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May 26, 2004

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Room 700  
Washington, D. C. 20423

ENTERED  
Office of Proceedings

MAY 26 2004

Part of  
Public Record



RE: Finance Docket No. 34495, *Buckingham Branch Railroad Company—Lease—CSX Transportation, Inc.*

Dear Secretary Williams:

Enclosed are the original and 10 copies of an Application, Motion for Protective Order, and a Petition Suggesting a Procedural Schedule in the above-entitled proceeding, 20 unbound copies of the maps, a check for the filing fee of \$5,900, and three computer diskettes in containing the Application, Motion, and Petition. Submitted in a separate package are 10 copies of the Confidential unredacted Lease Agreement.

Please time and date stamp the additional copy of this letter, the Application, the Motion, and the Petition and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours

A handwritten signature in black ink, appearing to be 'L. Gitomer'.

Louis E. Gitomer  
Attorney for: CSX Transportation, Inc.

**FILED**

MAY 26 2004

**SURFACE  
TRANSPORTATION BOARD**

Enclosures

**FEE RECEIVED**

MAY 26 2004

**SURFACE  
TRANSPORTATION BOARD**

211109  
**ORIGINAL**

BBRR-1/CSXT-1

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD COMPANY—LEASE  
CSX TRANSPORTATION, INC.

APPLICATION



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Counsel for CSX Transportation, Inc.

Counsel for Buckingham Branch Railroad  
Company

Dated: May 26, 2004

**FILED**  
MAY 26 2004  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD COMPANY—LEASE  
CSX TRANSPORTATION, INC.

APPLICATION



The Buckingham Branch Railroad Company (“BB”) and CSX Transportation, Inc. (“CSXT”), jointly referred to as “Applicants,” respectfully submit this Application for Surface Transportation Board (“the “Board”) approval and authorization, pursuant to 49 U.S.C. § 11323, *et seq.*, of BB’s lease of approximately 199.7 miles of CSXT line running between AM Junction (near Richmond) and Clifton Forge, VA (the “Line”). In addition, for the duration of the Lease between Applicants, BB will assume CSXT’s lease of and operation over Norfolk Southern Railway Company’s (“NSR”) 9.1 mile line between Gordonsville, VA and Orange, VA (the “NS Line”). A more complete description of the Line can be found in section 1180.6(a)(7)(vi) of this Application, and Exhibit A to the Lease, which is in Exhibit 2 hereto. CSXT is retaining limited overhead trackage rights and limited local trackage rights over the Line.

The subject lease is a minor transaction, as that term is defined in the Board's regulations at 49 C.F.R. § 1180.2(c). The proposed transaction is not a control or merger, and does not involve two class 1 railroads. BB is a class 3 railroad. In addition, the proposed transaction will not have any anticompetitive effects. BB will replace CSXT as the railroad providing local service on the Line.

The following information is furnished to the Board in accordance with its Railroad Consolidation Procedures, which are set forth at 49 C.F.R. Part 1180.

**Section 1180.6. Supporting information.**

(a) All applications filed under 49 U.S.C. 11323 shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address, and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in all applications:

(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

BB, P.O. Box 336, Highway U.S. 15, Dillwyn, VA, 23936, represented by R. Curtis Steele, Jr., McVitty Executive Center, 2758 Electric Road, Suite A, Roanoke, VA 24018, (540) 725-8386, and Keith G. O'Brien, Rea, Cross & Auchincloss, 1707 L Street NW, Suite 570, Washington, DC 20036, (202) 785-3700, seeks approval to lease the Line and for the assignment of a lease of the NS Line from CSXT, 500 Water Street, Jacksonville, FL 32202, represented by Peter J. Shudtz, CSX Corporation, 1331 Pennsylvania Avenue, N.W., Suite 560, Washington, DC 20004, (202) 783-8124, and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005, (202) 638-3307. CSXT will retain limited overhead trackage rights and limited local trackage rights. Questions can be addressed to any of the above counsel.

(ii) The proposed time schedule for consummation of the proposed transaction.

BB plans to begin operating over the Line in December 2004.

(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

Upon Board approval and consummation of this proposed transaction, BB will be responsible for service on the Line. BB's four trains per day, five day a week service to local customers will be more frequent than CSXT's current service.

The Applicants expect the proposed transaction to result in operating economies, improved service, and improved financial viability. They do not anticipate any changes to routes and rates as BB takes over the service. BB will provide more frequent and responsive service to the local customers. It intends to employ people that are local to the Line as an aid to improving

customer service. The additional traffic that BB expects to generate based on its experience on its other line will improve BB's financial viability.

CSXT expects the proposed transaction to improve its financial viability through system rationalization. CSXT's use of the Line will be limited to overhead trackage rights for certain empty west-bound trains and local trackage rights to handle certain aggregate train service from Martin Marietta at Verdon, VA.

(iv) The nature and amount of any new securities or other financial arrangements.

BB does not plan to issue any new securities in connection with this transaction. It does expect to obtain some unsecured short term financing to meet operating capital needs in the early stages of operation. CSXT does not plan any new financial arrangements in connection with this transaction.

(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see Sec.1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

Applicants expect the proposed transaction to increase inter- and intramodal competition.

Applicants do not expect that as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

BB owns and operates a 17-mile line of railroad between Bremono, milepost 0.0, and Dillwyn, milepost 17.0, in Fluvanna and Buckingham Counties, VA. Two miles west of Bremono,

BB interchanges with CSXT on CSXT's line at Strathmore, VA. BB provides regular scheduled freight service three days per week and additional service as requested and needed by customers.

BB was founded in 1989. It is a family-owned short line railroad that was formerly the Buckingham Subdivision of CSXT. Since 1989 BB has dramatically increased freight traffic (from about 800 carloads per year in 1989 up to 2400 carloads per year during its best year) and developed a reputation for safety and dependability.

BB's uniqueness and success have captured the attention of the media. It has been featured in Smithsonian Magazine, on Good Morning America and on National Public Radio, as well as other media outlets. The Commonwealth of Virginia Rail Preservation Program and profits from operations have enabled BB to upgrade track and bridges from FRA excepted classification to FRA class 1 track standards in preparation for an industry that will ship 3,000 carloads per year to locate on BB's existing line.

The Line is paralleled by Interstate Highway 64 and is crossed by Interstate Highway 81, both of which provide major highway access for truck traffic to and from customers on the Line and significant competition to railroad traffic, especially intermodal traffic. BB plans to compete fiercely with trucks for traffic originating and terminating on the Line. BB plans to intensely market itself to the customers on the Line to build the traffic base. BB believes that it can effectively compete with motor carriers for the freight traffic on the Line by providing more frequent rail service, and by providing local sales, marketing, and operating personnel. CSXT will provide effective interchange with BB and will maintain competitive routes and rates over connections with BB. The product market is freight transportation. The geographic market served by the Line, which runs between Clifton Forge and Richmond, VA, includes the towns of

Goshen, Craigsville, Fordwick, Staunton, Waynesboro, Afton, Crozet, Ivy, Keswick, Lindsay, Gordonsville, Orange, South Orange, Louisa, Mineral, Pendleton, Frederick Hall, Beaver Dam, Hewlett, Verdon, Doswell, North Doswell, Bear Island, Hanover, Atlee, Ellerson and Ruffin.

BB will replace CSXT as the railroad serving local customers. BB will interchange with CSXT at Clifton Forge and Doswell, either for deliveries to CSXT for further movement from BB's customers, or to pick up cars for deliveries to BB's customers.

BB believes that, by concentrating on more frequent service and closer customer relations, it can divert traffic from trucks to more efficient rail service. BB plans to have local people marketing its services to the customers on the Line to build a relationship that will encourage the shift of truck shipments to rail.

CSXT, through retained overhead trackage rights, will operate over the Line to return empty coal and covered hopper trains to their origins, especially to the Appalachian coal fields for the empty coal trains. CSXT will also retain local trackage rights to continue to move certain aggregate trains from Martin Marietta at Verdon, VA in single line service.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

BB will pay CSXT annual rent of \$140,000 per year. Additional rent, as an element of the consideration for the Lease, may be due under certain circumstances when interchange of traffic is with a carrier other than CSXT.

(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

As a result of the proposed transaction, there will be no increase in fixed charges.

(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

The proposed transaction will improve the adequacy of transportation service to the shipping public. By its lease of the Line, BB expects to increase the frequency and quality of rail service on the Line. As indicated by the Operating Plan, which appears as Exhibit 15 to this Application, BB is an experienced and successful short line that possesses substantial assets including rolling stock and other equipment, facilities, and qualified personnel. As the Board has recognized, locally based carriers often can provide service better tailored to the needs of customers. BB is ideally situated to provide excellent service on the Line.

The Applicants expect the proposed transaction to continue to provide adequate transportation service to the public and to continue to provide essential services. In fact, BB will increase the frequency of local rail service to five days per week with four round-trip trains operating daily on the Line between various origins and destinations. BB is planning to operate a scheduled railroad based upon interchange times agreed upon with CSXT. The Applicants' mutual goal is to interchange traffic with each other in a timely, predictable manner in order to avoid service delays.

Five days per week, BB will operate four round-trip trains on the Line. In the morning a train will operate between Doswell and Ruffin (near Richmond), and in the evening another train will operate between Doswell and Gordonsville. At the other end of the Line a morning train will operate between Staunton and Clifton Forge, and a second train will operate between Staunton and Orange (including Gordonsville) in the evening. Each train will pick-up and set-out cars for BB's customers. BB will also provide additional service as needed by its customers.

BB plans to maintain the Line at the present FRA track class standards. It will provide service with two GP-16 locomotives that it currently owns and two GP-40 locomotives that it proposes to acquire.

BB plans to cross-train certain of its employees to create more flexibility in its work force to serve the needs of BB's customers. BB also plans to have regular schedules for its employees so that they will not be on call and will be able to go home at the end of the scheduled work day. There will be no planned overnight layovers. In addition, BB will consider qualified local CSXT employees for employment because of their knowledge of the property and customers.

The Applicants will work closely with local governments and with the Commonwealth of Virginia to make the proposed transaction a success. BB will work closely with its customers, and CSXT will work closely with BB.

Inasmuch as no other rail carriers serve customers on the Line, the proposed transaction should not have any significant effect on other rail carriers in the territory. Consequently, the consummation of the proposed transaction should not adversely affect essential transportation services by other rail carriers.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

See Appendix 1. In order to provide the level of labor protection mandated by 49 U.S.C. § 11326, Applicants request the Board to impose the labor protective conditions in *Mendocino Coast Ry., Inc.--Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.--Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA v. ICC*, 675 F.2d 1248

(D.C. Cir. 1982), as modified by *Wilmington Term. RR, Inc.—Pur. & Lease-CSX Transp., Inc.*, 6 ICC2d 799, 814-826 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n v. I.C.C.*, 930 F.2d 511 (6<sup>th</sup> Cir. 1991). *See also Portland & Western Railroad, Inc.-Lease and Operation-Burlington Northern Railroad Company*, ICC Finance Docket No. 32766 (ICC served January 5, 1996).

(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.

Not applicable.

(3) Any other supporting or descriptive statements applicants deem material.

Applicants believe that the information furnished in this application adequately supports the Board's approval of this minor transaction under applicable statutory criteria and Board precedent. Applicants will furnish the Board with any information concerning this transaction that it may require, and will participate fully in any proceedings on this transaction which the Board deems appropriate.

(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

See Appendix 2.

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

BB owns and operates about 17 miles of railroad in the Commonwealth of Virginia. CSXT owns and operates about 23,000 miles of railroad in the States of Alabama, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana,

Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the Provinces of Ontario and Québec.

(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

See Exhibit 1.

(7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

The proposed transaction is the Lease of the Line by BB from CSXT. In addition, BB will assume CSXT's lease of and operation over the NS Line, for the duration of the CSXT-BB Lease. BB will assume the common carrier obligation on the Line and provide all local service. CSXT however, will retain limited overhead trackage rights to move certain westbound empty trains, retain local trackage rights to move certain aggregate trains about 29.5 miles over the Line from Martin Marietta at Verdon, VA, and will enter into a detour agreement with BB to detour loaded eastbound coal trains over the Line in case of an emergency or maintenance on CSXT's parallel line.

The Lease is for a 20-year term with one mutual five year option to extend the Lease. BB will take over local service, except as noted above, and will maintain the Line. After two years, BB will also assume the maintenance of the signal system and dispatching on the Line. BB will

pay CSXT annual rent of \$ 140,000 per year. Additional rent, as an element of the consideration for the Lease, may be due under certain circumstances when traffic is interchanged with another carrier.

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at Sec.1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

See Exhibit 2. The proposed agreements are attached to this application. Certain commercially sensitive terms of the proposed agreements have been redacted from this public version of the application. The complete proposed agreements have been filed under seal pursuant to 49 C.F.R. § 1104.14(b) and a protective order requested from the Board.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

Not applicable.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

Not applicable.

(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

CSXT is leasing BB about 199.7 miles of its 23,000-mile railroad.

(vi) Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

CSXT is leasing to BB the Line, which is located in the Commonwealth of Virginia and consists of (1) the Piedmont Subdivision between AM Junction (Richmond), milepost 85.5, and Gordonsville, milepost CA 160.6, a distance of 75.1 miles, (2) the Washington Subdivision between Gordonsville, milepost CA 160.6, and Charlottesville, milepost CA 180 (including the line currently leased from NSR to CSXT between Gordonsville, Milepost CAA 9.1 and South Orange, Milepost CAA 180), a distance of 28.5 miles, and (3) the North Mountain Subdivision between Charlottesville, milepost CA 180, and Clifton Forge (JD Cabin), milepost CA 276.1, a distance of 96.1 miles. CSXT will retain overhead trackage rights on the Line in order to return certain empty trains to the point of origin, including trains to coal mines. CSXT will also retain certain limited local trackage rights to Verdon, VA. BB will interchange with CSXT at each end of the Line, in the west at Clifton Forge, and in the east at Doswell.

(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

No governmental financial assistance is involved in the proposed transaction.

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Section of Environmental Analysis for the proper format of the environmental report.

No environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5) and there will be no action that would normally require environmental documentation. Hence, this Application does not require environmental documentation under 49 C.F.R. §1105.6(b)(4) and (c)(2)(i).

An historic report is not required because BB will operate the Line, will require further Board approval to discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Application does not require an historic report under 49 C.F.R. §1105.8(b)(1).

**Section 1180.8(c). Operational data.**

(c) For minor transactions: Operating plan-minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction. Where relevant, submit information related to the following:

(1) Traffic level density on lines proposed for joint operations.

On an annual basis, BB projects that it will handle about 11,700 carloads over the Line, consisting of 6,200 carloads of local traffic, 1,000 carloads for interchange with Norfolk Southern Railway Company and the Eastern Shore Railroad, Inc., and 4,500 CSXT non-revenue carloads. On an annual basis, over the Line, CSXT projects that it will move through its retained overhead trackage rights about 156,000 west-bound empty cars and through its retained local trackage rights about 7,900 revenue rock carloads from Martin Marietta at Verdon, VA.

(2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.

The proposed transaction will have no impact on commuter operations since there are none over the Line.

An Amtrak train, the Cardinal does operate over the Line. Amtrak operates two trains per day on Sunday, Wednesday and Friday of each week over the Line, one eastbound, Train No. 50, and one westbound, Train No. 51. Both trains stop at Charlottesville, Staunton, and Clifton

Forge. BB plans to schedule operations around the scheduled times for Amtrak's trains to minimize delays.

BB does plan to seek approval from Amtrak and the Federal Railroad Administration ("FRA"), as necessary, to abandon the Train Control System ("TCS") currently in place on the North Mountain and Washington Subdivisions on the Line. Upon approval of the abandonment of the TCS, or two years after commencement of the Lease, whichever occurs first, BB will dispatch the Line. If the TCS system is not abandoned, BB and CSXT will assess the situation to the mutual satisfaction of both parties.

(3) Operating economies, which include, but are not limited to, estimated savings.

CSXT expects operating economies as a result of the lease of the Line to BB. CSXT will reduce its operating expenses and save on some capital expenditures. Although CSXT and BB have agreed to the proposed transaction in principal and have resolved many specific items, it is difficult to estimate savings until all of the specific terms of the Lease are resolved between CSXT and BB.

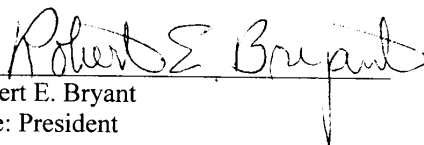
(4) Any anticipated discontinuances or abandonments.

BB does not anticipate discontinuing service over or abandoning any portion of the Line.

### CONCLUSION

Buckingham Branch Railroad Company and CSX Transportation, Inc. pray that the Board grant this application and enter an appropriate order approving the transaction proposed in the Lease as required by 49 U.S.C. § 11323(a).

Buckingham Branch Railroad Company

By:   
Robert E. Bryant  
Title: President

CSX Transportation, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: May 26, 2004

### CONCLUSION

Buckingham Branch Railroad Company and CSX Transportation, Inc. pray that the Board grant this application and enter an appropriate order approving the transaction proposed in the Lease as required by 49 U.S.C. § 11323(a).

Buckingham Branch Railroad Company

By: \_\_\_\_\_  
Robert E. Bryant  
Title: President

CSX Transportation, Inc.

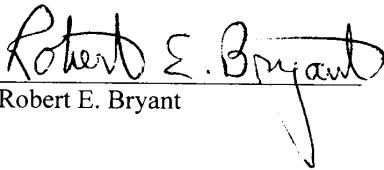
By:  \_\_\_\_\_  
Name: Les M. Pessa  
Title: VP Strategic Planning

Dated: May 26, 2004

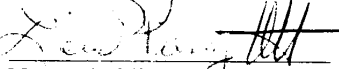
**VERIFICATION**

Commonwealth of Virginia   )  
                                                  )ss  
County of Buckingham        )

Robert E. Bryant, being duly sworn, states that he is the President of Buckingham Branch Railroad Company; that he is duly authorized to sign, verify and file the foregoing Application and the exhibits thereto on behalf of Buckingham Branch Railroad Company; and that such matters as are set forth therein are true and correct to the best of his knowledge, information and belief.

  
Robert E. Bryant

Subscribed and sworn to before me this 24<sup>th</sup> day of May 2004.

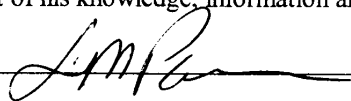
  
Notary Public

My Commission expires: 11-26-07

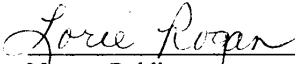
**VERIFICATION**

State of Florida                    )  
                                          )ss  
County of Duval                 )

Lee H. Lasse, being duly sworn, states that he is the VP Strategic Planning  
of CSX Transportation, Inc.; that he is duly authorized to sign, verify and file the foregoing  
Application and the exhibits thereto on behalf of CSX Transportation, Inc.; and that such matters  
as are set forth therein are true and correct to the best of his knowledge, information and belief.



Subscribed and sworn to before me this 26<sup>th</sup> day of May 2004.

  
Notary Public

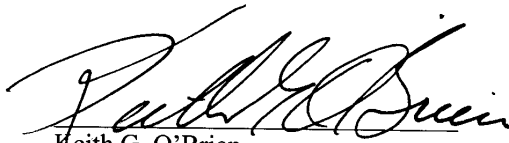
My Commission expires: 07/29/06



Lorie Rogan  
MY COMMISSION # DD109647 EXPIRES  
July 29, 2006  
BONDED THRU TROY FAIR INSURANCE, INC.

## CERTIFICATE

Keith G. O'Brien certifies this 25th day of May, 2004, that he is Counsel to Buckingham Branch Railroad Company; that Robert E. Bryant is President of Buckingham Branch Railroad Company; and that he is duly authorized to sign, verify and file the foregoing Application and exhibits thereto on behalf of Buckingham Branch Railroad Company.



Keith G. O'Brien

### **CERTIFICATE**

Peter J. Shudtz certifies this 26<sup>th</sup> day of May, 2004, that he is Counsel to CSX Transportation, Inc.; that Les Passa is Vice President Strategic Planning of CSX Transportation, Inc.; and that Les Passa is duly authorized to sign, verify and file the foregoing Application and Exhibits thereto on behalf of CSX Transportation, Inc.

Peter J. Shudtz

## **APPENDIXES AND EXHIBITS**

## **INDEX TO APPENDIXES AND EXHIBITS**

### **Appendixes**

Appendix 1 Impacts of the proposed transaction upon carrier employees.

Appendix 2A Opinion of Counsel Buckingham Branch Railroad Company.

Appendix 2B Opinion of Counsel CSX Transportation, Inc.

### **Exhibits**

Exhibit 1 Maps.

Exhibit 2 Lease Agreement between Applicants.

Exhibits 3-14 Not Applicable.

Exhibit 15 Minor transaction Operating Plan.

Exhibits 16-21 Not Applicable.

## APPENDIX 1-Impacts of the proposed transaction upon carrier employees.

Table 1  
CSXT Employees Affected by BB's Lease of CSXT's Line between  
AM Junction (near Richmond) and Clifton Forge, VA (the "Line")

| Classifications               | Dismissed | Displaced | Relocated |
|-------------------------------|-----------|-----------|-----------|
| Trainmen (UTU)                | 0         | 7         | 0         |
| Engineers (BLE)               | 0         | 4         | 0         |
| Maintenance of Way (BMWE)     | 0         | 14        | 0         |
| Signal & Communications (BRS) | 0         | 7         | 3         |
| Total                         | 0         | 32        | 3         |

Table 2  
On Duty Location of Affected CSXT Employees

| On Duty Location  | Classification |     |      |     |
|-------------------|----------------|-----|------|-----|
|                   | BLE            | UTU | BMWE | BRS |
| Clifton Forge     | 1              | 2   |      |     |
| Richmond          | 3              | 5   | 1    | 2   |
| Charlottesville   |                |     | 3    | 3*  |
| Goshen            |                |     | 3    |     |
| Gordonsville      |                |     |      | 2   |
| White Sulphur, WV |                |     |      | 3   |
| Floating          |                |     | 5    |     |
| Doswell           |                |     | 2    |     |
| Total             | 4              | 7   | 14   | 10  |

\* BRS employees to be relocated.

Prior to consummation of the Lease, CSXT Trainmen and Engineers operate local service over the Line for CSXT. Upon consummation of the Lease to BB, local work formerly performed by the CSXT Trainmen and Engineers will be performed by BB employees. The maintenance of way work on the Line performed by CSXT employees prior to consummation of the Lease will upon consummation of the Lease be performed by BB employees.

CSXT has agreed to continue to maintain the signal system on the Line and to dispatch the Line for up to two years after closing. At that time the seven employees assigned to maintain

the signal system on the Line shall be displaced, and three relocated. However, CSXT may cease maintaining the signal system and dispatching the Line at an earlier date if the Federal Railroad Administration (“FRA”) and Amtrak, as necessary, approve the abandonment of the signal system. CSXT does not expect any dispatchers to be impacted by the Lease of the Line.

At this time, CSXT has not obtained any implementing agreements.

The number of positions shown above is based on conditions prior to the date of this Application, and may change based upon conditions at the time of consummation of this transaction.

**APPENDIX 1-Impacts of the proposed transaction upon carrier employees.**

**BB Employees Affected by BB's Lease of CSXT's Line between  
AM Junction (near Richmond) and Clifton Forge, VA (the "Line")**

| Classifications         | Hired | Dismissed | Displaced | Relocated |
|-------------------------|-------|-----------|-----------|-----------|
| Trainmen                | 5     | 0         | 0         | 0         |
| Engineers               | 5     | 0         | 0         | 0         |
| Maintenance of Way      | 8     | 0         | 0         | 0         |
| Signal & Communications | 6     | 0         | 0         | 0         |
| Mechanical              | 2     | 0         | 0         | 0         |
| Clerical                | 1     | 0         | 0         | 0         |

BB will hire approximately ten employees for train and engine service, ten employees for maintenance of the Line and equipment, and one clerical employee to begin operating and maintaining the Line on the date of consummation of the Lease. It expects to cross-train many of these employees to perform other functions in the interest of operating in the most efficient manner possible. If the signal system on the Line has not been approved for abandonment by FRA and Amtrak, as necessary, two years after consummation of the Lease, BB expects to hire approximately six employees to operate the signal system. If FRA and Amtrak, as necessary, authorize abandonment of the signal system, BB will hire no signal employees.

BB plans to consider qualified local CSXT employees for hire based on qualifications to be determined by BB. Since no existing employees of BB will be adversely affected by the proposed transaction, and because all the employees BB will need to operate and maintain the

Line and equipment will be new hires, BB does not intend to enter into any implementing agreements.

The number of positions shown above is based on conditions prior to the date of this Application, and may change based upon conditions at the time of consummation of this transaction.

**Appendix 2A-Opinion of Counsel Buckingham Branch Railroad Company.**

LAW OFFICES  
**REA, CROSS & AUCHINCLOSS**  
SUITE 570

THOMAS M. AUCHINCLOSS, JR.  
LEO C. FRANEY  
KEITH G. O'BRIEN  
BRYCE REA, JR.  
BRIAN L. TROIANO

1707 L STREET, N.W.  
WASHINGTON, D. C. 20036  
(202) 785-3700  
FACSIMILE: (202) 659-4934

DONALD E. CROSS (1923-1986)

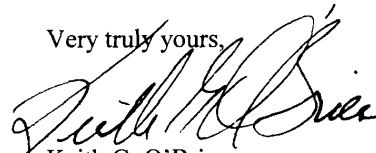
May 25, 2004

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

Dear Secretary Williams:

As counsel for Buckingham Branch Railroad Company ("BB"), I am familiar with the Application of BB and CSX Transportation, Inc. ("CSXT") for BB's lease from CSXT of an 199.7 mile line of railroad running between AM Junction (near Richmond) and Clifton Forge, VA. I am of the opinion that the transaction described in said Application meets the requirements of law and will be legally authorized and valid, if approved by the Board.

Very truly yours,



Keith G. O'Brien

**Appendix 2B-Opinion of Counsel CSX Transportation, Inc.**



May 26, 2004

Surface Transportation Board  
Washington, DC 20423

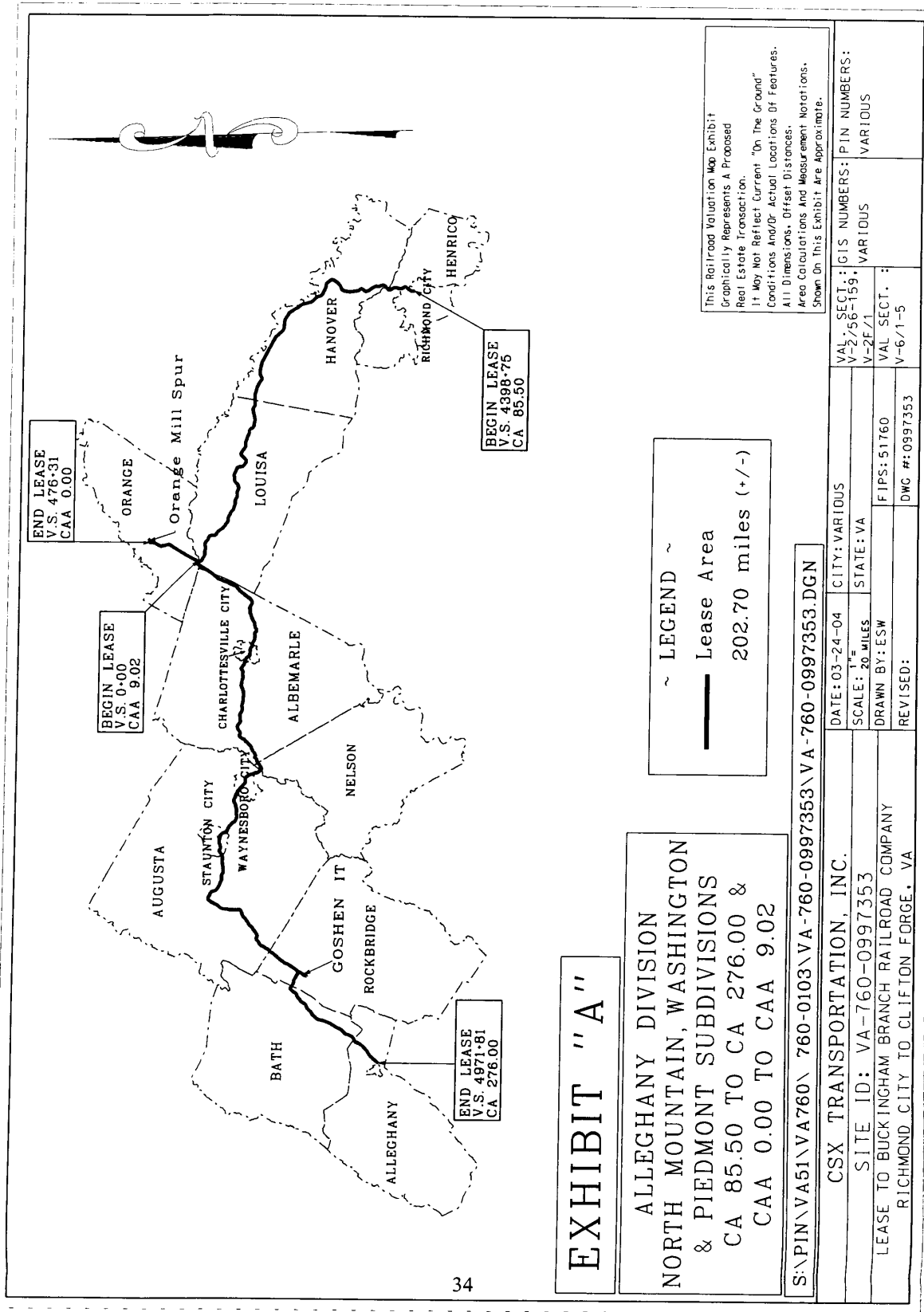
Gentlemen:

As counsel for CSX Transportation, Inc. ("CSXT"), I am familiar with the Application of Buckingham Branch Railroad Company ("BBR") and CSXT for BBR's lease from CSXT of an 199.7-mile line of railroad running between AM Junction (near Richmond) and Clifton Forge, VA, and am of the opinion that the transaction described in said Application meets the requirements of law and will be legally authorized and valid, if approved by the Board.

Very Truly yours,

  
Peter J. Shudtz

**Exhibit 1-Maps.**



This Railroad Valuation Map Exhibit Graphically Represents A Proposed Real Estate Transaction. It May Not Reflect Current "On The Ground" Conditions And/or Actual Locations Of Features. All Dimensions, Offset Distances, Area Calculations And Measurement Notations, Shown On This Exhibit Are Approximate.

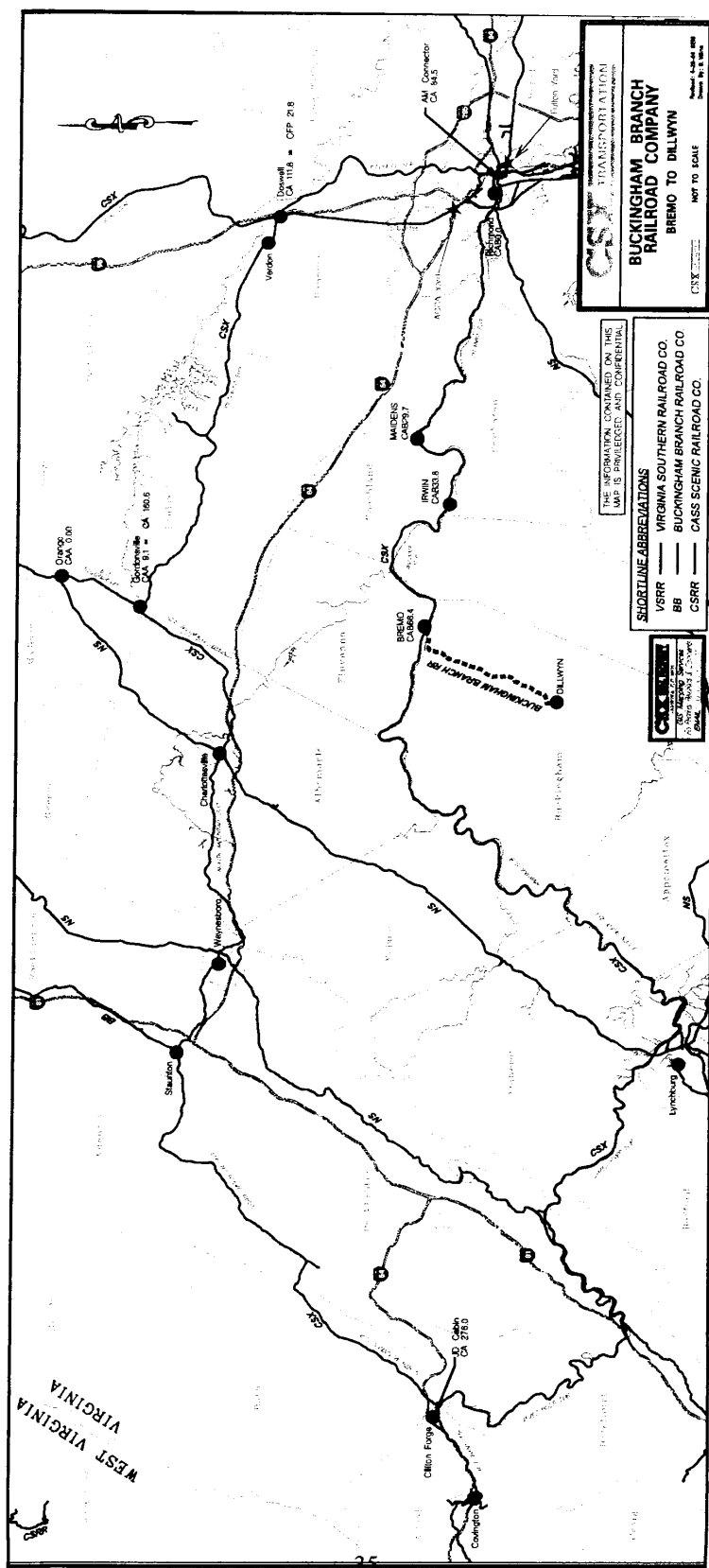
# EXHIBIT "A"

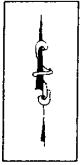
ALLEGHANY DIVISION  
NORTH MOUNTAIN, WASHINGTON  
& PIEDMONT SUBDIVISIONS  
CA 85.50 TO CA 276.00 &  
CAA 0.00 TO CAA 9.02

~ LEGEND ~  
— Lease Area  
202.70 miles (+/-)

S:\PIN\VA51\VA760\ 760-0103\VA-760-0997353\VA-760-0997353.DGN

|                                             |                     |                |                          |
|---------------------------------------------|---------------------|----------------|--------------------------|
| CSX TRANSPORTATION, INC.                    | DATE: 03-24-04      | CITY: VARIOUS  | VAL. SECT.: PIN NUMBERS: |
| SITE ID: VA-760-0997353                     | SCALE: 1"= 20 MILES | STATE: VA      | V-2/56-T59;              |
| LEASE TO BUCKINGHAM BRANCH RAILROAD COMPANY | DRAWN BY: ESW       | FIPS: 51760    | V-2F/1                   |
| RICHMOND CITY TO CLIFTON FORGE, VA          | REVISED:            | DWG #: 0997353 | VAL SECT.: VARIOUS       |
|                                             |                     |                | V-6/1-5                  |





CSXT OPERATING CORRIDOR

CSX  
TRANSPORTATION  
REALITY  
GIS Mapping Services

NOT TO SCALE

**LEGEND:**

CSXT OPERATING CORRIDOR

CSX  
TRANSPORTATION  
REALITY  
GIS Mapping Services  
For Reports, Reviews & Comments  
EMAIL: GIS@CSX.COM

**Exhibit 2-Lease Agreement between Applicants.**

**D – R – A – F – T**

**Effective as of  
December 20, 2004**

**LEASE  
AGREEMENT**

**Between**

**CSX Transportation, Inc.  
and  
Buckingham Branch Railroad Company**

---

**Covering  
Certain Land and Track  
From apx. MP CA-85.5 -- to MP CA-276 (a/k/a The North  
Mountain, Washington and Piedmont Subdivisions) in  
Richmond City, Hanover, Louisa, Orange, Albemarle,  
Augusta, Rockbridge, Bath and Alleghany Counties, VA**

---

**THIS IS A DRAFT DOCUMENT FOR DISCUSSION  
PURPOSES ONLY. THIS DRAFT DOES NOT  
CONSTITUTE A BINDING OFFER UNLESS IT IS SIGNED  
BY AN AUTHORIZED OFFICER OF CSX  
TRANSPORTATION, INC.**

## CONTENTS

| <u>Paragraph</u> |                                                               | <u>Page No.</u> |
|------------------|---------------------------------------------------------------|-----------------|
| 1                | Property Covered                                              | -               |
| 2                | Right to Possession                                           | -               |
| 3                | Term and Default                                              | -               |
| 4                | Lease Payments                                                | -               |
| 5                | Omitted                                                       | -               |
| 6                | Inspection of Line                                            | -               |
| 7                | Commencement Date, STB Review and Labor                       | -               |
| 8                | Omitted                                                       | -               |
| 9                | Compliance with Laws                                          | -               |
| 10               | Maintenance, Improvements and Additional Assets               | -               |
| 11               | Public Funds                                                  | -               |
| 12               | Special Audits                                                | -               |
| 13               | Authority to Lease                                            | -               |
| 14               | Environmental                                                 | -               |
| 15               | Assignment and Sublease/Sublicense                            | -               |
| 16               | Sole Benefit                                                  | -               |
| 17               | Waiver                                                        | -               |
| 18               | Amendment                                                     | -               |
| 19               | Notices                                                       | -               |
| 20               | Headings                                                      | -               |
| 21               | Taxes                                                         | -               |
| 22               | Allocation of Income and Expenses                             | -               |
| 23               | Utilities                                                     | -               |
| 24               | Liens                                                         | -               |
| 25               | Reserved Rights                                               | -               |
| 26               | Passenger Rail Use                                            | -               |
| 27               | Effect of Termination or Expiration of Lease                  | -               |
| 28               | Abandonment, Discontinuance or other<br>Regulatory Activities | -               |
| 29               | Eminent Domain                                                | -               |
| 30               | Governing Law                                                 | -               |
| 31               | Insurance                                                     | -               |
| 32               | Arbitration                                                   | -               |
| 33               | Counterparts                                                  | -               |
| 34               | Confidentiality                                               | -               |
| 35               | Force Majeure                                                 | -               |
| 36               | Liability                                                     | -               |
| 37               | Severability                                                  | -               |

|           |                                                             |
|-----------|-------------------------------------------------------------|
| Exhibit A | Description of Line to Be Leased                            |
| Exhibit B | Other Lessor Assets Provided to Lessee and<br>Terms Thereof |
| Exhibit C | Lessor Equipment to Be Removed from the Line                |
| Exhibit D | List of Names and Addresses for Notice Purposes             |
| Exhibit E | Assignment and Assumption Agreement                         |
| Exhibit F | Trackage Rights Agreement                                   |
| Exhibit G | AAR/ASLRRA Interpretation Relating to Paper Barriers        |

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made this \_\_\_\_ day of \_\_\_\_, by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, along with its subsidiaries and affiliates (collectively, "Lessor") and **Buckingham Branch Railroad Company**, a Virginia corporation, ("Lessee").

### WITNESSETH:

**WHEREAS**, Lessor is the owner of, or has an interest in, the line of railroad (the "Land"), including all tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, crossing warning devices, train control signal system and any and all improvements or fixtures that are affixed thereto (the "Facilities"), from Milepost CA 85.5 at or near Richmond, VA to Milepost CA 276 at or near Clifton Forge, VA, including the Land and Facilities known as the C&O Flats and the the Depot building, fixtures and property at Doswell, VA all as more particularly shown on **Exhibit A, Exhibit A-1 and Exhibit A-2 and described in Exhibit A-3** (collectively, the Land and Facilities may sometimes be referred to as the "Line"); and

**WHEREAS**, it is Lessor's goal in entering into this Lease to reduce its capital needs, rationalize its rail system and restructure its business;

**WHEREAS**, Lessee desires to lease the Line from Lessor, in accordance with the terms and conditions stated in this Lease, in order to provide rail service to current and future customers located on the Line and to provide common carrier rail services; and

**WHEREAS**, Lessor desires to reserve certain trackage rights over the Line.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants, and the other good and valuable consideration set forth herein, Lessor and Lessee agree as follows:

### 1. PROPERTY COVERED.

(a.) Except as otherwise provided herein and subject to the Reserved Rights and the terms and conditions hereof, Lessor hereby leases the Line to Lessee effective on the Commencement Date, provided that the Line shall be leased in its "AS IS, WHERE IS" CONDITION AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Lessee acknowledges that it has inspected the Line and accepts it in its current condition and Lessee deems it appropriate for all purposes, including Lessee's intended use. Lessee leases the Line subject to all existing agreements, encroachments, claims, easements, occupancies, grants, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded and whether or not this Lease provides actual notice thereof.

(b) Except as otherwise provided herein, during the term of this Lease Lessee shall have the exclusive right to conduct rail freight operations on the Line. In addition, Lessee shall not grant to any third party any trackage, haulage or other rights whatsoever to conduct rail freight operations on the Line without Lessor's reasonable consent.

## **2. RIGHT TO POSSESSION.**

(a) On the Commencement Date, Lessor will deliver possession of the Line to Lessee; provided, however, that Lessor will have three (3) months after said Commencement Date in which to remove, at its sole expense and without unreasonable interference to Lessee's operations, all rolling stock and personal property described on **Exhibit C**.

(b) With respect to scrap crossties on the Line, within three (3) years of the Commencement Date: (i) Lessor will provide the railcars (gondolas) necessary to transport such crossties off of the Line; (ii) Lessor will arrange for the loading of the crossties at its sole cost and expense; (iii) Lessee will interchange the loaded railcars to Lessor; and (iv) Lessor will arrange for the disposal of the crossties.

(c) Lessee acknowledges that this Lease is subject to the rights of the National Rail Passenger Service Corporation ("Amtrak") to the extent Amtrak

has rights over certain of the tracks within the Line, in accordance with the Agreement dated June 1, 1999, as amended, between Amtrak and Lessor (the "Amtrak Agreement").

### **3. TERM and DEFAULT.**

(a) Unless otherwise terminated as provided herein, this Lease shall be for a term of TWENTY (20) years from the Commencement Date ("Term".) This Lease may be renewed for one (1) period of FIVE (5) years if, and only if, the parties reach a mutually accepted agreement, in their sole and absolute discretion, on the terms and conditions of such renewal. In the event the parties fail to reach agreement concerning renewal, such failure shall not constitute a breach of this Agreement, the Lease shall expire by its own terms, and such matter shall not be subject to arbitration.

(b) If either Lessee or Lessor breaches any material covenant or obligation under this Lease and if such breach continues without cure for a period of 60 calendar days from the date of receipt of written notice of such breach, the non-breaching party may terminate this Lease without further notice, provided that if the breach would reasonably take more than 60 days to cure and the party in breach has commenced such cure within such 60 day period and diligently pursues such cure, the party in breach shall have an additional 30 days to complete such cure. Lessee acknowledges and agrees that if Lessee materially breaches this Lease, Lessor shall have the right, in addition to exercising its rights under the prior sentence, to suspend any car volume guaranty set forth in the Trackage Rights Agreement, to pursue specific performance of Lessee's obligations, and to pursue all other rights and remedies at law or in equity, including without limitation, compensation for traffic re-routing costs, crew costs, equipment costs, demurrage penalties and fuel expense. Any material breach of the Trackage Rights Agreement shall also constitute a breach hereof.

### **4. LEASE PAYMENTS.**

(a) Base Annual Rent. Lessee shall pay to Lessor One Hundred Forty Thousand Dollars (\$140,000) in cash, payable quarterly in four equal installments on March 20, June 20, September 20, and December 19 of each year of the term of this Lease (the "Base Rent"). The Base Annual Rent for the ensuing ten years shall be

subject to renegotiation by the parties. Such renegotiation shall be completed no later than six months prior to commencement of the second ten years of this Lease, unless the parties agree to continue such renegotiation. If a mutually satisfactory agreement for lease payments by Lessee over the second ten years of this Lease is not reached at least six months prior to commencement of the such second ten years or, if the parties have agreed to continue such renegotiation, by the time either party concludes that continued renegotiation will not produce agreement (the "Impasse Date"), either party shall have the option of terminating the Lease and all related agreements by giving the other party written notice of termination. Such termination shall be effective upon the later of (i) the last date of the first ten years of this Lease, or (ii) the Impasse Date, provided that, in either case, termination shall not be effective until the STB grants a discontinuance under Paragraph 28 hereof, to which Lessor shall consent. During any renegotiation or notice period extending beyond the last date of the first ten years of this Lease and until the STB grants a discontinuance, the provisions of this Lease and related agreements shall continue to apply. In the event the parties fail to reach agreement concerning the Base Rent for the second ten (10) years of the Lease, such failure shall not constitute a breach of this Agreement and such matter shall not be subject to arbitration.

(b) Additional Rent.







(c) Failure of Lessee to receive any bill for periodic rent, or receipt of a bill showing an incorrect rent, shall neither override the Lease terms nor excuse or release Lessee from liability or responsibility for the correct rent. In the event the Lessor is required to employ an attorney to collect the rent, Lessee agrees to reimburse the cost of the attorney employed to collect the rent

(d) If the Base Rent or Additional Rent or any other amount due pursuant to the terms of this Lease is not paid by the due date, it will be subject to Lessor's standard late charge and will also accrue interest at (nine) percent (9%) per annum, unless limited by local law, and then at the highest rate so permitted.

(e) The Rent stated in this Paragraph shall be due irrespective of Lessee's abandonment of service over or cessation of use of any portion of the Line.

**5. Intentionally Omitted**

**6. INSPECTION OF LINE.**

Lessor (or its agent) shall have the right to inspect the Line annually and at such other times as it reasonably deems necessary to monitor compliance with this Lease. Lessor shall have the right to enter the Line to conduct such inspections; however, Lessor will comply with any instructions of Lessee reasonably designed to insure the safety of the personnel and property of Lessee and Lessor. At Lessee's option, a representative of Lessee may accompany Lessor (or its agent) during the inspection, provided however, that the Lessee representative does so at his or her own risk. Lessor will provide Lessee Five (5) days advance notice before entering the Line to conduct an inspection.

**7. COMMENCEMENT DATE, STB REVIEW and LABOR.**

The parties shall file with the Surface Transportation Board ("STB") and any other governmental authority with jurisdiction over the Line, any and all applications, petitions, notices, and/or secure any and all approvals from the STB and other such governmental authorities, that may be required for the lease of the Line and the transfer of rail operations on the Line to Lessee.

Lessee's lease of the Line shall commence on December 20, 2004, contingent upon the approval published by the STB authorizing the consummation hereof (the "Commencement Date") and such other conditions to closing as are set forth in the Transaction Agreement executed by the parties on or about May 26, 2004. As of the Commencement Date, Lessee and Lessor shall have jointly determined that they have complied with all STB conditions imposed on this transaction, if any, so as to be authorized by law to commence the Lease.

Each party to this Lease shall be responsible for all costs of protection of its respective employees arising out of STB approval of this transaction under 49 U.S.C. §11323 and implementation of the transaction, the exercise or performance by Lessor or Lessee of any rights or obligations hereunder, the termination of this Lease, or Lessee's abandonment or discontinuance of operations on the Line, whether such costs are attributable to protective conditions or benefits imposed by any judicial, regulatory or governmental body or are required to be paid pursuant to collective bargaining or other agreements. Lessee shall consider for employment any of Lessor's employees on the Line who, in Lessee's sole judgment, are qualified for the positions for which they apply and make proper application therefor; provided, however, that Lessee shall have no obligation to hire any such applicant.

**8. Intentionally Omitted**

**9. COMPLIANCE WITH LAWS.**

Lessee shall comply with all applicable Federal, State and local laws, ordinances and regulations in its use and operation of the Line, and Lessee hereby agrees to indemnify and hold Lessor harmless from and against any and all liability, claims, costs (including attorney's fees), damages and expenses arising in any manner out of its failure to comply with such laws, ordinances or regulations.

**10. MAINTENANCE, IMPROVEMENTS, AND ADDITIONAL ASSETS.**

(a) Subject to Paragraph 10(c) hereof, Lessee shall be solely responsible for and shall bear, at its sole risk, the cost and expense of maintaining the Line (to the extent the same has not been abandoned, taken, condemned, expropriated or seized) (i) in good working order, (ii) in the condition necessary to permit railroad

freight operations comparable to those existing as of the Commencement Date as established by Lessor's Railroad Timetable, as modified by train orders, in effect at that time, and (iii) in at least the FRA track class standard(s) existing as of the Commencement Date. The foregoing standard shall apply throughout the Term of the Lease unless Lessor, in its sole and absolute discretion, consents to the maintenance of the Line to a lesser standard. Lessor's decision not to consent to such lesser maintenance shall not constitute a breach of this Agreement, and such matter shall not be subject to arbitration.

(b) Lessee shall, at its sole cost and expense, promptly file and diligently pursue a petition with the FRA and Amtrak, as necessary, for authority to abandon the Train Control System currently in place on the North Mountain and Washington Subdivisions of the Line ("TCS"). Lessor shall fully cooperate with and assist Lessee in obtaining such authority. Lessor shall have the obligation to maintain such TCS and to dispatch the entire Line until (i) two (2) years from the Commencement Date, or (ii) the FRA and/or Amtrak, as applicable, grant Lessee's petition to abandon such TCS, whichever first occurs. Thereafter, (i) if such TCS is still required, Lessee shall maintain the TCS at its sole cost and expense, and (ii) regardless of the status of such TCS, Lessee shall dispatch the Line at its sole cost and expense.

(c) In addition to leasing the Line to Lessee, Lessor shall lease to Lessee those certain assets listed on **Exhibit B** ("Additional Assets") on the terms and conditions provided in this Lease. Lessee shall have no right to dispose of any portion of the Line or of such Additional Assets without prior written consent from Lessor; provided, however, that Lessee shall have the right, without prior written consent from Lessor, to dispose of materials from the Line and from the Additional Assets to the extent such disposition is required for maintenance, rehabilitation, upgrading or improvement of the Line or Additional Assets. As Lessor remains the owner of the Line and the Additional Assets, Lessor shall be entitled to full monetary compensation for any such assets sold by Lessee except where such assets are replaced by Lessee with assets that are deemed equivalent in the reasonable judgment of Lessor, which shall be the property of Lessor. Lessee shall be solely responsible for and shall bear all the risk, cost and expense of use and maintenance of the Additional Assets using Lessee's own labor and/or contractor(s). Lessee shall maintain, keep and repair the Additional Assets in substantially the same condition as the same existed on the Commencement Date, ordinary wear and

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tear excepted, and as may be required under any applicable federal, state or local law(s), ordinance(s) and regulation(s). Lessee shall not be responsible for and shall bear no cost and expense of the maintenance of any portion of the Additional Assets used by Lessor or any third parties, or for any fixtures, structures or appurtenances placed on the Line or on the Additional Assets by Lessor or any third parties, pursuant to any exceptions, reservations, rights and/or privileges under this Lease.

(d) Lessee may make improvements upon or connected to the Line without the prior written consent of Lessor, provided that all such improvements shall be the property of Lessor.

(e) Lessee shall not create or permit or allow any nuisance condition to exist on or in the Line or any Additional Assets.

#### **11. PUBLIC FUNDS.**

If Lessee seeks public funding for use on any portion of the Line, Lessee shall first give Lessor notice of its intent to seek such public funding and get Lessor's prior written approval, which shall not be unreasonably withheld or delayed.

#### **12. SPECIAL AUDITS.**

At any time, Lessor may perform a special audit if it has a reasonable belief that Lessee is not in compliance with this Lease. The cost of the audit shall be borne by Lessor, provided that if such audit reveals Lessee is not in substantial compliance with the terms of this Lease, Lessee shall reimburse Lessor for the costs of the audit.

#### **13. AUTHORITY TO LEASE.**

As of the Commencement Date, Lessee and Lessor will have the necessary corporate authority and approval to enter this Lease. The parties represent and warrant to each other that each party has secured all requisite corporate and governmental authority to enter into this Lease and to operate or permit operation in accordance with the terms hereof.

#### **14. ENVIRONMENTAL.**

(a) On and after the Commencement Date of this Lease and during the continuance hereof, Lessee shall not create or permit to be created or knowingly allow to exist upon the Line or the Additional Assets any use, storage (except storage for a reasonable period of time as incident to an industrial switching movement for a patron on the Line), disposal or release of Hazardous Materials, public or private, and Lessee shall indemnify and hold harmless Lessor, and its parent corporations, subsidiaries and affiliates, and all of its and their directors, officers, agents or employees, from and against any and all liabilities, damages, penalties, fines, claims, demands, causes of action, liens, suits, costs, judgments and expenses, including costs of defense and reasonable attorneys' and consultants' fees (collectively "Liability"), growing out of any such use, storage, disposal or release of Hazardous Materials thereon, including without limitation Liability arising out of the application and/or violation of laws, ordinances and governmental regulations relating to air, water, noise, wastes and other pollution. Lessee shall comply with all applicable federal, state and local laws, rules and regulations pertaining to air, water, noise, and wastes and other pollution or relating to the storage, transport, disposal or other release of Hazardous Materials. Except as provided in subparagraphs (b) and (d) of this Paragraph 14, Lessee shall install and bear the expense of any and all pollution control structures, devices or equipment which are required during the Term of this Lease under any applicable laws, ordinances or governmental regulations as a result of Lessee's operations. Lessee shall exercise due care in its use and operation of the Line, including taking precautions against reasonably foreseeable acts or omissions of any third party, to prevent Environmental Contamination or the Release of a Hazardous Material into the environment.

(b) Lessee shall be responsible to Lessor and shall defend, indemnify and hold harmless Lessor, and its parent corporations, subsidiaries and affiliates, and all of its and their directors, officers, agents or employees, from and against any Liability arising under any environmental protection or pollution law, or any liability in tort (strict or otherwise) arising (i) out of Environmental Contamination of the Line or the Additional Assets occurring after the Commencement Date of this Lease or (ii) out of and to the extent that Lessee has knowingly exacerbated after such Commencement Date Environmental Contamination existing prior to such Commencement Date. Lessor shall defend, indemnify and hold harmless Lessee, and its parent corporations, subsidiaries and affiliates, and all of its and their respective directors, officers, agents or employees, from and against any Liability arising out of Environmental Contamination of the Line or

the Additional Assets occurring prior to such Commencement Date, to the extent not knowingly exacerbated by Lessee. These obligations to indemnify undertaken by each party shall survive the Term of this Lease.

(c) As to the provisions of this Paragraph 14 only, Lessee and Lessor waive any statute of limitations defense as between the parties, provided, however, that if one party gives the other party written notice of Environmental Contamination of the Line or the Additional Assets, the waiver of the statute of limitations shall cease, but only as to the Environmental Contamination which is the subject of the written notice, and as to such contamination, the parties shall then be subject from the date of receipt of such written notice to the times then provided in the then-applicable statute of limitations. The waiver of statute of limitations for any matter not covered in said written notice shall continue.

(d) Notwithstanding the foregoing provisions of this Paragraph 14, to the extent that Lessor operates its trains on the Line or uses the Additional Assets, Lessor shall be separately responsible for any Environmental Contamination of the Line to the extent arising out of its use. Lessor shall defend, indemnify and hold harmless Lessee from and against any Liability resulting from Environmental Contamination of the Line or the Additional Assets to the extent caused by Lessor after the Commencement Date.

(e) For purposes of this Paragraph,

- (i) "Environmental Contamination" shall mean any condition arising from the use, storage, transport, disposal or release of Hazardous Materials to, on or under the Line.
- (ii) "Hazardous Materials" shall mean and include, without limitation, (1) "hazardous substances" or "toxic substances", or "pollutants or contaminants", as those terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; or the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, all as amended; (2) "hazardous

wastes", as that term is defined by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., as amended; (3) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable federal, state or local law, regulation, code, ordinance, guideline, order, agreement or requirement imposing liability or standards of conduct concerning any hazardous, toxic or dangerous or residual waste substance or material, or the exposure of persons thereto all as amended as of the date hereof; (4) any crude oil or any other petroleum product; (5) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. § 2100 et seq., as amended; (6) asbestos and asbestos containing materials in any form; or (7) compounds containing polychlorinated biphenyls. For the purposes of this Paragraph, "as amended" shall mean and include any amendment, adoption, revision or promulgation now in effect or occurring after the date of this Lease.

**15. ASSIGNMENT AND SUBLEASE/SUBLICENSE.**

(a) Assignment. Subject to the provisions of Paragraph 15(b), this Lease may not be assigned, or in any manner transferred, nor shall the Line be sublet by Lessee, other than to a subsidiary or commonly controlled affiliate of Lessee, without the advance written consent of Lessor, which may be withheld in its sole discretion, signed by an authorized officer. In addition to other conditions as may be placed on such assignment, transfer or sublease, as a condition to obtaining Lessor's consent for assignment, Lessee will provide written notice to Lessor of its desire to assign this Lease, together with an agreement, in form and substance acceptable to Lessor, signed by the intended assignee and agreeing that the intended assignee will be bound by all provisions of this Lease.

(b) Track Leases, Public/Private Road/Pedestrian Crossings, and Private Sidetracks. Lessee shall hereby solely be responsible for the approval and

preparation for new track lease agreements, public/private road/pedestrian crossing agreements, and private sidetrack agreements on the Line, whether overhead, underpass or at grade. Any new agreement prepared for the purposes stated in this Paragraph shall be prepared in the form of a sublease/sublicense subject to the terms of this Lease, and a copy of each executed agreement shall be promptly forwarded to Lessor.

(c) Lessee shall not allow the placement of any permanent structures on Lessor's property by or for third parties, and shall not grant any type of permanent access/occupancy to Lessor's property to or for third parties, without the prior written consent of Lessor, which may be withheld or conditioned in Lessor's reasonable discretion.

(d) Pools. Notwithstanding any provision hereof, Lessee may enter into contracts for the joint use and pooling of equipment as approved by the STB.

(e) Assignment of Certain of Lessor's Contracts. As of the Commencement Date and as appropriate during the Term of this Lease, and pursuant to the Assignment and Assumption Agreement attached hereto as **Exhibit E**, Lessor shall assign to Lessee and Lessee shall assume from Lessor those certain agreements listed in **Exhibit E**. Lessor represents that it has fulfilled, as of the Commencement Date, all of Lessor's covenants, promises, and obligations arising under such agreements that were required to be completed prior to the Commencement Date. Lessor and Lessee shall diligently attempt to determine all agreements to be listed in **Exhibit E** and will cooperate in amending **Exhibit E** to add or remove agreements therefrom that do or do not, as the case may be, relate to the Line or to Lessee's continuing freight operations thereon. Upon expiration or other termination of this Lease, such assignment and assumption shall cease and the agreements listed therein shall revert to Lessor.

## **16. SOLE BENEFIT.**

This Lease is intended for the sole benefit of the parties hereto. Nothing in this Lease is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, agents, employees, parent corporation, subsidiaries, affiliates, successors, and permitted assigns, any right or benefit pursuant to any provision or term of this Lease, and all

provisions and terms of this Lease are and will be for the sole and exclusive benefit of the parties to this Lease.

**17. WAIVER.**

Any waiver at any time by one party of a breach hereof by the other party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Lease or the right of either party hereto thereafter to avail itself of any rights under this Lease with respect to a subsequent breach. No provision of this Lease shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder.

**18. AMENDMENT.**

No provision of this Lease shall be modified without the written concurrence of the parties hereto. This Lease includes attachments and exhibits appended hereto and represents the entire understanding of the parties hereto, and to that extent supersedes any prior understandings, written or oral.

**19. NOTICES.**

All notices required to be given under this Lease shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown on **Exhibit D** or such successor addresses as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested or by facsimile, with confirmed receipt, addressed to the officers and addresses shown on Exhibit D. All notices shall be effective on the day following confirmed receipt of the letter or facsimile.

**20. HEADINGS.**

The headings of the Paragraphs of this Lease are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Lease.

## **21. TAXES.**

Lessee shall be responsible for and pay all licenses, taxes, levies and assessments, including property taxes, relating to the Line after the Commencement Date. All licenses, taxes, levies, and assessments relating to the Line, including property taxes, will be prorated for the first year of the Lease as of the Commencement Date. After the Commencement Date and during the Term of this Lease, Lessee will pay when due, and prior to the imposition of any penalty, all licenses, taxes, levies, and assessments of whatever kind or nature which may become a lien against the Line, and will defend, indemnify and hold Lessor harmless against any liability for payment of such licenses, taxes, levies, and assessments, including attorneys' fees and costs; provided, however, that nothing in this Lease will be construed to diminish any right of Lessee to contest any such license, tax, levy, or assessment in appropriate judicial or administrative proceedings. Upon request, Lessee will present to Lessor for inspection the documentation (or photocopies thereof) showing the payment of any of such licenses, taxes, levies, and assessments. Promptly upon receipt of an itemized statement, Lessee will reimburse Lessor for any such licenses, taxes, levies, or assessments paid by Lessor, and upon request by Lessee, Lessor will present to Lessee for inspection the documentation (or photocopies thereof) showing the payment thereof.

## **22. ALLOCATION OF INCOME AND EXPENSES.**

This is an absolute, pure net lease; and, except as otherwise expressly provided in this Lease, Lessee shall have and hereby assumes all duties and obligations with relation to the repair, maintenance, existence and operation of the Line and all other improvements or fixtures now or hereafter located during the Term of this Lease, irrespective of law or custom.

## **23. UTILITIES.**

Lessee shall initiate, contract for and obtain in its sole name all utility services required for its use of or operations on the Line, including gas, electricity, telephone, water and sewer connections and services. Lessee shall pay all charges for such services as they become due, and shall defend, indemnify and hold Lessor (and the Line) harmless from costs of such services.

#### **24. LIENS.**

(a) Lessee expressly agrees that it shall not allow any lien on or encumbrance against the Line, or any portion thereof, or against the Additional Assets without first obtaining Lessor's express written consent, which may be withheld in Lessor's sole and absolute discretion. Lessee shall, upon prior notice to and reasonable approval from Lessor, have the right to encumber the leasehold interest created hereby, provided that any such encumbrance shall not extend beyond the Term of this Lease.

(b) Lessee shall pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by Lessee during the Term of this Lease in the construction, repair, maintenance, or removal of the Line and any improvements located thereon, or the Additional Assets, whether said improvements are the property of Lessor or of Lessee. Lessee shall defend, indemnify and save harmless Lessor from all such claims or liens whatsoever, provided, however, that Lessor shall reimburse Lessee for the costs of such construction, repair, maintenance or removal, or the claims or liens arising therefrom, when such construction, repair, maintenance or removal are requested by Lessor or necessitated by damage attributable to Lessor's use of the Line or any improvements located thereon or the Additional Assets. In the event the Lease is terminated or expires, Lessee shall return the Line and the Additional Assets to Lessor free and clear of any such liens, claims and demands. Notwithstanding the foregoing, in the event that Lessee participates in any federal or state funding programs after receiving the written consent of Lessor for such participation, Lessor shall comply with all obligations to which it is subject under any such federal or state funding programs.

#### **25. RESERVED RIGHTS.**

(a) Lessor reserves unto itself, its affiliates, subsidiaries, parents, successors and/or assigns, the following property rights hereinafter collectively referred to as the "Reserved Rights":

- (i) to operate certain of its trains over the Line under a reservation of trackage rights as more fully set forth in Exhibit F hereto and under certain other separate agreements which may be entered into by the parties from

time to time during the Term hereof;

- (ii) The exclusive use of 526 square feet of space in the Doswell Depot building along with non-exclusive use of hallway and restroom in said building, together with sufficient parking space adjacent to the depot building for vehicles and rights of ingress and egress to the depot building shown on Exhibits B-1 and B-2, attached hereto, provided that Lessor shall not be responsible for any maintenance, janitorial or utility cost in connection with its use of the depot building, but Lessor shall be responsible for its own telecommunications costs and charges.
- (iii) All existing agreements, leases, or licenses with third parties, including any affiliates of Lessor, whether recorded or not, except those assigned to Lessee pursuant to Paragraph 15(e) and Exhibit E hereof;
- (iv) Except as otherwise provided in Paragraph 15(b) hereof, the exclusive right to prepare and enter into future agreements, leases, licenses or occupations with third parties directly;
- (v) The right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove utility systems and their associated and appurtenant equipment and facilities as well as the right to attach the utility systems and related facilities to existing bridges and to install them in existing tunnels; and the right of ingress and egress for access purposes;
- (vi) The right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove commercial poster panels and towers and their associated and appurtenant equipment and facilities as well as the right to attach the commercial poster panels

and towers and related facilities to existing bridges and to install them in existing tunnels; and the right of ingress and egress for access purposes;

(vii) The right to amend this Lease at any time, in its sole discretion, to exclude from the Line any portion of the Land for the purpose of conveying such properties to third parties, provided that the same does not materially interfere with Lessee's continuing freight operations or the safety thereof, does not require Lessee to incur or expend any incremental costs, and does not substantially increase Lessee's risk (i.e. insurance and indemnity will be required for Lessee's benefit); and

(viii) The right to convey all minerals, mineral rights and air rights in, on or under the Line.

(b) Lessor shall retain any rentals, fees or other payments associated with the Reserved Rights.

(c) Lessee shall have the right and obligation to review any application by a third party, or by Lessor or Lessor's affiliates, to cross over or under the Line or to utilize any portion of the Line pursuant to this Paragraph 25 that is located within 25 feet of the centerline of any existing operating track. Lessee shall have thirty (30) days from the date Lessee receives the application to review plans and any other related information, to evaluate the proposed use(s) contemplated in the application and advise Lessor if the application is approved or denied. If Lessee has not responded to the application within such thirty (30) day period, Lessee shall be presumed to have approved the application and Lessor shall be free to enter into the appropriate agreement, lease, license or occupation. Lessee's approval of any application shall not be unreasonably withheld, conditioned or delayed.

(d) Lessor's exercise of the Reserved Rights in this Paragraph 25 shall not unreasonably interfere with Lessee's present or reasonably contemplated freight operations under this Lease, or with the Lessee's performance of its other obligations hereunder or under the Trackage Rights Agreement and other agreements

between the parties associated with this transaction. Lessor, its licensees and invitees shall be required to provide notice to Lessee before entering the Line for the purposes described in this Paragraph 25.

## **26. PASSENGER RAIL USE**

(a) The parties acknowledge and accept that the Line is encumbered by that certain Agreement between Lessor and the National Rail Passenger Corporation dated June 1, 1999, as amended (the "Amtrak Agreement"), which has been provided to and reviewed by Lessee. Except as otherwise provided herein, and subject to the execution of a mutually acceptable arrangement involving the allocation of the benefits and obligations of Amtrak operations over the Line, Lessee agrees to provide, as Lessor's agent, the facilities and services necessary to comply with Lessor's obligations under the Amtrak Agreement.

(b) Lessee shall use the Line for freight rail transportation purposes only. However, Lessee may operate or authorize the operation of passenger excursion trains over the Line provided that each such train is (i) an Amtrak Special train under the Amtrak Agreement, or (ii) covered by public general liability insurance in the amount of not less than \$500 million, or (iii) covered by a lesser amount of general liability insurance specified by Lessor in its sole and absolute discretion. With respect to subsection (iii) above, if Lessor decides not to approve insurance coverage in an amount less than \$500 million, such decision shall not constitute a breach of this Agreement, and such matter shall not be subject to arbitration. Lessor retains the right to authorize passenger, special, commuter and excursion trains over the tracks on the Line, with Lessee's reasonable consent and provided that the exercise of such rights by Lessor does not materially interfere with Lessee's continuing freight operations or the safety thereof, does not require Lessee to incur or expend any incremental costs, and does not substantially increase Lessee's risk (i.e. insurance and indemnity will be required for Lessee's benefit).

## **27. EFFECT OF TERMINATION OR EXPIRATION OF LEASE.**

(a) At least 60 days prior to the expiration of this Lease, or promptly upon the earlier termination of this Lease, Lessee shall submit all necessary applications, petitions and/or notices to the STB or any successor agency to effectuate a termination of this Lease and a discontinuance of its operations hereunder. Upon expiration or earlier termination of this Lease, Lessor shall have the right to enter onto and operate the Line. Upon obtaining any necessary regulatory authority or exemption, Lessee will forthwith vacate and surrender the Line, all property and assets described in Exhibit B, and any improvements made thereon to Lessee.

(b) Upon expiration or earlier termination of this Lease, Lessee shall surrender the Line to Lessor, (i) free and clear of all liens and encumbrances, (ii) in good working order, (iii) in a condition necessary to permit railroad freight operations comparable to those existing as of the Commencement Date as established by Railroad's Timetable in effect at that time; and (iv) in at least the FRA track class standard(s) applicable to the Line as of the Commencement Date, or such lesser FRA track class standard(s) as may have been agreed to by the parties during the Term of this Lease.

(c) Upon expiration or earlier termination of this Lease, Lessee shall, at no cost to Lessor, assign to Lessor all agreements entered into by Lessee pursuant to Paragraph 15(b) hereof.

(d) If Lessee holds over or remains in possession of the Line after the expiration of this Lease, Lessor in addition to all other legal and equitable rights it may have, may elect to treat such holding over or continued possession as creating a tenancy from month to month only, and monthly rental for such period will be payable as a pro-rated share of the rent set forth in Paragraph 4 herein. Such monthly rental shall be due and payable on the first of each month, in advance.

## **28. DISCONTINUANCE OR OTHER REGULATORY ACTIVITIES.**

(a) Lessee shall not discontinue its rail operations on or over the entire Line or any portion of the Line without Lessor's prior written consent, which may be withheld in Lessor's sole discretion. Lessee shall give Lessor 90 days prior written notice of its plan to discontinue its rail operations on or over the entire Line or a portion of the Line.

(b) Within 30 days of receiving the notice, Lessor shall in writing notify Lessee whether or not Lessor consents to Lessee's discontinuance.

(c) If Lessor consents to such discontinuance, Lessor shall notify Lessee in writing that Lessor shall exercise one of the following options, to which Lessee consents by the execution of this Lease:

(i) Lessor shall resume providing common carrier service over the entire Line or the portion of the Line where Lessee will discontinue service, and Lessee will file for the necessary authorization from the STB or other appropriate regulatory authority as may be appropriate, to obtain discontinuance authority for the entire Line or the portion of the Line; or

(ii) Lessee shall assign its right to operate as a common carrier over the entire Line or the portion of the Line that it seeks to discontinue service over to a third party to be designated by Lessor, and Lessee will not have to file for authorization from the STB or other appropriate regulatory authority as may be appropriate, to obtain discontinuance authority; or

(iii) Lessee will discontinue service by filing for the necessary authorization from the STB or other appropriate regulatory authority as may be appropriate, to obtain discontinuance authority and shall join Lessor in the filing for Lessor to abandon the entire Line or the portion of the Line; or

(iv) Lessee will discontinue service by filing for the necessary authorization from the STB or other appropriate regulatory authority as may be appropriate, to obtain discontinuance authority and shall join Lessor in the filing for Lessor to discontinue service over the entire Line or the portion of the Line.

(d) If Lessee consummates one or more discontinuances of any portion of the Line, the obligations of this Lease shall terminate as to the same, and the parties shall,

in good faith, discuss the extent to which the terms and conditions of this Lease need to be amended to reflect such discontinuance(s).

(e) If Lessee consummates discontinuance of the entire Line, this Lease and all obligations hereunder which do not survive termination shall terminate.

## **29. EMINENT DOMAIN.**

(a) During the Term of this Lease, if the whole or any part of the Line shall be taken, condemned, expropriated or seized by any governmental or lawful authority by the exercise of the right of eminent domain, for any public or quasi-public purpose, use or benefit, the following provisions shall be applicable:

- (i) If such proceedings result in the taking of all or a material operating portion of the Line (i.e., that which materially interferes with Lessee's use of the Line for railroad operation purposes), Lessee shall have the right, upon written notice to Lessor, to terminate this Lease in its entirety as of the date title to the Line, or such material portion, vests in the condemning authority;
- (ii) If such proceedings result in the taking of less than all or a nonmaterial portions of the Line, then the Lease shall terminate only as to the portion so taken, and this Lease shall continue in full force and effect as to that portion of the Line remaining, provided that the parties shall, in good faith, discuss the extent to which the terms and conditions of this Lease need to be amended to reflect such taking(s).

(b) If the temporary use (i.e., less than ninety (90) consecutive days) of the whole or any part of the Line shall be taken at any time during the Term of this Lease for any public or quasi-public use, purpose, or benefit, Lessee shall give prompt notice thereof to Lessor and the Lease shall be suspended for the duration of such temporary taking but continue for the balance of its Term. In such case, Lessee shall continue to pay, in full, all sums and charges to be paid by Lessee under the provisions of this Lease. In the event that such temporary taking shall exceed such ninety (90) day period, then either

Lessor or Lessee may elect to treat such taking in accordance with the provisions of Paragraph 29(a) hereof.

(c) During the Term of this Lease, if: (i) any such proceeding is instituted, or (ii) the exercise of such power is threatened, and (iii) if such proceeding or threatened proceeding involves or affects any or all of Lessor's exceptions, reservations, rights or privileges contained herein, Lessor shall be entitled to any and all funds payable for the taking of or damage to such exception, reservation, right or privilege; and Lessor shall be entitled to prosecute and receive, as the case may be, any and all claims, causes of action and awards for damages arising out of or connected therewith.

(d) Except as otherwise expressly provided in this Paragraph 29, Lessor shall be entitled to any and all funds payable for the total or partial taking or temporary use of the Line without any participation by Lessee, provided that nothing contained herein shall be construed to preclude Lessee, at its sole risk, cost and expense, from prosecuting any claim directly against the condemning authority for loss of its business or the value of its leasehold estate hereunder.

(e) During the Term of this Lease, each party shall provide prompt notice to the other party of any and all proceedings for condemnation, expropriation or seizure, or any and all threats of the exercise of the powers to condemn, expropriate or seize all or any portion of the Line, by furnishing the other party a copy of any and all documents and written communications with respect thereto that may be received by the receiving party. Lessee shall make all reasonable efforts to cooperate with Lessor in the defense of such proceedings.

(f) Except as provided in (d) above and except to the extent the takings, condemnations, expropriations and/or seizures resulted from Lessee's failure to fulfill its common carrier obligations on the Line, Lessor shall be responsible for paying all costs of prosecuting claims and causes of action for awards and/or damages due to, and for paying all costs of defense against, takings, condemnations, expropriations and/or seizures contemplated by this Paragraph.

**30. GOVERNING LAW.**

This Lease, the Trackage Rights Agreement, and all other agreements between the parties associated with this transaction shall be governed by the laws of the Commonwealth of Virginia.

**31. INSURANCE.**

(a) Prior to the Commencement Date of this Lease, Lessee, at its sole cost and expense, shall procure, and thereafter shall maintain in full force and effect at all times during the Term of this Lease, insurance meeting the requirements of this Paragraph 31.

(b) Lessee shall have Railroad Comprehensive Liability Insurance, with a Combined Single Limit of not less than Five Million Dollars (\$5,000,000) per occurrence, subject to self-insured retention in an amount approved in writing by Lessor, in its sole discretion, during the Term of this Lease. Such insurance shall: (a) specifically name Lessor as an "additional insured" thereon; (b) include a "severability of interests" provision; (c) provide Contractual Liability coverage specifically insuring all liability assumed by Lessee under this Lease; and (d) provide coverage for physical damage to property and risk of loss or damage to the structures, improvements, and fixtures on the Line, and motive power, rolling stock and lading being operated over the Line, irrespective of the ownership thereof. This insurance shall not be deemed a limitation on Lessee's liability, but shall be deemed to be additional security therefor. Further, the policy shall also waive subrogation against the Lessor.

(c) Lessee shall furnish certified copies of the above policies to Lessor's Risk Management Department, 500 Water Street, S/C J-907, Jacksonville, FL 32202.

(d) Each policy shall be endorsed to provide for thirty (30) days' written notice to said Risk Management Department prior to termination or material change in the coverage provided.

(e) In the event that Lessee fails to procure or maintain the required coverages during the Term, Lessor may, in addition to Lessor's rights to declare Lessee to be in default and to terminate under Paragraph 3(b) of this Lease, procure such insurance for Lessee's account.

### **32. ARBITRATION.**

Any dispute arising between the parties hereto with respect to any of the provisions hereof which cannot be settled by the parties themselves within sixty (60) calendar days of either party giving the other notice of the dispute shall be settled under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceeding shall be held in Richmond, Virginia. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto and shall be enforceable in a court of competent jurisdiction. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator(s), if any, shall be borne equally by the parties hereto. The arbitrator(s) shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws.

### **33. COUNTERPARTS.**

This Lease may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

### **34. CONFIDENTIALITY.**

(a) Each party hereto covenants that all information and documents concerning the other party known to, or received or reviewed by, the first party, its employees, agents or representatives, in connection with this Lease and the transactions contemplated hereby shall be maintained in confidence and not disclosed or utilized (other than in connection with the transactions contemplated hereby) by the first party, its employees, agents or representatives, without the other party's prior written consent, unless (i) such information and documents were, are now, or become generally available to the public (but not as a result of a breach of any duty of confidentiality by which the first party, or any of its employees, agents and representatives, is bound), (ii) such information and documents were known to first party prior to their disclosure to the first party by the other party in connection with this Lease, as demonstrated by the first party's written records, (iii) such information and documents are disclosed by a third party, or (iv) such items are required to be disclosed pursuant to a judicial order or applicable law, rule or regulation or to the parties' insurers. Notwithstanding anything herein to the contrary, each party may disclose (without prior notification to, or approval or consent by, the

other party), to taxing authorities and/or to such party's representatives, outside counsel and advisors, any confidential information that is required to be disclosed in connection with such party's tax filings, reports, claims, audits, and litigation.

(b) In the event that either party hereto, or any of its employees, agents or representatives, becomes legally compelled to disclose any such information or documents, the disclosing party shall provide the other party with prompt notice before such disclosure so that the other party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Lease, or both. In the event that such protective order or other remedy is not obtained, or that the other party waives compliance with the provisions of this Lease, the disclosing party shall furnish only that portion of the information or documents that it is advised by written opinion of counsel is legally required.

(c) It is agreed that money damages would not be a sufficient remedy for any breach of this Paragraph 34 and that either party hereto shall be entitled to specific performance as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Paragraph 34 but shall be in addition to all other remedies available at law or in equity. Each party hereto further agrees and covenants that it shall not use any information or document that it obtains or has obtained in connection with this Lease in any judicial or administrative proceeding brought against the other party, except in a proceeding brought hereunder. With respect to any judicial or administrative proceeding brought by a third party challenging any provision of this Lease or relating to any action or inaction required by this Lease, the party against whom such proceeding is brought may use for purposes of defending such proceeding information or documents that it obtains or has obtained in connection with this Lease; provided, however, that the party against whom such proceeding is brought shall consult with and obtain the written consent of the other party prior to such use of information or documents.

### **35. FORCE MAJEURE.**

(a) The prompt and timely performance of all obligations and covenants under this Lease, including the obligation to make prompt and timely payment of each installment of Rent or any other payment of any nature, is and shall be of the essence of this Lease.

(b) Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, other than payment of Rent, said party shall not be

responsible for any delays due to strikes, lockouts, labor disputes, casualties, acts of God, war, terrorist acts, court orders, work stoppages, nuclear incidents, riots, public disorder, acts of a public enemy, criminal acts or acts or omissions of other parties or entities, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, embargoes, Association American Railroads, STB or FRA orders, other governmental laws, orders or regulations or other such causes beyond the reasonable control of said party (each a "Force Majeure"). In the event of such Force Majeure, the performance time period shall be extended for the amount of time said party is so delayed; provided, however, that this Paragraph 35(b) shall not be construed to affect the responsibilities of said party hereunder to perform such act or thing once such Force Majeure conditions have been removed.

### **36. LIABILITY.**

Except with respect to liabilities arising directly from freight train operations conducted by Lessor under the Trackage Rights Agreement and except with respect to liabilities to third parties arising from Lessor's retention of scrap crossties on the Line following the Commencement Date, which shall be governed by the provisions of the Trackage Rights Agreement, Lessor shall not be liable for any loss, damage, or claim to or pertaining to the Line or the Additional Assets, any improvements or fixtures located thereon by Lessee, or the property of Lessee or any third party, or for personal injury or death of any person that may result from Lessee's operation, use or interest in the Line or the Additional Assets, unless the same is due to Lessor's gross negligence or willful misconduct. Lessee and Lessor shall defend, indemnify and hold harmless each other from and against any and all such loss, damage or claims, including the parties' respective reasonable attorney's fees and costs, arising from their respective liabilities as provided or referred to in this Paragraph.

### **37. SEVERABILITY**

If any part of this Lease is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Lease and the remaining parts of this Lease shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

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

**BUCKINGHAM BRANCH  
RAILROAD COMPANY**

**WITNESS:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSX TRANSPORTATION, INC.**

**WITNESS:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **Description of Line to Be Leased**

Description of Property at: Richmond to Clifton Forge, VA  
For: Lease to Buckingham Branch Railroad Company  
CSX Site ID: VA-760-0997353

Three strips of land of varied width, being portions of the North Mountain, Washington and Piedmont Subdivisions of Lessor's Alleghany Division lying and situate in the counties and cities of: Richmond City, Henrico, Hanover, Louisa, Orange, Albemarle, Charlottesville City, Nelson Augusta, Waynesboro City, Staunton City, Rockbridge, Bath and Alleghany, Commonwealth of Virginia, the centerlines of which are individually described as follows:

#### **TRACT 1**

**BEGINNING at a point in the centerline of the existing mainline railroad tracks at approximate Railroad Valuation Station 4398+75 (also designated as approximate Railroad Milepost CA 85.5), such beginning point situate in the City of Richmond and lying 1,910 feet, more or less, as measured along said centerline of track, southerly from the centerline of Hospital Street as it crosses said track centerline – [the westerly limit of the lease area between the point of beginning (Station 4395+00 and the centerline of Hospital Street (Station 4414+10 +/-) shall be a line parallel and concentric with and 25 feet distant westerly from said track centerline] – ; thence along said track centerline in general northerly, then westerly, then southwesterly direction through the City of Richmond; the counties of Henrico, Hanover, Louisa, Orange, Albemarle; the City of Charlottesville; the counties of Nelson, Augusta; the cities of Waynesboro and Staunton; the counties of Rockbridge, Bath and Alleghany, a distance of 190.5 miles, more or less, such distance being based on the map locations of the mileposts, to the ENDING POINT at Railroad Milepost CA 276, located at approximate Railroad Valuation Station 4971+81, such ending point situate in Alleghany County and lying 1,885 feet, more or less, as measured along said centerline of track, easterly from the Clifton Forge Corporation Line as it crosses said track centerline, which such Tract 1 shall include the C&O Flats as more particularly depicted on Exhibit \_\_\_\_\_.**

#### **TRACT 2 (Orange Branch)**

**BEGINNING at the point of switch for the Orange Branch at TRACT 1 Railroad Valuation Station 8367+95 = TRACT 2 Station 0+00 (also designated as approximate Railroad Milepost CAA 9.02), such beginning point situate at Gordonsville, Orange County, Virginia and being at or near Main Street (aka U.S. 15); thence along the Orange Branch track centerline, in a generally northeasterly direction, a distance of 9.02 miles,**

more or less, such distance being based on the map locations of the mileposts, to the **ENDING POINT** at Railroad Milepost CAA 0, located at approximate Railroad Valuation Station 476+31, such ending point situate at Orange, Virginia 200 feet, more or less, as measured along said track centerline, southerly from the south line of Church Street.

### **TRACT 3 (Goshen IT)**

**BEGINNING** at Goshen Branch Railroad Valuation Station 0+00 = TRACT 1 Railroad Valuation Station 3750+08 (also designated as approximate Railroad Milepost CA 253.04), such beginning point situate at Goshen, Rockbridge County, Virginia; thence in a general southerly direction, along the centerline of the Goshen Branch track, a distance of 1.9 miles, more or less, to the **ENDING POINT** at the end of lessor's ownership at Station 101+39.

TOGETHER WITH former RF&P tracks located at Lessor's Doswell Yard at or near Doswell, Virginia in the County of Hanover: "Depot Track", "Wye Track", "Stone Track", "Bank Track" and that portion of "Track #4" **BEGINNING** at Railroad Milepost CFP 21.97 +/- located approximately at Valuation Station 1260+00 in a general northerly direction to the **ENDING POINT** at Railroad Milepost CFP 23.05 at approximate Valuation Station 1317.50.

### **Tract 4 (Doswell Depot)**

TOGETHER WITH former RF&P depot building and land located at Lessor's Doswell Yard at or near Doswell, VA, at Railroad Milepost CFP 21.87, south of SR 688, as more particularly shown on Exhibit A-1 and A-2.

## **EXHIBIT B**

### **Other Lessor Assets Provided to Lessee and Terms Thereof:**

#### **Piedmont Sub**

Dispatcher Base Station -- Total 5  
Mineral, Beaverdam, Doswell, Peake, Dill Rod  
SNA Controllers -- Total 1  
Mineral  
Frame CKT -- Total 1  
Mineral

#### **Washington Sub**

Dispatcher Base Station -- Total 1  
Gordonsville

#### **North Mountain Sub**

Dispatcher Base Station -- Total 8  
Clifton Forge East, Millboro, Bells Valley, North Staunton, Fisherville, Afton,  
Charlottesville  
MRAS Base Station -- Total 1  
Afton  
Other Base Station -- Total 1  
Charlottesville (Yardmaster Base)  
AEI-CCTC Standalone -- Total 1 (Ruff Store)  
RCCI (Staunton) -- Total 2 CDMA's  
Frame (DATA) Charlottesville -- Total 1  
Frame (NGDCC) Staunton -- Total 1  
Satellite (Staunton) -- Total 1  
IFBs @ Ruffstore, Goshen, Staunton, Charlottesville  
Radio Bases on C425 and C426 on the NGD Platform at RCCI Staunton

**EXHIBIT C**

**Equipment to Be Removed by Lessor**

**PIEDMONT**

CA 112.9 - 9 - 12' TIES , 2 -10S , 14 - 11S 6 -MAIN LINE TIES

CA 115.9 - 15' - 132LB STRIP RUBBER FOR XINGS

CA 124.1 - 76 MAIN LINE TIES

4 X 39' 132LB RAILS

3- 10S , 1 -14

CA 140.7 - MINERAL

6 - CONCRETE M.P.

128 - MAIN LINE TIES

28 - KGS OF SPIKES

3- BUG DERAILS

10PR - 131LB BARS

4 PR - 122LB BARS

2 PR 131/100 COMP BARS

2 PR 112/100 COMP BARS

3 PR 130RE/100 COMP BARS

2 PR 115/100 COMPS

10 GAGE RODS

1 NEW CENTURY SW STAND

2 - HI-WEIR STAND

2 BOW HANDLES

1 16" RH 131LB SW POINT

1 16" LH 131LB SW POINT

30 HOOK PLATES

18 X 7' PIECES OF 132LB OMNI RUBBER CROSSING MATERIAL

110' OF STRIP RUBBER - 132LB CROSSING

800' OF SCRAP RAIL

30 TNS OF OTM SCRAP

WASHINGTON SUB.

GORDANSVILLE - 10 MAIN LINE TIES

4 KEGS OF SPIKES

NORTH MTN SUB.

CA 186.6 - IVY

4 -PR 112LB POLY BARS

1 -PR 100LB POLY BARS

8 - SWITCH POINTS 131LB, 100LB 132LB

1 SET PANDROL SWITCH PLATES

6 - HI -WEIR STANDS

12- SHORT LATCHES

1 -NEW CENTURY DERAIL STAND

45' OF CROSSING RUBBER - STRIP - 100LB

2 -#16 132LB 24FT FROGS SH

1 #10 100LB FROG 16'6"

2 -#8 13FT 100LB FROGS

1 #8 131LB 13FT FROG

1 - 140LB GD RAIL SH

5 KEGS OF SPIKES

4 CONCRETE M.P.

30' OF CROSSING - STRIP 122LB

30' OF CROSSING - STRIP 100LB

2 - 11FT TIES

1 - MAIN LINE TIE

15 -SHORT CONNECTING RODS

CROZET - CA 194.6

10 KGS OF SPIKES  
500- 132LB ANCHORS  
AFTON - CA 203.7  
75 KGS OF 5 1/2 INCH SPIKES 5/8 CUT  
1 141/122 TRANSITION RAIL  
FISHERSVILLE - CA 213.5  
4 - KGS SPIKES  
3 - 140LB GD RAILS SH  
STAUNTON CA 221.3  
1 - 140LB GD RAIL  
2 -140LB GD RAILS - BOLT DOWN  
CA232 - CA 233  
86 MAIN LINE TIES  
GOSHEN  
CA 253.3  
10 PR - 132LB BARS  
20 KG SPIKES  
1 - SW POINT 16' 6"  
2500 - 132LB ANCHORS  
100 TN OF SCRAP  
Printers  
Faxes  
Telephones  
Refrigerators

**EXHIBIT D**

**List of Names and Addresses for Notice Purposes**

Notices to LESSOR shall be delivered to:

Property Services Department  
Director of Corridor Administration  
CSX Transportation  
500 Water Street, J180  
Jacksonville, FL 32202

With copies to:

AVP Network Rationalization  
CSX Transportation  
500 Water Street, J200  
Jacksonville, FL 32202

Director – Rail Network Marketing  
CSX Transportation  
500 Water Street, J848  
Jacksonville, FL 32202

Notices to LESSEE shall be delivered to:

Robert E. Bryant, President  
Buckingham Branch Railroad Company  
P. O. Box 336  
Highway U. S. 15  
Dillwyn, VA 23936

**EXHIBIT E**

**ASSIGNMENT AND ASSUMPTION OF VARIOUS  
AGREEMENTS, LEASES, LICENSES AND ORDINANCES**

FOR VALUE RECEIVED by and between CSX Transportation, Inc., hereinafter referred to as "Assignor," and Buckingham Branch Railroad Company, hereinafter referred to as "Assignee", Assignor does hereby fully assign unto Assignee all of the right, title and interest of Assignor in those agreements, leases, licenses and ordinances, ("Contracts"), indicated on Exhibit E-1, attached hereto and made a part hereof. Subject to the provisions of Paragraph 15(e) of the Lease, Assignee does hereby assume, to the extent of the interest hereby assigned, all of the covenants, promises and obligations of Assignor contained within the subject Contracts. Assignor shall be entitled to retain any and all rentals, fees and the like received prior to the Commencement Date of the Lease, without proration. Assignee shall be entitled to retain any and all rentals, fees and the like received prior to the expiration or earlier termination of the Lease, without proration.

Upon the termination or expiration of the Lease and Joint Use, the assignments made by this instrument shall terminate. Within a reasonable time from the date of the termination or expiration of the Lease and Joint Use, Assignee shall deliver to Assignor the Contracts listed on Exhibits E-1 and all new Contracts.

**ASSIGNOR:**

ATTEST:

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

ATTEST:

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

|                                                                                                                                                                                                                             |                                          |             |             |  |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------|-------------|--|--|
| CSX RPI CONTRACT ID: 2004 101                                                                                                                                                                                               |                                          |             |             |  |  |
| REGARDING THE PENDING LEASE TO (N MTN SUB-BUCKINGHAM BR RR) INVOLVING SITE ID: (VA - 760 - 997353) LOCATED IN RICHMOND, VA A REVIEW OF THE AVAILABLE RECORDS INDICATES THE FOLLOWING CONTRACTS OCCUPY THE SUBJECT PROPERTY: |                                          |             |             |  |  |
| <b>CONTRACT :</b>                                                                                                                                                                                                           | <b>NAME</b>                              | <b>DATE</b> | <b>TYPE</b> |  |  |
| CO-000165-                                                                                                                                                                                                                  | MEAD CORP                                |             |             |  |  |
| CO-000165-                                                                                                                                                                                                                  | MEAD CORP                                | 5/14/76     | ST          |  |  |
| CO-000256-                                                                                                                                                                                                                  | AMERICAN AGGREGATES CORP                 | 5/14/76     | STCR        |  |  |
| CO-000256-                                                                                                                                                                                                                  | AMERICAN AGGREGATES CORP                 | 3/6/77      | ST          |  |  |
| CO-000507-                                                                                                                                                                                                                  | RECTOR AND VISITORS OF THE UNIVERSITY OF | 3/6/77      | STCR        |  |  |
| CO-000539-                                                                                                                                                                                                                  | ORANGE MADISON CO OP FARM SERVICE INC    | 12/10/85    | ST          |  |  |
| CO-002418-                                                                                                                                                                                                                  | VIRGINIA PORTLAND CEMENT CO              | 11/1/86     | ST          |  |  |
| CO-009761-                                                                                                                                                                                                                  | WAYNESBORO CITY OF                       | 8/31/03     | XGBRG       |  |  |
| CO-009823-                                                                                                                                                                                                                  | AUGUSTA COUNTY OF                        | 8/29/24     | RELTK       |  |  |
| CO-014778-                                                                                                                                                                                                                  | RICHMOND CITY OF                         | 11/25/24    | XGBRG       |  |  |
| CO-014906-                                                                                                                                                                                                                  | GORDONSVILLE TOWN OF                     | 12/13/30    | XGPUB       |  |  |
| CO-018913-                                                                                                                                                                                                                  | VIRGINIA COMMONWEALTH OF                 | 3/18/31     | XGBRG       |  |  |
| CO-020794-                                                                                                                                                                                                                  | VIRGINIA UNIVERSITY OF                   | 2/20/36     | XGUPS       |  |  |
| CO-021862-                                                                                                                                                                                                                  | VIRGINIA COMMONWEALTH OF                 | 1/28/38     | ST          |  |  |
| CO-021977-                                                                                                                                                                                                                  | VIRGINIA COMMONWEALTH OF                 | 4/17/39     | XGBRG       |  |  |
| CO-022114-                                                                                                                                                                                                                  | VA DOT                                   | 6/29/39     | XGSIG       |  |  |
| CO-023608-                                                                                                                                                                                                                  | CHARLOTTESVILLE CITY OF                  | 5/8/39      | XGBRG       |  |  |
| CO-024658-                                                                                                                                                                                                                  | NORFOLK & WESTERN RWY CO                 | 5/26/41     | XGBRG       |  |  |
| CO-025372-                                                                                                                                                                                                                  | WAYNESBORO CITY OF                       | 1/1/42      | JF          |  |  |
| CO-033049-                                                                                                                                                                                                                  | RICHMOND VA                              | 1/11/43     | XGBRG       |  |  |
| CO-033502-                                                                                                                                                                                                                  | AUGUSTA COOP BUREAU INC                  | 8/31/50     | XGSIG       |  |  |
| CO-033872-                                                                                                                                                                                                                  | RICHMOND CITY OF                         | 2/27/51     | ST          |  |  |
| CO-033929-                                                                                                                                                                                                                  | VIRGINIA STATE OF                        | 7/24/50     | XGSIG       |  |  |
| CO-036735-                                                                                                                                                                                                                  | SUPERIOR STONE CO                        | 5/31/51     | XGSIG       |  |  |
| CO-036760-                                                                                                                                                                                                                  | VA DOT                                   | 7/15/54     | XGPVT       |  |  |
| CO-036984-                                                                                                                                                                                                                  | VIRGINIA STATE HIGHWAY DEPT              | 9/20/54     | XGUPS       |  |  |
| CO-037363-                                                                                                                                                                                                                  | AMERICAN AGGREGATES CORP                 | 12/1/53     | XGSIG       |  |  |
| CO-042397-                                                                                                                                                                                                                  | VIRGINIA COMMONWEALTH OF                 | 5/11/55     | ST          |  |  |
| CO-044453-                                                                                                                                                                                                                  | VIRGINIA COMMONWEALTH OF                 | 5/8/56      | XGSIG       |  |  |

|            |                                             |  |  |          |       |  |  |
|------------|---------------------------------------------|--|--|----------|-------|--|--|
| CO-044454- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 2/16/59  | XGSIG |  |  |
| CO-044916- | WAYNESBORO CITY OF                          |  |  | 2/16/59  | XGSIG |  |  |
| CO-045560- | WAYNESBORO CITY OF;<br>COMMONWEALTH OF VIRG |  |  | 11/23/59 | XGBRG |  |  |
| CO-045585- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 1/16/61  | XGSIG |  |  |
| CO-045586- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 1/30/61  | XGSIG |  |  |
| CO-045715- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 1/30/61  | XGSIG |  |  |
| CO-046179- | HENRICO COUNTY VA                           |  |  | 5/2/61   | XGBRG |  |  |
| CO-047654- | CHARLOTTESVILLE<br>STONE CORP               |  |  | 1/5/62   | XGBRG |  |  |
| CO-048670- | CHARLOTTESVILLE<br>CITY OF                  |  |  | 8/31/63  | XGPVT |  |  |
| CO-049560- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 9/29/64  | XGSIG |  |  |
| CO-049896- | RUFFIN AND PAYNE INC                        |  |  | 7/19/65  | XGSIG |  |  |
| CO-049952- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 10/6/65  | ST    |  |  |
| CO-051513- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 11/30/65 | XGBRG |  |  |
| CO-051514- | VA DOT                                      |  |  | 5/31/67  | XGBRG |  |  |
| CO-051516- | WAYNESBORO CITY OF                          |  |  | 5/31/67  | XGBRG |  |  |
| CO-051890- | VA DOT                                      |  |  | 6/7/67   | XGBRG |  |  |
| CO-052048- | BARNHILL<br>CONTRACTING CO INC              |  |  | 9/20/66  | DRDCH |  |  |
| CO-052819- | MOORE BROTHERS CO<br>INC                    |  |  | 10/2/67  | XGPVT |  |  |
| CO-053653- | WAYNESBORO CITY OF                          |  |  | 5/17/68  | XGPVT |  |  |
| CO-055396- | OWENS ILLINOIS INC                          |  |  | 3/20/69  | XGBRG |  |  |
| CO-058161- | VIRGINIA STATE HIGHWAY<br>COMMISSION        |  |  | 8/18/70  | ST    |  |  |
| CO-058940- | VA DOT                                      |  |  | 7/17/73  | XGPUB |  |  |
| CO-059862- | VA DOT                                      |  |  | 4/4/74   | XGUPS |  |  |
| CO-060838- | VA DOT                                      |  |  | 4/25/75  | XGSIG |  |  |
| CO-061264- | VA DOT                                      |  |  | 6/2/77   | XGSIG |  |  |
| CO-061799- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 4/24/78  | XGSIG |  |  |
| CO-061877- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 8/7/79   | XGSIG |  |  |
| CO-062392- | CHARLOTTESVILLE VA                          |  |  | 6/21/79  | XGSIG |  |  |
| CO-062396- | HENRICO COUNTY VA                           |  |  | 7/21/80  | XGSIG |  |  |
| CO-062908- | WAYNE<br>MANUFACTURING<br>CORP              |  |  | 3/12/81  | XGSIG |  |  |
| CO-063177- | VIRGINIA<br>COMMONWEALTH OF                 |  |  | 12/16/81 | XGPVT |  |  |
| CO-063411- | VA DOT                                      |  |  | 2/15/83  | XGBRG |  |  |
| CO-063464- | RICHMOND CITY OF                            |  |  | 1/23/84  | XGSIG |  |  |
| CO-063525- | VA DOT                                      |  |  | 5/31/84  | DRDCH |  |  |
| CO-064013- | VIRGINIA UNIVERSITY<br>OF                   |  |  | 2/20/85  | XGSIG |  |  |
| CO-L07691- | RECTOR AND VISITORS OF<br>THE UNIVERSITY OF |  |  | 1/28/38  | ST    |  |  |

|                   |                                        |  |  |          |       |  |  |
|-------------------|----------------------------------------|--|--|----------|-------|--|--|
| CO-L09996-        | VIRGINIA DEPT OF<br>TRANSPORTATION     |  |  | 3/30/31  | CV    |  |  |
| CO-L10097-        | VIRGINIA DEPT OF<br>TRANSPORTATION     |  |  | 3/8/34   | XGUPS |  |  |
| CO-L10201-        | CONSUMERS SUPPLY<br>CO INC             |  |  | 4/6/35   | XGBRG |  |  |
| CO-L10578-        | BAG COAL INC                           |  |  | 4/15/35  | ST    |  |  |
| CO-L11743-        | WILEY H T                              |  |  | 10/25/35 | ST    |  |  |
| CO-L12925-        | VIRGINIA<br>COMMONWEALTH OF            |  |  | 6/28/37  | ST    |  |  |
| CO-L13443-        | VIRGINIA<br>COMMONWEALTH OF            |  |  | 12/10/38 | XGUPS |  |  |
| CO-L18303-        | HENRICO COUNTY BOARD OF<br>SUPERVISORS |  |  | 7/29/39  | ST    |  |  |
| CO-L18303-<br>001 | RICHMOND CITY OF                       |  |  | 2/7/46   | XGBRG |  |  |
| CO-L18902-        | APPALACHIAN WOOD<br>PRESERVING CO      |  |  | 2/7/46   | XGBRG |  |  |
| CO-L22754-        | AUGUSTA CO OP FARM<br>BUREAU INC       |  |  | 8/10/46  | ST    |  |  |
| CO-L25402-        | SUPERIOR STONE CO                      |  |  | 2/27/51  | ST    |  |  |
| CO-L25662-        | B P OIL CORP                           |  |  | 7/15/54  | XGPVT |  |  |
| CO-L25928-        | C R BUTLER OF<br>VIRGINIA INC          |  |  | 1/12/55  | ST    |  |  |
| CO-L26116-        | VIRGINIA DEPT OF<br>TRANSPORTATION     |  |  | 1/21/55  | XGPVT |  |  |
| CO-L35266-        | BURKE PARSONS<br>BOWLBY CORP           |  |  | 10/1/70  | ST    |  |  |
| CO-L35266-        | BURKE PARSONS<br>BOWLBY CORP           |  |  | 5/26/71  | XGMTC |  |  |
| CO-L35319-        | APPALACHIAN POWER<br>CO                |  |  | 5/26/71  | XGPVT |  |  |
| CO-L35319-        | APPALACHIAN POWER<br>CO                |  |  | 4/7/71   | XGMTC |  |  |
| CO-L35996-        | PARAMOUNT PARKS<br>INC                 |  |  | 4/7/71   | XGPVT |  |  |
| CO-L35996-        | PARAMOUNT PARKS<br>INC                 |  |  | 2/21/73  | XGMTC |  |  |
| CO-L36526-        | HANOVER COUNTY OF                      |  |  | 2/21/73  | XGPVT |  |  |
| CO-L36526-        | HANOVER COUNTY OF                      |  |  | 8/15/74  | XGMTC |  |  |
| CO-L36975-        | AMERICAN<br>AGGREGATES CORP            |  |  | 8/15/74  | XGPVT |  |  |
| CO-L36975-        | AMERICAN<br>AGGREGATES CORP            |  |  | 9/25/75  | XGMTC |  |  |
| CO-L38619-        | VIRGINIA VERMICULITE<br>LTD            |  |  | 10/27/75 | TL    |  |  |
| CO-L39100-        | LUCK STONE CORP                        |  |  | 11/1/78  | TL    |  |  |
| CO-L40048-        | BEAR ISLAND PAPER<br>CO                |  |  | 3/1/81   | TL    |  |  |
| CO-L40048-        | BEAR ISLAND PAPER<br>CO                |  |  | 8/14/81  | XGMTC |  |  |
| CO-L40099-        | LUCK STONE CORP                        |  |  | 8/14/81  | XGPVT |  |  |
| CO-L40099-        | LUCK STONE CORP                        |  |  | 1/1/82   | XGPVT |  |  |
| CO-L40222-        | BRETT AGGREGATES                       |  |  | 1/1/82   | XGSM3 |  |  |

|             |                                       |  |  |          |       |  |  |
|-------------|---------------------------------------|--|--|----------|-------|--|--|
|             | INC                                   |  |  |          |       |  |  |
| CO-L40222-  | BRETT AGGREGATES<br>INC               |  |  | 9/15/82  | XGMTC |  |  |
| CO-L40341-  | BEAR ISLAND PAPER<br>CO LP            |  |  | 9/15/82  | XGPVT |  |  |
| CO-L40341-  | BEAR ISLAND PAPER<br>CO LP            |  |  | 6/27/83  | XGMTC |  |  |
| CSX-006838- | NORFOLK SOUTHERN<br>RAILWAY CO        |  |  | 6/27/83  | XGPVT |  |  |
| CSX-007401- | KLOCKNER PENTAPLAST OF<br>AMERICA INC |  |  | 10/17/88 | JFTRK |  |  |
| CSX-013406- | RICHMOND<br>NEWSPAPERS INC            |  |  | 6/6/88   | ST    |  |  |
| CSX-013446- | DOSWELL I INC                         |  |  | 4/6/90   | STCR  |  |  |
| CSX-013958- | CAROLINA AVENUE LLC                   |  |  | 9/5/90   | ST    |  |  |
| CSX-014869- | VIRGINIA DOT                          |  |  | 3/27/91  | ST    |  |  |
| CSX-015011- | COLUMBIA PROPANE<br>CORP              |  |  | 12/3/91  | XGOPS |  |  |
| CSX-016965- | VA DOT                                |  |  | 9/1/91   | ST    |  |  |
| CSX-018907- | INDIANTOWN<br>COGENERATION LP         |  |  | 9/9/92   | XGPUB |  |  |
| CSX-019673- | WAYNESBORO VA                         |  |  | 8/7/92   | ST    |  |  |
| CSX-020671- | VA DOT                                |  |  | 9/14/93  | XGPUB |  |  |
| CSX-021475- | VIRGINIA CENTRAL<br>RAILROAD LTD      |  |  | 7/12/94  | XGBRG |  |  |
| CSX-023159- | LIVIA PROPERTIES II                   |  |  | 12/7/93  | TL    |  |  |
| CSX-023725- | LYDDAN ENTERPRISES                    |  |  | 9/23/94  | STTG  |  |  |
| CSX-026390- | VA DOT                                |  |  | 2/3/95   | ST    |  |  |
| CSX-032625- | CLEM VIRGINIA C                       |  |  | 5/20/96  | XGPUB |  |  |
| CSX-032625- | CLEM VIRGINIA C                       |  |  | 1/20/99  | XGMTC |  |  |
| CSX-033872- | VA DOT                                |  |  | 1/20/99  | XGPVT |  |  |
| CSX-035155- | VA DOT                                |  |  | 3/25/98  | XGSIG |  |  |
| CSX-038763- | VA DOT                                |  |  | 5/12/99  | XGSIG |  |  |
| CSX-038764- | VA DOT                                |  |  | 6/20/00  | XGSIG |  |  |
| CSX-038765- | VA DOT                                |  |  | 6/22/00  | XGSIG |  |  |
| CSX-039630- | BUILDING SPECIALTIES                  |  |  | 6/22/00  | XGSIG |  |  |
| CSX-040167- | VA DOT                                |  |  | 9/11/00  | STCR  |  |  |
| CSX-040454- | VA DOT                                |  |  | 8/10/00  | XGPUB |  |  |
| CSX-044230- | TRANSFLO TERMINAL<br>SERVICES INC     |  |  | 12/14/00 | XGBRG |  |  |
| CSX-046565- | U S SILICA CO                         |  |  | 10/9/02  | TL    |  |  |
| CSX-051242- | VA DOT                                |  |  | 12/22/03 | ST    |  |  |
| CSX-051274- | VA DOT                                |  |  | 4/16/01  | XGSIG |  |  |
| CSX-051289- | VA DOT                                |  |  | 9/12/00  | XGPUB |  |  |
| CSX-051290- | VA DOT                                |  |  | 7/17/01  | XGSIG |  |  |
| CSX-051540- | VA DOT                                |  |  | 7/17/01  | XGSIG |  |  |
| CSX-052174- | VA DOT                                |  |  | 10/5/01  | XGPUB |  |  |
| CSX-052380- | VA DOT                                |  |  | 8/9/02   | XGSIG |  |  |
| CSX-052515- | VA DOT                                |  |  | 3/25/03  | XGSIG |  |  |
| CSX-052515- | VA DOT                                |  |  | 2/18/03  | XGPUB |  |  |
| CSX-052533- | VA DOT                                |  |  | 2/18/03  | XGSIG |  |  |
| CSX-052533- | VA DOT                                |  |  | 2/26/03  | XGPUB |  |  |
| CSX-052600- | VA DOT                                |  |  | 2/26/03  | XGSIG |  |  |
| CSX-052600- | VA DOT                                |  |  | 4/24/03  | XGPUB |  |  |
| CSX-052701- | VA DOT                                |  |  | 4/24/03  | XGSIG |  |  |
| CSX-052701- | VA DOT                                |  |  | 4/24/03  | XGPUB |  |  |

|             |                  |  |  |          |       |  |  |
|-------------|------------------|--|--|----------|-------|--|--|
| CSX-052706- | VA DOT           |  |  | 4/24/03  | XGSIG |  |  |
| CSX-052706- | VA DOT           |  |  | 4/24/03  | XGPUB |  |  |
| CSX-052755- | VA DOT           |  |  | 4/24/03  | XGSIG |  |  |
| CSX-052755- | VA DOT           |  |  | 6/9/03   | XGPUB |  |  |
| CSX-053176- | VA DOT           |  |  | 6/9/03   | XGSIG |  |  |
| CSX-053176- | VA DOT           |  |  | 5/20/03  | XGPUB |  |  |
| CSX-053177- | VA DOT           |  |  | 5/20/03  | XGSIG |  |  |
| CSX-053177- | VA DOT           |  |  | 2/2/03   | XGPUB |  |  |
| CSX-053259- | VA DOT (225030R) |  |  | 2/2/03   | XGSIG |  |  |
| CSX-053260- | VA DOT (225013A) |  |  | 8/8/03   | XGPUB |  |  |
| CSX-053261- | VA DOT (225032E) |  |  | 8/8/03   | XGPUB |  |  |
| CSX-053262- | VA DOT (225028P) |  |  | 8/8/03   | XGPUB |  |  |
| CSX-053287- | VA DOT           |  |  | 8/8/03   | XGPUB |  |  |
|             |                  |  |  | 10/15/03 | XGBRG |  |  |

**D R A F T**

**EXHIBIT "F" to  
LEASE AGREEMENT of  
December 20, 2004  
Between  
CSX TRANSPORTATION, INC.  
And  
BUCKINGHAM BRANCH RAILROAD COMPANY  
Covering  
TRACKAGE RIGHTS**

**THIS EXHIBIT F TO LEASE ("Lease")**, effective as of the 20<sup>th</sup> day of December 2004, by and between BUCKINGHAM BRANCH RAILROAD COMPANY, a Virginia corporation (hereinafter referred to as "Lessee"), and CSX TRANSPORTATION, INC., a Virginia corporation, (hereinafter referred to as "Lessor");

**WITNESSETH:**

**WHEREAS**, Under the provisions of attached Lease, Lessor has conveyed to Lessee, Lessor's former Piedmont, Washington and North Mountain Subdivisions of its C&O Division between the vicinity of Richmond, VA and the vicinity of Clifton Forge, VA;

**WHEREAS**, Under the Lease, Lessor has retained certain trackage rights as set forth herein; and

**WHEREAS**, Lessor desires to operate certain of its trains over the immediately aforesaid lines of Lessee under said trackage rights;

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

**ARTICLE 1. RETENTION OF TRACKAGE RIGHTS**

Subject to the terms and conditions herein provided, Lessor has retained the right to operate its trains (including cars, locomotives and telemetry devices) with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Lessee's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage":

A. Segment "A" Between the connection of Lessee and Lessor at Lessee's Piedmont Subdivision Milepost (MP) CA 85.5 at AM Junction, Richmond, VA, and the connection of Lessee and Lessor at Lessee's North Mountain MP CA 276.1 at JD Cabin, Clifton Forge, VA, a distance of 190.6 miles.

B. Segment "B" Between the connection of Lessee and Lessor at Lessee's Piedmont Subdivision MP CA 111.9 at Doswell, VA, and Lessee's North Mountain Subdivision MP CA 276.1 at JD Cabin, a distance of 164.2 miles.

C. Segment "C" Between the connection of Lessee and Lessor at Lessee's Piedmont Subdivision MP CA 85.5 at AM Junction, Richmond, VA, and Lessee's Piedmont Subdivision MP CA 115.0 approximately, at Verdon, VA, a distance of 29.5 miles.

## **ARTICLE 2. USE OF SUBJECT TRACKAGE**

A. Lessor's use of the Subject Trackage shall be in common with Lessee and any other user of the Subject Trackage, and Lessee's right to use the Subject Trackage shall not be diminished by this Agreement. Lessee's right to grant to other persons rights of any nature in the Subject Trackage shall be subject to the provisions of the Lease.

B. Except as may otherwise be provided by this Agreement, Lessor shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Lessee, preclude the emergency use by Lessor of such auxiliary tracks as may be designated by Lessee for such purposes.

C. Except as otherwise specified in the Lease, Lessee shall have exclusive control of the management and operation of the Subject Trackage.

D. The right of either party to file a claim against the other party for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by either party is interrupted or delayed at any time from any cause shall be subject to the provisions of the Lease.

## **ARTICLE 3. RESTRICTION ON USE**

The Trackage Rights herein retained are for the sole purpose of Lessor using same for bridge traffic only between the terminals of Subject Trackage and Lessor shall not perform any local freight service whatsoever at any point located on Subject Trackage, except as specified in Article 3.B.

A. Lessor's use of Segments A and B of the Subject Trackage shall be restricted to the westbound overhead movement only, of only empty open top hopper car trains and empty covered-hopper car trains. Through November 30, 2014, movements of such trains by Lessor shall be limited to an average of not more than four (4) trains per twenty-four hour period. Movements by Lessor in excess of said volume limit through November 30, 2014 shall be at the joint discretion of the parties, and shall be subject to the provisions of separate agreements of even date between the parties covering emergency detour movements and reroutes for operating convenience.

B. Lessor's use of Segment C shall be restricted to the movement of Lessor's unit aggregate trains from Martin Marietta quarry located at Verdon to points on Lessor's lines in the vicinity of Newport News, VA, and empty unit aggregate trains of Lessor moving in reverse direction from vicinity of Newport News to such quarry. All other trains originating or terminating at such

quarry shall be interchanged between the parties in accordance with the provisions of separate agreement of even date covering interchange at Doswell, VA.

#### **ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS**

A. When operating over the Subject Trackage, Lessor's locomotives and crews shall be equipped to communicate with Lessee on radio frequencies normally used by Lessee in directing train movements on the Subject Trackage.

B. Lessee and Lessor shall each be responsible for qualifying their respective employees for occupancy of and operation over the Subject Trackage. Procedures for such qualification shall be developed and arranged by each carrier for its own employees. However, Lessor's procedures shall be subject to the approval of Lessee, and Lessee shall control Lessor's access to the Subject Trackage for the purpose of Lessor's qualifying its employees.

#### **ARTICLE 5. COMPENSATION FOR TRACKAGE RIGHTS**

A. The factor to be used in calculating payments to be made by Lessor for the Segments A and B Trackage Rights covered by this Agreement shall be

for the Guaranteed Volume, as defined below. For any cars in excess of the Guaranteed Volume, the factor to be used in calculating payments to be made by Lessor for the Segments A and B Trackage Rights covered by this Agreement shall be

Lessor shall compensate Lessee for  
(the "Guaranteed Volume") during the first ten (10) years of this Agreement. In the event of any underage in volume in any calendar month within such ten (10) year period, such underage shall be considered as having moved over Segment A of the Subject Trackage for purposes of calculating compensation due Lessee.

B. The factor to be used in calculating payments to be made by Lessor for the Segment C Trackage Rights covered by this Agreement shall be  
(hereinafter also referred to as the "Current Charge"). The aforesaid per car mile charges shall hereinafter be referred to as the "Current Charge".

C.

D. Lessee shall on or about the tenth day of each month render billing to Lessor for Lessor's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.

E. Lessor shall furnish Lessee information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

F. On and after January 1, 2014, the parties shall jointly review Lessor's movements over segments A and B in the calendar year 2013, and shall renegotiate the volume commitment of Lessor to Lessee, if any, to apply for the balance of the term of this Agreement commencing December 20, 2014. Any renegotiation entered into under this paragraph shall be undertaken by the parties in good faith, considering all the facts and circumstances relevant to the issue before them, provided that the parties shall not be required to agree to any new amount of volume commitment. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, the volume commitment shall expire, and their failure to agree on such matter shall not be subject to arbitration.

#### **ARTICLE 6. RENEGOTIATION OF CURRENT CHARGE**

At the option of either party hereto, the Current Charges shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. Any renegotiation entered into under this paragraph shall be undertaken by the parties in good faith, considering all the facts and circumstances relevant to the issue before them, provided that the parties shall not be required to agree to any new amount of Current Charges. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, the parties shall continue to be bound by the then applicable Current Charges provided in this Agreement, and their failure to agree shall not be subject to arbitration.

#### **ARTICLE 7. PAYMENT OF BILLS**

A. All payments called for under this Agreement shall be made by Lessor within thirty (30) after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. 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 for a period of two (2) years from the date of billing.

B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Lessee at the time any work is performed by Lessee for Lessor

#### **ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE**

Lessee's obligation to maintain the Subject Trackage shall be as set forth in Paragraphs 10(b) and 10(c) of the Lease, which are incorporated herein by this reference.

#### **ARTICLE 9. INSURANCE**

Lessee shall procure insurance in accordance with Paragraph 31 of the Lease, which shall be endorsed as necessary to also insure Lessee's contractual obligations as set forth in this Agreement.

#### **ARTICLE 10. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS**

- A. Intentionally omitted.
- B. Any additional connections to the Subject Trackage which may be desired by Lessor shall be subject to the Lessee's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
  - (i). Lessor or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of Lessor or others which connect the respective lines of the parties hereto.
  - (ii). Lessee shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of Lessor such portions of the additional tracks located on the right-of-way of Lessee which connect the respective lines of the parties hereto.

#### **ARTICLE 11. ADDITIONS, RETIREMENTS AND ALTERATIONS**

A. Additions and betterments to or retirements from the Subject Trackage shall be governed by Paragraphs 10(d) and 28 of the Lease, which are incorporated herein by this reference, provided that Lessee shall not, through such actions, be relieved of its obligations hereunder. Subject to the foregoing, such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

#### **ARTICLE 12. MANAGEMENT AND OPERATIONS**

In the event of conflict between the provisions of this Article 12 and the provisions of the Lease, the provisions of the Lease shall govern with respect to the trackage rights herein contemplated.

A. Lessor shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains

(locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. Lessor shall indemnify, protect, defend, and save harmless Lessee and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Lessee or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of Lessor to comply with its obligations in this regard.

B. Lessor in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Lessee, and the movement of Lessor's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Lessee. Lessor's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Lessee's operating rules and regulations without the prior consent of Lessee.

C. Lessor shall ensure that all of its employees who shall operate its trains, locomotives and cars over, or otherwise occupy, the Subject Trackage are qualified for such operation or occupancy. For reasonable cause Lessee may in its sole discretion bar any employee of Lessor from operating over or otherwise occupying the Subject Trackage

D. The trains, locomotives, cars and equipment of Lessor, Lessee, and any other present or future Lessor of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.

E. In the event that a train of Lessor shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among Lessor's crew, or due to mechanical failure of Lessor's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of Lessor fails to maintain the speed required by Lessee on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of Lessor's trains on the Subject Trackage, Lessee shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew Lessor's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and Lessor shall reimburse Lessee for the cost of rendering any such assistance.

F. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Lessee, and Lessor shall reimburse Lessee for the cost thereof.

### **ARTICLE 13. MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in Lessor's trains on the Subject Trackage shall be assumed by Lessor and reported and paid by it directly to the Lessee of such cars.

### **ARTICLE 14. CLEARING OF WRECKS**

Whenever Lessor's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Lessee shall perform or provide for the performance of such service, including the repair and restoration of roadbed, track and structures. 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 Article 15 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by Lessor at the time of such wreck, shall be promptly delivered to it.

### **ARTICLE 15. LIABILITY**

Except as otherwise determined under Article 14 of the Lease pertaining to liability for the use, storage, transport, disposition or release of hazardous materials and environmental contamination of the Subject Trackage, the responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgements, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein (i.e. with respect to the train operations subject of the trackage rights herein contemplated only), all of which are collectively referred to as a "Loss", shall be divided as follows:

A. If a Loss occurs involving the trains, locomotives, cars, equipment and/or employees of only one of the parties, then the involved party should be solely responsible for the Loss, even if caused partially or completely by the other party.

B. If a Loss occurs on the Subject Trackage involving the trains, locomotives, cars, equipment and/or employees of both Lessee and Lessor, then: (i) each is solely responsible for any Loss to its trains, locomotives, cars, equipment and/or employees in its own account including lading, and (ii) the parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving only one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.

D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

E. In every case of death or injury suffered by an employee of either Lessor or Lessee, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

F. For purposes of determining liability, pilots furnished by Lessee to Lessor pursuant to this Agreement shall be considered as the employees of Lessor while such employees are on duty as pilots.

G. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other 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 a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

H. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.

I. Notwithstanding any and all of the forgoing provisions of this Article, in the event a Loss occurs while the Subject Trackage is being used by Lessee and/or Lessor, and such Loss is attributable solely to the gross negligence or willful misconduct of only one of the parties to this Agreement, then such party shall be solely responsible for such Loss.

#### **ARTICLE 16. CLAIMS**

A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses of third parties arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the

provisions of this Agreement.

B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.

C. In the event a claim or suit is asserted by a third party against Lessee or Lessor which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

D. All costs and expenses in connection with the investigation, adjustment and defense of any third-party claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other 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 (\$35,000).

F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and 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 a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this 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 employee arising under its collective bargaining agreements with its employees.

G. It is understood that nothing in this Article 16 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 15.

#### **ARTICLE 17. DEFAULT AND TERMINATION**

With respect to defaults hereunder and rights of termination, the provisions of Paragraph 3 of the Lease shall govern, which is incorporated herein by this reference. A default hereunder by either party shall, at the other party's option, also constitute a default under the Lease.

#### **ARTICLE 18. REGULATORY APPROVAL**

Paragraphs 7, 10 and 28 of the Lease, which are incorporated herein by this reference, shall govern the rights and obligations of the parties with respect to regulatory approvals.

**ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE**

Lessee's rights to abandon portions of the Subject Trackage shall be governed by Paragraph 28 of the Lease, which is incorporated herein by this reference, provided that Lessee shall not, through such actions, be relieved of its obligations hereunder.

**ARTICLE 20. TERM**

The term of this Agreement shall run concurrently with the term of the Lease.

**ARTICLE 21. FORCE MAJEURE**

What constitutes force majeure events shall be governed by the provisions of Paragraph 35 of the Lease, which is incorporated herein by reference.

**ARTICLE 22. ARBITRATION**

Disputes hereunder shall be governed by the provisions of Paragraph 32 of the Lease, which is incorporated herein by this reference.

**ARTICLE 23. SUCCESSORS AND ASSIGNS**

Assignments shall be governed by the provisions of Paragraph 15 of the Lease, which is incorporated herein by this reference.

**ARTICLE 24. NOTICE**

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to Lessee: Robert E. Bryant, President  
Buckingham Branch Railroad Company  
P. O. Box 336  
Highway U. S. 15  
Dillwyn, VA 23936

If to Lessor: AVP Passenger & Joint Facility Contracts  
CSX Transportation, Inc.  
500 Water Street, J801  
Jacksonville, FL 32202

Either party may provide changes in the above addresses to the other party by personal

service or U.S. mail.

**ARTICLE 25.      GENERAL PROVISIONS**

A.      This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. 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 either of the parties hereto.

B.      This Agreement contains the entire understanding of the parties hereto 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 both parties to this Agreement.

D.      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.

E.      All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

F.      As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

G.      This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

H.      Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

**IN WITNESS WHEREOF**, the parties hereto entered into this Agreement to be effective as of the date first above written.

Witness for Lessee:

BUCKINGHAM BRANCH RAILROAD  
COMPANY

**Draft**

By: \_\_\_\_\_

Name: Robert E. Bryant

Title: President

Witness for Lessor :

CSX TRANSPORTATION, INC.

**Draft**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **Exhibit 15-Minor Transaction Operating Plan.**

Buckingham Branch Railroad Company (“BB”) is an experienced and successful railroad operating over approximately 17 miles of track it owns in central Virginia, from Dillwyn to Bremo. It is a family-owned railroad that has been operating since 1989 and has built its traffic base from about 800 carloads in its initial year to a high of 2400 carloads in its best year. It originates and terminates local traffic on its line and interchanges with CSX Transportation, Inc (“CSXT”) at Strathmore, VA. The Company is debt free and has an excellent safety record. It owns and controls 5 locomotives (4 owned, 1 leased), 62 revenue service cars, 4 cabooses, and 11 pieces of self-propelled maintenance-of-way equipment. In addition to rolling stock, BB owns a station house and general office building at Dillwyn, a slide table at Dillwyn Yard, and several pieces of equipment used to make intermodal transfers at two points on its line.

BB employs fifteen persons, including one family member officer/shareholder, a general manager, a general agent, a payroll and administrative clerk, an attorney, and ten train and maintenance service personnel who are cross-trained to meet constantly changing needs. In addition, two family member officer/shareholders work actively in the business.

For this transaction BB will lease and operate the lines of CSXT consisting of (1) the Piedmont Subdivision between AM Junction (Richmond), milepost 85.5, and Gordonsville, milepost CA 160.6, a distance of 75.1 miles, (2) the Washington Subdivision between Gordonsville, milepost CA 160.6, and Charlottesville, milepost CA 180 (including the line currently leased by NSR to CSXT between Gordonsville, Milepost CAA 9.1 and South Orange, Milepost CAA 180), a distance of 28.5 miles, and (3) the North Mountain Subdivision between Charlottesville, milepost CA 180, and Clifton Forge (JD Cabin), milepost CA 276.1, a distance of 96.1 miles. CSXT will retain overhead trackage rights over the entire length of this trackage

for the movement of approximately 156,000 empty open top and covered hopper cars per year. CSXT will also retain local trackage rights over approximately 29.5 miles of this trackage between Milepost CA 85.5 at Ruffin, VA and Milepost CA 115.0 at Verdon, VA for the restricted movement of approximately 7,900 loaded and empty unit aggregate cars per year.

BB will operate from two locations, from Doswell, VA in the east and from Staunton, VA in the west. Traffic will be interchanged between the two carriers at Doswell and Clifton Forge, VA. Train service will be provided to all customers on the line five (5) days per week. Service will be conducted on such schedules and in such manner as will not interfere with Amtrak's operation over the line from Orange to Clifton Forge.

The operation from Staunton will use two locomotives. One two-person crew will depart Staunton in the morning westbound to Clifton Forge and return. Another two-person crew will depart Staunton in the evening eastbound through Charlottesville and Gordonsville, VA, to Orange, VA and returning to Staunton, with the potential for picking up and setting out cars at Gordonsville in either direction.

The operation from Doswell will use two locomotives. One two-person crew will depart Doswell in the evening destined for Gordonsville, where it will set out cars for or pick up cars from the Staunton-Orange crews and return to Doswell. A second crew will depart in the morning from Doswell to Ruffin, VA, near Richmond, and return. This crew will also do all the local work at Doswell.

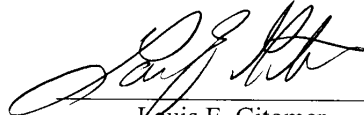
BB will employ additional train and maintenance service employees required for the new operations. It will consider for employment qualified former CSXT employees whose positions are abolished as a result of this transaction and who make proper application for employment. In addition to operating and maintenance employees, BB expects to hire additional management

and support staff for these operations and to provide additional support from existing BB management and staff and from outside consultants. Overall, BB expects to hire approximately ten train and engine service employees, ten right-of-way and mechanical maintenance employees, one office staff person, and one manager for the new operations.

BB, with the assistance of CSXT, plans to apply for authority from the Federal Railroad Administration and Amtrak, if necessary, to abandon the Train Control System (“TCS”) signal system between Orange and Clifton Forge. CSXT will maintain the TCS and will manage train dispatching for the lines covered by the Lease for up to two years while BB seeks such abandonment authority. If the line in question is approved for TCS abandonment, it will be operated as dark territory, and at that time BB will be responsible for maintaining and managing the TCS and dispatching for the lines covered by the Lease. If the Orange to Clifton Forge line is not approved for TCS abandonment within two years of the start of operations under this Lease, BB will take over the TCS maintenance and dispatching for the Line covered by the Lease.

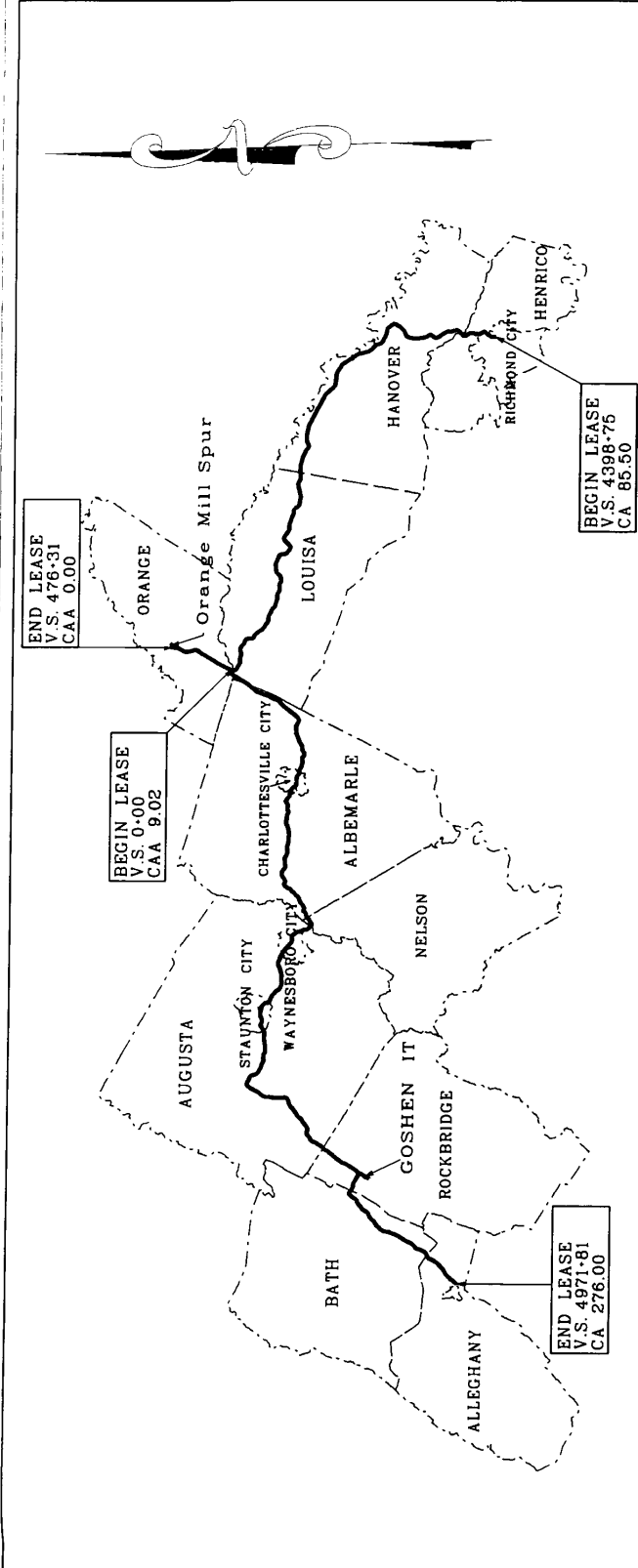
CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served pursuant to the requirements of 49 C.F.R. § 1180.4(c)(5).



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Louis E. Gitomer  
May 26, 2004



# EXHIBIT "A"

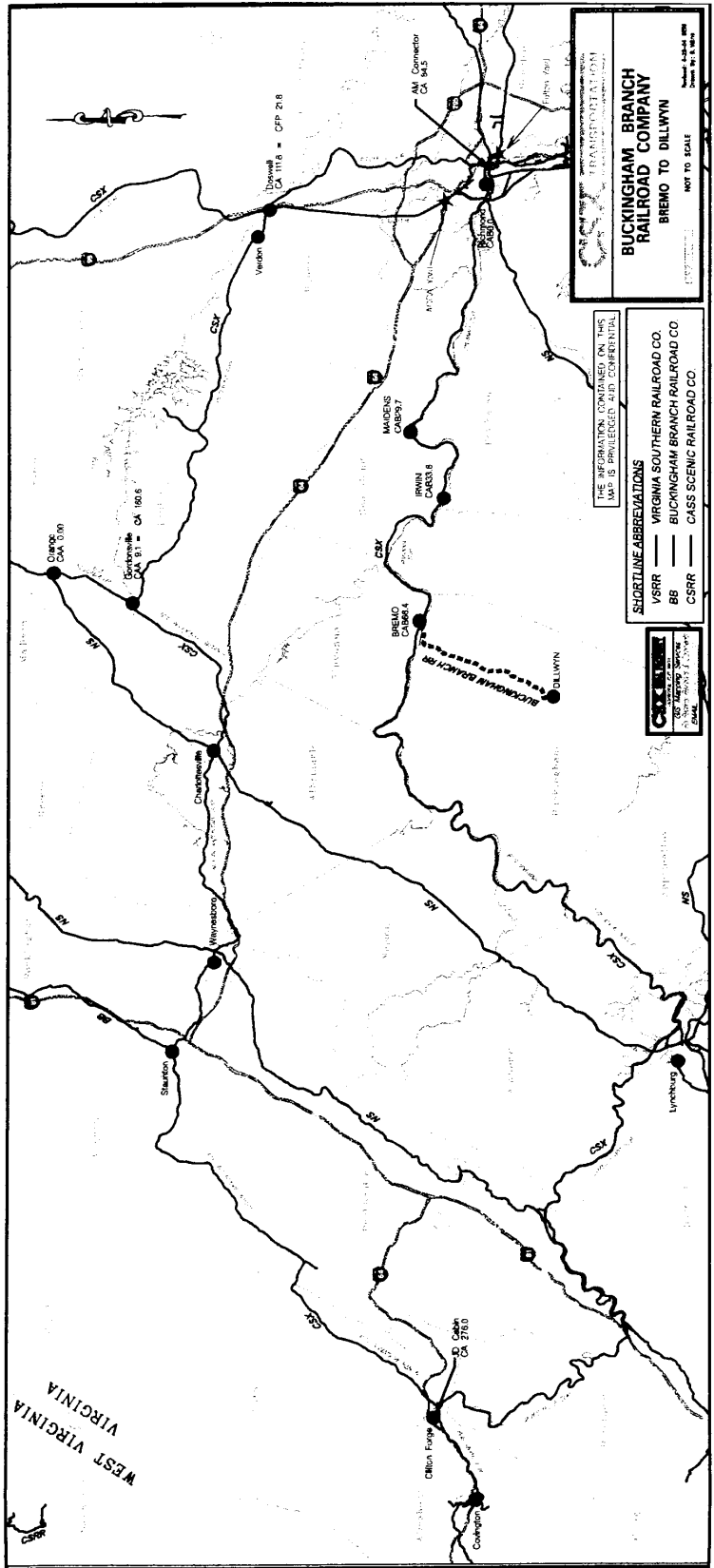
ALLEGHANY DIVISION  
 NORTH MOUNTAIN, WASHINGTON  
 & PIEDMONT SUBDIVISIONS  
 CA 85.50 TO CA 276.00 &  
 CAA 0.00 TO CAA 9.02

~ LEGEND ~  
 — Lease Area  
 202.70 miles (+/-)

This Railroad Valuation Map Exhibit  
 Graphically Represents A Proposed  
 Real Estate Transaction.  
 It May Not Reflect Current "On The Ground"  
 Conditions And/or Actual Locations Of Features.  
 All Dimensions, Offset Distances,  
 Area Calculations And Measurement Notations,  
 Shown On This Exhibit Are Approximate.

S:\PIN\VA51\VA760\ 760-0103\VA-760-0997353\VA-760-0997353.DGN

|                                             |  |                      |                |                          |                                   |
|---------------------------------------------|--|----------------------|----------------|--------------------------|-----------------------------------|
| CSX TRANSPORTATION, INC.                    |  | DATE: 03-24-04       | CITY: VARIOUS  | VAL. SECT.: V-2/56-159.1 | GIS NUMBERS: PIN NUMBERS: VARIOUS |
| SITE ID: VA-760-0997353                     |  | SCALE: 1" = 20 MILES | STATE: VA      | VAL. SECT.: V-2E/1       | VARIOUS                           |
| LEASE TO BUCKINGHAM BRANCH RAILROAD COMPANY |  | DRAWN BY: ESW        | FIPS: 51760    | VAL. SECT.: V-6/1-5      |                                   |
| RICHMOND CITY TO CLIFTON FORCE, VA          |  | REVISED:             | DWG #: 0997353 |                          |                                   |







**CSXT OPERATING CORRIDOR**

CSX TRANSPORTATION  
BEST OF SPEED  
GIS Mapping Services

**NOT TO SCALE**

**LEGEND:**

**CSXT OPERATING CORRIDOR** ———



TRADE MARK  
REGISTERED

GIS Mapping Services  
For Routes, Schedules & Comments  
EMAIL: [GIS@CSX.COM](mailto:GIS@CSX.COM)