



Norfolk Southern Corporation  
Law Department  
Three Commercial Place  
Norfolk, Virginia 23510-9241

**Writer's Direct Dial Number**

(757) 629-2759  
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James R. Paschall  
Senior General Attorney



May 2, 2006

ENTERED  
Office of Proceedings

MAY 11 - 2006

Part of  
Public Record

Original and 10 copies via DHL Express

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

216484  
216485  
216489  
Re: STB Docket No. AB-290 (Sub-No. 254X), Norfolk Southern Railway Company - Petition for Exemption - Discontinuance of Service - Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina; STB Docket No. AB-290 (Sub-No. 274X), Yadkin Railroad Company - Petition for Exemption - Discontinuance of Service and Operating Rights Under Lease - Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina;  
STB Docket No. AB-149 (Sub-No. 2), Winston-Salem Southbound Railway Company - Petition for Exemption - Discontinuance of Service and Operating Rights Under Lease - Between Whitney, NC and Badin, NC, in Stanly County, North Carolina

Dear Mr. Williams:

In line with the Board's request, I enclose for the record in the above dockets an original and ten copies of NSR's petition for exemption in *Norfolk Southern Railway Company - Corporate Family Transaction Exemption - Yadkin Railroad Company*, STB Finance Docket No. 33951 (STB served December 12, 2000).

Yours very truly,

James R. Paschall

Enclosures

Mr. Vernon A. Williams  
Re: AB-290, Sub-No. 254X  
AB-290, Sub-No. 274X  
AB-149, Sub-No. 2X

Page 2 of 2  
May 2, 2006

cc w/ encl.:

Ms. Sue Koessler  
Alcoa, Inc.  
1100 Riverview Tower  
900 S. Gay Street  
Knoxville, TN 37902

Mr. Michael F. McBride  
LeBoeuf, Lamb, Greene & MacRae LLP  
1875 Connecticut Avenue, N.W.  
Washington, DC 20009

Via DHL Express

Mr. Patrick B. Simmons  
Director - Rail Division  
North Carolina Department of Transportation  
1533 Mail Service Center  
Raleigh, NC 27699-1533

Ms. JoAnne Sanford, Chair  
North Carolina Utilities Commission  
P. O. Box 29510  
Raleigh, NC 27626

United States Department of Defense  
Military Traffic Management Command (MTMCTEA)  
Transportation Engineering Agency  
Railroads for National Defense Program  
720 Thimble Shoals, Blvd., Suite 130  
Newport News, VA 23606-2574

Mr. Tom Ross, Chief of National Recreation and Trails  
U. S. Department of the Interior - National Park Service  
Recreation Resources Assistance Division  
P.O. Box 37127  
Washington, D.C., 20013-7127

U. S. Department of Agriculture,  
Chief of the Forest Service  
4th Floor N.W., Auditors' Building  
14th Street and Independence Avenue, S.W.  
Washington, D.C. 20250



**NORFOLK  
SOUTHERN**

Norfolk Southern Corporation  
Law Department  
Three Commercial Place  
Norfolk, Virginia 23510-9242

114  
**Maquiling B. Parkerson  
Assistant General Attorney**

Writer's Direct Dial Number

(757) 533-4939  
Fax: (757) 533-4872

November 28, 2000

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

Re: STB Finance Docket No. 33951, Norfolk Southern Railway Company -  
Corporate Family Transaction - Yadkin Railroad Company

Dear Mr. Williams:

Pursuant to 49 C.F.R. § 1180.4(g)(1), applicants Norfolk Southern Railway Company and Yadkin Railroad Company hereby submit the attached Notice of Exemption. Ten copies of the Notice, with exhibits, are included pursuant to 49 C.F.R. § 1104.3(a). A disk containing the Notice of Exemption in WordPerfect format is also included. Twenty unbound copies of the map marked Exhibit 1 are included pursuant to 49 C.F.R. § 1180.6(a)(6).

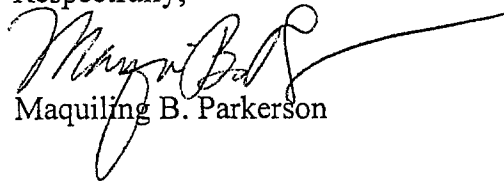
Also included is a check in the amount of one thousand one hundred dollars (\$1,100), as required by 49 C.F.R. § 1002.2(f)(38)(iv).

The enclosed Notice of Exemption is for a proposed lease of the line of Yadkin Railroad Company to Norfolk Southern Railway Company. Norfolk Southern Railway Company and its predecessor companies have been operating the line of Yadkin Railroad Company under a lease which will expire December 31, 2000. The current lease was approved by the Interstate Commerce Commission in Finance Docket No. 17158, Carolina & Northwestern Railway Company, Control, Etc., 282 I.C.C. 803 (1951). The proposed lease is exempt from the requirements of Part 1180 of the Surface Transportation Board's regulations because it is a renewal of a previously approved lease (49 C.F.R. § 1180.2(d)(4)) and a transaction within the corporate family (49 C.F.R. § 1180.2(d)(3)).

November 28, 2000  
Page 2

Please do not hesitate to call if you have any questions regarding the enclosed documents.

Respectfully,

A handwritten signature in black ink, appearing to read 'Maquiling B. Parkerson', with a long, sweeping horizontal line extending to the right.

Maquiling B. Parkerson

Attachments

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 33951

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NORFOLK SOUTHERN RAILWAY COMPANY  
- CORPORATE FAMILY TRANSACTION -  
YADKIN RAILROAD COMPANY

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NOTICE OF EXEMPTION

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NOW COME Norfolk Southern Railway Company ("NSR") and Yadkin Railroad Company ("Yadkin") and state as follows:

This is a notice of intent to engage in a transaction found by the Surface Transportation Board's ("Board's") predecessor, the Interstate Commerce Commission ("Commission"), to be presumptively exempt from Board regulation pursuant to 49 U.S.C. § 10502. The transaction, a lease of the entirety of Yadkin's line of railroad and all associated improvements (the "Yadkin Line") to NSR, is generally exempt from the requirements of Part 1180 of the Board's regulations because it is a renewal of a lease previously approved by the Commission. It is also exempt because it is within the NSR corporate family and will not result in changes in service levels, operational changes or a change in the competitive balance with carriers outside the NSR corporate family.

In Ex. Parte No. 282 (Sub-No. 3), Railroad Consolidation Procedures, 363 I.C.C. 200 (1980) and 366 I.C.C. 75 (1982), the Commission determined that certain types of transactions, set forth at 49 C.F.R. § 1180.2(d), are presumed exempt: among them, “[r]enewal of leases and any other matters where the Board has previously authorized the transaction, and only an extension of time is involved” (49 C.F.R. § 1180.2(d)(4)) and “[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family” (49 C.F.R. § 1180.2(d)(3)).

The Board’s regulations at § 1180.4(g)(1) provide that, to avail itself of such an exemption, a rail carrier must file a verified notice of the transaction. Accordingly, pursuant to the requirements of § 1180.4(g)(1), NSR and Yadkin file this notice and submit the following required information:

I. Description of Corporate Family Transaction

A. 49 C.F.R. § 1180.6(a)(1):

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

This notice is filed on behalf of Norfolk Southern Railway Company, a Virginia corporation, and Yadkin Railroad Company, a North Carolina corporation, each having a business address at Three Commercial Place, Norfolk, Virginia 23510-2191. The name, address and telephone number of the parties’ counsel to whom questions may be

addressed is:

Maquiling B. Parkerson  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
(757) 533-4939

NSR is a Class I railroad that, together with its rail subsidiaries, operates over 21,800 miles of railroad in 23 states. Yadkin, one of NSR's rail subsidiaries, is a Class III railroad that owns approximately 30 miles of road located in North Carolina. NSR owns 90.40% of the common stock of Yadkin and operates the Yadkin Line as an integral part of its rail network.

NSR and its predecessors have leased Yadkin's entire line of railroad since July 1, 1951. The Yadkin lease will expire on December 31, 2000. The purpose of the proposed transaction is to enter into an agreement whereby NSR will continue to lease and operate the line of railroad owned by Yadkin.

The lease of the Yadkin Line by the Carolina and Northwestern Railway Company, a predecessor of Norfolk Southern Railway Company, was approved by the Interstate Commerce Commission in Finance Docket No. 17158, Carolina & Northwestern Railway Company, Control, Etc., 282 I.C.C. 803 (1951). The Board's exemption for "renewal of leases and any other matters where the Board has previously authorized the transaction, and only an extension of time is involved" therefore applies in this case. 49 C.F.R. § 1180.2(d)(4). Yadkin and NSR contemplate an extension of time

on the lease arrangement that was approved by the ICC.<sup>1</sup>

In addition, the proposed transaction also fits the criteria of the Board's exemption for intra-family transactions because it will not result in (i) adverse changes in service levels, (ii) significant operational changes, or (iii) a change in the competitive balance with carriers outside the corporate family. 49 C.F.R. § 1180.2(d)(3). In fact, no change to rail service or operations is expected as a result of the proposed transaction; NSR will continue to operate the Yadkin line of railroad as part of its unified rail system exactly as it did prior to the transaction.

No effects on employees are anticipated. The interests of rail employees will be addressed adequately by imposition of standard labor protective provisions for leases, as set forth in Mendocino Coast Ry., Inc. - Lease and Operate, 360 I.C.C. 653, aff'd sub nom. Railway Labor Executives Association v. I.C.C., 675 F.2d 1248 (D.C. Cir. 1982).

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

The transaction will be consummated prior to December 31, 2000.

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<sup>1</sup> The proposed lease extends the term of the lease arrangement until 2025 with an optional twenty-five year extension thereafter. In addition, other lease terms, including the rental amount, have been modernized. The subject matter and essential terms of the lease remain substantially the same.

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

The purpose of the proposed transaction is to allow NSR to continue to lease and operate the Yadkin Line. By continuing the lease arrangement, NSR will continue to have access to a line of railroad that it has integrated into its system for the term of the lease. Yadkin at this time does not have the facilities and equipment to operate as a separate entity.

Under the lease, the operation of the railroad will not change. As in the original lease, NSR will have the exclusive right to operate the Yadkin Line. The compensation NSR pays Yadkin for the lease will be adjusted to reflect the current value of the Yadkin line of railroad.

B. 49 C.F.R. § 1180.6(a)(5)-(7):

NSR and its consolidated railroad subsidiaries own or operate lines of railroad in the states of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia. Yadkin owns property located entirely in the state of North Carolina.

A map showing the line of railroad owned by Yadkin in relation to the NSR rail system is attached as Exhibit 1 hereto.

A copy of the proposed Lease Agreement between Yadkin and NSR is attached as

Exhibit 2 hereto.

II. Other Matters

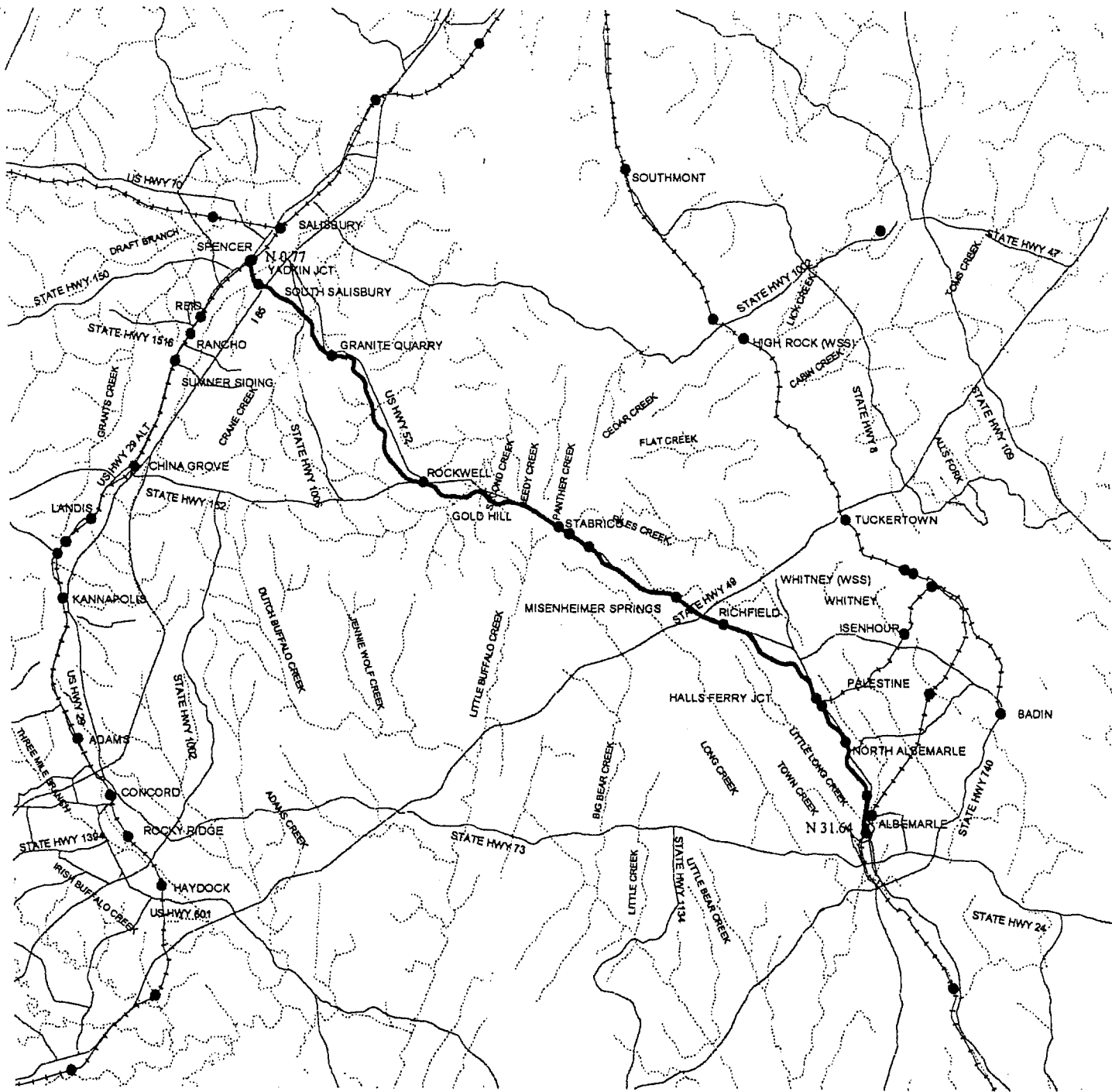
The proposed corporate family transaction will not have a significant effect on the quality of the human environment or on the consumption of energy. Because the proposed lease does not involve a change in carrier operations, no environmental reports or documentation are required under 49 C.F.R. Part 1105.

Respectfully submitted,

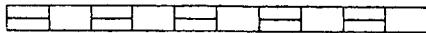


Maquiling B. Parkerson  
Assistant General Attorney  
Norfolk Southern Corporation

Dated: November 28, 2000



0 1 2 3 4 5 6 7 8 9 10 Miles



**Yadkin Railroad Co.**  
Owning Company

Office of Chief Engineer - Design & Construction Atlanta, Ga

|                                                                              |                    |          |                |
|------------------------------------------------------------------------------|--------------------|----------|----------------|
| 1                                                                            | MB L-E             | 10/16/00 |                |
| Rev.                                                                         | By                 | Date     | Description    |
| Location Yadkin Jct. to So. Albemarle, NC                                    |                    |          |                |
| Title Proposed Lease to Norfolk Southern<br>Between MP N 0.77 and MP N 31.64 |                    |          |                |
| Dgn                                                                          | Val Sec            | Map      | Mile Post      |
| Dwn RPD                                                                      | File 188 - 24      |          | Drawing Number |
| Chk                                                                          | Date Sep. 27, 2000 |          | TA00 - 0150    |

CADD File  
Field Book

Sheet 1 of 1

**LEASE AGREEMENT**

THIS INDENTURE OF LEASE AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2000, by and between **YADKIN RAILROAD COMPANY**, a North Carolina corporation (hereinafter referred to as "Yadkin") and **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (hereinafter referred to as "NSR").

**WITNESSETH:**

**WHEREAS**, Yadkin is the owner of a line of railroad including real property, railroad right-of-way, railroad facilities, and appurtenances located thereon and affixed thereto between Yadkin Junction, North Carolina, and Albermarle, North Carolina; and

**WHEREAS**, the railroad, physical properties, equipment, materials and supplies, contracts, rights, powers, franchises and privileges of Yadkin were leased to Carolina and Northwestern Railway Company, a predecessor of NSR, by a lease dated July 1, 1951, and expiring December 31, 2000; and

**WHEREAS**, Yadkin desires to continue to lease said line of railroad to NSR, and NSR desires to continue to lease and operate said line of railroad upon the terms and conditions set forth herein;

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

**1. PROPERTY COVERED.** Yadkin hereby leases to NSR, effective on the Commencement Date hereinafter stated, on an exclusive basis, the line of railroad owned by Yadkin, which is located between Yadkin Junction, North Carolina, and Albemarle, North Carolina (hereinafter referred to as the "Yadkin Line"), all in (except to the extent provided otherwise in this Lease) "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. This Lease includes without limitation the real property, railroad right of way, road bed, main track, sidings, industrial tracks, depots, yards, storage and parking areas, culverts, bridges, buildings, structures, communication and signal facilities, equipment, materials, supplies, fixtures, and all other appurtenances and all contracts, rights, powers, franchises and privileges of Yadkin. This Lease does not include the cash, securities and other financial investments, intercompany advances or liabilities of Yadkin.

**2. RIGHT TO POSSESSION.** On the Commencement Date provided for in Article 6 of this Lease, Yadkin will deliver to NSR possession of the Yadkin Line for NSR's lease and operation.

**3. TERM.** The term of the lease of the Yadkin Line to NSR will be twenty-five (25) years from the Commencement Date provided for in Article 6 of this Lease, and shall be automatically extended for an additional twenty-five (25) year term unless either party provides the other with twelve (12) months' written notice of termination before the end of the initial term.

**4. POSSESSION OF PREMISES AFTER END OF TERM.** If, subject to the right of Yadkin to seek removal of NSR from the Yadkin Line by all applicable legal means, NSR

holds over or remains in possession of the Yadkin Line after the expiration of the Lease, such holding over or continued possession will create a tenancy from month to month only, and monthly rental for such period will be equal to one-twelfth (1/12) of the Annual Rental provided for in Article 5(b) of this Lease and will be payable as set forth in Article 5(c) of this Lease.

**5. RENTAL.** (a) Unless modified by mutual agreement, as rental for NSR's lease of the Yadkin Line, NSR will pay to Yadkin the Annual Rental as hereinafter defined, provided that the rental for any lease year that is less than 365 days shall be prorated. If any segment of the Yadkin Line is abandoned or disposed of by NSR pursuant to Articles 7(b) or 7(c) herein, the Annual Rental shall be reduced as of the effective date of the abandonment order, certificate of exemption or disposition by the percentage reduction in the miles of the Yadkin Line included in this lease.

(b) NSR shall pay Yadkin one hundred thirty six thousand dollars (\$136,000) as rental for the first year of this Lease (the "Base Rental"). The Base Rental shall be adjusted annually during the term of this Lease by the same percentage of increase or decrease as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84 = 100) specified for All Items - United States" compiled by the Bureau of Labor Statistics of the United States Department of Labor (the "Price Index"). The following method shall be used to make adjustments hereunder:

- (i) Adjustments shall be made annually effective on the anniversary of the Commencement Date.
- (ii) Each annual adjustment shall be made with reference to the Price Index for the fourth month immediately preceding the month in which the adjustment is made

(the "Current Price Index").

- (iii) Each adjustment shall be made by determining the percentage increase of the then Current Price Index divided by the price index for the calendar month of the Commencement Date (the "Base Price Index").
- (iv) The percentage thus determined shall be multiplied by the Base Rental, and the product thus determined shall represent the rent payable until another adjustment is made (the "Annual Rental").

$$\frac{\text{Current Price Index}}{\text{Base Price Index}} \times \text{Base Rental} = \text{Annual Rental}$$

In the event the Price Index is converted to a different standard reference base or otherwise revised, changed or eliminated the determination of the percentage increase shall be made with the use of such conversion factor, formula or table for converting the Price Index as may then be substituted.

(c) Annual Rental for each year will be due and payable by NSR no later than December 31 of each year.

(d) Acceptance by Yadkin (or whomever has the right to collect rent as owner, designee, or assignee of Yadkin's rights under this Lease) of Annual Rental paid by NSR pursuant to this Article will not be taken or construed to be a waiver of any provision of this Lease.

**6. COMMENCEMENT DATE.** The term of this Lease shall commence on January 1, 2001. Insofar as this Lease is concerned, that day shall be known as the "Commencement Date."

**7. USE OF LEASED PROPERTY.** (a) During the term of this Lease, NSR will use

the Yadkin Line to provide service as a rail carrier and for any other lawful purpose. NSR shall comply with all applicable federal, state and local laws, ordinances and regulations in its use of the Yadkin Line. NSR hereby agrees to indemnify and hold harmless Yadkin 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.

(b) During the term of this Lease, NSR will not discontinue its operation as a rail carrier over all or any part of the Yadkin Line without first applying for and obtaining from the Surface Transportation Board ("STB"), and any other regulatory agency with jurisdiction, any necessary order or certificate of exemption from regulation for such discontinuance of operations over the Yadkin Line. NSR will not seek such regulatory authority, or if no regulatory authority is needed, take any action to discontinue its operations on the Yadkin Line, without first giving Yadkin notice of NSR's intent to do so. Upon receipt of such notice, Yadkin will cooperate with and assist NSR in its applications for and efforts to obtain any necessary regulatory approvals or exemptions. If rail operations are abandoned over any segment of the Yadkin Line, this Lease shall terminate as to the abandoned segment with a corresponding adjustment in the Annual Rental as stated in Article 5 herein. As soon as practicable following such termination, NSR shall surrender the abandoned segment in good order to Yadkin, and restore the segment to its condition as of the Commencement Date of this Lease, normal wear and tear excepted. NSR shall not be required to replace or restore any of the leased property sold or disposed of pursuant to Article 7(c) of this Lease.

(c) During the term of this Lease, NSR shall have the right to sell or otherwise dispose of any portion of the leased assets no longer necessary in connection with the operation and

maintenance of the Yadkin Line. Upon the sale or disposition of the leased property, such property and any proceeds shall belong to NSR; provided, however, that NSR shall pay to Yadkin an amount equal to the net salvage value of such property. The net salvage value equals the fair market value of the property less the costs, including but not limited to labor, salvage costs, legal fees, and selling expenses, which would be incurred in removing and selling the property. If the property is sold by NSR, the sale price, less any costs incurred by NSR in the sale of the property, shall conclusively equal the net salvage value.

**8. ALLOCATION OF INCOME AND EXPENSES.** Any income accrued on or subsequent to the Commencement Date during the term of this Lease and any claims, expenses, and liabilities which arise or are accrued on or subsequent to the Commencement Date during the term of this Lease in respect of the Yadkin Line will belong to, be paid to, and be the responsibility of NSR, and it will be the obligation of NSR to collect such income and to pay or otherwise to resolve such claims, expenses, and liabilities.

**9. TAXES.** (a) After the Commencement Date provided for in Article 6 herein and during the term of this Lease, NSR will pay when due, and prior to the imposition of any penalty, all licenses, taxes, levies, or assessments of whatever kind or nature which may become a lien against the Yadkin Line, other than as a result of an act or omission of Yadkin, and will indemnify Yadkin 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 NSR to contest any such license, tax, levy, or assessment in appropriate judicial or administrative proceedings. Upon request, NSR will present to Yadkin 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, NSR will reimburse Yadkin for any such licenses, taxes, levies, or assessments paid by Yadkin, and upon request by NSR, Yadkin will present to NSR for inspection the official receipts (or photocopies thereof) showing the payment of any of such licenses, taxes, levies, and assessments.

**10. UTILITIES.** Beginning on the Commencement Date provided for in Article 6 herein and during the term of this Lease, NSR will pay all bills for water, sewer, gas, and electric service to the Yadkin Line.

**11. EMINENT DOMAIN.** If during the term of this Lease, the Yadkin Line or any part thereof is appropriated or otherwise acquired 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 Yadkin, and the Lease will terminate as to such property. In the case of a partial taking that materially interferes with NSR's operations over the property, the Lease will continue with an appropriate proportional abatement of rental.

**12. MAINTENANCE AND IMPROVEMENTS.** During the term of the Lease, at its sole cost and expense, NSR properly will maintain the Yadkin Line in a condition appropriate to its usage. NSR's maintenance obligations hereunder will include any function which Yadkin, but for this Lease, would be required to perform pursuant to applicable federal, state, and municipal laws, ordinances, and regulations. NSR shall have the right to relocate switches and industrial tracks and to upgrade the existing line, all at NSR's sole expense.

**13. LIENS.** NSR will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by NSR during the term of the Lease in

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

**14. ENVIRONMENTAL.** (a) NSR will not create or permit to be created or to exist upon the Yadkin Line any use, storage or disposal, excluding any use, storage or handling incidental to transportation or maintenance of track and/or right of way, of hazardous substances, hazardous wastes, or toxic materials during the continuance of this Lease, and NSR shall indemnify and hold harmless Yadkin and all of its directors, officers, agents, or employees, from and against any suit or claim growing out of any such use, storage or disposal thereon. NSR shall install and bear the expense of any and all pollution control structures, devices or equipment that are required during the term of this Lease under applicable federal, state or local laws, ordinances or governmental regulations and which relate directly to railroad operations conducted by NSR over the Yadkin Line. During the term of this Lease, NSR will comply with all applicable federal, state and local laws, rules, governmental regulations or ordinances controlling air, water, noise, hazardous wastes, solid wastes and other pollution or relating to the storage, transport, release or disposal of hazardous materials, substances, wastes or other pollutants, including any pertaining to any repair, rehabilitation, maintenance, reconstruction or construction conducted by NSR on the Yadkin Line.

(b) Yadkin shall be responsible to NSR and shall defend, indemnify, and hold harmless NSR, its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents or employees, from and against any and all liabilities, damages, penalties, fines, claims, demands, causes of actions, liens, suits, costs, judgments and expenses, including costs of

defense and reasonable attorneys' fees and reasonable consultants' fees, arising out of any conditions existing on the Yadkin Line as of the Commencement Date of this Lease (the "Preexisting Conditions"), unless Yadkin proves that NSR caused or created such conditions, or unless Yadkin proves that NSR exacerbated such conditions, in which case Yadkin's responsibility shall not extend to the exacerbation of such conditions. This indemnification shall survive the term of this Lease.

(c) NSR shall be responsible to Yadkin and shall defend, indemnify and hold harmless Yadkin, its parent corporation, subsidiaries and affiliates, and all of its directors, officers, agents or employees, from and against any and all liabilities, damages, penalties, fines, claims, demands, causes of actions, liens, suits, costs, judgments and expenses, including costs of defense and reasonable attorneys' fees and reasonable consultants' fees, arising (i) out of contamination of the Yadkin Line after the Commencement Date of this Lease caused by NSR's operations on the Yadkin Line, unless NSR proves that Yadkin caused or created such condition after the Commencement Date of this Lease, or (ii) out of NSR's exacerbation of any Preexisting Conditions. This indemnification shall survive the term of this Lease.

(d) NSR will furnish Yadkin written notice of any and all releases of hazardous substances and/or regulated substances on the Yadkin Line which occur during the term of the Lease whenever such releases are required to be reported to any federal, state or local authority. Such written notice will identify the substance released, the amount released and the measures undertaken, if any, to clean up and remove the released material and any contaminated soil or water. NSR will also provide Yadkin with copies of any reports made to any governmental agency which relate to such releases during the term of the Lease.

(e) During the term of the Lease, Yadkin shall have the right to enter the Yadkin Line for

the purpose of inspecting to ensure compliance with the requirements of this paragraph. In order to exercise this right to enter the property for inspection, Yadkin must first give NSR seventy two (72) hours advance notice of its plan to inspect the property and must thereafter comply with any instructions of NSR designed to insure the safety of the personnel and property of Yadkin and NSR. To provide the required advance notice of inspection to NSR, Yadkin shall contact the Division Engineer at (803) 255-4251. If Yadkin detects any violation of this paragraph, including any contamination of the Yadkin Line occurring during the term of this Lease, Yadkin will notify NSR. Upon receipt of such notice, NSR will take immediate steps to eliminate the violation to the reasonable satisfaction of Yadkin. Should NSR inadequately remedy or fail to eliminate the violation, Yadkin shall have the right to enter the Yadkin Line to take whatever corrective action Yadkin reasonably deems necessary to eliminate the violation, at the sole expense of NSR.

(f) As to the provisions of this article only, as to each other, Yadkin and NSR hereby waive any statute of limitations defense, provided, however, that if one party gives the other party written notice of contamination of the Yadkin Line, 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 statute of limitations for any matter not covered in said written notice shall continue.

**15. INDEMNIFICATION.** The liability of the parties hereto, as between themselves, for death, personal injury, or property damage will be determined as follows:

Except where the sole proximate cause of such injury, death, loss, or damage is the negligence or intentional tortuous act of Yadkin, NSR will indemnify and save harmless Yadkin

and its officers, agents, employees, lessors, subsidiaries, affiliates, successors, and assigns from and against any and all loss, damage, claims, judgments, expense including attorneys' fees and disbursements, or liability for: (i) injury to or death of any person occurring on or about the Yadkin Line during the term of or in connection with this Lease; and (ii) loss of or damage to any property whatsoever, including but not limited to the property covered by this Lease, where such injury, death, loss, or damage is caused by, arises out of, results from, or is incident to (A) the condition or existence of the property covered by this Lease or (B) NSR's lease, use, or operation of such property or any portion thereof.

**16. NO COVENANT OF QUIET ENJOYMENT.** Nothing in this Lease implies or imports a covenant by Yadkin for quiet enjoyment by NSR of the Yadkin Line during the term of this Lease, and nothing in this Lease implies or imports any representation by Yadkin that the fee title to the Yadkin Line is owned by Yadkin, provided, however, that Yadkin does represent that the Yadkin Line currently is operated by NSR as a continuous line of railroad and that Yadkin is granting NSR sufficient rights hereunder to conduct continued rail common carrier operations on the Yadkin Line.

**17. COMMON CARRIER RESPONSIBILITY.** On the Commencement Date provided for in Article 6 of this Lease, NSR will assume and relieve Yadkin of all common carrier responsibility and obligation for the Yadkin Line (other than the residual common carrier obligation of Yadkin arising from Yadkin's ownership of a line used in interstate commerce), including performance of rail carrier service along the Yadkin Line.

**18. CORPORATE APPROVALS.** On or prior to the effective date of this Lease, NSR and Yadkin will obtain appropriate corporate approvals for NSR's lease of the Yadkin Line.

**19. LABOR.** Each party agrees to indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon that agency's approval or exemption of this Lease and operations hereunder, or pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

**20. REGULATORY APPROVAL.** NSR will apply for and obtain from the STB, or any other regulatory agency with jurisdiction, any necessary approvals or exemptions from regulation for its lease and operation of the Yadkin Line, and Yadkin will cooperate with and assist NSR in its applications for and efforts to obtain such regulatory approvals or exemptions.

**21. NO THIRD PARTY BENEFICIARY.** This Lease is intended for the sole benefit of the parties hereto, nothing in this Lease is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns, any right pursuant to any provision or term of this Lease, and all provisions and terms of this Lease are and will be for the sole and exclusive benefit of the parties to this Lease.

**22. WAIVERS.** Any waiver at any time of a breach of any provision, condition, obligation, or requirement of this Lease will extend only to the particular breach so waived and

will not impair or affect the existence of any provision, condition, obligation, or requirement of this Lease or the right of Yadkin thereafter to avail itself of any breach, subject to such waiver.

**23. TERMINATION.** This Lease may be terminated if for a period of thirty (30) days either Yadkin or NSR fails to keep or perform any one or more of the covenants or obligations under this Lease and if such failure continues for a period of sixty (60) days from the date of receipt of written notice of such failure. This Lease may also be terminated at any time by the mutual consent of NSR and Yadkin.

**24. EFFECT OF TERMINATION.** (a) Upon expiration of NSR's lease of the Yadkin Line or if NSR's lease of the Yadkin Line is terminated, NSR will forthwith vacate and surrender the Yadkin Line (upon obtaining necessary regulatory authority or exemption, which NSR shall promptly seek). NSR shall surrender any segments of the Yadkin Line over which NSR was actually conducting rail operations at the time of the termination in a condition at least equal to the Federal Railroad Administration Class I standards. NSR shall surrender all other leased property in good order to Yadkin, and restore the property to its condition as of the Commencement Date of this Lease, normal wear and tear excepted. NSR shall not be required to replace or restore any of the leased property sold or disposed of pursuant to Article 7(c) of this lease.

(b) Provided that all sums due Yadkin under this Lease have been paid and all NSR's obligations and covenants under this Lease have been performed, NSR may remove from the Yadkin Line any and all structures or other property belonging to NSR or which NSR caused or permitted to be placed or erected on the Yadkin Line and which are the property of NSR. Such removal will be effected without damage to the property of Yadkin. If NSR fails to make such

removal within sixty (60) days from the date of termination of the Lease, Yadkin may take title thereto without consideration of any kind therefor or claim by NSR or anyone claiming an interest by or through NSR, or Yadkin may remove all or any part of such structures and/or property and restore the Yadkin Line to its former condition at the sole expense of NSR, and NSR will reimburse Yadkin for such expense within thirty (30) days of receipt of a bill or bills therefor.

**25. CHOICE OF LAW.** This Lease will be construed in accordance with the laws of the United States of America and the State of North Carolina.

**26. COUNTERPARTS.** This Lease 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 duly executed this Lease as of the day and  
year first above written.

In the presence of:

**YADKIN RAILROAD COMPANY**

\_\_\_\_\_  
As to Yadkin

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

In the presence of:

**NORFOLK SOUTHERN RAILWAY COMPANY**

\_\_\_\_\_  
As to NSR

By \_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Secretary