60 days of written notice thereof
- (iii) Failure of Pan Am Southern to timely repair or cause its Terminal Operators to timely repair damaged Norfolk Southern, CP, D&H or Customer Intermodal Equipment in accordance with authorization, where such failure is more than occasional

Pan Am Southern shall ensure that agreements with its Terminal Operators permits the replacement of such Terminal Operators as required by this Section 8(a)

(b) Failure to Interchange – Westbound. Should Pan Am Southern fail to Interchange westbound traffic prior to the cutoff time, the following procedure and guidelines shall apply

- (i) Pan Am Southern shall notify Norfolk Southern as soon as possible of any delays and an estimated time of arrival at Mechanicville, NY.
- (ii) Both Participating Parties shall make every reasonable effort to accommodate such delays and to make scheduled connections

(c) Failure to Interchange -- Eastbound Should Norfolk Southern fail to Interchange eastbound traffic prior to the cutoff time for Pan Am Southern' eastbound trains departing from Mechanicville, NY, the following procedure and guidelines shall apply

- (i) Norfolk Southern shall notify Pan Am Southern as soon as possible of any delays and an estimated time of arrival at Mechanicville, NY.
- (ii) Both Participating Parties shall make every reasonable effort to accommodate such delays and to make scheduled arrival time at the intended Destination Terminal

(d) Event of Default Not Related to Performance Either of the following events shall constitute an "Event of Default" which shall give Norfolk Southern or Pan Am Southern cause to terminate at the non-defaulting Participating Party's option

- (i) The admission in writing by Norfolk Southern or Pan Am Southern of its inability to pay its debts when due

- (ii) A force majeure event as defined in Section 10 of the Agreement prevents either party from performing its obligations hereunder for a period of sixty (60) days.

(d) Service Standards. The parties shall perform their responsibilities hereunder in accordance with the line haul and terminal service standards set forth in Schedule E to this Appendix F

SCHEDULE A TO APPENDIX F – HAULAGE SERVICES

Westbound Haulage Services between the Destination Facilities or the Waterville Facility and Interchange at Mechanicville, NY shall include

- **Transportation of Intermodal Equipment and Automotive Traffic from terminal to Interchange point at Mechanicville, NY using Pan Am Southern power**
- **Notification to Norfolk Southern of Interchange**
- **Generation of invoices to Norfolk Southern for Haulage Services**

Eastbound Haulage Services between Norfolk Southern Interchange at Mechanicville, NY and the Destination Facilities or the Waterville Facility shall include

- **Transportation between Mechanicville, NY interchange and the Destination Facilities or the Waterville Facility using Pan Am Southern power**
- **Generation of invoices to Norfolk Southern for Haulage Services**

SCHEDULE B TO APPENDIX F – LIFT SERVICES

Lift Services for westbound traffic between the Destination Facilities or the Waterville Facility and Interchange at Mechanicville, NY shall include:

- Receipt of Intermodal Equipment and Automotive Traffic through gate at terminal.
- Inspection of Intermodal Equipment and seal and Automotive Traffic at gate and documentation of any exceptions
- Confirmation and/or input of waybill data
- Storage of Intermodal Equipment and Automotive Traffic in Destination Facility or the Waterville Facility until:
 - 1) Next departing train; or
 - 2) Disposition instructions received from Customer or Norfolk Southern
- Proper loading of Intermodal Equipment and Automotive Traffic onto Railcars at Destination Facility or the Waterville Facility.
- For Automotive Traffic, vehicle unloading, shuttling, baying and inventory management
- Generation of invoices in the name of Pan Am Southern to Norfolk Southern for Lift Services with instructions to pay the Terminal Operator directly

Lift Services for eastbound traffic between Norfolk Southern Interchange at Mechanicville, NY and the Destination Facilities or the Waterville Facility shall include

- Proper unloading and grounding of Intermodal Equipment and Automotive Traffic from Railcars.
- Live lifting upon request.
- Notification of arrival to Customer
- Storage of Intermodal Equipment and Automotive Traffic
- Provision of any customs or bonding services for international traffic
- Outgate clerical services and collection of storage or other fees
- Generation of invoices in the name of Pan Am Southern to Norfolk Southern for Lift Services with instructions to pay the Terminal Operator directly

SCHEDULE C TO APPENDIX F – AUXILIARY SERVICES

- 1) Equipment Maintenance** Maintain Intermodal Equipment at the request of the Customer or Norfolk Southern - whomever owns, leases or otherwise controls the Intermodal Equipment - in accordance with the provisions and guidelines contained in Appendix V Intermodal Equipment Maintenance shall include the cleaning of Intermodal Equipment
- 2) Miscellaneous Terminal Services** - These services shall include
 - a** Transferring or adjusting lading - This shall be billable only if such activity is requested by Customer or Norfolk Southern and is not the result of sole negligence or error in handling the Intermodal Equipment or Automotive Traffic by Pan Am Southern or the Terminal Operator
 - b** Inspecting Intermodal Equipment prior to lease termination or other inspections not associated with lift operations
 - c.** Any other miscellaneous services not associated with linehaul services that Norfolk Southern and/or its Operations Service Representatives may request.
- 3) Generation of invoices in the name of Pan Am Southern to Norfolk Southern for Auxiliary Services requested by Norfolk Southern with instructions to pay the Terminal Operator directly**
- 4) Generation of invoices in the name of Pan Am Southern to Customers for Auxiliary Services requested by Customers with instructions to pay the Terminal Operator directly**

[REDACTED]

[REDACTED]

(d) Intermodal and Automotive charges shall be subject to fuel surcharge pursuant Appendix G to the Agreement

2 Lift Services

[REDACTED]

3. Auxiliary Services

[REDACTED]

SCHEDULE E TO APPENDIX F - SCHEDULES AND HOURS OF OPERATIONS

Depart Waterville Arrive/Dep Ayer Arrive MCV/Mohawk

[To be determined]

EASTBOUND SCHEDULES AND DAYS OF OPERATION

Depart MCV/Mohawk Arrive/Dep Ayer Arrive Waterville

[To be determined]

WATERVILLE TERMINAL GATE HOURS OF OPERATION

MON-FRI: 24 hours SAT: 0800-1700 SUN: 0800-1700

AYER TERMINAL GATE HOURS OF OPERATION

[To be determined]

PERFORMANCE STANDARDS

[To be determined, will include commitments by parties for continuous improvement of schedule efficiencies]

APPENDIX G – COMPENSATION

Section 1 Compensation.

(a) Norfolk Southern shall compensate Pan Am Southern for the trackage rights use of the Subject Trackage by paying to Pan Am Southern a sum computed by multiplying (i) the Trackage Rights Charge, as hereinafter defined, by (ii) the number of cars (loaded or empty) and locomotives moved over the Subject Trackage by (iii) the miles of the Subject Trackage over which the cars and/or locomotives moved, with multi-platform cars being counted as one car for each four axles

(b) Norfolk Southern shall compensate Pan Am Southern for the haulage rights use of the Subject Trackage by paying to Pan Am Southern a sum computed by multiplying (i) the Haulage Rights Charge, as hereinafter defined, by (ii) the number of cars (loaded or empty) and locomotives moved over the Subject Trackage, with multi-platform cars being counted as one car for each four axles.

Section 2 The Trackage Rights Charge.

(a) The Trackage Rights Charge shall initially be set at [REDACTED] (United States currency)

(b) The Trackage Rights Charge shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July first following the Effective Date of this Agreement, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East - Materials, prices, wage rates and supplements combined (excluding fuel) (the "Cost Index" The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year The Cost Factor may be a positive or negative number

(c) The Trackage Rights Charge shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Trackage Rights Charge. In computing the adjusted Trackage Rights Charge, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent

(d) In the event the base for the Cost Index shall be changed from that in effect at the Effective Date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 14 of this Agreement

(c) In the event that the Cost Factor is a negative number, no adjustment to the Trackage Rights Charge will take place for that calendar year. Said negative Cost Factor will be taken into consideration in calculating subsequent years' Cost Factor. Specifically, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor goes negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account.

(f) Notwithstanding any of the foregoing, under no circumstances shall the rate paid to Pan Am Southern by Norfolk Southern be less than the initial Trackage Rights Charge set forth in Section 2(a) of this Appendix G.

Section 3 The Haulage Rights Charge.

The per car charges for each loaded haulage car are set forth in the individual appendices. Those charges shall be subject to adjustment as set forth below:

(a) Rate Adjustment

(1) The Rates shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July 2009 (or, in the case of Automotive Traffic, the first July thereafter following the initial commencement of Haulage Services with respect to Automotive Traffic), to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes - Table A -- Annual Indexes of Charge-out Prices and Wage Rates (1977=100) -- East -- Materials, prices, wage rates and supplements combined (excluding fuel)" (the "Cost Index"). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(2) The Rates shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Rates. In computing the adjusted Rates, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(3) In the event the base for the Cost Index shall be changed from that in effect at the effective date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

(4) In the event that the Cost Factor is a negative number, no adjustment to the Haulage Rights Charge will take place for that calendar year. Said negative Cost Factor will be

taken into consideration in calculating subsequent years' Cost Factor. Specifically, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor goes negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account, and so on.

(5) Notwithstanding any of the foregoing, under no circumstances shall the Rates be less than those reflected in the tables above except as provided in subsection (b)(4) of Schedule D of Appendix F to the Agreement.

(b) Fuel Surcharge:

[illegible]

The surcharge will be applied to the intermodal haulage component of the monthly invoice. For a given month, take the average of the DOE's Index value released on each of the Mondays during that month. Using the above scale, determine the appropriate fuel surcharge to apply.

TRANSPORTATION AGREEMENT ASSIGNMENT AND DIVISIONS ALLOCATION AGREEMENT

THIS TRANSPORTATION AGREEMENT ASSIGNMENT AND DIVISIONS ALLOCATION AGREEMENT ("Agreement") is made and entered into this ____ day of _____, by and among Pan Am Southern LLC, a Delaware limited liability company ("Pan Am Southern") and Springfield Terminal Railway Company ("Springfield Terminal"). Each of Pan Am Southern and Springfield Terminal is sometimes referred to as a "Party" and collectively as "Parties "

RECITALS

WHEREAS, Pan Am Railways, Inc. ("Pan Am"), on behalf of itself and its subsidiaries, Boston and Maine Corporation ("B&M"), and Springfield Terminal (collectively, the "Pan Am System Parties") and Norfolk Southern Railway Company ("Norfolk Southern") and [] entered into a Transaction Agreement (the "Transaction Agreement"), dated as of [], 2008, which provides, among other things, for Norfolk Southern and B&M to form Pan Am Southern, and

WHEREAS, prior to Closing, as defined in the Transaction Agreement, Springfield Terminal was responsible for developing and quoting Rates and Allowances, as each of those terms is defined hereinafter, for rail transportation over the then-existing Pan Am system (the portion of such system as is not included in the Assets (as hereinafter defined) being defined as "Remaining Springfield Terminal System"); and

WHEREAS, the Transaction Agreement provides for B&M and the other Pan Am System Parties to sell in part, and contribute in part, certain railroad lines and trackage rights owned or operated generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the "Line", as more specifically defined in the Transaction Agreement) and certain other related assets previously operated in a unified manner with other railroad lines, trackage rights and assets by Springfield Terminal (collectively, the "Assets", as more specifically defined in the Transaction Agreement) to Pan Am Southern (the "Contribution"); and

WHEREAS, as a result of the Contribution, the rail lines previously operated in a unified manner by Springfield Terminal will, after Closing, be operated by two entities, Pan Am Southern (as to the lines contributed and sold to Pan Am Southern) and Springfield Terminal (as to the Remaining Springfield Terminal System); and

WHEREAS, the Transaction Agreement contemplates that railroad operations over the Line, including the quoting of Rates and Allowances initially will be performed on behalf of Pan Am Southern by a railroad operator (the "Railroad Operator") pursuant to a Railroad Operating Agreement (as defined in the Transaction Agreement) and that the initial Railroad Operator shall be Springfield Terminal; and

WHEREAS, for so long as Springfield Terminal remains the Railroad Operator, it will have direct knowledge of the costs for the provision of particular railroad transportation services over the rail lines of Pan Am Southern, because Springfield Terminal will be the Railroad Operator, and will be compensated, pursuant to the Railroad Operating Agreement, for providing that Railroad Operator service, and

WHEREAS, for so long as the Railroad Operating Agreement remains effective, Springfield Terminal will continue, after the Closing, to be responsible for developing and quoting Rates and Allowances for movements over the same lines as it did prior to Closing, but owner and operator with respect to the Remaining Springfield Terminal System and, under separate agreements, as the Railroad Operator for Pan Am Southern; and

WHEREAS, the Parties acknowledge the difficulty in, and legal impediments against, Springfield Terminal developing independent Rates and Allowances for Pan Am Southern, principally in the context of a joint line transportation move involving both the Line and Remaining Springfield Terminal System (a "Joint Move"), or a transportation move involving only the Line (a "Pan Am Southern Only Move" and, collectively with a Joint Move, a "Rail Move"), when Springfield Terminal also develops Rates and Allowances for itself with respect to the Remaining Springfield Terminal System; and

WHEREAS, Pan Am Southern and Springfield Terminal have determined to implement a formulaic model (the "Model", as further defined in Section 4) for allocation of revenues and certain Allowances from transportation provided by Pan Am Southern (as to the lines contributed and sold) and Springfield Terminal (as to the Remaining Springfield Terminal System) pursuant to a Rail Move as a result of Rates developed and quoted by Springfield Terminal; and

WHEREAS, Pan Am Southern and Springfield Terminal have determined that the Model shall provide for a certain set amount (the "Terminal Credit") to be allocated to either or both Carrier(s) if the Rail Move involves an origin or termination on said Carrier, and to allocate the remainder, after allocating for any Terminal Credits and/or any Local Service Charges, to each Carrier on the basis of each Carrier's on-line route miles involved in the Rail Move, if any; and

WHEREAS, Norfolk Southern and Springfield Terminal obtained the prior approval of the Surface Transportation Board ("STB") to consummate the transactions set forth in the Transaction Agreement, including the authority to enter into, and perform pursuant to, this Agreement.

NOW, THEREFORE, with reference to the foregoing facts and in consideration of the mutual agreements and understandings set forth herein, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. Definitions and Interpretation

(a) Interpretation Generally

Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry

(b) Capitalized Terms

All capitalized terms shall have the defined meaning set forth below

“AAA” shall have the meaning given to that term in Section 11(c)(11).

“Agreement” shall have the meaning given to that term in the introductory paragraph.

“Allowance” shall have the meaning given to that term in Section 2(e).

“Assets” shall have the meaning given to that term in the Recitals

“B&M” shall have the meaning given to that term in the Recitals.

“Carrier” shall mean Pan Am Southern and/or Springfield Terminal, as the context requires

“Cars” shall mean each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment.

“Contribution” shall have the meaning given to that term in the Recitals

“Cost Factor” shall have the meaning given to that term in Section 5(b).

“Cost Index” shall have the meaning given to that term in Section 5(b).

“Customers” shall mean shippers and receivers of rail freight

“Customer Transportation Agreements” shall mean contracts, exempt quotations and common carrier offerings pursuant to which Springfield Terminal and/or Pan Am Southern has undertaken, alone or in conjunction with other rail carriers to provide through rail transportation to Customers

“Delaware Courts” shall have the meaning given to that term in Section 11(c)(1).

“Dispute” shall have the meaning given to that term in Section 11(a).

“Effective Date” shall mean the effective date of the Railroad Operating Agreement.

“Existing Customer Transportation Agreement” shall have the meaning given to that term in Section 2(a)

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB.

“HPII” shall mean horse power hours.

“JOC” shall have the meaning given to that term in the L.I.C Agreement.

“Joint Move” shall have the meaning given to that term in the Recitals.

“Line” shall have the meaning given to that term in the Recitals.

"LLC Agreement" shall mean the Limited Liability Company Agreement of Pan Am Southern between Norfolk Southern and B&M dated _____.

"Local Services" shall mean those local services not necessary for completion of the line haul transportation, including, without limitation, loading or unloading, weighing of cars, intra-plant switching, storage or warehousing. The weighing of cars for the purpose of assessing transportation charges shall be a Local Service

"Local Service Charge" shall have the meaning given to that term in Section 4(b)

"Management Committee" shall have the meaning given to that term in the LLC Agreement

"Model" shall have the meaning given to that term in the Recitals and Section 4.

"Monthly Statement" shall have the meaning given to that term in Section 7(a).

"New Customer Transportation Agreement" shall have the meaning given to that term in Section 3(a)(ii)

"Norfolk Southern" shall have the meaning given to that term in the Recitals.

"Pan Am" shall have the meaning given to that term in the Recitals.

"Pan Am System Parties" shall have the meaning given to that term in the Recitals

"Party" and **"Parties"** shall have the meaning given to those terms in the introductory paragraph

"Person" shall mean an individual or a partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity.

"Pan Am Southern" shall have the meaning given to that term in the introductory paragraph

"Pan Am Southern Only Move" shall have the meaning given to that term in the Recitals

"Rail Move" shall have the meaning given to that term in the Recitals.

"Railroad Operator" shall have the meaning given to that term in the Recitals

"Rate" shall mean any public or private commercial transportation charge quoted for the movement of loaded or empty freight rail cars, locomotives or other rail-moved equipment, exclusive of any and all Allowances, and not including any charges for Local Services.

"Remainder" shall have the meaning given to that term in Section 4.

"Remaining Springfield Terminal System" shall have the meaning given to that term in the Recitals

“Rules” shall have the meaning given to that term in Section 11(c)(11)

“Springfield Terminal” shall have the meaning given to that term in the introductory paragraph

“STB” shall have the meaning given to that term in the Recitals.

“Terminal Credit” shall have the meaning given to that term in the Recitals

“TIH/PIH” shall mean, as defined by the definition of “material poisonous by inhalation” to be found at 49 CFR Section 171.8, specifically:

(1) A gas meeting the defining criteria of Section 173.115(c) of Subchapter C (which is titled “Hazardous Materials Regulations”) and assigned to Hazard Zone A, B, C or D in accordance with Section 173.116(a) of Subchapter C;

(2) A liquid (other than as a mist) meeting the defining criteria in Section 173.132(a)(1)(iii) of Subchapter C and assigned to Hazard Zone A or B in accordance with Section 173.133 (a) of Subchapter C, or

(3) Any material identified as an inhalation hazard by a special provision in Column 7 of the Section 172.101 table

“Transaction Agreement” shall have the meaning given to that term in the Recitals

“Transportation Agreement” shall mean an Existing Customer Transportation Agreement or a New Customer Transportation Agreement, as the context requires

(c) Construction of Certain Terms and Phrases

Unless the context otherwise requires, (i) words of any gender include each other gender, (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refers to the specified Article or Section of this Agreement; (v) the terms “and” and “or” include the term “and/or” when the context is appropriate; (vi) the terms “include” or “including” also include the words “without limitation” when the context is appropriate. Whenever this Agreement refers to a number of days, such number shall refer to calendar days. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. All dollar amounts set forth herein are in United States currency. Whenever this Agreement refers to an Appendix, Exhibit or Schedule attached hereto, the Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference. References herein to any agreement or contract mean such agreement or contract as amended.

Section 2. Existing Customer Transportation Agreements

(a) Appendix B lists all identified existing Customer Transportation Agreements pursuant to which Springfield Terminal, prior to Closing, has committed to undertake freight rail transportation requiring the use of the Line (each an “Existing Customer Transportation Agreement”). If,

subsequent to the effective date of this Agreement. Springfield Terminal discovers any additional Existing Customer Transportation Agreements, said Appendix B shall be amended accordingly.

(b) Subject to the terms of the Transaction Agreement, and for value received, Springfield Terminal does hereby transfer and assign unto Pan Am Southern all of Springfield Terminal's rights, titles and interests in those various Existing Customer Transportation Agreements to the extent that said instruments involve freight rail transportation requiring the use of the Line, and retaining to itself said Existing Customer Transportation Agreements to the extent, if any, that said instruments involve freight rail transportation requiring the use of Remaining Springfield Terminal System.

(c) Subject to the terms of the Transaction Agreement, Pan Am Southern does hereby accept and assume, to the extent of the interest hereby assigned, all of the rights, titles, interests, covenants, promises and obligations of Springfield Terminal contained within the Existing Customer Transportation Agreements

(d) For the avoidance of doubt (1) Pan Am Southern shall cause to be performed all the necessary operations to complete the transportation to and from Pan Am Southern's stations, or in interchange with other carriers, pursuant to Existing Customer Transportation Agreements, in each case in accordance with its terms, and (2) Springfield Terminal shall cause to be performed all the necessary operations to complete the transportation to and from stations on the Remaining Springfield Terminal System, or in interchange with other carriers, pursuant to Existing Customer Transportation Agreements, in each case in accordance with its terms and to the extent not assigned.

(e) Except as described in Section 6(b), revenues received from, and any obligations to provide refunds, rebates or other such payments or discounts, including the obligation to pay car hire or expenses or horse power hours on utilized locomotives (each an "Allowance"), if any, arising out of Existing Customer Transportation Agreements shall be allocated in accordance with the Model

Section 3. Appointment of Springfield Terminal

(a) Pan Am Southern hereby retains and engages Springfield Terminal and Springfield Terminal agrees to become and act as the agent for Pan Am Southern for

(i) the allocation of revenues and Allowances between Pan Am Southern and Springfield Terminal, if any, arising from Existing Customer Transportation Agreements, and

(ii) the development and quoting of Rates and Allowances and charges for Local Services for Customer Transportation Agreements entered into on or after Closing (each a "New Customer Transportation Agreement") involving the movement of rail traffic over either (A) the Line exclusively (either for a move local to the Line or a move involving carriers other than the Remaining Springfield Terminal System) or (B) both the Line and the Remaining Springfield Terminal System (either for a move local to the Line and the Remaining Springfield Terminal System or a moving involving carriers other than Pan Am Southern and the Remaining Springfield Terminal System), including

(A) the form and content of said New Customer Transportation Agreement, be it common carrier rate, exempt rate quote, circular, contract, or other, provided, however, that Rates and Allowances generally shall be quoted on a joint line (through rate) basis, except with regard to movements of TIH/PIH movements, which generally shall be quoted on a Rule 11 basis; and

(B) any applicable fuel surcharge to be applied, and

(C) charges for demurrage and Local Services

(it being understood that Springfield Terminal, when developing and quoting a Rate and Allowance for Customer Transportation Agreements involving the movement of rail traffic over the Remaining Springfield Terminal System but not over the Line shall do so, if at all, pursuant to a different authority granted pursuant to a different agreement).

(b) Generally the pricing for Pan Am Southern will be on through rates, but allowing for exceptions (e.g. TIH/PIH). Pan Am Southern and Springfield Terminal agree that the pricing strategy should support the commercial objectives established by Pan Am Southern

(c) In order to maximize the development of competitive market opportunities for Pan Am Southern, Springfield Terminal shall consult with the JOC when necessary or appropriate on the development of a Rate and Allowance, if any, for a New Customer Transportation Agreement involving the movement of rail traffic over the Line but not over Remaining Springfield Terminal System

Section 4. Allocation of Transportation Revenues.

For all movements pursuant to a Transportation Agreement, Pan Am Southern and Springfield Terminal shall be allocated revenues and Allowances in accordance with the following Model

(a) If either or both of the Carriers shall have an origin or destination covered by the transportation provided pursuant to a Transportation Agreement, the Carrier with that origin or destination shall be allocated a Terminal Credit

(b) If either or both of the Carriers shall perform Local Services for which a charge ("Local Service Charge") is separately assessed to the Customer (in addition to the Rate), the Carrier shall be allocated the associated applicable charge

(c) The Terminal Credit, and all Local Service Charges assessed as a portion of the Rate, shall be subtracted from the Rate to arrive at the "Remainder"

(d) The Remainder shall then be allocated to each Carrier in a ratio that equals a ratio of the on-system main line miles over which the transportation is provided. On-system main line miles shall be calculated using the distances between stations using Springfield Terminal timetables in effect on May 1, 2008, and shall be rounded to the nearest whole mile, with decimals under .50 rounding down, and decimals at .50 and above rounding up.

(e) Allowances and surcharges, such as fuel surcharges, shall be allocated in the same proportion as the Rate is allocated.

Examples of the application of the Model are set forth in Appendix A

Section 5. Terminal Credit

(a) The Terminal Credit for the movement of Cars [REDACTED]

(b) The Terminal Credit shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July first following the Effective Date of this Agreement, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East -- Materials, prices, wage rates and supplements combined (excluding fuel) (the "Cost Index") The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year The Cost Factor may be a positive or negative number

(c) The Terminal Credit shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Terminal Credit. In computing the adjusted Terminal Credit, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(d) In the event the base for the Cost Index shall be changed from that in effect at the Effective Date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto In the absence of agreement, the parties shall submit the matter to binding arbitration under the terms of Section 11 of this Agreement.

(e) In the event that the Cost Factor is a negative number, no adjustment to the Terminal Credit will take place for that calendar year. Said negative Cost Factor will be taken into consideration in calculating subsequent years' Cost Factor. Specifically, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor is negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account

(f) Notwithstanding any of the foregoing, under no circumstances shall the Terminal Credit be less than the initial Terminal Credit set forth in Section 5(a).

Section 6. Car Hire and Special Locomotive Provisions

(a) Car Hire

For all traffic moving pursuant to a Customer Transportation Agreement, car hire shall be placed in the account of Pan Am Southern, while Cars are located on Pan Am Southern, and in the account of Springfield Terminal, while the Cars are located on the Remaining Springfield Terminal System, [REDACTED]

(b) Special Locomotive Provisions.

[REDACTED]

Section 7. Reports

(a) On or before the 15th day of each calendar month during the term of this Agreement, Springfield Terminal shall prepare on behalf of and deliver to Pan Am Southern a monthly statement setting forth the number of Cars operated over the Line during the prior calendar month (the "Monthly Statement"), which shall detail the associated allocation of revenues and Allowances to be billed and paid and the basis (respective on-line route miles traversed, on-line destination/termination, and other matters reasonably requested by Pan Am Southern) for such allocation. The Parties acknowledge that Springfield Terminal, pursuant to the Railroad Operating Agreement, shall be responsible for invoicing Customers pursuant to Transportation Agreements. The Monthly Statement shall be in electronic format and shall contain a detailed list of the Cars that moved during the subject month, which list shall include, for each Car, information relating to such Cars that Pan Am Southern may reasonably request in connection with accounting for the allocation of revenues and Allowances hereunder.

(b) Any dispute regarding the details of a Monthly Statement or allocation thereunder shall be raised no later than three (3) years from the date of the Monthly Statement and shall be reconciled between the Parties pursuant to Section 11, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Monthly Statement.

(c) Pan Am Southern and Springfield Terminal shall each have the right, at its own expense, to audit the records of any other Party pertaining to any Monthly Statements or the data used to determine the allocations thereunder, provided, however, that such audit is initiated at any time within three (3) years of the date of the relevant Monthly Statement. All such audits shall be conducted at reasonable intervals, locations, and times. All such audits shall be prosecuted with reasonable due diligence. Each Party acknowledges that all information disclosed to it or its representatives in connection with such an audit will be subject to Section 13. Any adjustment resulting from an audit conducted pursuant to this Section 7(c) with respect to which the Parties are in concurrence shall be reflected in a subsequent Monthly Statement. The initiation of an audit pursuant to this Section 7(c)

within the three (3) year time frame provided for in this Section 7(c) shall be considered the raising of a timely dispute pursuant to Section 7(b).

Section 8. Term and Termination

This Agreement shall become effective on the Effective Date and shall continue until the earlier of (i) termination by mutual agreement, and (ii) the termination or expiration of the Railroad Operating Agreement. Pan Am Southern shall have the right to terminate this Agreement upon a Pan Am Change in Control, as that term is defined in the Transaction Agreement.

Section 9. Successors and Assigns

(a) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. Third party beneficiary status shall inure to the benefit of Norfolk Southern and its subsidiary railroads and each of its and their successors and permitted assigns.

(b) No Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Parties, which consent may be withheld at the discretion of such other Parties.

Section 10. Notice

Any notice required or permitted to be given by one Party to any other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to Pan Am Southern:	Chairman Pan Am Southern c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
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With a copy to
Norfolk Southern
and Springfield
Terminal

If to Norfolk Southern	Mike R. McClellan Vice President – Intermodal and Automotive Marketing Norfolk Southern Corporation Three Commercial Place Norfolk, Virginia 23510-2191
With a copy to:	Vice President – Law Norfolk Southern Corporation Three Commercial Place Norfolk, VA 23510 (757) 629-2374 (757) 533-4872 (fax)
If to Springfield Terminal	David A. Fink President Springfield Terminal Railway Company c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692 (978) 663-1186 (978) 663-6907 (fax)
With a copy to	Robert Culliford Vice President Law Pan Am Systems Iron Horse Park North Billerica, MA 01862-1692 (603) 766-2002 (603) 766-2094 (fax)

Any Notice, other than a Notice sent by registered or certified mail, shall be effective when received, a Notice sent by registered or certified mail, postage prepaid return receipt requested, shall be effective on the earlier of when received or the third day following deposit in the United States mails. Any Party may from time to time change its address for further Notices hereunder by giving notice to the other Parties in the manner prescribed in this Section

Section 11. Dispute Resolution

(a) Reference to Senior Management

Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be referred to the JOC (for Pan Am Southern) for resolution and if the parties are unable to resolve the dispute, it will be referred, in writing, to the Management Committee (for Pan Am Southern) to resolve

(b) Reference for Formal Dispute Resolution

Any Dispute not resolved within sixty (60) days after receipt by any of the involved parties of written notice of reference of such Dispute to the senior management pursuant to Section 11(a), shall be submitted, if at all, by any Party for formal dispute resolution pursuant to Section 11(c).

(c) Formal Dispute Resolution

(i) Submission to Jurisdiction Each of the Parties hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 11(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (B) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof.

(ii) Dispute Resolution. Each of the Parties stipulates and agrees that any Dispute that is not resolved pursuant to Section 11(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D C , by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the American Arbitration Association ("AAA") then in effect (the "Rules"), under the following terms and conditions

(A) Selection of Arbitrator. A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator

(B) Conduct of Arbitration The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement

(C) Replacement of Arbitrator. Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator

(D) Findings and Conclusions. The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(E) Time is of the Essence. The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding.

(F) Temporary Equitable Relief. By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect.

(G) Consolidation. The parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this Agreement and/or any other JV Transaction Agreement, as that term is defined in the LLC Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under this Agreement and/or any other JV Transaction Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or the other JV Transaction Agreement be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration; (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(H) Discovery. Recognizing the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(I) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 11(c)(ii) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(J) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(d) As a third party beneficiary, Norfolk Southern may initiate and prosecute arbitration pursuant to Section 11(b) on behalf of Pan Am Southern. Pan Am Southern and Springfield Terminal

shall cooperate with Norfolk Southern in the preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

Section 12. Relationship of the Parties.

Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between the Parties. In the performance of transportation and other services by the Carriers, each shall be independent of the other, and employees of Pan Am Southern and Springfield Terminal shall be subject to the direction, supervision and control of their respective employer.

Section 13. Confidentiality

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by any Party to any person other than members, officers, employees, and attorneys, without the prior written approval of the other Parties. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

Section 14. Miscellaneous

(a) Entire Agreement

This Agreement, including any attached exhibits and schedules, contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are hereby merged herein. Except as expressly provided herein, nothing in this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies under or by way of this Agreement.

(b) Extension, Waiver and Amendment

The Parties may (i) extend the time for the performance of any of the obligations or other acts of any other Party hereto or (ii) waive compliance by any other Party hereto with any of the provisions hereof, in each case only if set forth in writing in an instrument signed by or on behalf of such Party. The waiver by any Party hereto of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach. This Agreement may be amended only by a written agreement executed by all of the Parties to this Agreement.

(c) Governing Law

THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF

THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS

(d) Judicial Interpretation.

Should any provision of this Agreement require judicial interpretation, it is agreed that a court or other tribunal interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any Person by reason of the rule of construction that a document is to be construed more strictly against the Person who itself or through its agent prepared the same, it being agreed that all Parties have participated in the preparation of this Agreement.

(e) No Third Party Beneficiaries

Other than specifically set forth herein, this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto, provided, however, that this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns

(f) Captions

The various captions of this Agreement are for reference only and shall not be considered or referred to in resolving questions of interpretation of this Agreement

(g) Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

(h) Costs and Attorneys' Fees

Each of the parties shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PAN AM SOUTHERN LLC

By: _____

Name.

Title

NORFOLK SOUTHERN RAILWAY
COMPANY

SPRINGFIELD TERMINAL RAILWAY
COMPANY

By: _____

Name

Title.

By: _____

Name

Title

Appendix A

Example 1 Rail Car Moving Between Buffalo, NY and Deerfield, MA

The interchange point between Norfolk Southern and Pan Am Southern is located at Mechanicville, NY. Springfield Terminal, on behalf of Pan Am Southern, quotes a joint line rate division of \$1,000 for the movement of a single loaded rail car between Mechanicville and Deerfield, MA. Pan Am Southern is allocated a Terminal Credit of [REDACTED]. The Remainder [REDACTED] is determined. The Remainder is allocated 100% to Pan Am Southern because there is no movement of the loaded rail car over the Remaining Springfield Terminal System. Any Allowance is allocated 100% to Pan Am Southern because the entirety of the revenues from the Rate is allocated to Pan Am Southern. The revenue waybill will indicate a routing of Buffalo – Norfolk Southern – Mechanicville – Pan Am Southern – Deerfield.

Example 2 Rail Car Moving Between Buffalo, NY and Portland, ME

The interchange point between Pan Am Southern and Remaining Springfield Terminal System is just east of Ayer, MA near Forge Village, MA. Springfield Terminal, on behalf of Pan Am Southern and Springfield Terminal, quotes a joint line rate division of \$1,000 for the movement of a single loaded rail car between Mechanicville and Portland, ME. Springfield Terminal is allocated a Terminal Credit of [REDACTED]. The Remainder [REDACTED] is determined. The Remainder is allocated 56.03% to Pan Am Southern and 43.97% to Springfield Terminal because the traffic will move 158 route miles over Pan Am Southern and 124 route miles over the Remaining Springfield Terminal System. Total revenues allocated to Pan Am Southern are [REDACTED] and total revenues allocated to Springfield Terminal are [REDACTED]. The revenue waybill will indicate a routing of Buffalo – Norfolk Southern – Mechanicville – Pan Am Southern – Forge Village – Springfield Terminal – Portland.

Example 3 Rail Car Moving Between Deerfield, MA and Portland, ME

Springfield Terminal, on behalf of Pan Am Southern and Springfield Terminal, quotes a joint line rate division of \$1,000 for the movement between Deerfield, MA and Portland, ME. Pan Am Southern and Springfield Terminal are both allocated a Terminal Credit [REDACTED] each, totaling [REDACTED]. The Remainder [REDACTED] is determined. The Remainder is allocated 37.37% to Pan Am Southern and 62.63% to Springfield Terminal because the traffic will move 74 route miles over Pan Am Southern and 124 route miles over the Remaining Springfield Terminal System. Total revenues allocated to Pan Am Southern are [REDACTED] and total revenues allocated to Springfield Terminal are [REDACTED]. The revenue waybill will indicate a routing of Deerfield – Pan Am Southern – Forge Village – Springfield Terminal – Portland.

Example 4 Rail Car Moving Between Worcester, MA (P&W) and Auburn, ME (SLR)

The interchange point between the Providence and Worcester ("P&W") and Pan Am Southern is located at Gardner, MA. The interchange point between Remaining Springfield Terminal System and Saint Lawrence & Atlantic Railroad ("SLR") is located at Danville Junction, ME. Springfield Terminal, on behalf of Pan Am Southern and Springfield Terminal, quotes a joint line rate division of \$1,000 for the movement between Gardner and Danville.

Junction Neither Pan Am Southern nor Springfield Terminal is allocated a Terminal Credit. The Remainder equals the entire \$1,000 quoted division The Remainder is allocated 16 38% to Pan Am Southern and 83 62% to Springfield Terminal because the traffic will move 29 route miles over Pan Am Southern and 148 route miles over the Remaining Springfield Terminal System Total revenues allocated to Pan Am Southern are [REDACTED] and total revenues allocated to Springfield Terminal are [REDACTED] The revenue waybill will indicate a routing of P&W – Gardner – Pan Am Southern – Ayer – Springfield Terminal – Danville Junction-SLR-Auburn, ME

Appendix B.—Transportation Agreements

[to be completed at closing]

Appendix C – [REDACTED]

[REDACTED]

SPRINGFIELD TERMINAL JOINT USE AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 2008, by and among Pan Am Southern LLC, a Delaware limited liability Company ("Pan Am Southern"), Springfield Terminal Railway Company ("Springfield Terminal"), a Vermont corporation that is a wholly-owned subsidiary of Pan Am Railways, Inc ("Pan Am", and collectively with Boston and Maine Corporation ("B&M") and Springfield Terminal, the "Pan Am System Parties") Pan Am Southern and Springfield Terminal are referred to individually herein as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, Norfolk Southern, Pan Am, on behalf of itself and its subsidiaries, including B&M, and Springfield Terminal entered into a Transaction Agreement (the "Transaction Agreement"), dated as of [], 2008, which provides, among other things, for Norfolk Southern Railway Company ("Norfolk Southern") and B&M to form Pan Am Southern, and

WHEREAS, the Transaction Agreement provides for B&M and the other Pan Am System Parties to sell in part and contribute in part certain railroad lines and trackage rights owned or operated generally in New York, Vermont, Connecticut, Massachusetts, and New Hampshire (the "Line", as more specifically defined in the Transaction Agreement) and certain other related assets to Pan Am Southern (the "Contribution"); and

WHEREAS, Massachusetts Bay Transportation Authority ("MBTA") operates passenger train service over a portion of the Line; and

WHEREAS, MBTA owns a line of railroad between CPF 312, at or near Milepost 311.97±, in the region of Ayer, MA and Milepost 329.55±, near Fitchburg, MA (the "MBTA Segment"), which constitutes a portion of the operating rights included in the Line, and

WHEREAS, MBTA and one or more of the Pan Am System Parties are parties to several agreements that govern the rights and obligations of each relating to the provision of passenger service, including passenger service on the Line that has been assigned to Pan Am Southern; and

WHEREAS, pursuant to a Railroad Operating Agreement, Pan Am Southern initially hired Springfield Terminal to perform as the designated operator ("Railroad Operator") for all railroad operations on behalf of Pan Am Southern, including Pan Am Southern railway operations required pursuant to this Agreement, and

WHEREAS, the Transaction Agreement provides for Pan Am Southern to grant to Springfield Terminal overhead trackage rights for the movement of traffic in Springfield Terminal's revenue waybill account ("Springfield Terminal Traffic") over certain rail lines of Pan Am Southern ("Subject Trackage" as is further defined herein) between the rail lines remaining to Springfield Terminal immediately following the completion of the Contribution

that lie north and east of Willows, and a connection with the rail lines remaining to Springfield Terminal that lie south of Harvard, and

WHEREAS, the Parties acknowledge the operating constraints governing the use of the Subject Trackage and limiting its use by Springfield Terminal to the extent set forth herein; and

WHEREAS, the Transaction Agreement provides for Pan Am Southern to grant to Springfield Terminal certain haulage rights for the movement of Intermodal Traffic and Automotive Traffic, as hereinafter defined, between CPF 312 and an intermodal and automotive facility to be constructed by Pan Am Southern in Mechanicville, NY (the "Mechanicville Facility"); and

WHEREAS, Norfolk Southern, Pan Am, B&M and Springfield Terminal obtained the prior consent of the Surface Transportation Board to consummate the transactions set forth in the Transaction Agreement, including the grant of the trackage rights described herein, and

WHEREAS, Norfolk Southern and B&M formed Pan Am Southern in accordance with the Transaction Agreement, and

WHEREAS, Pan Am Southern now wishes to grant Springfield Terminal *overhead trackage rights under the terms and conditions hereinafter provided; and*

WHEREAS, MBTA has granted consent for Pan Am Southern to grant trackage rights over the MBTA Segment to Springfield Terminal as provided herein, and

WHEREAS, Pan Am Southern now wishes to grant Springfield Terminal Haulage Rights, as defined herein, under the terms and conditions hereinafter provided, and

WHEREAS, given the structure of Pan Am Southern, the Parties desire to grant Norfolk Southern third-party beneficiary status to enforce this Agreement on behalf of Pan Am Southern, and

WHEREAS, the Parties desire to set forth the terms and conditions upon which Springfield Terminal may use trackage rights to transport Springfield Terminal Traffic over the Subject Trackage,

NOW, THEREFORE, the Parties hereto, intending to be legally bound, agree as follows.

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally.

(i) Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(ii) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(iii) The Parties acknowledge that Springfield Terminal initially will be the Railroad Operator for Pan Am Southern pursuant to the Railroad Operating Agreement. Unless the context requires otherwise, a reference to Pan Am Southern shall be a reference to Pan Am Southern and its Railroad Operator. Except when Springfield Terminal is operating on behalf of Pan Am Southern pursuant to the Railroad Operating Agreement, its actions shall not be considered to be those of the Railroad Operator.

(b) Capitalized Terms

All capitalized terms shall have the defined meaning set forth below:

"AAR" shall mean the Association of American Railroads.

"Abandonment Notice Period" shall have the meaning given to that term in Section 16(c).

"Abandonment Segment" shall have the meaning given to that term in Section 16(a).

"Agreement" shall have the meaning given to that term in the introductory paragraph.

"Automotive Traffic" shall mean finished automobiles, sport utility vehicles, vans (including minivans), trucks and other vehicles.

"B&M" shall have the meaning given to that term in the introductory paragraph.

"Carload Operating Charges" shall mean those per carload mile charges imposed on Pan Am Southern to operate freight rail service over the MBTA Segment.

"Cars" means each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment.

"Clearance File" shall have the meaning given to that term in Section 5(b).

"Contribution" shall have the meaning given to that term in the Recitals.

"CSXT" shall mean CSX Transportation, Inc.

"Effective Date" shall have the meaning given to that term in Section 11(a).

“End Points” shall mean: (1) Harvard, MA at Milepost 25 70, and (2) CPF 312 at Milepost 311 97

“Equipment” shall mean and be confined to hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

“Exercise Notice” shall have the meaning given to that term in Section 16(c)

“FMV” shall have the meaning given to that term in Section 16(c)

“Foreign Railroad” shall mean a railroad that is not a party to this Agreement

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB

“Haulage Rights” shall have the meaning given to that term in Section 2(b)(1)

“Haulage Traffic” shall have the meaning given to that term in Section 2(b)

“Hazardous Materials” shall mean any traffic moving on STCC 49-XXX-XX.

“Intermodal Traffic” generally shall mean the movement of containers and trailers on rail cars

“JOC” shall mean that Joint Operating Committee of Pan Am Southern established pursuant to the LLC Agreement

“JV Transaction Agreements” shall have the meaning given to that term in the LLC Agreement

“Line” shall have the meaning given to that term in the Recitals

“LLC Agreement” shall mean that Limited Liability Company Agreement of Pan Am Southern Railway LLC, by and between Norfolk Southern and B&M, and dated as of [], 2008.

“Loss or Damage” shall have the meaning given to that term in Section 8.

“Management Committee” shall mean the Management Committee of Pan Am Southern as provided in the LLC Agreement.

“MBTA” shall have the meaning given to that term in the Recitals

“MBTA Segment” shall have the meaning given to that term in the Recitals.

“Mechanicville Facility” shall have the meaning given to that term in the Recitals

“Monthly Statement” shall have the meaning given to that term in Section 7(a)

“Norfolk Southern” shall have the meaning given to that term in the Recitals

“Pan Am” shall have the meaning given to that term in the introductory paragraph.

“Pan Am Southern” shall have the meaning given to that term in the introductory paragraph

“Pan Am Southern Cars” shall mean Cars and Equipment in the revenue and/or car hire account of Springfield Terminal

“Pan Am System Parties” shall have the meaning given to that term in the Recitals.

“Parties” shall have the meaning given to that term in the introductory paragraph.

“Party” shall have the meaning given to that term in the introductory paragraph.

“Person” shall mean an individual or partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity.

“Railroad Operator” shall have the meaning given to that term in the Recitals.

“Remaining Springfield Terminal” shall mean those lines owned or operated by Springfield Terminal on the day after the Closing.

“Springfield Terminal” shall have the meaning given to that term in the introductory paragraph.

“Springfield Terminal Cars” shall mean Cars and Equipment in the revenue and/or car hire account of Springfield Terminal

“Springfield Terminal Capacity Improvements” shall have the meaning given to that term in Section 3(j).

“Springfield Terminal Capacity Study” shall have the meaning given to that term in Section 3(j)

“Springfield Terminal Traffic” shall have the meaning given to that term in the Recitals

“STB” shall mean the Surface Transportation Board or any successor entity thereto.

“Subject Trackage” shall mean the certain lines of railroad generally running between the End Points.

“Subject Traffic” shall have the meaning given to that term in Section 8(a).

“Trackage Rights” shall have the meaning given to that term in Section 2(a)(1)

“Transaction Agreement” shall have the meaning given to that term in the Recitals

“Use Invoice” shall have the meaning given to that term in Section 7(a)

“Waiver Notice” shall have the meaning given to that term in Section 16(c)

(c) **Successor Laws**

A reference to any particular statute or regulation shall include a reference to any successor statute or regulation

SECTION 2. TRACKAGE RIGHTS AND HAULAGE RIGHTS

(a) **Trackage Rights**

(i) Pursuant to the Transaction Agreement and subject to the terms set forth in this Agreement, Pan Am Southern hereby grants Springfield Terminal trackage rights for the sole purpose of transporting Springfield Terminal Traffic over the Subject Trackage, including the MBTA Segment (collectively, “Trackage Rights”) These rights consist of the right to operate its trains, locomotives, Cars, and Equipment with its own crews over the entirety of the Subject Trackage Springfield Terminal’s use of the Trackage Rights shall be subject to the limitations and restrictions set forth in this Section 2(a) and Section 3

(ii) Springfield Terminal locomotives and crews operating over the Subject Trackage shall be equipped to communicate with Pan Am Southern on radio frequencies normally used by Pan Am Southern in directing train movements on the Subject Trackage

(iii) Springfield Terminal’s operations over the Subject Trackage shall at all times be subject to the direction and control of Pan Am Southern and comply in all respects with the safety rules, operating rules and other regulations of Pan Am Southern.

(iv) Springfield Terminal shall make such arrangements with Pan Am Southern as may be required to have all of its employees who shall operate its trains, locomotives, Cars and Equipment over the Subject Trackage qualified for operation thereover Pan Am Southern shall provide, and shall cause its Railroad Operator to provide, reasonable cooperation and assistance in the qualification of Springfield Terminal operating (train and engine) crews for service over the Subject Trackage upon request. Springfield Terminal supervisory personnel who have been qualified to operate over the Subject Trackage may qualify other Springfield Terminal employees for operation of trains over the Subject Trackage.

(b) Haulage Rights. Pursuant to the Transaction Agreement and subject to the terms set forth in this Agreement, Pan Am Southern hereby grants Springfield Terminal haulage rights (collectively, the "Haulage Rights") between CPF 312 and the Mechanicville Facility [REDACTED]

[REDACTED] ("Haulage Traffic").

SECTION 3. USE AND RESTRICTIONS ON USE OF THE SUBJECT TRackage

(a) Traffic moving pursuant to this Agreement shall at all times remain in the revenue waybill and car hire accounts of Springfield Terminal while moving over the tracks of Pan Am Southern.

(b) Pan Am Southern shall not be entitled to any line haul revenue for the handling of Haulage Traffic, or movement of traffic pursuant to the Trackage Rights, nor shall Pan Am Southern participate in the routing of, nor appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of any of the same.

(c) Springfield Terminal's use of Subject Trackage pursuant to the trackage rights grant shall be in common with Pan Am Southern, and other than as explicitly set forth herein, Pan Am Southern's right to use the Subject Trackage shall not be diminished by this Agreement.

(d) Springfield Terminal's operations over the Subject Trackage shall at all times be subject to the direction and control of Pan Am Southern and comply in all respects with the safety rules, operating rules and other regulations of the Pan Am Southern.

(e) In its exercise of the Trackage Rights grant, Springfield Terminal may operate trains in either direction over the Subject Trackage.

(f) In its exercise of the Trackage Rights grant, Springfield Terminal may use its Trackage Rights only to move traffic between:

(i) an interchange with CSXT south of Harvard and Springfield Terminal's own line at Willows; and

(ii) customers local to the Springfield Terminal's line south of Harvard and Springfield Terminal's line north of Willows; and

(iii) a connection with the Providence and Worcester at Worcester, MA and Springfield Terminal's line north of Willows; and

(iv) Ayer and an interchange with CSXT at Barbers, south of Harvard, but only for movements of empty Equipment originating at Ayer, such empty Equipment to be picked up by through trains that are operated by Springfield Terminal pursuant to this Agreement, and

(v) Ayer and Springfield Terminal's own line at Willows, but only for movements of traffic originating at Ayer that, in addition, is either (A) dimensional traffic requiring the use of the Ayer – Barber line segment or (B) empty Equipment originating at Ayer, such dimensional traffic or empty equipment to be picked up by through trains that are operated by Springfield Terminal pursuant to this Agreement

(g) Except as provided in Section 3(f)(iii) and Section 3(f)(iv), Springfield Terminal may use its Trackage Rights solely to operate its trains in overhead movements. The Trackage Rights shall not include the right of ingress and egress to any tracks, switches, turnouts, or other track classifications that connect to any point along the Subject Trackage except the End Points.

(h) Except as may otherwise be permitted by this Agreement, Springfield Terminal shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing Cars or Equipment, or the making or breaking up of trains, provided, however, that Springfield Terminal may use such auxiliary Subject Trackage as may be designated by the Railroad Operator as necessary for the handling of locomotives or Cars had ordered en route.

(i) Springfield Terminal may not, pursuant to this Agreement, grant haulage rights, trackage rights, or other operating rights of any nature on or over the Subject Trackage to any other Person

(j) In its exercise of the Trackage Rights grant, Springfield Terminal may not move, in any one calendar year, over the Subject Trackage more than one hundred twenty percent (120%) of Cars, loaded or empty, in the aggregate (counting each one-way movement as a single movement) that moved over the Subject Trackage in 2007, unless and until: (i) Springfield Terminal funds fifty percent (50%) of a study (the "Springfield Terminal Capacity Study", to be conducted by an independent third party) to identify the capacity improvements ("Springfield Terminal Capacity Improvements") necessary to handle the potential additional traffic with no negative impact on Pan Am Southern, and (ii) the Springfield Terminal Capacity Improvements are constructed at Springfield Terminal's sole risk and expense. Should the Springfield Terminal Capacity Improvements be constructed, the number of Cars, loaded or empty, Springfield Terminal may move over the Subject Trackage in any one calendar year shall be expanded only by an amount equal to the added capacity. Pan Am Southern agrees to fund fifty (50%) of the Springfield Terminal Capacity Study. Pan Am Southern shall have the right to

approve the individual Springfield Terminal Capacity Improvements constructed, but such approval shall not be unreasonably withheld, provided the Springfield Terminal Capacity Improvements conform to the recommendations of the Springfield Terminal Capacity Study

(k) Springfield Terminal Cars shall not move on trains transporting Norfolk Southern Intermodal Traffic or Automotive Traffic unless Norfolk Southern and the JOC consent

SECTION 4. INFRASTRUCTURE

(a) Maintenance.

(i) Pan Am Southern shall be solely responsible for the maintenance, repair, and renewal of the Subject Trackage. Pan Am Southern shall arrange to keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition (following the upgrading anticipated by the Transaction Agreement) not to be, as to Hill Yard, less than industry yard standard but in any event not less than Federal Railroad Administration Class 1, and, as to the remainder of the Subject Trackage, less than Federal Railroad Administration Class 2 (or any replacement of it), subject to normal slow orders and the like, but Pan Am Southern does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Pan Am Southern shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use commercially reasonable efforts to avoid such interruptions

(ii) Existing connections or facilities connecting the trackage owned or operated by Springfield Terminal with those of the Subject Trackage shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under applicable agreements

(b) Infrastructure Improvements

Pan Am Southern from time to time may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any Governmental Authority having jurisdiction, provided that no such retirement shall materially affect operations over the Subject Trackage. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage

(c) Loss of Use of the Line

(i) Other than as specifically set forth in this Agreement, Springfield Terminal shall not have, pursuant to this Agreement, any claim against Pan Am Southern for liability on account of Loss or Damage of any kind in the event the use of the Subject Trackage by Springfield Terminal is interrupted or delayed at any time by any cause

(ii) If the Subject Trackage is unavailable for service due to a derailment, line outage or other interruption of service, then Pan Am Southern shall cooperate and consult, and shall cause its Railroad Operator to cooperate and consult, with Springfield Terminal in order to address any resulting backlog of trains over a period of time following the resolution of such derailment as may be required to reduce such backlog of Springfield Terminal Traffic or trains. The operation of such trains shall be prioritized according to service standard protocols to be developed by the JOC

SECTION 5. MANAGEMENT AND OPERATIONS

(a) Dispatching

(i) Pan Am Southern, through its Railroad Operator, shall have exclusive control over the management and dispatching of the Subject Trackage. Dispatching of the Subject Trackage shall be conducted in a manner as to afford each of Pan Am Southern and Springfield Terminal, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the Subject Trackage consistent with the demands and needs of other authorized users. For the purposes of dispatching, trains of the same class shall be treated with equal priority, with the four (4) classes of trains (in order of priority) being:

- (1) Passenger;
- (2) Unit trains carrying Intermodal Traffic or Automotive Traffic,
- (3) Regular (unit and freight trains not scheduled to set off/pick up en route), and
- (4) Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements),

provided, that in the event of a conflict, the dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains

(ii) Springfield Terminal shall have the right to station a Springfield Terminal employee or agent in the dispatch center operated by Pan Am Southern or its Railroad Operator. Said person shall be present solely as an observer, and shall have no authority to control the movement of trains or otherwise interfere with or adjust the operation of trains, Cars or Equipment operating on the Subject Trackage

(b) Dimensional Loads/Excess Clearance Cars

In the exercise of its Trackage Rights grant, but not its Haulage Rights grant, Springfield Terminal shall have the right to operate all dimensional loads and excess clearance railcars for handling over the Subject Trackage, subject to a clearance file (the "Clearance File") applicable to traffic of Pan Am Southern and all other carriers authorized to operate over the line. Pan Am

Southern shall promptly inform Springfield Terminal of any changes made to the Clearance File, provided, however, that for so long as Springfield Terminal shall be the Railroad Operator, all changes in the Clearance File shall be assumed to have been communicated to Springfield Terminal

(c) Compensation

Springfield Terminal shall compensate Pan Am Southern for the use of the Subject Trackage in accordance with Appendix B Compensation.

(d) Mileage, Car Hire and Carload Operating Charges.

All mileage and car hire charges accruing on Springfield Terminal Cars on the Subject Trackage shall be assumed by Springfield Terminal and reported and paid by it directly All Carload Operating Charges shall be paid by Pan Am Southern

SECTION 6. COMPLIANCE WITH APPLICABLE LAWS AND RULES

(a) Each of Pan Am Southern and Springfield Terminal shall comply, and Pan Am Southern shall cause its Railroad Operator to comply, with all applicable federal, state and local laws, rules, regulations and orders promulgated by any Governmental Authority that relate to the operations contemplated hereunder If any fine, penalty, cost or charge is imposed or assessed on or against either of them by reason of the other Party's non-compliance (or, in the case of Pan Am Southern, the non-compliance of the Railroad Operator, for which Pan Am Southern shall be responsible) with any such laws, rules, regulations or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, cost, or charge, and all expenses and attorney's fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge or expense to that other Party

(b) Without affecting the generality of the foregoing Section 6(a), each of Pan Am Southern and Springfield Terminal shall comply, and Pan Am Southern shall cause its Railroad Operator to comply, with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, Cars and Equipment while such trains, locomotives, Cars, and Equipment are being operated over the Subject Trackage Each of those Parties shall indemnify, protect, defend, and save harmless the other Party from and against all fines, penalties and liabilities imposed upon such Party under such laws, rules, and regulations by any Governmental Authority or court having jurisdiction, when attributable solely to the failure of indemnifying Party (or, in the case of Pan Am Southern, the failure of the Railroad Operator, for which Pan Am Southern shall be responsible) to comply with its obligations in this regard.

(c) Springfield Terminal's trains shall not include locomotives, Cars or Equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as contained in the Clearance File maintained by Pan Am Southern, and no train shall contain

locomotives, Cars or Equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Pan Am Southern's operating rules and regulations, without the prior consent of Pan Am Southern. The IOC shall make proper accommodation for exceptions, should that be reasonable, necessary, and practicable

(d) If any employee of Springfield Terminal shall neglect, refuse, or fail to abide by Pan Am Southern's rules, instructions and restrictions governing the operation on or along Pan Am Southern's property, such employee shall, upon written request of Pan Am Southern, be prohibited by Springfield Terminal from working on Pan Am Southern's property. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of Springfield Terminal, then upon such notice presented in writing, Springfield Terminal shall promptly hold an investigation in which all Parties concerned shall participate, with each Party bearing the expense for its officers', counsel's, witnesses' and employees' participation. Springfield Terminal shall give notice of such investigations to its employees, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between the employer and its employees. If the result of such investigation warrants, such employee shall, upon written request by Pan Am Southern, be withdrawn by Springfield Terminal from service on Pan Am Southern's property and Springfield Terminal shall release and indemnify Pan Am Southern from and against any and all claims and expenses because of such withdrawal.

SECTION 7. INVOICES AND PAYMENT OF BILLS

(a) On or before the 15th day of each calendar month during the term of this Agreement, the Railroad Operator shall prepare on behalf of Pan Am Southern a monthly statement setting forth the number of Springfield Terminal Cars operated over the Subject Trackage during the month (the "Monthly Statement") and an invoice (the "Use Invoice"). The Monthly Statement shall be in electronic format, and shall contain a detailed list of the *Springfield Terminal Cars that moved during the subject month, which list shall include, for each Car, information relating to such Cars that Pan Am Southern may reasonably request in connection with accounting for the use of the services and rights provided hereunder.* The Monthly Statement and the Use Invoice shall be delivered to Springfield Terminal and Springfield Terminal shall make payment to Pan Am Southern within thirty (30) days after the date of receipt of such Use Invoice.

(b) Any dispute regarding the details of a Monthly Statement or amount of a Use Invoice shall be reconciled between the Parties pursuant to Section 14, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If Springfield Terminal disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full subject to adjustment upon resolution of the dispute; provided, however, that (1) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice, and (11) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing.

within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments

(c) Pan Am Southern and Springfield Terminal shall each have the right, at its own expense, to audit the records of any other Party pertaining to the use of the Subject Trackage under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by Pan Am Southern pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to this Agreement. All such audits shall be conducted at reasonable intervals, locations, and times. All such audits shall be prosecuted with reasonable due diligence. Each Party agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant to this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 7(c) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(d) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices, shall include direct labor and material costs, together with the surcharges, overhead percentages, and Equipment rentals as specified by Pan Am Southern at the time any work is performed by Pan Am Southern for Springfield Terminal, or shall include actual costs and expenses, upon mutual agreement of the Parties.

SECTION 8. LIABILITY

As between the Parties hereto, responsibility for all claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages and expenses of every character, including any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever (including employees of the Parties), resulting from, arising out of, incidental to or occurring in connection with this Agreement ("Loss or Damage"), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise specifically provided for hereinafter):

(a) Springfield Terminal Cars moving pursuant to this Agreement shall, for the purposes of this Section 8, be referred to as "Subject Traffic". Otherwise, for the purposes of assigning responsibility for Loss or Damage under this Section 8 (including but not limited to Section 8(d)) as between the Parties, the trains, Cars and Equipment of a Foreign Railroad shall be considered to be the trains, Cars and Equipment of Pan Am Southern. By way of illustration only, if, for example, Pan Am Southern were to grant D&H trackage rights pursuant to a trackage rights agreement, then traffic moving pursuant to that D&H trackage rights agreement would be considered Pan Am Southern traffic.

(b) Springfield Terminal shall be responsible for (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein; and (2) to the extent not allocated pursuant to Section 8(c)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors, or employees, either solely or in conjunction with a third party.

(c) Pan Am Southern shall be responsible for (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein, and (2) to the extent not allocated pursuant to Section 8(b)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors (including the Railroad Operator), or employees, either solely or in conjunction with a third party

(d) Loss or Damage arising from or growing out of the negligence or willful misconduct of both Springfield Terminal and Pan Am Southern (or their respective officers, agents, contractors or employees) shall be borne by the Parties in proportion to their fault

(e) To the extent responsibility for Loss or Damage is not allocated pursuant to Section 8(b), 8(c), and 8(d) such responsibility for Loss or Damages shall be (i) borne solely by Springfield Terminal if the involved trains are handling only Subject Traffic, or (ii) borne by each of Pan Am Southern and Springfield Terminal in proportion to the number of Cars in such trains that are moving in that Party's revenue waybill account or car hire account

(f) Notwithstanding anything to the contrary in Section 8(b), Section 8(c), Section 8(d), and Section 8(e) above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, or to third parties from substances transported in Cars or contained in locomotives occurs with one or more trains handling Subject Traffic being involved, then, as between themselves, (i) Pan Am Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Pan Am Southern Cars and/or contained in a Pan Am Southern locomotive which was released, (ii) Springfield Terminal shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Subject Traffic and/or contained in a Springfield Terminal locomotive which was released, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in Cars, Equipment or locomotives in the revenue waybill and car hire accounts of both Springfield Terminal and Pan Am Southern which was (or were) released shall be borne by the Parties in proportion to the total number of such Cars, Equipment or locomotives in that Party's revenue waybill or car hire account from which there was (or were) such a release

(g) Notwithstanding anything to the contrary in this Section 8, if (i) Loss or Damage occurs with one or more trains being involved, (ii) one or more of the involved trains is handling (A) only Subject Traffic or (B) both Subject Traffic and Pan Am Southern Cars; (iii) such Loss or Damage is attributable solely to the Gross Negligence or Willful or Wanton Misconduct of only one of the Parties (or of Springfield Terminal in its role as the Railroad Operator for Pan Am Southern), and (iv) such Gross Negligence or Willful or Wanton Misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such Gross Negligence or Willful or Wanton Misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Section 8(g), (1) "Gross Negligence or Willful or Wanton Misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, such a gross want of care and regard for the rights of others as to justify

the presumption of willfulness and wantonness" and shall include, by definition, acts or omissions of any its employees while under the influence of drugs or alcohol, and (2) Subject Traffic being handled in haulage shall be considered Pan Am Southern Cars

(h) If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of another Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 8.

(i) In every case of death or injury suffered by an employee of one of the Parties, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

(j) Whenever any liability, cost or expense is assumed by or allocated to a Party under this Section 8, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the Party indemnified, or their directors, officers, agents or employees, and (ii) defend such Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party

(k) Each of Pan Am Southern and Springfield Terminal shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(l) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Section 8, provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.

(m) No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709) for which another Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement

or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000) The foregoing amount of Thirty-Five Thousand Dollars (\$35,000) shall be adjusted annually consistent with the provisions of Section 2(b) and Section 2(c) of Appendix B

(n) Each Party shall indemnify and hold harmless the other Parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that each Party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

SECTION 9. RERAILING, WRECKING, BAD ORDERS AND REPAIRS

(a) Whenever one or more Cars and/or locomotives in the account of Springfield Terminal requires rerailling, wrecking service or wrecking train service, Pan Am Southern shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage and structures. Pan Am Southern shall promptly inform Springfield Terminal of its intent to proceed with wrecking service or wrecking train service, and shall permit a Springfield Terminal representative to be present on the scene, to work in concert with the employees of Pan Am Southern and its Railroad Operator to manage such wrecking service or wrecking train service. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom shall be apportioned in accordance with the provisions of Section 8 hereof. All locomotives, Cars, Equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by Springfield Terminal at the time of such wreck, shall be promptly delivered to it.

(b) If any Cars or locomotives of Springfield Terminal are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those Cars or locomotives shall, after being repaired, be picked up by Pan Am Southern, or if agreed upon by the parties, Pan Am Southern will transport them to a mutually acceptable location to be picked up by Springfield Terminal. Pan Am Southern may, upon request of Springfield Terminal and at the expense of Springfield Terminal, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered Cars or locomotives safe and lawful for movement, and

billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR

SECTION 10. FORCE MAJEURE

The obligations, other than payment obligations, of Springfield Terminal and Pan Am Southern under this Agreement shall be subject to force majeure (including flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, wreck, derailment, washout, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, or governmental laws, orders or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either of Springfield Terminal's or Pan Am Southern's ability to fulfill its obligations to the other Parties under this Agreement, said Party shall take all commercially reasonable measures to restore performance of its obligations in a timely manner

SECTION 11. TERM AND TERMINATION

(a) This Agreement shall become effective following the latest date of (a) the date first written above, (b) receipt of any required regulatory approvals or exemptions, and (c) the expiration of any time periods required by the issuance of labor notices by the Parties, should such labor notices be required ("Effective Date"). The Parties shall determine the Effective Date through an exchange of written correspondence

(b) This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement

(c) Termination of this Agreement shall not relieve or release any Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof, nor shall it terminate any underlying right, or contingent right, of movement pursuant to the trackage rights grant

SECTION 12. SUCCESSORS AND ASSIGNS.

(a) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. Third party beneficiary status shall inure to the benefit of Norfolk Southern and each of its successors and permitted assigns

(b) Except as otherwise specifically provided hereinafter, no Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Parties, which consent may be withheld at the discretion of such other Parties.

(c) In the event of a sale of substantially all of the assets or business of Springfield Terminal, or the merger or consolidation of Springfield Terminal into or with a firm or corporation not controlled by Springfield Terminal, Springfield Terminal may, without the prior consent of Pan Am Southern, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Springfield Terminal, or merging or consolidating with Springfield Terminal, provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of Springfield Terminal under this Agreement that existed prior to such assignment

(d) In the event of a sale of substantially all of the assets or business of Pan Am Southern, or the merger or consolidation of Pan Am Southern, Pan Am Southern may, without the prior consent of Springfield Terminal, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Pan Am Southern, or merging or consolidating with Pan Am Southern; provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of Pan Am Southern under this Agreement that existed prior to such assignment

SECTION 13. NOTICE

Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows

If to Pan Am Southern:	Chairman Pan Am Southern LLC c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
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With a copy to Norfolk Southern:	Mike R. McClellan Vice President – Intermodal and Automotive Marketing Norfolk Southern Corporation Three Commercial Place Norfolk, Virginia 23510-2191
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and

Vice President – Law
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2374
(757) 533-4872 (fax)

11 to Springfield
Terminal
David A. Fink
President
Springfield Terminal Railway Company
c/o Pan Am Railways
Iron Horse Park
North Billerica, MA 01862-1692
(978) 663-1186
(978) 663-6907 (fax)

With a copy to
Robert Culliford
Vice President Law
Pan Am Systems
Iron Horse Park
North Billerica, MA 01862-1692
(603) 766-2002
(603) 766-2094 (fax)

Any Party (or Norfolk Southern) may provide notice of changes in the above addressees to the others by personal service or certified mail.

SECTION 14. DISPUTE RESOLUTION

(a) Reference to JOC

Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be referred to the JOC (for Pan Am Southern) for resolution and if the Parties are unable to resolve the dispute, it will be referred, in writing, to the Management Committee (for Pan Am Southern) to resolve

(b) Reference for Formal Dispute Resolution

Any Dispute not resolved within sixty (60) days after receipt by any of the involved parties of written notice of reference of such Dispute to the Management Committee pursuant to Section 14(a), shall be submitted, by either Party for formal dispute resolution pursuant to Section 14(c)

(c) Formal Dispute Resolution

(i) Submission to Jurisdiction. Each of the Parties hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the "Delaware Courts") in any action to enforce or in aid of the agreement to arbitrate in Section 14(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (B) agrees that it will not

attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof

(ii) Dispute Resolution Each of the Parties stipulates and agrees that any Dispute that is not resolved pursuant to Section 14(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "Rules"), under the following terms and conditions:

(A) Selection of Arbitrator A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator

(B) Conduct of Arbitration The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement

(C) Replacement of Arbitrator Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator

(D) Findings and Conclusions The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(E) Time is of the Essence The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding

(F) Temporary Equitable Relief By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator's orders to that effect

(G) Consolidation The parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this

Agreement and/or any other JV Transaction Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under this Agreement and/or any JV Transaction Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or any other JV Transaction Agreement be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact common with those in the pending arbitration, (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(H) Discovery. Recognizing the express desire of the parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(I) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 14(c)(ii) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(J) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(c) As a third party beneficiary, Norfolk Southern may initiate and prosecute arbitration pursuant to Section 14(b) on behalf of Pan Am Southern. Pan Am Southern and Springfield Terminal shall cooperate with Norfolk Southern in the preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

SECTION 15. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or in connection with an audit by the Internal Revenue Service or other tax authority, or as may be necessary or appropriate for

a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than members, officers, employees, independent auditors, and attorneys, without the prior written approval of the other Party. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

SECTION 16. ABANDONMENT

(a) Pan Am Southern shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon or discontinue service on the Subject Trackage or any portion thereof (the "Abandonment Segment") during the term of this Agreement. Pan Am Southern shall provide Springfield Terminal no less than ninety (90) days prior notice of its intention to seek to abandon or discontinue service over any Abandonment Segment

(b) If Pan Am Southern elects to abandon or discontinue service over the Subject Trackage (or any portion thereof) pursuant to Section 16(a), this Agreement shall continue to apply in all respects to any remaining portion of the Subject Trackage not abandoned or subject to discontinuance by Pan Am Southern.

(c) Pan Am Southern shall, not less than 60 days prior to any submission to the STTB (or successor agency having jurisdiction over said abandonment or discontinuance) of an application or exemption for authority to abandon or discontinue service over an Abandonment Segment(s), first offer Springfield Terminal the first right to purchase such Abandonment Segment(s) for fair market value ("FMV") of such Abandonment Segment(s), and on such other terms and conditions as are customary with respect to line sales, which such notice shall specifically identify this Section 16 and the time periods for action hereunder. Springfield Terminal shall have forty-five (45) days ("Abandonment Notice Period") within which to advise Pan Am Southern that it will exercise its right to purchase ("Exercise Notice"). If the Parties are unable to agree upon the FMV of the Abandonment Segment(s) that Springfield Terminal wishes to purchase, either Party may refer the issue to arbitration pursuant to Section 14, which arbitration shall determine all other issues relating to terms and conditions for the sale not then (at the time of the initiation of the arbitration) agreed to by the Parties. Such arbitration shall be conducted on an expedited basis, with selection of the arbitrators within thirty (30) days of the initiation of arbitration, all submissions to be made by the Parties within sixty (60) days of the initiation of arbitration, and a written decision to be rendered within thirty (30) days following the final submissions of the Parties.

(d) The Parties shall consummate the sale contemplated by this Section 16 within forty-five (45) days of the latest of: (i) the rendering of a written arbitration decision, should issues related to the sale proceed to arbitration; (ii) the execution of a purchase and sale agreement, should the Parties execute the same; and (iii) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(c) If Springfield Terminal elects not to purchase the Abandonment Segment, it shall so advise Pan Am Southern within the same forty-five (45) day Abandonment Notice Period by delivering to Pan Am Southern a notice of waiver of right to purchase said segment ("Waiver Notice") Failure of Springfield Terminal to provide Pan Am Southern (including a copy to Norfolk Southern) with either an Exercise Notice or a Waiver Notice within the aforesaid forty-five (45) day period shall constitute a Waiver Notice

(f) In the event of a Waiver Notice and Springfield Terminal does not purchase the Abandonment Segment pursuant to its rights in this Agreement, Springfield Terminal shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the Abandonment Segment and for the discontinuance of Springfield Terminal's trackage rights over the Abandonment Segment

SECTION 17. INDEMNITY COVERAGE

As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Parties shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees

SECTION 18. MISCELLANEOUS PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto Norfolk Southern shall have third party status solely for the purpose of enforcing this Agreement, and not by way of recovery for damages hereunder

(b) This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties

(c) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by all Parties

(d) The division of this Agreement into articles, sections, and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to articles, sections or subsections are to articles, sections or subsections of this Agreement.

(e) This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction

(f) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(g) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(h) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between Pan Am Southern and Springfield Terminal.

(i) THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

(j) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

PAN AM SOUTHERN LLC

By _____

As to Pan Am Southern

WITNESS:

SPRINGFIELD TERMINAL RAILWAY
COMPANY

As to Springfield Terminal

By: _____

INDEX TO APPENDICES

APPENDIX A – MAP OF SUBJECT TRACKAGE

APPENDIX B – COMPENSATION

APPENDIX B – COMMERCIAL APPENDIX

Section 1 Trackage Rights Compensation

(a) Compensation

Springfield Terminal shall compensate Pan Am Southern for the use of the Subject Trackage by paying to Pan Am Southern a sum computed by multiplying (i) the Trackage Rights Charge, as hereinafter defined, by (ii) the number of Cars (loaded or empty) and locomotives moved over the Subject Trackage, with multi-platform Cars being counted as one car for each four axles.

(b) The Trackage Rights Charge.

(i) The Trackage Rights Charge shall initially be set at

[REDACTED]

(ii) The Trackage Rights Charge shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July first following the Effective Date of this Agreement, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) – East Materials, prices, wage rates and supplements combined (excluding fuel) (the "Cost Index"). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(iii) The Trackage Rights Charge shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Trackage Rights Charge. In computing the adjusted Trackage Rights Charge, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(iv) In the event the base for the Cost Index shall be changed from that in effect at the Effective Date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 14 of this Trackage Rights Agreement.

(v) In the event that the Cost Factor is a negative number, no adjustment to the Trackage Rights Charge will take place for that calendar year. Said negative Cost Factor will be taken into consideration in calculating subsequent years' Cost Factor. For example, if the Cost Index is negative for two years in a row, the Cost Factor for the second year shall be adjusted downward assuming that the first year's negative Cost Index was taken into account. If the Cost Factor goes negative for three years in a row, the rate shall be adjusted again by the Cost Factor with the assumption that the first two years' negative Cost Index was taken into account.

(vi) Notwithstanding any of the foregoing, under no circumstances shall the rate paid to Pan Am Southern by Springfield Terminal be less than the initial Trackage Rights Charge set forth in Section 1(b)(i) of this Appendix B.

(c) In addition to any other adjustment to the Trackage Rights Charge described in this Appendix B, should the charges imposed on Pan Am Southern for the use of the MBTA Segment increase year-over-year in a rolling three year average by more than three percent (3%), then the Trackage Rights Charge shall be increased to reflect such change.

Section 2 Intermodal Haulage Compensation

(a) Compensation

Springfield Terminal shall compensate Pan Am Southern for the Intermodal Haulage by paying to Pan Am Southern a sum computed by multiplying (i) the Intermodal Haulage Charge, as hereinafter defined, by (ii) the number of units (loaded or empty) moved.

(b) The Intermodal Haulage Charge

(i) The Intermodal Haulage Charge shall initially be set as follows

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(i) Rate Adjustment

(A) The Rates shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July 2009, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes – Table A – Annual Indexes of Charge-out Prices and Wage Rates (1977=100) East – Materials, prices, wage rates and supplements combined (excluding fuel)" (the "Cost Index"). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(B) The Rates shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Rates. In computing the adjusted Rates, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(C) In the event the base for the Cost Index shall be changed from that in effect at the effective date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an

