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ERIC M. HOCKY
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December 22, 2004
VIA: UPS Overnight

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 34643
Central New York Railroad Corporation
- Lease and Operation Exemption -
Norfolk Southern Railway Company
Notice of Exemption

ENTERED
Office of Proceedings
DEC 23 2004
Part of
Public Record

Dear Secretary Williams:

Enclosed for filing please find the original and ten (10) copies of the above-referenced Notice of Exemption of Central New York Railroad Corporation, along with a diskette containing the document in WordPerfect 9. A check in the amount of \$1,500 representing the filing fee is also enclosed.

Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Respectfully,


ERIC M. HOCKY

Enclosures
FEE RECEIVED
DEC 23 2004
SURFACE
TRANSPORTATION BOARD



GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

212845

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 34643

CENTRAL NEW YORK RAILROAD CORPORATION
- LEASE AND OPERATION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

UNDER 49 U.S.C. §10902

ENTERED
Office of Proceedings
DEC 23 2004
Part of
Public Record

FEE RECEIVED
DEC 23 2004
SURFACE
TRANSPORTATION BOARD

ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
Four Penn Center
Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
(215) 563-9400

Attorneys for
Central New York Railroad Corporation

Dated: December 22, 2004

FILED
DEC 23 2004
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34643

CENTRAL NEW YORK RAILROAD CORPORATION
- LEASE AND OPERATION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

This Verified Notice is filed pursuant to 49 C.F.R. §1150.41 by a Class III carrier, Central New York Railroad Corporation ("CNY") to exempt from regulation under 49 U.S.C. §10902 its lease from Norfolk Southern Railway Company ("NS"), and operation, of the line of railroad (the "Rail Line") between milepost 89.9 at or near Port Jervis, New York, and milepost 213.0 at Binghamton, New York, as shown on the map attached as Exhibit A. The total mileage of the Rail Line to be acquired and operated is approximately 123.1 miles. The Rail Line is located in the Counties of Broome, Sullivan, Delaware and Orange, New York, and the Counties of Pike and Susquehanna, Pennsylvania.

Notice

In accordance with 49 C.F.R. §1150.43, CNY hereby states as follows:

- (a) The full name and address of Applicant are: Central New York Railroad Corporation, 195 Blackbrook Road, Lake Nancy, NY 12850.
- (b) The name, address and telephone number of the representative of CNY who should receive correspondence are: Eric M. Hocky, Esquire, Gollatz, Griffin

& Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2808; (215) 563-9400.

(c) CNY and NS are entering into a lease to cover CNY's lease of the Rail Line. A copy of the lease is attached as Exhibit B.¹

(d) The current operator of the Rail Line is NS.

(e) Brief Summary of the Proposed Transaction:

The Rail Line is a portion of NS' Southern Tier Line. NS is leasing the Rail Line to CNY. CNY will maintain the Rail Line and be responsible for local freight service. NS is retaining overhead trackage rights.² As a locally based operator, CNY will be able to provide service that better meets the needs of local shippers while allowing NS to efficiently handle its overhead traffic.

(1) The name and address of the railroad leasing the Rail Line to CNY are: Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

(2) CNY expects to commence operation of the Rail Line on or after December 31, 2004, more than seven days after the filing of this Notice of Exemption.

(3) The mileposts of the Rail Line are between milepost 89.9 at or near Port Jervis and milepost 213.0 at Binghamton, in the Counties of Broome,

¹ The copy of the lease shows the significant terms of the proposed transaction, but has been redacted to protect the confidentiality of the confidential compensation and other commercially sensitive terms.

² Because NS is retaining the trackage rights as part of the proposed lease to CNY, the parties do not believe that any separate trackage rights filing is required. Compare *Minnesota Northern Railroad, Inc. – Exemption*, STB Finance Docket Nos. 33315, et al (served August 14, 1997) (no filing required where the trackage rights were reserved as part of the agreement), and *The Burlington Northern and Santa Fe Railway Company – Trackage Rights Exemption*, STB Finance Docket No. 34304 (served February 3, 2003) (filing required where the acquiring carrier granted back trackage rights).

Sullivan, Delaware and Orange, New York, and the Counties of Pike and Susquehanna, Pennsylvania.

(4) The total mileage to be acquired and operated is approximately 123.1 miles.

(f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Line.

(g) CNY certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.

(h) CNY certifies that its total annual revenues after the transaction will not exceed \$5,000,000. Accordingly, no additional notice is required under 49 C.F.R. §1150.42(e).

Environmental and Historic Reports

Pursuant to 49 C.F.R. §1105.6(c)(2), no environmental documentation should be required because this proceeding involves authority for a lease for continued rail operations that will not exceed the thresholds established in 49 C.F.R. §1105.7(c)(4) or (5).

No historic report under 49 C.F.R. §1105.8(b)(1) should be required because the transaction merely involves a lease for continued rail operations, and further Board approval is required to discontinue or abandon any service. CNY has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

Labor Protection

CNY is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions.

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Respectfully submitted,



ERIC M. HOCKY
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Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
(215) 563-9400

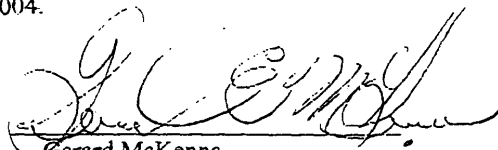
Attorneys for
Central New York Railroad Corporation

Dated: December 22, 2004

VERIFICATION

I, Gerard McKenna, President of Central New York Railroad Corporation
verify under penalty of perjury that the foregoing is true and correct. Further, I certify
that I am qualified and authorized to file the foregoing document.

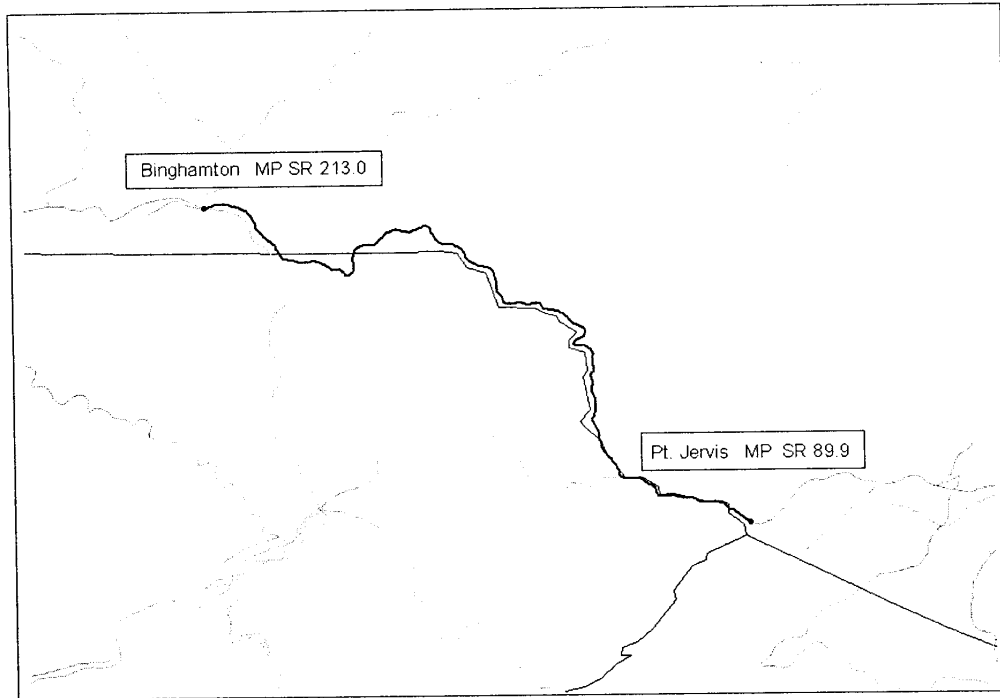
Executed on December 21, 2004.



Gerard McKenna

MAP

EXHIBIT A



LEASE

EXHIBIT B

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made this ____ day of December, 2004, by and between **CENTRAL NEW YORK RAILROAD CORPORATION**, a New York corporation (hereinafter referred to as "LESSEE"), and **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (hereinafter referred to as "NSR").

WITNESSETH:

WHEREAS, NSR is the owner of the line of railroad described in Attachment A (the "Line");

WHEREAS, NSR desires to lease the Line to LESSEE in order to maintain rail service to customers located on the Line;

WHEREAS, LESSEE desires to lease the Line from NSR in accordance with the terms stated herein;

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable considerations set forth herein, LESSEE and NSR agree as follows (this agreement and all of the attachments hereto sometimes referred to hereinafter as the "Agreement"):

1. PROPERTY COVERED

(a) NSR hereby leases to LESSEE, effective on the Commencement Date stated in Article 30, on an exclusive basis, subject to the rights retained by NSR herein, the line of railroad described in Attachment A (the "Line"), all in (except to the extent provided otherwise in this Agreement) "AS IS, WHERE IS" CONDITION AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. LESSEE acknowledges that it has inspected the Line to the extent it deems necessary for its operations on the Line for the term of this Agreement and accepts it in its current condition. LESSEE leases the property subject to all existing easements and other impediments to the title of NSR, whether or not this Agreement provides actual notice thereof. It is the intent of the parties that NSR is assigning mileage, as that term is described in Section 45G of the Internal Revenue Code, with the intent that such mileage be considered to be in the account of LESSEE, not NSR, for purposes of Section 45G.

(b) It is understood and agreed that LESSEE has neither the right nor the option to purchase the Line, and that, unless specifically granted to LESSEE in this Agreement, all rights and interests of NSR, or its parent corporations, subsidiaries and affiliates, in and to the land and improvements adjacent to, beneath and above the Line (collectively, the "Property") are reserved unto NSR, including, without limitation, the "Reserved Rights" enumerated in Article 35 of this Agreement.

(c) NSR reserves unto itself overhead trackage rights over the Line, in accordance with the terms and conditions of the Trackage Rights Agreement set forth as Attachment B. Compensation to be paid by NSR to LESSEE shall be \$[REDACTED] per car mile.

(d) LESSEE may not perform haulage over the Line, recognizing that The New York, Susquehanna & Western Railway Company ("NYS&W") performs haulage for CSX Transportation, Inc. over the Line pursuant to an existing agreement. In addition, LESSEE shall not have the right to grant trackage rights over the Line. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(e) NYS&W and NSR's predecessor have previously entered into a Trackage Rights Agreement which grants trackage rights to NYS&W between Binghamton and Warwick, NY. NSR agrees to assign the portion of this Trackage Rights Agreement that relates to the Line to CNY, in a form substantially as set forth in Attachment H. CNY is expressly prohibited from assigning this trackage rights agreement, or any rights or obligations thereunder, to a third party.

2. POTENTIAL SALE AND LEASEBACK.

The parties recognize and understand that LESSEE plans to investigate the possibility of conveying the Line to a governmental entity in order to obtain property tax abatement. Should it be in the best interest of both parties to do so, the parties agree to cooperate with respect to such a conveyance of the Line, provided the Line is leased back to NSR as owner of the Line.

3. RIGHT TO POSSESSION.

(a) On the Commencement Date provided for in Article 29 of this Agreement, NSR will deliver to LESSEE possession of the Line for LESSEE's lease and operation; provided, however, that NSR will have one (1) week after said Commencement Date in which to remove, at its sole expense and without interference with LESSEE's operations, all track material, equipment, locomotives, and other rolling stock of NSR located on but not affixed to the Line as of the Commencement Date.

(b) LESSEE may remove track located between MP178 and MP190 so that the Line would become a single track railroad between those points, and LESSEE may retain the proceeds from the scrapping of such track to pay property taxes due with respect to the Line, or to make capital reinvestments in the Line. In addition, LESSEE may remove the signal system from the Line, after the FRA approves such removal. In no other situations may LESSEE remove track, track materials, ballast, ties or any other improvements from the Line without the express written consent of NSR.

4. TERM.

(a) Unless otherwise terminated pursuant to (b), (c), (d) or (e) herein, this Agreement shall be for a term of twenty (20) years from the Commencement Date provided for in Article 29 of this Agreement. In addition, LESSEE shall have the right to renew this Agreement for one additional term of ten (10) years. Should LESSEE wish to exercise this right, it must provide six (6) months' written notice to NSR.

(b) This Agreement may be terminated by the non-breaching party if either LESSEE or NSR breaches any one or more of the material covenants or obligations under this Agreement and if such breach continues for a period of thirty (30) days from the date of receipt of written notice of such breach. A breach of a material covenant or obligation includes, but is not limited to, the following: (i) failure of LESSEE to make the payments provided for in Article 15 of this Agreement; (ii) failure of LESSEE to maintain the Line in accordance with the requirements set forth in Attachment C; or (iii) NSR's failure to make any payments to LESSEE contemplated by this Agreement.

(c) Subject to the provisions of the Agreement, LESSEE may terminate this Agreement under the following conditions:

(i) if the Agreement is not in effect by December 30, 2004.

(ii) if neither of the following have occurred by February 28, 2005: (x) if the amount of the property tax abatement/PILOT payments have not been reduced by 50% or greater from the amount of the property tax/PILOT payments in place at the inception of the initial term; or (y) if the sale/leaseback transaction described in Section 2 is not in effect; then LESSEE may terminate this Agreement upon 60 days' written notice.

(iii) if LESSEE has not obtained FRA approval, on or before July 1, 2005, to remove the signal system on the Line.

(iv) if, after the first three (3) years of the term, LESSEE fails to develop sufficient traffic, in its reasonable judgment, along the Line, to merit keeping the Line, or any segment thereof, in service, then LESSEE may terminate this Agreement upon 60 days' written notice.

(d) NSR may terminate this Agreement at any time at the following times:

(i) if notice of termination is given in 2005, 2006 or 2007, NSR must give one (1) year's written notice to terminate;

(ii) if notice of termination is given in 2008 or 2009, NSR must give 180 days' written notice to terminate;

(iii) if notice to terminate is given in 2010 or after, NSR must give 90 days' written notice to terminate.

(e) In the event NSR terminates this Lease, NSR will pay LESSEE a termination fee to allow LESSEE to recover its investment in the Line, in the manner set forth below. Within 30 days from the date NSR notifies LESSEE that it intends to terminate the Lease, LESSEE must provide NSR with a calculation of the termination fee, representing LESSEE's depreciated capital improvements to the Line, using straight line depreciation with the same asset lives used by LESSEE for tax purposes, and excluding from the cost of improvements and depreciation amounts funded by governmental grants, and amounts for which a tax credit is received pursuant to Section 45G of the Internal Revenue Code. To the extent LESSEE has obtained loan(s) for the specific purpose of constructing improvements on the Line, NSR will assume the balance remaining on the loans at the time of termination, to the extent and only to the extent the proceeds of such loan(s) were used to improve the Line. Subject to the notice provisions contained elsewhere in this Agreement, after receipt of the payment of the termination fee, LESSEE must surrender the Line to NSR.

(f) LESSEE grants to NS an irrevocable power of attorney for purposes of consenting to and making an STB filing with respect to any termination of this Lease Agreement.

5. EFFECT OF TERMINATION OR EXPIRATION OF AGREEMENT.

(a) At least 60 days prior to the expiration or termination of this Agreement, LESSEE shall submit all necessary applications and petitions to the Surface Transportation Board to effectuate a termination of this lease. Upon obtaining any necessary regulatory authority or exemption, LESSEE will forthwith vacate and surrender the Line and any improvements made thereon (other than as provided in Article 5(c)) to NSR and NSR shall have the right to enter onto and operate the Line.

(b) LESSEE shall surrender the property to NSR in as good or better condition as it was as of the Commencement Date of this Agreement, normal wear and tear excepted, both in terms of operating condition of the railroad and the environmental condition of the property. This requirement shall be deemed to have been fulfilled if the surrendered property is in compliance with the maintenance standards set forth in Attachment B and includes, except as permitted pursuant to Section 3(b): (1) A continuous main track between the end points of the Line as of the Commencement Date; and (2) at least as many miles of serviceable main track and passing track as existed on the Commencement Date, both as shown on Attachment A and adjusted for any abandonment previously implemented pursuant to Article 38.

(c) Provided that all sums due NSR under this Agreement have been paid and LESSEE is then in compliance with all obligations and covenants under this Agreement, LESSEE may remove from the Line any and all structures or other property belonging to LESSEE or which LESSEE caused or permitted to be placed or erected on the Line and which are the property of LESSEE, provided such removal can be effected without damage to the property of NSR. If LESSEE fails to make such removal within sixty (60) days from the date of termination of the Agreement, NSR may take title thereto without consideration of any kind therefor or claim by LESSEE or anyone claiming an interest by or through LESSEE, or, at NSR's sole option, NSR may remove all or any part of such structures and/or property and restore the Line to its former condition at the sole expense of LESSEE, and LESSEE will

reimburse NSR for such expense within thirty (30) days of receipt of a bill or bills therefor; provided that LESSEE shall have no obligation to reimburse NSR if the bill(s) are not received by LESSEE within 6 months after the date of LESSEE's surrender of the property.

(d) If, subject to the right of NSR to seek removal of LESSEE from the Line by all applicable legal means, LESSEE holds over or remains in possession of the Line after the expiration of this Agreement, such holding over or continued possession will create a tenancy from month to month only, and monthly rental for such period will be payable as set forth in Article 15 herein.

(e) In the event of a termination of this Agreement with respect to a portion of the Line, pro-rata adjustments to the Supplemental Rental will be made, as more particularly specified in Article 15.

6. ACCOUNTING STANDARDS.

(a) As between NSR and LESSEE, the Association of American Railroads ("AAR") Accounting Rules shall govern.

(b) NSR shall have the right to inspect the accounting records of LESSEE, as they pertain to this Agreement and to the Line, at any time during business hours, upon reasonable notice to LESSEE.

7. INDUSTRY AGREEMENTS.

LESSEE will become a signatory to the industry's Interchange Rules, Interline Settlement System, and Car Service and Car Hire Agreement.

8. CAR SUPPLY AND CAR SERVICE.

(a) LESSEE shall not load cars supplied empty by NSR to a line haul carrier other than NSR. If LESSEE loads a car supplied empty by NSR to a line haul carrier other than NSR, LESSEE shall pay NSR a misloading charge of \$ [REDACTED]

(b) If requested by NSR, LESSEE shall use its best efforts to have cars serving one or more of LESSEE's customers placed in assigned service.

(c) Except as may be provided in **Attachment D**, NSR has no special duties or obligations to LESSEE with respect to car supply and car service. LESSEE is solely responsible for car ordering for NSR traffic on the Line.

9. DEMURRAGE AND CYCLE TIME.

LESSEE shall have the right to determine what demurrage charges, if any, to impose when cars are on its lines and shall be responsible for the billing and collection of all such charges. LESSEE agrees it will impose such demurrage charges as are reasonably necessary to cover car hire costs or to encourage its customers to contribute to the efficient movement of cars

between LESSEE and NSR. LESSEE agrees to work with NSR to maximize the efficient flow of equipment.

10. CAR MARKS AND STENCILING.

LESSEE's car marks may be used only on such number of cars as are necessary to insure that its customers have an adequate number of empty cars to load and therefore LESSEE will not enter into any arrangement with any third party which would allow the use of LESSEE's car marks on more than the number of empties required by its customers less the number of empties, if any, ordinarily provided by NSR. Should LESSEE desire to enter into any arrangement allowing the use of its mark by a third party, NSR's prior written consent shall be necessary. If such consent is not obtained and LESSEE nevertheless enters into such arrangement, LESSEE shall be liable for all car hire owed on such cars by NSR. If LESSEE fails to stencil its mark on a car or fails to unstencil such mark and as a result of such failure, NSR incurs any penalty, LESSEE shall fully reimburse NSR.

11. SETBACK AND OTHER CHARGES.

LESSEE shall not impose on NSR, either directly or indirectly, any charges for rejected cars, misrouting, misdelivery or setback or any other charges of any type, whether by tariff or otherwise, except as provided in Attachment E.

12. AEI TAGS AND EOT'S.

All cars owned, leased or otherwise controlled by LESSEE shall be equipped with automatic equipment identification ("AET") tags that meet the requirements of the AAR Interchange Rules.

13. DATA EXCHANGE AND OTHER INFORMATION TECHNOLOGY REQUIREMENTS.

LESSEE will supply its own hardware, software and related services, which shall be within two versions of the then current AAR standard. LESSEE will use its best efforts to work with NSR to maximize the electronic flow of information. To the extent LESSEE acts as a switching carrier for NSR, LESSEE shall participate in NSR's EDI program that requires LESSEE to transmit electronically to NSR all switching settlement data. LESSEE may, at its own cost, elect to use the services of a third party provider. If requested by NSR, LESSEE shall electronically transmit within 24 hours records of cars which have been rejected for loading or which may incur any charge listed in this Agreement.

14. SETTLING OF REVENUES.

Linehaul revenues will be settled in accordance with the procedures of the Interline Settlement System ("ISS"), as more specifically set forth in Attachment D.

15. LEASE PAYMENTS.

Lease rental for the Line shall be \$1.00 per year, subject to the other terms set forth

below. The provisions of subsection A below shall apply to the exclusion of the provisions of subsection B, unless the terms of subsection A are invalidated, either by law, regulation or judicial or administrative decisions (the "Adverse Impact"), in which case the terms of subsection B below shall apply, as of the effective date of the Adverse Impact. The provisions of subsection C below shall apply in all circumstances, regardless of whether the provisions of subsection A or B apply.

A. (a) As additional consideration to NSR for leasing this line to LESSEE for nominal monetary consideration, LESSEE will not use any portion of the RAIL LINE for the transportation of any rail freight shipment which is not interchanged from or to NSR, or in the local, non-interline revenue account of LESSEE; provided, however, that CNY may interchange traffic with NYS&W, when such traffic originates or terminates locally on NYS&W.

(b) In the event LESSEE violates the restriction set forth above, LESSEE shall pay to NSR as liquidated damages and not as a penalty the sum of (i) \$[REDACTED] per railcar with respect to traffic moving to or from Kirkwood, NY; and (ii) \$[REDACTED] per railcar with respect to all other traffic moving to or from other stations located on the Line.

B. As stated above, in the event of an Adverse Impact, the following provisions will apply:

(a) The lease Rental for the Line shall be (i) \$[REDACTED] per railcar with respect to traffic moving to or from Kirkwood, NY; and (ii) \$[REDACTED] per railcar with respect to all other traffic moving to or from other stations located on the Line, subject to the exceptions set forth in this Article.

(b) Within 30 days of the end of each calendar quarter, LESSEE shall provide NSR with a statement showing the number of cars, which moved over LESSEE during the quarter. With each statement, LESSEE shall make payment to NSR of the Lease Rental due. If LESSEE fails to pay within 30 days of the end of the quarter any portion of the amount due, LESSEE shall also pay NSR interest on the unpaid amount at the rate of 1% per month.

(c) If LESSEE knowingly and intentionally underpays during the year by underreporting the cars originated, terminated or otherwise moved over LESSEE, LESSEE shall pay, in addition to the Lease Rental, a payment of \$[REDACTED]/car/month for each month (to a per car maximum of \$[REDACTED]) the cars are knowingly and intentionally not reported to offset in part the additional costs for NSR associated with such underreporting.

(d) Acceptance by NSR of the Lease Rental or the Supplemental Lease Rental paid by LESSEE pursuant to this Article will not be taken or construed to be a waiver of any provision of this Agreement.

(f) The Lease Rental set forth in this Article (the "Lease Fees") shall be revised upward or downward each year, beginning with the bill rendered for the month of December first following the "Commencement Date" of this Agreement, to compensate for the increase or decrease in the Rail Cost Adjustment Factor, Unadjusted for Productivity (RCAF-U). The Lease

Fees shall be revised by calculating the percent of increase or decrease in the RCAF-U by comparing the RCAF-U for the date closest to December that precedes December on a year over year basis, and applying that percentage to the Lease Fees. In the event the RCAF-U is discontinued, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under the terms of Article 36 of this Agreement. Under no circumstances shall the amounts of the Lease Fees be lower than the initial amounts set forth in herein.

C. (a) LESSEE shall pay to NSR, as Supplemental Lease Rental, an annual amount as illustrated on Attachment F. [REDACTED]

(b) The amounts contained in Attachment F are illustrative only. Actual results will be different. Payment of the Supplemental Lease Rental shall be made on or before March 31 of the year following the applicable year.

16. MAINTENANCE.

(a) LESSEE acknowledges that it has been given the opportunity to make as detailed an inspection of the Line as it desired.

(b) Except as provided by this paragraph, LESSEE shall be responsible for all maintenance of the Line, including but not limited to track, bridges, signals, detectors and highway grade crossing equipment, as applicable. The Line shall be maintained to the standards set forth in Attachment C. Should LESSEE fail to maintain its track in compliance with such standards, NSR shall have the right, but not the obligation, to make repairs necessary to bring the Line into compliance, and LESSEE shall credit NSR's cost of making such repairs against its trackage rights and haulage charges to NSR.

17. INSPECTION OF LINE.

NSR shall have the right, upon giving 24 hours notice, to enter the line to conduct such inspections; provided that NSR shall comply with any instructions of LESSEE reasonably designed to insure the safety of the personnel and property.

18. *FORCE MAJEURE*. A party shall be excused from its contractual obligations to the extent it is prevented or delayed in such performance by any of the following conditions of *force majeure*: Act of God, act of the public enemy, act of terrorism, authority of law, fire or explosion, lockout, strike, war, insurrection, computer virus or sabotage, derailment or any like

- causes beyond their control. The party declaring *force majeure* shall promptly notify the other parties when the *force majeure* begins, the nature of the *force majeure* and when the condition is terminated.

19. BUYBACK PROVISIONS.

LESSEE agrees that it will not sell its shares, business and rights without the express written consent of NSR. This provision shall inure to the benefit of NSR and NSR's heirs, representatives and assigns, and shall continue in full force and effect for the term of this Agreement and any renewal.

20. PUBLIC FUNDS.

LESSEE shall use its best efforts to obtain public funds that will benefit the Line or otherwise improve rail service. If requested by NSR, LESSEE shall also work with NSR to obtain public funds.

21. SPECIAL AND ANNUAL AUDITS AND REVIEWS; FINANCIAL STATEMENTS.

(a) To insure compliance with the terms and conditions of this Agreement, NSR has the right to require an annual audit of LESSEE's books and records, including all interchange records. In addition, NSR may at its option require an audit with respect to environmental or hazardous commodity matters. If necessary or desirable for audit purposes, LESSEE will direct that all interchange records maintained by third parties, including the AAR and its TRAIN II records, be made available to the auditors. NSR, at its own cost, may conduct the audit using its own employees or an independent auditing or accounting firm; provided that all information reviewed in the course of the audit shall be treated as confidential. LESSEE shall cooperate with any such audit. If LESSEE disagrees with the results of the audit and requests another audit, LESSEE and NSR will select an independent auditor (or if they cannot agree, such auditor shall be selected by an arbiter appointed by the American Arbitration Association), with the cost of the independent auditor split evenly between the parties.

(b) At any time, NSR may, at its own cost, demand a special audit if it has a reasonable belief that LESSEE is not in compliance with this Agreement. If LESSEE objects to the audit, the decision as to whether to allow an audit shall be made by an arbiter selected pursuant to the Commercial Arbitration Rules of the American Arbitration Association solely to determine whether an audit shall proceed.

- (c) LESSEE shall provide NSR, on a monthly basis, with a balance sheet, income statement, and a statement of cash flows.

22. INTERCHANGE AGREEMENT AND LIABILITY.

On or before the Commencement Date provided for in Article 29 of this Agreement, NSR and LESSEE will enter into an Interchange Agreement substantially in the form of Attachment

G. The Interchange Agreement shall govern the parties' obligations with regard to the interchange of cars and maintenance, repair and operation of tracks and equipment related to that interchange. As of the Commencement Date, NSR and LESSEE shall interchange at Binghamton, NY, as set forth in the diagram, which is part of **Attachment A**. The Interchange Agreement shall also govern all liabilities of LESSEE and NSR, both on the interchange tracks and on the rest of the Line.

23. ENVIRONMENTAL.

(a) LESSEE shall not create or permit to be created or to exist upon Line any nuisance, use, storage (except for a reasonable period of time as incident to an industrial switching movement for a patron on the Line) or disposal of hazardous substances, hazardous waste, toxic materials or waste materials (as such terms are defined under applicable federal or state law or regulations, referred to collectively hereinafter as "Hazardous Materials"), public or private, during the continuance of this Agreement, and LESSEE shall indemnify and hold harmless NSR, and its respective parent corporations, subsidiaries and affiliates, and all of its respective directors, officers, agents or employees, from and against any suit or claim, including without limitation, for penalties, fines, or investigation, clean-up or remedial action costs, growing out of any such nuisance, use, storage or disposal thereon, including without limitation any suit or claim growing out of violation of any laws, ordinances and governmental regulations controlling air, water, noise, Hazardous Materials or other pollution. LESSEE shall install and bear the expense for the term of the Agreement of any and all pollution control structures, devices, equipment or permits which are required during the term of this agreement under any applicable laws, ordinances or governmental regulations as a result of LESSEE's operations.

(b) LESSEE shall be responsible to NSR and shall defend, indemnify and hold harmless NSR, and its respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents or employees, from and against any liability, including without limitation, penalties, fines, investigation, clean-up or remedial action costs, costs of defense, reasonable attorneys' fees and reasonable consultants' fees, arising (i) out of the presence of Hazardous Materials in, on or under the Line (referred to hereinafter as "Contamination") occurring after the Commencement Date of this Agreement or (ii) out of and to the extent that LESSEE has exacerbated (after the Commencement Date of this Agreement) Contamination existing prior to Commencement Date of this Agreement. NSR shall defend, indemnify and hold harmless LESSEE and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents or employees, from and against any liability, including without limitation, penalties, fines, investigation, clean-up or remedial action costs, costs of defense, reasonable attorneys' fees and reasonable consultants' fees for Contamination but only to the extent such Contamination resulted from such acts of NSR or events under its control which occurred prior to the Commencement Date of this Agreement, and further only to the extent such Contamination has not been exacerbated by LESSEE. NSR shall defend, indemnify and hold harmless LESSEE, and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents or employees, from and against any liability, including, without limitation, penalties, fines, investigation, clean-up or remedial costs, costs of

defense, reasonable attorneys' fees and reasonable consultants' fees, for Contamination, but only to the extent such Contamination resulted from such acts of Consolidated Rail Corporation or events under their control which occurred on April 1, 1976 or thereafter but prior to the Commencement Date of this Agreement, and further only to the extent such Contamination has not been exacerbated by LESSEE. The indemnification provided in this subparagraph (b) shall survive the term of this Agreement.

(c) As to the provisions of this Article 23 only, LESSEE and NSR hereby waive any statute of limitations defense, provided, however, that if one party gives the other party written notice of Contamination, the waiver of the statute of limitations shall cease, but only as to the 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 the statute of limitations for any matter not covered in said written notice shall continue.

(d) LESSEE shall have the right to conduct an inspection of the Line, on or prior to the Commencement Date of this Agreement. LESSEE shall provide NSR with a copy of any written reports or records created as part of such inspection, upon NSR's request. LESSEE shall require NSR's written consent before conducting any intrusive environmental inspection procedures, which consent shall not be unreasonably withheld. In requesting such consent, LESSEE shall describe its goals in conducting such environmental inspection.

(e) Within thirty (30) days after expiration or termination of this Agreement, LESSEE and NSR shall conduct a joint inspection of the Line.

24. ASSIGNMENT.

This Agreement may not be assigned, or in any manner transferred, nor shall the Line be sublet, used or occupied by any party other than LESSEE (via trackage rights, haulage rights, or other means), nor used for any purpose other than as specified.

25. SOLE BENEFIT.

This Agreement is intended for the sole benefit of the parties hereto, nothing in this Agreement 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, lessors, parent corporation, subsidiaries, affiliates, successors, and permitted assigns, any right pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

26. WAIVER.

Any waiver at any time of a breach of any provision, condition, obligation, or requirement of this Agreement 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

Agreement or the right of either party thereafter to avail itself of any breach, subject to such waiver. No provision of this Agreement shall be waived by any act or knowledge of the parties, but only by a written instrument signed by the party waiving a right hereunder.

27. AMENDMENT.

No provision of this Agreement (which includes Attachments A through G hereto), shall be modified without the written concurrence of the parties. This Agreement represents the entire understanding of the parties, and to that extent supercedes any prior understandings, written or oral.

28. NOTICES.

All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown on Attachment I 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 telegram or fax, with confirmed receipt, addressed to the officers and addresses shown on Attachment I. All notices shall be effective on day following confirmed receipt of the letter, telegram, or fax.

29. COMMENCEMENT DATE.

LESSEE's lease of the Line shall commence on the latter of the 31st day of December, 2004, at 12:01 a.m., or the effective date of any decision or notice of exemption served by the Surface Transportation Board authorizing the consummation hereof. Insofar as this Agreement is concerned, that day shall be known as the "Commencement Date".

30. HEADINGS.

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

31. TAXES.

- (a) After the Commencement Date provided for in Article 29 herein and during the term of this Agreement, LESSEE will pay when due, and prior to the imposition of any penalty, all licenses, taxes, PILOT Payments, levies, or assessments of whatever kind or nature which may become a lien against the Line, and will indemnify NSR against any liability for payment of such licenses, taxes, levies, and assessments; provided, however, that nothing in this paragraph will be construed to diminish any right of LESSEE to contest any such license, tax, levy, or assessment in appropriate judicial or administrative proceedings, subject, however, to the terms of the Contract and the Leaseback. Upon request, LESSEE will present to NSR for inspection the official receipts (or photocopies thereof) showing the payment of any of such licenses, taxes, levies, and assessments.

- (b) Promptly upon receipt of an itemized statement, LESSEE will reimburse NSR for

any such licenses, taxes, PILOT Payments, levies, or assessments paid by NSR, and upon request by LESSEE, NSR will present to LESSEE for inspection the official receipts (or photocopies thereof) showing the payment of any of such licenses, taxes, PILOT Payments, levies, and assessments. [REDACTED]

32. ALLOCATION OF INCOME AND EXPENSES.

Except as otherwise specifically set forth herein, any income accrued on or subsequent to the Commencement Date during the term of this Agreement and any claims, expenses, and liabilities which arise or are accrued on or subsequent to the Commencement Date during the term of this Agreement in respect of the Line will belong to, be paid to, and be the responsibility of LESSEE, and it will be the obligation of LESSEE to collect such income and to pay or otherwise to resolve such claims, expenses, and liabilities.

33. UTILITIES.

Beginning on the Commencement Date provided for in Article 29 herein and during the term of this Agreement, LESSEE will pay all bills for water, sewer, gas, and electric service to the line.

34. LIENS.

LESSEE will 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 Agreement in the construction, repair, maintenance, or removal of the Line and any improvements located thereon, whether said improvements are the property of NSR or of LESSEE. LESSEE will indemnify and save harmless NSR from all such claims, liens, or demands whatsoever.

35. MISCELLANEOUS PROPERTY RIGHTS.

(a) NSR RESERVES unto itself, its successors and assigns the following "Reserved Rights", the specific definitions for which are set forth in subsection (b) of this Article 35: "Reserved Communication Rights and Reserved Communication Facilities", "Reserved Mineral, Water and Timber Rights", "Reserved Electric Line and Pipeline Rights", "Reserved Signboard Rights," and any other communications or other facilities or rights reserved to NSR, its successors and assigns or to third parties, or their respective successors or assigns, under current or future Reserved Agreements that are retained by NSR or that may be entered into by NSR with respect to the specific types of Reserved Rights previously mentioned, including rights to ingress to and egress from Reserved Facilities and rights to place, construct, install, maintain, use, repair, rehabilitate, improve, replace or remove the Reserved Facilities on the Property and rights to receive utility services across, along, over or under the Property for or at Reserved Facilities, without costs or obligations to NSR or the third party from or to LESSEE that are not included in or provided for in a Reserved Agreement or any new Reserved Agreement that NSR

may make with a third party. Reserved Rights shall be interpreted to include the Reserved Facilities constructed pursuant to those rights and the rights of ingress and egress related thereto, unless the context specifically requires otherwise.

(b) Definitions:

(i) The phrase "Reserved Communication Rights and Reserved Communication Facilities" shall mean the rights of NSR, or NSR's affiliates, Citico Realty Company, Southern Region Industrial Realty, Inc. and their respective successors or assigns, to retain ownership, lease, occupancy and possession of, and to maintain, repair, improve, replace, use, operate, license, lease, sublease, collocate, remove, receive utility service for or at, and exercise access rights, including ingress to and egress from the "Reserved Communication Facilities" that NSR or its affiliates, or their respective licensees, may locate on, under, over, adjacent to or near the Property. "Reserved Communication Rights" include rights reserved by NSR to retain any existing Reserved Agreements with respect to, or to grant new, easements, leases, licenses, collocations or rights for the use of the Property or adjacent property for the current or future placement, construction, installation, collocation, operation, maintenance, repair, replacement, improvement or removal of, and ingress to and egress from, and utility service to and from, Reserved Communication Facilities, whether underground, above ground or over the ground, along all or part of the length of the Property, and to retain the income from those Reserved Agreements, without costs or obligations to NSR or the third party from or to LESSEE or LESSEE's interference with, prevention of or failure to allow the proper and timely exercise of those rights, provided that the exercise of any of these current or future rights or the construction, installation, collocation, maintenance, repair, improvement, use, operation, replacement or removal of any structures, facilities, improvements or easements or ingress to or egress from, or utility service to those structures, facilities, improvements or easements, or the conduct of any activities under new Reserved Agreements shall be exercised so as to not materially interfere with Lessee's operation or use of the Line. "Reserved Communication Rights" also include any current or future radio or communication licenses or Reserved Communications Facilities on or connected with the Property, or the property on which those Reserved Communications Facilities are located, or the right of ingress to, egress from, use of or utility services to those Reserved Communications Facilities.

(ii) The phrase "Reserved Mineral, Water and Timber Rights" shall include (A) royalty interests or reservations in minerals, water or timber or mineral, water or timber rights previously created; (B) the rights to all oil, petroleum, gas, asphalt and other minerals, gaseous, liquid and solid, or water, on, in and under the Property, provided that such rights shall not include any right of surface entry for exploration, development or extraction that would materially interfere with the operation or structure of, or support for, the Line and (C) the rights to all timber on the Property, which must be harvested without interference with the operation of the Line, except to the extent such timber or timber harvesting rights or the proceeds therefrom may be covered or allocated between the parties by a separate agreement between the parties.

(iii) The phrase "Reserved Electric Line and Pipeline Rights" shall mean rights reserved by NSR to retain the income and performance from any existing Reserved Agreements with respect to the Property or to grant new, easements, leases, licenses or rights for the use of the Property or adjacent property for the construction, installation, placement, operation, maintenance, repair, replacement, improvement or removal of, and ingress to and egress from, and utility service to and from, electric transmission, distribution or service lines or facilities or pipelines or facilities, whether underground, above ground or over the ground, along all or part of the length of the Property, and to retain the income from those Reserved Agreements, without costs or obligations to NSR or the third party from or to LESSEE, provided that the exercise of any rights or the construction, placement, installation, maintenance, repair, improvement, use, operation, replacement or removal of any structures, facilities, improvements or easements or ingress to or egress from, or utility service to those structures, facilities, improvements or easements, or the conduct of any activities under new Reserved Agreements shall not materially interfere with Lessee's operation or use of the Line.

(iv) The phrase "Reserved Signboard Rights" shall mean rights reserved by NSR to retain any existing Reserved Agreements with respect to the Property and the income from and the right to perform or to require LESSEE to allow the performance of the Reserved Agreements on, under or above the Property, or to grant new, easements, leases, licenses or rights for the use of the Property or adjacent property for the construction, placement, installation, operation, maintenance, repair, replacement, improvement or removal of, and ingress to and egress from, and utility service to and from, signboards, components or related structures or attachments (collectively, "Signboards"), along all or part of the length of the Property, without costs or obligations to NSR or the third party from or to LESSEE, provided that the exercise of any rights or the construction, placement, installation, maintenance, repair, improvement, use, operation, replacement or removal of any Signboards or ingress to or egress from, or utility service to those Signboards, or the conduct of any activities under new Reserved Agreements, shall not materially interfere with LESSEE's operation or use of the Line. Reserved Signboard Rights includes rights under Reserved Agreements that allow third parties to place Signboards on all or a portion of NSR's or its parent, subsidiary or affiliated company' property, even if no Signboards are currently located on the Property pursuant to any such Reserved Agreement.

(v) The phrase "Reserved Agreements" shall mean "Ancillary Agreements" or other agreements between NSR and third parties under which the third party is given a lease, license or right, including the right to construct, install, place, access, maintain, repair, improve, replace, use, operate and remove a facility, structure, improvement or easement and to receive any necessary utility service for the use and operation of the foregoing facilities, or to conduct an activity on, under or over the Property in return for some payment or other consideration or both to NSR. NSR shall retain the income and other rights under a Reserved Agreement, and the right to perform its duties on or with respect to the Property at no cost to NSR. "Ancillary Agreements" are agreements that in whole or in part affect or relate to all or a portion of the Property or its use or operation. Such Ancillary Agreements generally grant rights to third parties or impose duties on

NSR, subject to further conditions and considerations to each party, with respect to the occupancy or use of all or a portion of the Property or adjacent or associated real property. Ancillary Agreements may include, but are not limited to, easements, leases, subleases, licenses, permits, joint facilities agreements, sidetrack agreements, industrial track agreements, rights-of-entry, public or private crossing agreements, communications agreements and signal or warning device installation or improvement agreements. An Ancillary Agreement may be a Reserved Agreement.

(vi) The phrase "Reserved Facilities", or certain types of Reserved Facilities, shall mean any structures, facilities, improvements, or components thereof, on, under, over, adjacent to or near the Property and any easements or access roads or paths located on, over, under or accessed from the Property, that are associated with Reserved Communication Rights (i.e., "Reserved Communication Facilities") or are on, over or under the Property pursuant to Reserved Agreements. "Reserved Facilities" shall also be interpreted to include activities conducted on, under or over the Property pursuant to Reserved Agreements and utility access to Reserved Facilities that require use of utilities, if the Reserved Agreement so requires. Reserved Facilities shall be interpreted to include Reserved Rights.(b) NSR's exercise of the rights in this Article shall not unreasonably interfere with LESSEE's operations, and NSR, its licensees and invitees shall be required to provide notice to LESSEE before entering the Line for the purposes described in this Article. NSR will reimburse LESSEE for direct, documented expenses that LESSEE incurs in conjunction with the facilitation of NSR's rights described in this Article.

36. ARBITRATION.

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by three (3) disinterested arbitrators. Each party shall select one arbitrator, and the two arbitrators so selected shall select a third arbitrator. If the parties fail to select such arbitrators within sixty (60) days after demand for the arbitration is made by either party, then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrators shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits, selected arbitrator and counsel. The compensation, costs and expenses of the third arbitrator shall be borne equally by the parties hereto. The arbitrators shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws. Pending the award of the arbitrators, there shall be no interruption in the transaction of business under the Agreement, and all payments in respect thereto shall be made in the same manner as prior to the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrators, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the dispute until the matter in dispute shall have fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrators.

37. NO PASSENGER RAIL USE.

Except as provided in the next sentence, LESSEE shall use the Line for freight rail transportation purposes only, and shall comply with all applicable Federal, State and local laws, ordinances and regulations in its use of the Line. LESSEE shall have the right to use the Line for passenger excursion, dinner or entertainment trains; provided that as a condition of operating any such passenger trains, LESSEE shall secure a liability insurance policy for such trains with a per-occurrence limit not less than ONE HUNDRED MILLION DOLLARS (\$100,000,000) and a self-insured retention of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000), naming NSR as an additional insured, and provide NSR with a copy of such policy. When operating such passenger excursion, dinner or entertainment trains, LESSEE agrees that in no event shall such trains operate at a speed in excess of 25 MPH. LESSEE hereby agrees to indemnify and hold harmless NSR 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.

38. ABANDONMENT, DISCONTINUANCE OR OTHER REGULATORY ACTIVITIES.

(a) Should this Agreement require the prior approval or authorization of the Surface Transportation Board ("STB") or any other regulatory agency for its implementation, modification or termination, in whole or in part, LESSEE, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application or petition to obtain that regulatory approval or authorization. LESSEE shall provide NSR a copy of the application prior to its filing. NSR will assist and support efforts by LESSEE to secure any necessary regulatory approvals. LESSEE will reimburse NSR for the cost (including attorney's fees) of obtaining any approval for which LESSEE does not timely apply or pursue but for which NSR then applies. LESSEE hereby appoints NSR its attorney in fact to apply for any regulatory authority required pursuant to this agreement. NSR may, but need not, exercise said authority at LESSEE's risk, cost and expense, should LESSEE fail to promptly do so.

(b) LESSEE will not suspend or discontinue its operations over any part of the Line without first applying for and obtaining from the STB, and any other regulatory agency with jurisdiction, any necessary certificate or exemption from regulation for such discontinuance of operations over the Line. LESSEE will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue LESSEE's operations without the prior approval of NSR, which NSR shall not unreasonably withhold. Upon such approval, NSR will cooperate and assist LESSEE in its efforts to obtain regulatory approval. If LESSEE obtains regulatory approval allowing it to abandon any segment of the Line, this Agreement shall terminate as to such segment. Any Supplemental Lease Rental due under § 15 shall be proportionately reduced (on a mileage basis) effective with the filing of a Notice of Abandonment with the Surface Transportation Board. The provisions of this subparagraph are in all respects subject to applicable provisions of the Contract, if the Contract is entered into.

(c) Upon the request of NSR, LESSEE will fully cooperate with NSR in any regulatory action it takes with the STB that is related in any way to the Line. LESSEE will further cooperate with NSR in resolving with individual shippers any issues related to the Line.

LESSEE will reimburse NSR for the cost (including attorney fees) of obtaining any required approvals for which LESSEE does not timely apply or pursue but for which NSR and/or PRR then applies.

(d) This Article shall remain effective after the termination or expiration of this Agreement.

39. EMINENT DOMAIN/CASUALTY LOSS.

If during the term of this Agreement, the Line or any part thereof is appropriated by a governmental body or agency thereof or by a quasi-public body, all awards or compensation for such appropriation or acquisition will be paid solely to NSR, NSR and LESSEE shall be free to make any claim against the appropriating or acquiring entity for the amount of any damage done to them, respectively, as a result of the appropriation or acquisition, and the Agreement will terminate as to such property as of the date of the appropriation or acquisition. In the case of a partial taking that materially interferes with LESSEE's operations over the property, the Agreement will continue with an appropriate proportional abatement of rental.

40. GOVERNING LAW.

This Agreement will be construed in accordance with the laws of the Commonwealth of Virginia.

41. APPROVALS.

On or prior to the effective date of this Agreement, LESSEE and NSR will use their best efforts to obtain appropriate corporate approvals for LESSEE's lease of the Line. [REDACTED]

42. INSURANCE.

(a) LESSEE shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject pursuant to this Agreement. Such insurance shall provide minimum limits of fifteen million dollars (\$15,000,000) per occurrence but may be subject to an annual aggregate limit of fifteen million dollars (\$15,000,000) and a per occurrence self-insured retention not in excess of two hundred fifty thousand dollars (\$250,000).

(b) If the insurance provided under this Article takes the form of a Claims Made Policy, LESSEE agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required by (a), for a period of time at least five (5) years following the termination or expiration of this Agreement. LESSEE further agrees to immediately give written notice to the Director Risk Management, Norfolk Southern

Corporation, Three Commercial Place, Norfolk, Virginia 23510, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

(c) On or before any anniversary date of this Agreement which occurs more than one year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Article, or changes in the terms and conditions of the policy, provided the cumulative amount of the increase does not exceed an average of two million dollars (\$2,000,000) for each year that this Agreement has been in effect.

(d) Every policy of insurance obtained by LESSEE pursuant to the requirements of this Article shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by LESSEE to satisfy the requirements of this Article will be subject to the approval of NSR.

(e) At least thirty (30) days prior to the Commencement Date of this Agreement, LESSEE will furnish to the Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510, an accurate copy of each policy of insurance obtained pursuant to the requirements of this Agreement. Compliance with this requirement will not relieve LESSEE of any other obligation under this Agreement and will in no way limit or modify LESSEE's obligation to provide the specific insurance coverage required by this Agreement.

43. CONFIDENTIALITY.

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement and during three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either LESSEE or NSR to any party other than LESSEE's and NSR's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other parties.

44. COUNTERPARTS.

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

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

chk-
anf

CENTRAL NEW YORK RAILROAD CORPORATION

By: _____

PRESIDENT

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

Executive Vice President Planning

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

CENTRAL NEW YORK RAILROAD CORPORATION

By: _____

NORFOLK SOUTHERN RAILWAY COMPANY

By: Kathryn B. McGuire
Executive Vice President Planning

Attachment A	Description of Line
Attachment B	Trackage Rights Agreement
Attachment C	Maintenance Standards
Attachment D	Revenue Requirements
Attachment E	Miscellaneous Charges
Attachment F	Supplemental Lease Rental
Attachment G	Interchange Agreement(s)
Attachment H	Partial Assignment of NYS&W Trackage Rights Agreement
Attachment I	List of names and addresses for notice purposes

ATTACHMENT A

Description of Property to Be Leased

1.) End points of the Line to be leased:

Between Mile Post SR 89.9 (junction of MNCR) and Mile Post 213.0 (0.2 miles east of CP-BD), a distance of 123.1 miles, more or less.

ATTACHMENT B

[Form of Trackage Rights Agreement]

ATTACHMENT C

Maintenance Standards

The following maintenance standards will apply to any segment of the Line that was active as of the Commencement Date, on main track only:

Until January 1, 2009, Federal Railroad Administration Class 2 track (25 MPH), with no more than ten percent (10%) of the route miles slow ordered.

Effective January 1, 2009, Federal Railroad Administration Class 3 track (40 MPH), with no more than 10% of the route miles slow ordered.

If LESSEE finds that any active segment of the Line does not meet these maintenance standards as of the Commencement Date, then LESSEE shall have until December 31, 2006 to achieve compliance with such standards.

ATTACHMENT D

LESSEE Revenue Requirements

LESSEE revenue requirements will be as follows: \$[REDACTED] per loaded railcar to or from Kirkwood, NY, performed as a switching service (Kirkwood, NY will be open to switch for NS); and \$[REDACTED] per loaded railcar elsewhere on the Line, as a fixed division of revenue.

In the event the provisions of Article 15B become effective, then LESSEE's revenue requirements will increase by \$[REDACTED] with respect to loaded railcars moving to or from Kirkwood, NY, and by \$[REDACTED] with respect to loaded railcars moving elsewhere on the Line, from the then current levels for such movements.

These revenue requirements are applicable to traffic originating or terminating at all LESSEE stations, via any interchange. LESSEE is responsible for car hire expense while cars are on LESSEE, except with respect to the switching service to or from Kirkwood, NY.

Revenue requirements shall be adjusted for inflation in the same manner as Lease Rentals are to be adjusted, pursuant to Article 15 of the Agreement.

Revenue requirements shall be adjusted to reflect any fuel surcharges imposed by NSR.

ATTACHMENT F

Miscellaneous Charges

Charges are chargeable by LESSEE to NSR, or by NSR to LESSEE, as indicated below:

- 1.) Misrouting (Car interchanged at an interchange other than the previously agreed to by the parties):
[REDACTED]
- 2.) Setback (Car interchanged by one party to the other, in error – receiving carrier is not part of the movement):
[REDACTED]
- 3.) Rejected empties (Empty car supplied by one party and interchanged to the other, and rejected for good cause by the shipper for loading):
[REDACTED]
- 4.) Refused loads (Loaded cars interchanged by one party to the other and refused by the consignee for reasons requiring consignee to pay an additional rate for reverse movement of the car):

LESSEE Revenue Requirements applies in both directions (as if car is deemed to be two loaded movements)

ATTACHMENT F

[Attach – SUPPLEMENTAL LEASE RENTAL]

REDACTED IN ITS ENTIRETY

ATTACHMENT G

[Attach – INTERCHANGE AGREEMENT]

ATTACHMENT H

[Attach – Partial Assignment of NYS&W Trackage Rights Agreement]

ATTACHMENT I

Notice Addresses

If to NSR:

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

If to CNY:

195 Blackbrook Road
Lake Nancy, NY 12850

CAPTION SUMMARY

EXHIBIT C

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34643

**CENTRAL NEW YORK RAILROAD CORPORATION
- LEASE AND OPERATION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY**

Central New York Railroad Corporation ("CNY"), a Class III carrier, has filed a Notice of Exemption to lease and operate approximately 123.1 miles of rail line currently owned by Norfolk Southern Railway Company ("NS") between milepost 89.9 at or near Port Jervis and milepost 213.0 at Binghamton, in the Counties of Broome, Sullivan, Delaware and Orange, New York, and the Counties of Pike and Susquehanna, Pennsylvania. NS is retaining overhead trackage rights over the rail line.

Comments must be filed with the Board and served on CNY's representative, Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2808; (215) 563-9400.

The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.