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October 1, 2004

BY HAND DELIVERY

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

ENTERED
Office of Proceedings

001

Re: Finance Docket No. 34562, Norfolk Southern Railway
Company—Trackage Rights Exemption—Delaware and Hudson
Railway Company, Inc—Between Saratoga Springs, NY and
Binghamton, NY

Dear Secretary Williams:

I enclose for filing in the public docket in the above captioned proceeding an original and 10 copies each of:

1. Verified Notice of Exemption; and
2. Motion for Protective Order.

I also enclose a check for \$950.00 as the filing fee for the Notice of Exemption and a 3.5" floppy disc containing the text of the Verified Notice of Exemption and the Motion for Protective Order.

Also enclosed in a separate envelope for filing under seal are an original and 10 copies of the highly confidential version of the trackage rights agreement that is the subject of the Verified Notice of Exemption and the Motion for Protective Order.

Sincerely,


Richard A. Allen

Encl.



212130



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34562

NORFOLK SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
DELAWARE AND HUDSON RAILWAY COMPANY, INC.--
BETWEEN SARATOGA SPRINGS, NY AND BINGHAMTON, NY

ENTERED
Office of Proceedings
OCT 1 2004

VERIFIED NOTICE OF EXEMPTION

FILED
OCT 1 2004
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
OCT 1 2004
SURFACE
TRANSPORTATION BOARD

John V. Edwards
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
Phone: (757) 629-2838 (Direct)
Fax: (757) 533-4872

Richard A. Allen
Scott Zimmerman
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888 Seventeenth Street
Suite 600
Washington, DC 20006-3939
(202) 298-8660

Dated: October 1, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34562

NORFOLK SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
DELAWARE AND HUDSON RAILWAY COMPANY, INC.--
BETWEEN SARATOGA SPRINGS, NY AND BINGHAMTON, NY

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. Sections 1180.2(d)(7) and 1180.4(g), Norfolk Southern Railway Company ("NSR") files this Verified Notice of Exemption (the "Notice") from prior approval requirements of 49 U.S.C. §§ 11323, et seq., to permit NSR to acquire and exercise overhead trackage rights over approximately 155.24 miles of track owned and operated by Delaware and Hudson Railway Company, Inc. ("D&H") between Saratoga Springs, NY and Binghamton, NY. The trackage rights are based upon a written agreement and are not filed or sought in a responsive application to a rail consolidation proceeding. Accordingly, they are exempt from the prior approval requirements of 49 U.S.C. § 11323.

NSR files this Notice in furtherance of the transaction, and submits the following information in support thereof, in accordance with the Board's regulations set forth at 49 C.F.R. §§ 1180.4(g)(1) and 1180.6:

A. Correspondence

The persons to whom correspondence with respect to this Notice should be sent are:

Richard A. Allen
Scott Zimmerman
Zuckert, Scoutt & Rasenberger LLP
888 Seventeenth Street
Suite 600
Washington, DC 20006-3939
(202) 298-866

John V. Edwards
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
Phone: (757) 629-2838
Fax: (757) 533-4872

B. Transaction Summary

The following is a summary of this transaction, its purpose, and its proposed timing:

NSR is a Virginia corporation whose business address and phone number are:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
(757) 629-2600

NSR is a Class I rail carrier, and a wholly-owned subsidiary of Norfolk Southern Corporation, a holding company. Norfolk Southern Corp.—Control—Norfolk & W. Ry. Co., 366 I.C.C. 173 (1982). NSR (with its subsidiaries) operates a rail system extending 21,000 miles throughout 22 states in the eastern United States and the District of Columbia and the Province of Ontario.

The rail carrier granting the trackage rights that are the subject of this Notice is Delaware and Hudson Railway Company, Inc. ("D&H"), a Delaware corporation, whose business address and telephone number are:

Delaware and Hudson Railway Company, Inc.
c/o Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

Under the proposed transaction, NSR will acquire overhead trackage rights over the following D&H lines between Saratoga Springs, NY and Binghamton, NY:

1. Between Milepost 37.10 $\pm$ of D&H's Canadian Main Line in Saratoga Springs, NY, and the point of connection between D&H's Canadian Main Line and D&H's Freight Main Line at CPF 480, located at Milepost 21.70 $\pm$ of D&H's Canadian Main Line (which point is also Milepost 480.36 $\pm$ of D&H's Freight Main Line) (including tracks within D&H's Saratoga Yard), a distance of approximately 15.40 miles;
2. Between Milepost 480.36 $\pm$ of D&H's Freight Main Line and Milepost 611.15 $\pm$ of D&H's Freight Main Line in Binghamton, NY, a distance of approximately 130.79 miles; and
3. Between Milepost 611.15 $\pm$ of D&H's Freight Main Line and Milepost 620.20 $\pm$ of D&H's Freight Main Line in Binghamton, NY (including tracks into and within D&H's East Binghamton Yard), a distance of approximately 9.05 miles, for a total distance of approximately 155.24 miles.

The trackage rights covered by this Notice may be used by NSR for the overhead movement between Saratoga Springs, NY and Binghamton, NY of trains handled by D&H for the account of NSR between Saratoga Springs, NY and Rouses Point, NY pursuant to a haulage agreement between NSR and D&H, and, in the case of D&H's Binghamton terminal trackage, including D&H's East Binghamton Yard, for other movements. Traffic moved by the trackage rights covered by this Notice will be blocked and switched in D&H's East Binghamton Yard pursuant to a switching agreement between NSR and D&H. NSR expects to abolish not more

than four train and engine service positions at Binghamton and to establish six new road crew positions, resulting in a net increase of at least two positions.

NSR service under the trackage rights described herein will commence on a date mutually agreed in writing between NSR and D&H, which shall not occur until the effective date of this Notice (including compliance with any condition(s) imposed by the STB in connection with this Notice).

C. Applicant's Location

NSR operates in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. NSR also operates in the District of Columbia and the Province of Ontario.

D. Map

Pursuant to 49 CFR § 1180.6(a)(6), a map depicting the trackage rights that are the subject of this Notice is attached hereto as Exhibit 1.

E. Agreement

A copy of the agreement under which NSR will exercise the trackage rights that are the subject of this Notice (redacting confidential business terms) is attached hereto as Exhibit 2. Concurrently with this Notice, NSR has filed a Petition for Protective Order relating to the terms of the trackage rights agreement between NSR and D&H, as well as an unredacted version of the executed trackage rights agreement (filed under seal).

F. Labor Protection

Any employees who are adversely affected by the acquisition of the trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in

Norfolk and Western Railway Co. —Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605
(1978), as modified by Mendocino Coast Railway, Inc.—Lease and Operate—California
Western Railroad, 360 I.C.C. 653 (1980).

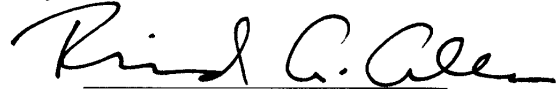
G. Environmental and Historical Reports

In accordance with 49 C.F.R. § 1105.6(c)(4), no environmental documentation is required in connection with the transaction that is the subject of this Notice. Likewise, in accordance with 49 C.F.R. § 1105.8(b)(3), no historical report is required in connection with the transaction that is the subject of this Notice.

H. Caption Summary

A caption summary suitable for publication in the Federal Register is attached hereto as Exhibit 3.

Respectfully submitted,



John V. Edwards
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
Phone: (757) 629-2838 (Direct)
Fax: (757) 533-4872

Richard A. Allen
Scott Zimmerman
Zuckert, Scutt & Rasenberger LLP
888 Seventeenth Street
Suite 600
Washington, DC 20006-3939
(202) 298-8660

VERIFICATION

I, Charles W. Moorman, Senior Vice President Corporate Planning and Services for Norfolk Southern Corporation, hereby verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption. Executed on September 30, 2004.

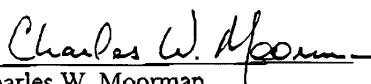
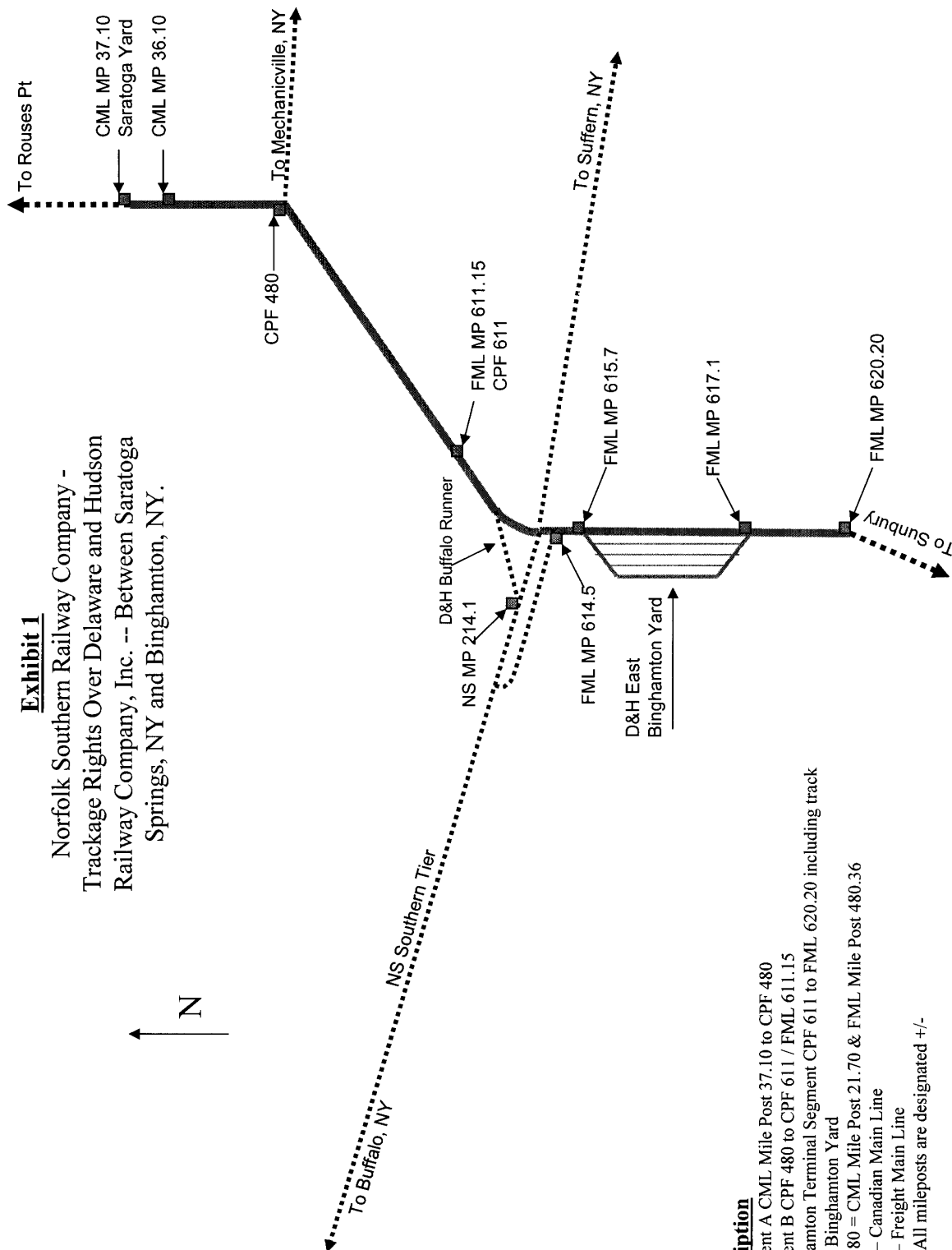

Charles W. Moorman
Senior Vice President Corporate
Planning and Services

Exhibit 1

Norfolk Southern Railway Company -
Trackage Rights Over Delaware and Hudson
Railway Company, Inc. -- Between Saratoga
Springs, NY and Binghamton, NY.



Description

- Segment A CML Mile Post 37.10 to CPF 480
- Segment B CPF 480 to CPF 611 / FML 611.15
- Binghamton Terminal Segment CPF 611 to FML 620.20 including track in East Binghamton Yard
- CPF 480 = CML Mile Post 21.70 & FML Mile Post 480.36
- CML - Canadian Main Line
- FML - Freight Main Line
- Note: All mileposts are designated +/-

09/24/2004

Map not to scale

Created by SCD Rail

PUBLIC VERSION – HIGHLY CONFIDENTIAL MATERIALS REDACTED

Exhibit 2

SARATOGA – EAST BINGHAMTON TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT (“Saratoga - East Binghamton Trackage Rights Agreement” or “Agreement”) is made this 30th day of September, 2004 by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (“Norfolk Southern”) and DELAWARE AND HUDSON RAILWAY COMPANY, INC., a Delaware corporation (“D&H”). Norfolk Southern and D&H are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, D&H has agreed to grant to Norfolk Southern, and Norfolk Southern has agreed to acquire from D&H, trackage rights over D&H’s line of railroad between D&H’s Saratoga Yard at Saratoga Springs, NY, on the one hand, and D&H’s East Binghamton Yard at Binghamton, NY, on the other hand, as described in Section 1 of this Agreement; and

WHEREAS, the Parties desire to set forth the terms and conditions upon which D&H shall grant, and Norfolk Southern shall exercise, such trackage rights;

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

SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) On the terms and subject to the conditions herein provided, D&H hereby grants to Norfolk Southern the right to operate its trains, locomotives, cars and equipment with its own crews (such rights being referred to hereinafter as the “Subject Trackage Rights”) over the following D&H railroad lines, all as shown in detail on Exhibit A to this Agreement:

(i) between D&H’s Saratoga Yard, located at Milepost 37.10 $\pm$ of D&H’s Canadian Main Line in Saratoga Springs, NY, and the point of connection between D&H’s Canadian Main Line and D&H’s Freight Main Line at CPF 480, located at Milepost 21.70 $\pm$ of D&H’s Canadian Main Line (which point is also Milepost 480.36 $\pm$ of D&H’s Freight Main Line), including the right to use such track(s) within Saratoga Yard as shall be designated from time to time by the D&H officer in charge of operations at Saratoga Springs, NY in connection with the operations permitted by this Agreement (the foregoing lines and yard tracks being referred to hereinafter as “D&H Segment A”); and

(ii) between CPF 480 and CPF 611 at Milepost 611.15 $\pm$ of D&H’s Freight Main Line in Binghamton, NY (the foregoing line being referred to hereinafter as “D&H Segment B”); and

(iii) between CPF 611 and Milepost 620.20 $\pm$ of D&H’s Freight Main Line in Binghamton, NY, including the right to use such track(s) within D&H’s East Binghamton Yard, located between Milepost 615.7 $\pm$ and Milepost 617.1 $\pm$, as shall be designated from time to time by the D&H officer in charge of operations at Binghamton, NY in connection with the operations permitted by this Agreement (the foregoing lines and yard tracks being referred to hereinafter as

the "Binghamton Terminal Segment"). D&H Segment A, D&H Segment B and the Binghamton Terminal Segment are referred to collectively hereinafter as the "Subject Trackage."

SECTION 2. USE OF SUBJECT TRACKAGE

(a) Norfolk Southern's use of the Subject Trackage shall be in common with D&H, and D&H's right to use the Subject Trackage shall not be diminished by this Saratoga – East Binghamton Trackage Rights Agreement.

(b) Norfolk Southern may operate trains in either direction over the Subject Trackage.

(c) Except as provided in Section 2(d) of this Agreement, Norfolk Southern may use the Subject Trackage solely for the purpose of the overhead movement between the End Points (as defined in Section 3(a) of this Agreement) of trains consisting entirely of cars in the revenue waybill account of Norfolk Southern, provided that such trains have a prior or subsequent movement on D&H's Canadian Main Line between Saratoga Yard and the point of connection between the lines of D&H and Canadian National Railway Company ("CN") at Rouses Point, NY, pursuant to that certain Rouses Point – Saratoga Haulage Agreement between Norfolk Southern and D&H of even date herewith (such trains being referred to hereinafter as "NS-CN Interline Trains").

(d) In addition to the overhead movement of NS-CN Interline Trains as described in Section 2(c), Norfolk Southern may use only the Binghamton Terminal Segment for the following additional purposes (in each case subject to the direction and control of the D&H officer in charge of operations at Binghamton, NY):

(i) transferring blocks of cars between NS-CN Interline Trains and Norfolk Southern through trains operating between the Binghamton terminal area, on the one hand, and points south or west of Binghamton, NY, on the other hand, as approved from time to time by the Service Standards Committee;

(ii) transferring blocks of cars (other than cars moving in NS-CN Interline Trains) between Norfolk Southern through trains operating between points south of Binghamton, NY, on the one hand, and points west of Binghamton, NY, on the other hand;

(iii) picking up or setting off blocks of cars having a prior or subsequent local movement by Norfolk Southern pursuant to Section 2(d)(iv) of this Agreement for handling by D&H under that certain East Binghamton Yard Terminal Services Agreement (the "East Binghamton Terminal Services Agreement") of even date herewith as approved from time to time by the Service Standards Committee;

(iv) providing local train service between D&H's East Binghamton Yard, on the one hand, and customer facilities and interchanges on Norfolk Southern's lines, on the other hand;

(v) changing crews on Norfolk Southern through trains arriving or departing the Binghamton terminal area; and

(vi) delivering or picking up D&H Haulage Cars (as that term is defined in Section 1.01 of that certain Southern Tier Haulage Agreement between Norfolk Southern and D&H of even date herewith).

(e) Norfolk Southern locomotives and crews operating over the Subject Trackage shall be equipped to communicate with D&H on radio frequencies normally used by D&H in directing train movements on the Subject Trackage.

(f) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. Norfolk Southern's operations over the Subject Trackage shall at all times be subject to the direction and control of the D&H operating officer in charge of the Subject Trackage and to applicable provisions of D&H's safety and operating rules.

(g) Before a Norfolk Southern train enters the Subject Trackage, Norfolk Southern shall confirm to D&H that the crew operating such Norfolk Southern train has the ability to make a complete and continuous movement over the Subject Trackage either (i) from an End Point to and beyond an End Point, or (ii) to a Norfolk Southern crew relief point (in which case Norfolk Southern shall also confirm that a relief crew will be available promptly upon arrival of such Norfolk Southern train at the crew relief point).

(h) D&H shall use its best efforts to allow, at no charge to Norfolk Southern, Norfolk Southern operating (train and engine) crews to utilize D&H's personnel facilities at Saratoga Springs, NY and Binghamton, NY solely for changing crews on Norfolk Southern trains, including local trains, moving over the Subject Trackage. If D&H's existing personnel facilities are not adequate to accommodate both D&H's and Norfolk Southern's personnel, D&H shall permit Norfolk Southern to construct or locate its own facilities for such purpose on or along the Subject Trackage at Saratoga Springs, NY and/or Binghamton, NY. In such event, Norfolk Southern shall pay the cost to establish such facilities at Saratoga Springs, NY and/or Binghamton, NY, and D&H shall pay the cost of utilities provided to the facilities established by Norfolk Southern.

(i) D&H shall provide Norfolk Southern equal access to the D&H crew bus services at Saratoga Springs, NY and Binghamton, NY, if that is possible under D&H's current contract for such services. If the provision of crew bus services to Norfolk Southern under D&H's current contract is not possible, D&H shall use its best efforts to obtain an amendment to its current contract to permit the provision of crew bus services to Norfolk Southern crews, and the incremental cost thereof shall be the responsibility of Norfolk Southern. If D&H's current contract cannot be amended to permit the provision of crew bus services to Norfolk Southern, Norfolk Southern may arrange for its own crew bus services at Saratoga Springs, NY and/or Binghamton, NY.

(j) Norfolk Southern shall have the right to move in its own trains all dimensional loads and excess clearance rail cars which it may approve for movement over the Subject Trackage, subject to a clearance file (the "Clearance File") applicable to traffic of both Parties maintained by D&H. D&H shall promptly inform Norfolk Southern of any changes made to the Clearance File. Before any dimensional load or excess clearance rail car is proposed for

movement by Norfolk Southern under this Agreement, it shall first notify D&H in writing, giving all pertinent physical facts, and requesting verification. D&H shall respond promptly either confirming the physical facts related to the proposed dimensional load(s) or excess clearance rail car(s) or specifically identifying the physical facts which would interfere with a planned move. In no event shall D&H deny to Norfolk Southern the ability to tender a specific rail car for movement over the Subject Trackage and then subsequently grant approval for the same or similar movement over the Subject Trackage in a D&H train unless Norfolk Southern receives timely notice that the limiting clearance or other reason for denial has been removed. The Parties shall cooperate to accommodate all dimensional loads and excess clearance rail cars, subject to compensation to D&H for any special services necessary or advisable for the movement thereof at the rate charged by D&H to Norfolk Southern from time to time under that certain letter agreement between D&H and Norfolk Southern dated as of May 14, 2003.

SECTION 3. RESTRICTIONS ON USE

(a) Except as provided in Section 2(d) of this Agreement with respect to only the Binghamton Terminal Segment, the Subject Trackage Rights are granted for the sole purpose of Norfolk Southern using the Subject Trackage to operate its trains in overhead movements:

(i) NS-CN Interline Trains may enter and exit the Subject Trackage only at
(A) Milepost 37.10 $\pm$ of D&H's Canadian Main Line in Saratoga Springs, NY, and
(B) Milepost 620.20 $\pm$ of D&H's Freight Main Line in Binghamton, NY;

(ii) Norfolk Southern through trains operating on the Subject Trackage pursuant to that certain Trackage Rights Agreement between Norfolk Southern and D&H dated as of June 27, 2002 (the "2002 Agreement") may enter and exit the Subject Trackage only at (A) the point of connection with Norfolk Southern's line at Milepost 614.5 $\pm$ of D&H's Freight Main Line in Binghamton, NY; (B) the point of connection with D&H's Buffalo Running Track at Milepost 613.79 $\pm$ of D&H's Freight Main Line in Binghamton, NY, and (C) Milepost 620.20 $\pm$ of D&H's Freight Main Line in Binghamton, NY; and Norfolk Southern local trains may enter and exit the Subject Trackage only at (A) Milepost 614.5 $\pm$ of D&H's Freight Main Line and (B) Milepost 613.79 $\pm$ of D&H's Freight Main Line, both in Binghamton, NY.

(i) Norfolk Southern trains operating on the Subject Trackage pursuant to this Agreement or the 2002 Agreement may also enter and exit D&H's East Binghamton Yard at Milepost 615.7 $\pm$ and Milepost 617.1 $\pm$ of D&H's Freight Main Line.

(b) The points of ingress and egress designated in this Section 3(a) are referred to herein as the "End Points". Norfolk Southern shall not have the right to enter or leave the Subject Trackage except at the End Points. Notwithstanding any other provision of this Saratoga – East Binghamton Trackage Rights Agreement to the contrary, Norfolk Southern expressly agrees that it will not, under any circumstances, use the Subject Trackage to handle intermodal container or trailer traffic between Saratoga Springs, NY and Binghamton, NY without the prior consent in writing of D&H, which consent D&H may withhold in its sole discretion; provided that this Section 3(b) shall not limit the right of Norfolk Southern to use the rights granted to it

under the 2002 Agreement to handle intermodal container or trailer traffic to the extent permitted by the 2002 Agreement.

(c) The connectivity between the trackage rights granted under this Agreement and the 2002 Agreement is only at Binghamton, NY and at no other point unless the Parties otherwise agree in writing. Norfolk Southern may not, under any circumstances, operate trains on the Subject Trackage between Saratoga Springs, NY, on the one hand, and Mechanicville, NY, on the other hand, pursuant to this Agreement, the 2002 Agreement, or otherwise.

(d) Except as provided in Section 2(d) of this Agreement with respect to the Binghamton Terminal Segment only, Norfolk Southern shall not perform any local freight service whatsoever at any point located on Subject Trackage.

(e) Norfolk Southern shall not interchange any traffic with any other carrier at any point on or along, or at the End Points of, the Subject Trackage. Norfolk Southern shall not, without the prior written consent of D&H, handle traffic for interchange with D&H in NS-CN Interline Trains.

(f) Norfolk Southern shall not have the right to serve existing or future shippers at facilities located on or along, or at the End Points of, the Subject Trackage.

(g) Except as provided in Section 2(d) of this Agreement with respect to the Binghamton Terminal Segment only, Norfolk Southern shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route; provided, that Norfolk Southern shall use such auxiliary Subject Trackage as may be designated by D&H for such purposes.

(h) Norfolk Southern may not grant trackage rights of any nature on the Subject Trackage to other parties.

(i) Notwithstanding any other provision of this Saratoga – East Binghamton Trackage Rights Agreement to the contrary, Norfolk Southern may not permit or admit any third party to the use of all or any part of the Subject Trackage, nor may Norfolk Southern contract or make any agreement to provide haulage over the Subject Trackage of trains, locomotives, cars or cabooses of any third party which, in the normal course of business, would not be considered as the trains, locomotives, cars or cabooses of Norfolk Southern, or in any other way provide haulage service for other carriers over the Subject Trackage; provided, that this Section 3(i) shall not be construed to prohibit Norfolk Southern from using the locomotives, cars and cabooses of another railroad as its own in Norfolk Southern trains pursuant to a run-through agreement with any railroad, or a bona fide equipment lease.

(j) The Parties agree that rebilling of traffic in the Saratoga Springs, NY area or the Binghamton, NY area is not a permissible method of avoiding any direct traffic limitation set forth in this Agreement.

(k) This Saratoga – East Binghamton Trackage Rights Agreement is not intended to, and shall not operate to, expand or contract any Party's existing commercial access to, or right to serve (directly or through switching), any particular customer facility. If, following the Commencement Date of this Agreement (as defined in Section 13(a) hereof), a new facility (including a transload facility) opens, or an existing facility expands or changes ownership (in each case, a "New Facility"), Norfolk Southern's commercial access or right to serve such facility shall be the same as if such New Facility had existed prior to the Commencement Date of this Agreement, and shall be neither expanded nor reduced by this Agreement.

(l) The length of Norfolk Southern trains (including locomotives and other motive power units) operating pursuant to this Agreement on Segment A and Segment B shall not exceed 8000 feet, subject to compliance with operating policies applied to D&H's own trains and the length limitations set out in the Rouses Point – Saratoga Haulage Services Agreement between Norfolk Southern and D&H of even date herewith. The maximum train length set forth in this Section 3(l) may be adjusted by the Services Standards Committee (as defined in Section 4(c)) from time to time consistent with D&H's governing operating practices and procedures.

(m) Norfolk Southern's use of the Subject Trackage pursuant to this Agreement shall be subject to the following maximum volume limitations, (none of which may be exceeded at any time by NSR, each of which is referred to hereinafter as a "Maximum Volume Restriction"):

(i) NSR may move no more than fourteen (14) trains per calendar week (Sunday to Saturday) over the Subject Trackage.

(ii) NSR may move no more than three (3) trains per calendar day over the Subject trackage; provided that the total number of trains moved by NSR during any calendar week shall not exceed the number specified in Section 3(m)(i).

(iii) If the Subject Trackage is unavailable to NSR due to a derailment, line outage or other interruption of service on the Subject Trackage, or on D&H's Canadian Main Line north of Saratoga Springs, NY or the CN lines connecting to D&H's Canadian Main Line at Rouses Point, NY, or if NSR experiences a derailment, an unintended line outage or other unintended interruption of service on its own lines connecting to, and necessary to reach, the Subject Trackage, in each case for a period of time (the "Outage Period") greater than twenty-four (24) hours, and no detour is available, then D&H shall cooperate and consult with NSR in order to address any resulting backlog of trains over a period of time ("Resolution Period") following the resolution of such derailment, line outage or other interruption of service (including the possibility of waiving the Maximum Volume Restrictions set forth in this Section 3(m) for the Resolution Period as may be required to reduce such backlog of NSR trains), provided, however, that the Maximum Volume Restriction set forth in Section 3(m)(i) shall not be exceeded as measured over an average of the Outage Period plus the Resolution Period.

(n) If NSR develops further business for interchange with CN at Rouses Point such that additional NS-CN Interline Trains are required which necessitate the operation of trains in

excess of the Maximum Volume Restriction ("Additional Trains"), NSR may request that D&H permit the operation of Additional Trains. D&H shall consider such a request in good faith and may in its discretion permit the operation of the number of Additional Trains specified by D&H. If D&H determines, in its sole judgment reasonably exercised (having regard to D&H's own present and future requirements and D&H's required reserve capacity), that facility changes, additions and betterments to D&H's Canadian Main Line are necessary to accommodate the operation of Additional Trains ("Capacity Improvements"), D&H shall advise NSR of the required Capacity Improvements and the number of Additional Trains that would be permitted if the Capacity Improvements were constructed. If NSR wishes that the Capacity Improvements be made it shall request in writing that the Capacity Improvements be made by D&H at the sole cost and expense of NSR. If requested to do so by NSR, D&H shall construct the Capacity Improvements and upon completion of the construction of the Capacity Improvements and payment therefor by NSR, the Maximum Volume Restriction shall be amended to permit the operation of the number of Additional Trains specified by D&H.

SECTION 4. SERVICE STANDARDS

(a) The Parties anticipate that, upon the commencement of Norfolk Southern operations under this Saratoga – East Binghamton Trackage Rights Agreement, the expected average transit time for movement between D&H's Saratoga Yard and D&H's East Binghamton Yard (subject to the vagaries of railroad operations) will be as set forth in the schedule attached hereto as Appendix A. Notwithstanding the foregoing, Norfolk Southern hereby acknowledges that D&H makes no guarantee as to the actual transit time for any Norfolk Southern train, and there shall be no penalty imposed on D&H for failure to meet the anticipated transit time set forth in this Section 4(a) over any period of time, nor shall Norfolk Southern have any right to seek damages from D&H on account of such failure. The Parties agree that this Section 4(a) addresses expected average transit time and Section 9(a) addresses dispatching, which are separate and distinct.

(b) Norfolk Southern shall provide the Service Standards Committee notice of the schedules for regularly scheduled Norfolk Southern trains operating over the Subject Trackage, as well as any proposed modifications. Norfolk Southern shall provide the Service Standards Committee at least seven (7) days prior written notice of such changes in Norfolk Southern train schedules, and notice as reasonably practicable in the case of train annulments and subject to the Maximum Volume Restrictions set forth in Section 3(m), extra trains necessitated by sudden or seasonal surges in traffic volumes.

(c) D&H and Norfolk Southern shall establish a Service Standards Committee, consisting of appropriate operating personnel of each party, which shall: (i) monitor, and periodically review, the performance of the Parties under this Saratoga – East Binghamton Trackage Rights Agreement, (ii) carry out such duties as may be assigned to it in this Agreement, including without limitation the prescription of protocols specifying the method and length of advance notice by Norfolk Southern to D&H of train annulments and extra trains sudden or seasonal surges in traffic volumes, (iii) review, and adjust as required from time to time, schedules for trains operating on the Subject Trackage, and (iv) address any other operating issues that may arise in connection with Norfolk Southern's operations hereunder. Meetings of

the Service Standards Committee may be convened by either Party as required to fulfill its duties under this Agreement. The Service Standards Committee may meet by telephone or at such location as the Parties may agree.

SECTION 5. COMPENSATION

(a) Generally.

(i) Norfolk Southern shall compensate D&H for the use of the Subject Trackage by NS-CN Interline Trains by paying to D&H a sum computed by multiplying (a) the Saratoga – East Binghamton Trackage Rights Charges (as defined in Section 5(b) of this Agreement) by (b) the number of cars (loaded or empty) and locomotives moved over the Subject Trackage by (c) the miles of the Subject Trackage over which the cars and/or locomotives are moved (which are agreed to be 14.4 miles for D&H Segment A, 130.79 miles for D&H Segment B, and 9.05 miles for the Binghamton Terminal Segment. In computing the compensation payable by Norfolk Southern pursuant to this Section 5, []

(b) The Saratoga – East Binghamton Trackage Rights Charges.

(i) The charge payable by Norfolk Southern for use of the Subject Trackage shall initially be [] for Norfolk Southern's use of D&H Segment A; provided, however, that []

[] and [] for Norfolk Southern's use of D&H Segment B and the Binghamton Terminal Segment (collectively, the "Saratoga – East Binghamton Trackage Rights Charges").

(ii) The Saratoga – East Binghamton Trackage Rights Charges shall be adjusted upward or downward effective July 1 each year, beginning July 1, 2005, to compensate D&H for one hundred percent (100%) of any increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indices of Charge-out Prices and Wage Rates (1977=100), Series RCR, included in "the AAR Railroad Cost Index" issued by the Association of American Railroads ("AAR"); provided, however, that the Saratoga – East Binghamton Trackage Rights Charges shall in no event be decreased to a level below those set forth in Section 5(b)(i) of this Agreement. In determining the amount (if any) of the annual adjustment, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the Eastern District shall be used, and the calendar year ending December 31, 2003 shall be deemed the "Base Calendar Year."

(iii) The first annual adjustment to the Saratoga – East Binghamton Trackage Rights Charges shall be computed by calculating the percentage of increase or decrease in the final index for the calendar year ending December 31, 2004, as related to the final index for the Base Calendar Year, and applying that percentage to the initial Saratoga – East Binghamton Trackage Rights Charges set forth in Section 5(b)(i). Subsequent annual adjustments will be computed by calculating the percentage of increase or decrease in the final index published for

the calendar year immediately preceding the year in which the adjustment is to be applied, as related to the final index published for the Base Calendar Year, and applying that percentage to the initial Saratoga – East Binghamton Trackage Rights Charges set forth in Section 5(b)(i). By way of example, assuming “A” to be the “Material prices, wage rates and supplements combined (excluding fuel)” final index for the Base Calendar Year; “B” to be the “Material prices, wage rates and supplements combined (excluding fuel)” final index for the calendar year 2004; “C” to be the initial Saratoga – East Binghamton Trackage Rights Charges; “D” to be the percentage of increase or decrease, the adjusted Saratoga - East Binghamton Trackage Rights Charges to be applied on and after July 1, 2005 would be determined by the following formula:

$$(1) \quad (B - A) / A = D$$

$$(2) \quad (C \times D) + C = \text{adjusted Saratoga - East Binghamton Trackage Rights Charges, effective July 1, 2005.}$$

(iv) If the base for the “Annual Indices of Charge-out Prices and Wage Rates” issued by the AAR is changed from the year 1977, an appropriate revision shall be made in the base (established as herein provided) for the calendar year 1977. If the AAR or any successor organization discontinues publication of the “Annual Indices of Charge-out Prices and Wage Rates,” an equitable substitute for determining the annual percentage of increase or decrease shall be negotiated by the Parties. In the absence of agreement, the Parties shall submit the issue to binding arbitration in the manner prescribed in Section 14.

(v) On or before the 15th day of each calendar month during the term of this Saratoga – East Binghamton Trackage Rights Agreement, Norfolk Southern shall prepare and deliver to D&H a statement setting forth the number of cars and miles operated on the Subject Trackage pursuant to this Saratoga – East Binghamton Trackage Rights Agreement during the immediately preceding month (the “Monthly Statement”). The Monthly Statement shall be delivered to D&H’s Manager – Interline Agreement Management in electronic format, and shall contain a detailed list of the cars that moved during the subject month, which list shall include, for each car, the following information: (1) car initial and number, (2) the respective End Points that the car moved between, (3) whether the car exceeded ninety-six (96) feet in length; (4) for each car exceeding ninety-six (96) feet in length, the number of axles on such car; and (5) any other information relating to such cars that D&H may reasonably request in connection with accounting for the use of the Subject Trackage Rights. D&H shall develop and present to Norfolk Southern an invoice (the “Use Invoice”) computed in accordance with Section 5(a) for use of the Subject Trackage Rights covered by that Monthly Statement. Norfolk Southern shall make payment to D&H within sixty (60) days after the date of such Use Invoice.

(vi) Any dispute regarding the amount of a Monthly Statement or Use Invoice shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If Norfolk Southern disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full (unless such dispute involves a material amount in relation to the total amount of such Use Invoice), subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three

(3) years from the date of the Use Invoice , and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(vii) Norfolk Southern and D&H shall each have the right, at its own expense, to audit the records of the other Party pertaining to the use of the Subject Trackage Rights under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by Norfolk Southern or D&H, respectively, pursuant to this Saratoga – East Binghamton Trackage Rights Agreement, at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to use of the Subject Trackage Rights. All such audits shall be conducted at reasonable intervals, locations and times. Each Party agrees that, except as permitted by Section 19 of this Agreement, all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant to Section 14 of this Saratoga – East Binghamton Trackage Rights Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 5(b)(vii) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(viii) Invoices rendered pursuant to the provisions of this Saratoga – East Binghamton Trackage Rights Agreement, other than Use Invoices and charges under Section 9(i), shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by D&H at the time any work is performed by D&H for Norfolk Southern, or shall include actual costs and expenses, upon mutual agreement of the Parties.

(c) Norfolk Southern shall not be required to compensate D&H for the use of the Subject Trackage by local trains operated by Norfolk Southern between D&H's East Binghamton Yard, on the one hand, and points of connection with Norfolk Southern's lines in Binghamton, NY, on the other hand, pursuant to Section 2(d)(iv) of this Agreement.

(d) Compensation to D&H for the use of D&H Segment B and the Binghamton Terminal Segment by Norfolk Southern trains other than NS-CN Interline Trains and NS local trains shall be governed by Section 7 of the 2002 Agreement, and not by the terms of this Agreement.

(e) All Norfolk Southern trains operating on the Subject Trackage pursuant to this Agreement (including without limitation NS-CN Interline Trains) shall be counted in determining Norfolk Southern's pro rata share of (i) "Extraordinary Line-Specific Roadway Capital Expenditures" pursuant to Section 6(B) of that certain Norfolk Southern/CPR Agreement on Northeast U.S. Restructuring dated as of June 27, 2002 (the "NEUS Agreement") and (ii) any

Property Tax Surcharge payable by Norfolk Southern under Section 6(D) of the NEUS Agreement.

SECTION 6. MAINTENANCE OF SUBJECT TRACKAGE

(a) D&H shall be solely responsible for the maintenance, repair and renewal of the Subject Trackage. D&H shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition not to be less than Federal Railroad Administration Class 2 (or any replacement of it), subject to slow orders and the like, but D&H does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. D&H shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

(b) D&H shall, in planning program maintenance of the Subject Trackage, take into account the schedule of Norfolk Southern trains on the Subject Trackage as well as D&H trains. D&H shall from time to time throughout the term of this Saratoga – East Binghamton Trackage Rights Agreement, through the Service Standards Committee, advise Norfolk Southern of its schedule for planned maintenance, and any revisions to such schedule, as soon as practicable after such maintenance plan is determined or revised. D&H shall further provide the designated officer of Norfolk Southern with seven (7) days prior notice (or such lesser notice period as is reasonable in the circumstances) of substantial delays or line outages on the Subject Trackage due to planned maintenance.

SECTION 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

(a) Existing connections or facilities, which are jointly used by the Parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

SECTION 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) D&H, from time to time and at its sole cost and expense, may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental entity having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

SECTION 9. MANAGEMENT AND OPERATIONS

(a) D&H shall have exclusive control of the management and operation (including dispatching) of the Subject Trackage. Operation and control, including dispatching, of the Subject Trackage shall be conducted in a manner as to afford each of the Parties, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the line. For the purposes of dispatching, NSR's and

D&H's trains of the same class shall be treated with equal priority, with the four (4) classes of trains being:

1. Passenger
2. Intermodal and automotive
3. Regular (unit and freight trains not scheduled to set off/pick up en route)
4. Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements);

provided, that in the event of a conflict, the D&H dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains.

(b) D&H shall provide Norfolk Southern with read-only access to D&H's Central Traffic Control screens covering the Subject Trackage in the offices of Norfolk Southern designated by Norfolk Southern. D&H shall be responsible for the cost of modifying its system to the extent necessary to provide Norfolk Southern access to its Central Traffic Control screens, and Norfolk Southern shall be responsible for the cost of the communications link with Norfolk Southern and the costs to use such link incurred in Norfolk Southern's offices. Such access, and the information derived therefrom, shall be restricted to Norfolk Southern operating personnel designated by the Services Standards Committee, who shall only use said access, and the information derived therefrom, to monitor Norfolk Southern train movements and for no other purpose, and shall further protect the confidentiality of the information derived therefrom.

(c) Norfolk Southern 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, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. Norfolk Southern shall indemnify, protect, defend, and save harmless D&H 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 D&H 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, when attributable solely to the failure of Norfolk Southern to comply with its obligations in this regard.

(d) Norfolk Southern in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of D&H, and the movement of Norfolk Southern's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of D&H; provided, however, that such safety rules, operating rules, other regulations and orders of the transportation officers of D&H shall not unjustly discriminate between the Parties. D&H will not make any rule or restriction applying to Norfolk Southern's trains that does not apply equally to D&H's trains. Norfolk Southern's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which

require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by D&H's operating rules and regulations, without the prior consent of D&H. The Service Standards Committee shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All Norfolk Southern trains shall be powered to permit operation at posted speeds.

(e) Norfolk Southern shall make such arrangements with D&H as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover. D&H shall provide reasonable cooperation and assistance in the qualification of Norfolk Southern operating (train and engine) crews for service over the Subject Trackage as soon as the date such crews and D&H personnel are available and the notice of exemption relating to the trackage rights granted herein has been filed with the STB. Norfolk Southern shall pay to D&H, upon receipt of bills therefor, any cost incurred by D&H in connection with the qualification of such employees of Norfolk Southern, as well as the cost of pilots furnished by D&H until such time as such Norfolk Southern employees are deemed by the appropriate examining officer of D&H to be properly qualified for operation as herein contemplated. Norfolk Southern supervisory personnel who have been qualified to operate over the Subject Trackage by an appropriate examining officer of D&H may qualify other Norfolk Southern employees for operation of trains over the Subject Trackage.

(f) If any employee of Norfolk Southern shall neglect, refuse or fail to abide by the instructions and restrictions governing the operation on or along the Subject Trackage or the associated D&H property, D&H shall so notify Norfolk Southern. D&H shall have the right to require Norfolk Southern promptly to withhold any Norfolk Southern employees from service over the Subject Trackage pending the results of a formal investigation of the alleged neglect, refusal or failure. After the notice is given to Norfolk Southern, Norfolk Southern and D&H shall promptly hold a joint investigation, in which each of the Parties shall bear the expenses of its own employees and witnesses. Notice of such investigation to Norfolk Southern employees shall be given by Norfolk Southern officers. The investigation shall be conducted in accordance with any applicable terms and conditions of schedule agreements between Norfolk Southern and its employees. If the result of such investigation warrants, such employee shall, upon written request by D&H, be restricted by Norfolk Southern from service on the Subject Trackage, and Norfolk Southern shall release and indemnify D&H from and against any and all claims and expenses because of such withdrawal.

(g) In the event that a Norfolk Southern train shall be forced to stop on the Subject Trackage, due to mechanical failure of Norfolk Southern's equipment or any other cause (mechanical or otherwise) not resulting from an accident or derailment, and such train is unable to proceed, or if a Norfolk Southern train fails to maintain the speed required by D&H on the Subject Trackage, or if in emergencies, bad ordered or otherwise defective cars are set out of a Norfolk Southern train on the Subject Trackage, D&H shall have the option to furnish motive power or such other assistance (mechanical or otherwise) 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. Norfolk Southern shall reimburse D&H for the cost of rendering any such assistance. If it becomes necessary to make repairs to or adjust or transfer the lading of such disabled or

defective cars in order to move them off the Subject Trackage, D&H shall arrange for such work to be done, and Norfolk Southern shall reimburse D&H for the cost thereof.

(h) Whenever Norfolk Southern's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, D&H shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage 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 Section 11 hereof. All locomotives, cars, equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by Norfolk Southern at the time of such wreck, shall be promptly delivered to it.

(i) If any cars, cabooses, or locomotives of Norfolk Southern are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being repaired, be picked up by Norfolk Southern. D&H may, upon request of Norfolk Southern and at the expense of Norfolk Southern, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

(j) Norfolk Southern shall not have any claim against D&H for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by Norfolk Southern is interrupted or delayed at any time from any cause.

(b) D&H shall make best efforts to provide the designated officer of Norfolk Southern with prompt notice of any unplanned substantial delays or line outages on the Subject Trackage, and shall promptly advise the designated officer of Norfolk Southern of the resumption of normal service on the Subject Trackage.

SECTION 10. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in Norfolk Southern's trains on the Subject Trackage shall be assumed by Norfolk Southern and reported and paid by it directly.

SECTION 11. LIABILITY

The responsibility between the Parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, arising out of, incidental to or occurring in connection with this Saratoga – East Binghamton Trackage Rights Agreement, also expressly including, without limitation, all liabilities arising after the Commencement Date hereof under FELA and environmental laws but excluding consequential damages of any Party hereto (which are always borne by the Party which sustained them) and

excluding claims for exemplary and punitive damages, hereinafter referred to as "Damage," shall be apportioned as follows without regard to fault or negligence:

(a) Whenever Loss or Damage occurs with one or more trains being involved, and one or more of the involved trains is a train operated by Norfolk Southern on D&H's tracks pursuant to the trackage rights held by Norfolk Southern under the 2002 Agreement, then the responsibility of the Parties, as between themselves, for such Loss or Damage shall be determined in accordance with the provisions of Section 10 of the 2002 Agreement, and not this Section 11.

(b) If Damage occurs involving solely the trains, locomotives, equipment or employees of one of the Parties, then that Party shall be solely responsible for such Damage, even if caused partially or completely by another Party.

(c) If Damage occurs involving the trains, locomotives, equipment and/or employees of both D&H and Norfolk Southern, then (i) D&H and Norfolk Southern each shall be solely responsible for any Damage to its own employees, locomotives and equipment and those cars in its own revenue account (including lading) ("D&H Equipment" and "Norfolk Southern Equipment," respectively, and collectively, the "Equipment"), and (ii) the Parties shall each be responsible for 50 percent of the Damage to the Subject Trackage and associated facilities and any Damage sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Damage.

(d) For the purposes of assigning responsibility for Damage under this Section 11 as between the Parties hereto, the trains of a third party or parties operating on the Subject Trackage shall be considered to be the trains of D&H.

(e) Notwithstanding anything to the contrary in Sections 11(b), (c) and (d), above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more trains of the Parties involved, then, as between themselves, the Parties agree that (i) D&H shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in D&H Equipment from which there was a release, (ii) Norfolk Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Norfolk Southern Equipment from which there was a release, and (iii) D&H and Norfolk Southern shall be responsible, in proportion to the total number of pieces of Equipment of each Party from which there was a release, for any damage or destruction to the environment and to third parties which results solely from one or more substances transported in both D&H Equipment and Norfolk Southern Equipment from which there was a release.

(f) Norfolk Southern and D&H each shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under this Section 11, and Norfolk Southern and D&H shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under this Section 11. In assigning joint responsibility to both Norfolk Southern and D&H, it is

not intended that Norfolk Southern and D&H will, in all instances, actually act jointly, but rather that they will agree between themselves on the most practical and efficient arrangement for handling, administering, and disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.

(g) Each Party covenants and agrees (i) to indemnify and save harmless the other Party from and against any payments which are the responsibility of such Party under this Saratoga – East Binghamton Trackage Rights Agreement, and all expenses, including attorney's fees and expenses, and any other expenses of any court or regulatory proceeding, incurred by the indemnified Party in defending any claim for which the responsible Party is liable, and (ii) to defend such indemnified Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

(h) Notwithstanding anything to the contrary in this Section 11, whenever Damage occurs with one or more trains being involved, and one or more of the involved trains is a Norfolk Southern train, and such Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Damage. The Parties agree that, for purposes of this Section 11(h), "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

(i) Notwithstanding any provision of this Section 11 to the contrary, each Party shall assume and bear all responsibility for any Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol.

(j) If any suit or action shall be brought against either Party for Damage which under the provisions of this Saratoga – East Binghamton Trackage Rights Agreement is 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.

(k) For purposes of determining liability under this Section 11, pilots furnished by D&H to Norfolk Southern pursuant to this Saratoga – East Binghamton Trackage Rights Agreement shall be considered to be the employees of Norfolk Southern while such pilots are on board or getting on or off Norfolk Southern trains.

(l) Notwithstanding any provision of this Saratoga – East Binghamton Trackage Rights Agreement to the contrary, for the purpose of this Section 11, the word "Equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject

Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 12. CLAIMS

(a) The Parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Party shall be responsible for losses occurring to lading in its possession for the account of such Party and (ii) the Parties shall follow applicable AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the Parties.

(b) Each of Norfolk Southern and D&H shall indemnify and hold harmless the other Party against, any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of lawsuits, claims or grievances brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that Norfolk Southern and D&H each shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 13. TERM, DEFAULT AND TERMINATION

(a) This Saratoga – East Binghamton Trackage Rights Agreement shall become effective (the "Effective Date") as of the first date executed by all of the Parties. However, Norfolk Southern operations over the Subject Trackage shall not commence until a date (the "Commencement Date") mutually agreed in writing between Norfolk Southern and D&H, which shall not occur until the effective date of any required U.S. Surface Transportation Board ("STB") authorization or exemption of the trackage rights granted to Norfolk Southern herein (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

(b) This Saratoga – East Binghamton Trackage Rights Agreement shall remain in full force and effect until mutually terminated by the Parties. The Initial Term of this Agreement shall be twenty-five (25) years from the Commencement Date, and shall be renewable continuously thereafter for additional periods of ten (10) years ("Additional Term(s)"). At the end of the Initial Term, Norfolk Southern may, at its option, (i) extend this Agreement under the same terms and conditions for one Additional Term, or (ii) require renegotiation of the Agreement. At the end of the first (and any subsequent) Additional Term, either Norfolk Southern or D&H may extend the Agreement under the then-current terms and conditions, or require renegotiation of the agreement. In either case, the notice to continue the then-current terms and conditions or to require renegotiation shall be given by Norfolk Southern or D&H, as the case may be, by giving the other Party advance written notice at least six (6) months prior to the expiration of the then-current term. If the Parties cannot agree upon the terms and conditions

upon which the trackage rights granted herein may be exercised by Norfolk Southern during such Additional Term, either Party may submit any open provisions to binding arbitration pursuant to Section 14. The arbitrator shall be instructed to take into consideration the relative economic positions of the Parties under this Agreement, and intent of the Parties, in each case at the time this Agreement was executed, as well as any significant operating, economic and/or technological changes that have occurred in the interim. The effective date for the new terms and conditions, whether reached by negotiation or arbitration, shall be deemed to be the first day of the relevant Additional Term.

(c) In the event that railroad operations, technology or other events create, in the view of one Party to this Agreement, a disparity such that the terms and conditions of this Agreement over time no longer reflect the intention of the Parties in a substantial and material way, and such disparity has a material and substantial adverse effect on said Party, that Party may give notice of such to the other Party, who shall negotiate in good faith modification of this Agreement in order to address and possibly remove said perceived disparity. Should the Parties fail to reach agreement with regard to such perceived disparity, the concerned Party may invoke mediation or other methods of non-binding alternative dispute resolution, in which the other Party agrees to participate in good faith.

(d) Norfolk Southern shall have the right to terminate this Saratoga – East Binghamton Trackage Rights Agreement at any time after the tenth (10th) anniversary of the Commencement Date, upon giving D&H at least thirty (30) days prior written notice of such termination. Such termination shall be considered to be a termination of both this Saratoga-East Binghamton Trackage Rights Agreement and the underlying right of movement, but shall not affect the 2002 Agreement.

(e) Termination of this Saratoga – East Binghamton Trackage Rights Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Saratoga – East Binghamton Trackage Rights Agreement prior to termination thereof.

(f) In the event of any substantial failure on the part of any Party to perform its obligations provided under the terms of this Saratoga – East Binghamton Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the other Party, the non-defaulting Party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to refer such matter to arbitration pursuant to Section 14 and seek damages and/or specific performance of the terms of this Agreement from the defaulting Party. In the case of a substantial default by Norfolk Southern which continues after adjudication of such default through arbitration, D&H may terminate this Saratoga – East Binghamton Trackage Rights Agreement and the underlying right of movement if Norfolk Southern fails to cure such substantial default within: (i) thirty (30) days of the receipt of notice of continued default in the case of such a default in an obligation to pay D&H of Norfolk Southern, (ii) fourteen (14) days of the receipt of notice of continued default in the case of such a default under Section 3(b), (c), (d), (e), (f), (h) or (i); and (iii) ninety (90) days

of the receipt notice of continued default in the case of any other such default under this Saratoga – East Binghamton Trackage Rights Agreement.

SECTION 14. ARBITRATION

(a) Any dispute arising between the Parties with respect to this Saratoga – East Binghamton Trackage Rights Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute, either Party may submit the dispute for binding arbitration by a single arbitrator before the American Arbitration Association under the Commercial Arbitration Rules. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne by the Parties, with Norfolk Southern paying fifty (50) percent and D&H paying fifty (50) percent. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Saratoga – East Binghamton Trackage Rights Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

SECTION 15. ABANDONMENT

(a) D&H shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon the Subject Trackage or any portion thereof (the “Abandonment Segment”) during the Initial Term, or any Additional Term, of this Saratoga – East Binghamton Trackage Rights Agreement. D&H shall provide Norfolk Southern no less than ninety (90) days prior notice of its intention to seek to abandon any Abandonment Segment.

(b) If D&H elects to abandon an Abandonment Segment, D&H shall, not less than ninety (90) days prior to any submission to the Surface Transportation Board (or successor agency having jurisdiction over said abandonment) of an application or exemption for authority to abandon such Abandonment Segment, offer Norfolk Southern the first right to purchase the Abandonment Segment for the fair market value of such Abandonment Segment at the time of purchase, and on such other terms and conditions as are customary with respect to line sales by D&H at the time. Norfolk Southern shall have sixty (60) days (“Abandonment Notice Period”) within which to advise D&H that it will exercise its right to purchase (“Exercise Notice”). If the Parties are unable to agree upon the fair market value of the Abandonment Segment that Norfolk Southern wishes to purchase, either Party may refer the issue to arbitration pursuant to Section 14, which such arbitration shall determine all issues relating to terms and conditions for the sale not then (at the time of the initiation of the arbitration) agreed to by the Parties. Such arbitration shall be conducted on an expedited basis, with a selection of the arbitrator within forty-five (45) days of the initiation of arbitration, all submissions to be made by the Parties within ninety (90) days of the initiation of arbitration, and a decision to be rendered within thirty (30) days following the final submissions of the Parties.

(c) The Parties shall consummate the sale contemplated by this Section 15 within forty-five (45) days of the latest of: (a) the rendering of an arbitration decision, should issues related to the sale proceed to arbitration; (b) the execution of a purchase and sale agreement, should the Parties execute the same; and (c) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(d) If Norfolk Southern elects not to purchase the Abandonment Segment, it shall so advise D&H within the same sixty (60) day Abandonment Notice Period by delivering to D&H a notice of waiver of right to purchase said segment ("Waiver Notice"). Failure of Norfolk Southern to provide D&H with either an Exercise Notice or a Waiver Notice within the aforesaid sixty (60) day period shall constitute a Waiver Notice.

(i) In the event of a Waiver Notice, Norfolk Southern shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the discontinuance of its trackage rights over the Abandonment Segment.

(ii) A Waiver Notice shall constitute a waiver by Norfolk Southern of its statutory rights, if any at the time of the abandonment, to purchase or otherwise subsidize operations over the Abandonment Segment pursuant to an offer of financial assistance or other applicable method.

SECTION 16. SUCCESSORS AND ASSIGNS

(a) This Saratoga – East Binghamton Trackage Rights Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and assigns.

(b) Except as provided in Section 16(c) and (d), Norfolk Southern may not assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of D&H, which consent D&H may withhold at its discretion.

(c) In the event of a sale of substantially all of the assets or business of Norfolk Southern, or the merger or consolidation of Norfolk Southern into a firm or corporation not controlled by Norfolk Southern Corporation, Norfolk Southern may assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Norfolk Southern, or merging or consolidating with Norfolk Southern.

(d) In the event of a sale or lease of substantially all of the assets or business of D&H, D&H may, without the prior consent of NSR, assign this Agreement to (i) CPRC or a U.S.-based subsidiary of CPRC, or (ii) the person or corporation acquiring the assets or business of D&H.

SECTION 17. NOTICE

Any notice required or permitted to be given by one Party to another under this Saratoga – East Binghamton Trackage Rights 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 D&H: General Manager – Interline Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

with a copy to:

Manager Interline Agreement Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

If to Norfolk Southern: Executive Vice President Operations
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

with a copy to:

Senior Director – Joint Facilities
Norfolk Southern Corporation
185 Spring Street, SW, Box 158
Atlanta, Georgia 30303

Either Party may provide changes in the above addresses to the other Party by personal service or certified mail.

SECTION 18. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Saratoga – East Binghamton Trackage Rights Agreement, said Party shall take all reasonable measures, including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Trackage at locations other than the End Points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

SECTION 19. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Saratoga – East Binghamton Trackage

Rights Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Saratoga – East Binghamton Trackage Rights Agreement, during the Initial Term and any Additional Terms, the terms and provisions of this Saratoga – East Binghamton Trackage Rights Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential, and will not be disclosed by either Party to any person other than such Party's officers, employees, and attorneys, without the prior written approval of the other Party.

SECTION 20. INDEMNITY COVERAGE

(a) As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Saratoga – East Binghamton Trackage Rights Agreement in favor of the other Party shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of its directors, officers, agents and employees.

SECTION 21. REGULATORY APPROVAL

(a) Upon execution of this Saratoga – East Binghamton Trackage Rights Agreement by each of the Parties hereto, Norfolk Southern shall promptly file with the STB, and diligently prosecute, an appropriate notice of exemption with respect to the trackage rights granted to it herein.

SECTION 22. FUTURE SERVICES

(a) If, at any time after the Effective Date of this Agreement, Norfolk Southern develops sufficient Incremental Traffic (as defined in Section 4B of that certain Norfolk Southern/CPR Agreement on Northeast Restructuring dated June 27, 2002 ("Restructuring Agreement")) such that NSR wishes to handle such Incremental Traffic in NS-CN Interline Trains between Binghamton and Mohawk Yard, Glenville, NY for exchange at Mohawk Yard in Glenville, NY for interchange with Guilford Transportation Industries as contemplated under the 2002 Agreement, Norfolk Southern may request that D&H grant the right to do so to Norfolk Southern, and D&H shall consider such request in good faith taking into account, among other factors, capacity at Mohawk Yard, the retention by D&H of Existing Haulage Traffic as defined in Section 4A of the Restructuring Agreement, and such other operational and commercial factors as D&H deems relevant. The Parties acknowledge and agree that the one (1) train per day limitation set out in Section 3.2 of the 2002 Agreement is lifted, subject to a capacity review under the said Section 3.2. For clarity, the Parties agree that additional CN-NS Interline Trains operating between Saratoga Springs, NY and Binghamton, NY shall be operated under this Agreement and not under the 2002 Agreement; otherwise the rights of Norfolk Southern under the 2002 Agreement are not diminished.

SECTION 23. GENERAL PROVISIONS

(a) This Saratoga – East Binghamton Trackage Rights Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto and not for the benefit of any

other person. Nothing herein contained shall be taken as creating or increasing any right of any other person to recover by way of damages or otherwise against any of the Parties hereto.

(b) This Saratoga – East Binghamton Trackage Rights Agreement contains the entire understanding of the Parties hereto with respect to its subject matter and supersedes any and all other agreements and understandings between the Parties.

(c) No term or provision of this Saratoga – East Binghamton Trackage Rights Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all of the Parties.

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

(e) All words, terms and phrases used in this Saratoga – East Binghamton Trackage Rights Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.

(f) The division of this Saratoga – East Binghamton Trackage Rights Agreement into sections and subsections, and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Saratoga – East Binghamton Trackage Rights Agreement. Unless the context otherwise requires, all references herein to sections are to sections in this Saratoga – East Binghamton Trackage Rights Agreement.

(g) As used in this Saratoga – East Binghamton Trackage Rights 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 moving in the trains of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party, but are in the possession of, or are being operated in a train of the other Party, such locomotives, cars and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.

(h) This Saratoga – East Binghamton Trackage Rights Agreement is the product of mutual negotiations of the Parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(i) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(j) If any provision of this Saratoga – East Binghamton Trackage Rights Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Saratoga – East Binghamton Trackage Rights Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Saratoga – East Binghamton Trackage Rights Agreement in all material respects.

(k) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between D&H and Norfolk Southern.

(l) This Saratoga – East Binghamton Trackage Rights Agreement shall be governed and interpreted in accordance with the laws of the State of New York, without regard to application of the choice of law principles thereof.

(m) This Saratoga – East Binghamton Trackage Rights Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

(n) If the STB, in approving or exempting (if so required) any of the transactions contemplated by this Agreement, the Rouses Point – Saratoga Haulage Agreement, or the East Binghamton Yard Terminal Services Agreement, imposes any condition (other than standard labor protective conditions) which would, in the sole judgment of NSR or D&H, materially reduce the benefits to that Party from the same, then the materially affected Party may, in its sole discretion: (a) accept the condition and proceed with the transactions contemplated by said agreements; (b) terminate said transactions collectively, or (c) appeal such condition judicially and postpone the Commencement Date for up to thirty (30) months until final action on its appeal; and if such appeal is unsuccessful, either (i) reject the condition and terminate said transactions collectively, or (ii) accept the condition and proceed with said transactions..

Confidential Appendix to the Saratoga Springs Trackage Rights Agreement

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IN WITNESS WHEREOF, the Parties hereto have caused this Saratoga – East
Binghamton Trackage Rights Agreement to be duly executed as of the date first above written.

WITNESS:

NORFOLK SOUTHERN RAILWAY
COMPANY

By _____

WITNESS:

DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

D. J. B. [Signature]

By [Signature]
Fred Green, President and
Chief Executive Officer

IN WITNESS WHEREOF, the Parties hereto have caused this Saratoga – East
Binghamton Trackage Rights Agreement to be duly executed as of the date first above written.

WITNESS:

NORFOLK SOUTHERN RAILWAY
COMPANY

W. E. Chapman

By Charles W. Moorman
Charles W. Moorman
~~Executive Vice President – Corporate~~
~~Planning & Services~~

WITNESS:

DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

By _____
Fred Green, President and
Chief Executive Officer

Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34562

Norfolk Southern Railway Company – Trackage Rights Exemption – Delaware and Hudson Railway Company, Inc.

Delaware and Hudson Railway Company, Inc. (“D&H”) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (“NSR”) to permit NSR to operate over the following D&H lines in between Saratoga Springs, NY and Binghamton, NY: (i) between Milepost 37.10 $\pm$ of D&H’s Canadian Main Line in Saratoga Springs, NY, and the point of connection between D&H’s Canadian Main Line and D&H’s Freight Main Line at CPF 480, located at Milepost 21.70 $\pm$ of D&H’s Canadian Main Line (which point is also Milepost 480.36 $\pm$ of D&H’s Freight Main Line), a distance of approximately 15.40 miles; (ii) between Milepost 480.36 $\pm$ of D&H’s Freight Main Line and Milepost 611.15 $\pm$ of D&H’s Freight Main Line in Binghamton, NY, a distance of approximately 130.79 miles; and (iii) between Milepost 611.15 $\pm$ of D&H’s Freight Main Line and Milepost 620.20 $\pm$ of D&H’s Freight Main Line in Binghamton, NY (including tracks into and within D&H’s East Binghamton Yard), a distance of approximately 9.05 miles, for a total distance of approximately 155.24 miles.

The trackage rights will be effective on a date mutually agreed in writing between NSR and D&H, which shall not occur until the effective date of this Notice (including compliance with any condition(s) imposed by the STB in connection with this Notice).

This notice is filed under Section 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board

Vernon A. Williams,
Secretary