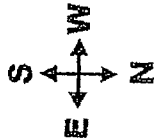


Keag to CPF467

The Direction from Keag to CPF467 is West



Special Requirements Applicable to Designated Automatic Block Signals.

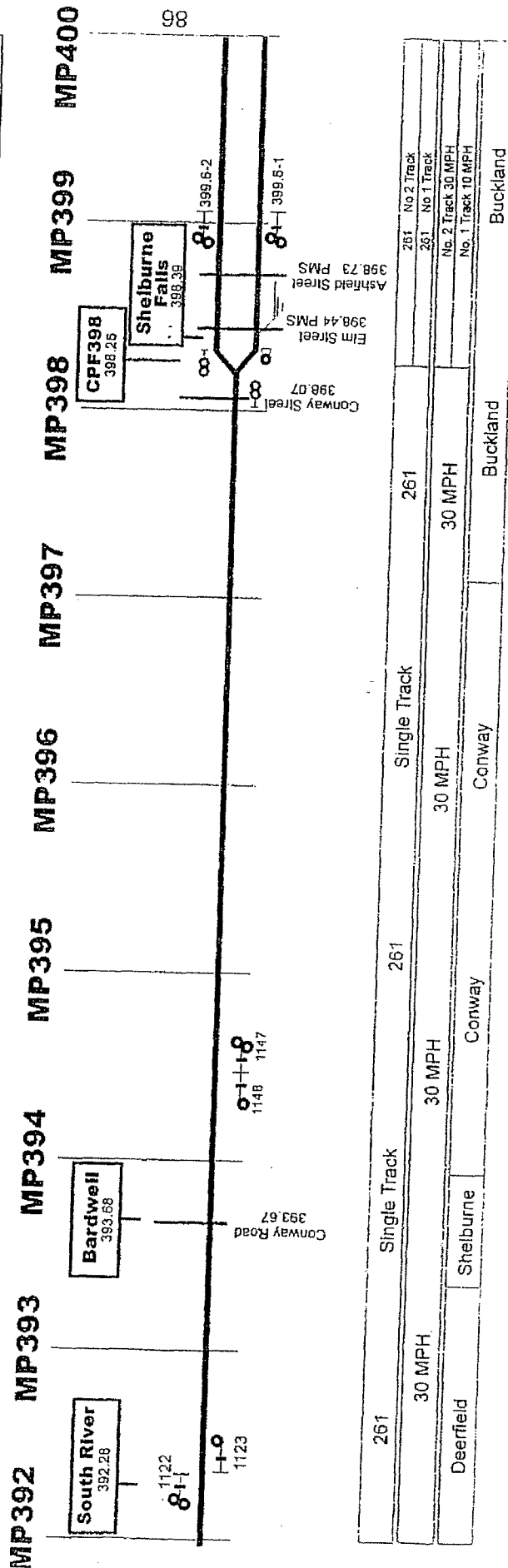
In order to avoid obstructing crossing at grade, when the specified trains (based on 50 foot cars) encounter an Approach (Rule 285) or a Stop and Proceed Indication (Rule 291) on the following Automatic Block Signals, they must be stopped at the signal and the Train Operations Manager advised. Movement must not be resumed until the Train Operations Manager advises that it is permissible to proceed or a more permissive signal indication is received:

Location: (City or Town)	ABS Signal No.	Applies to	TOM
Shelburne Falls	No. 399.6-2	Eastward Trains	4
Shelburne Falls	No. 399.6-1	Eastward Trains	4

261: Equilateral Turnouts

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

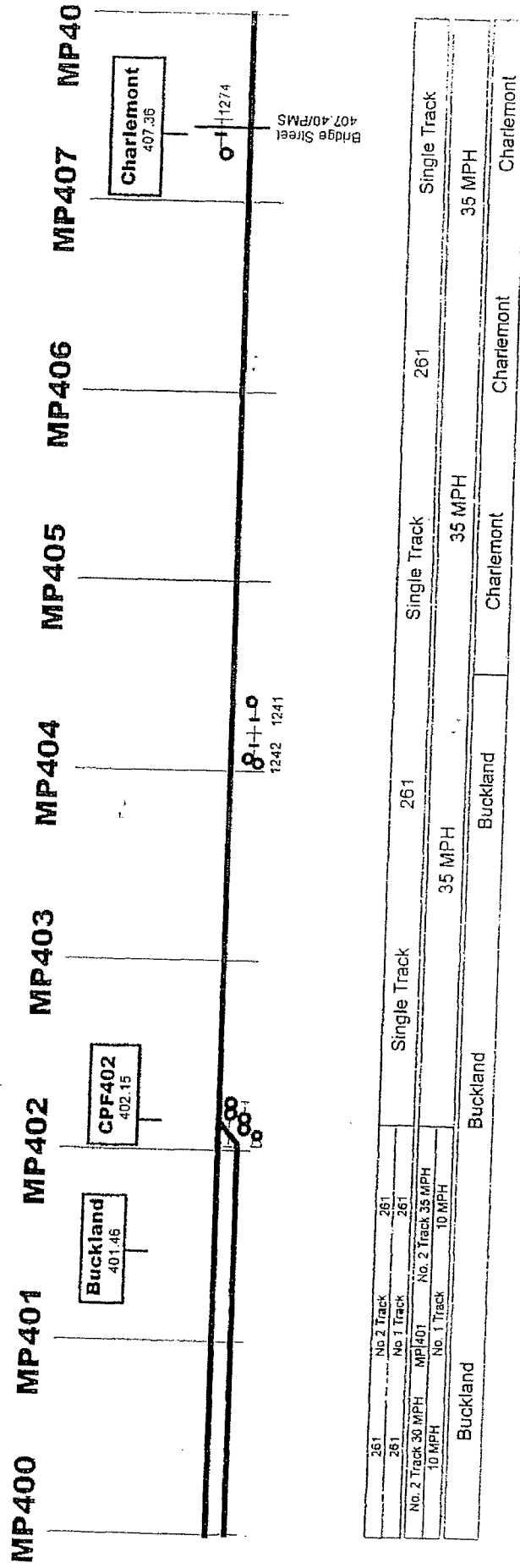
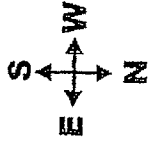
CP#398



Freight Main Line

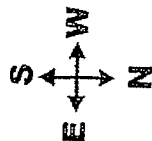
Keag to CPF467

The Direction from Keag to CPF467 is West



Keag to CPF467

The Direction from Keag to CPF467 is West



83: Tunnel Instructions/Hoosac Tunnel

Before a passenger train is allowed to operate through the tunnel, the tunnel must be clear of any preceding movement and no following movement is to be made until the passenger train is clear of the tunnel.

In the event of signal failure, a preceding train movement must be clear of the tunnel before another is authorized to move through the tunnel.

if, in the determination of the conductor and/or engineer, a speed of at least 10 mph cannot be maintained while operating through the tunnel, the movement must not be made until appropriate corrective action has been taken.

Telephones providing communication with the District 4 Train Operations Manager are located at the following: each automatic Block Signal, each manhole located within the tunnel, Central Shaft and at tunnel doors.

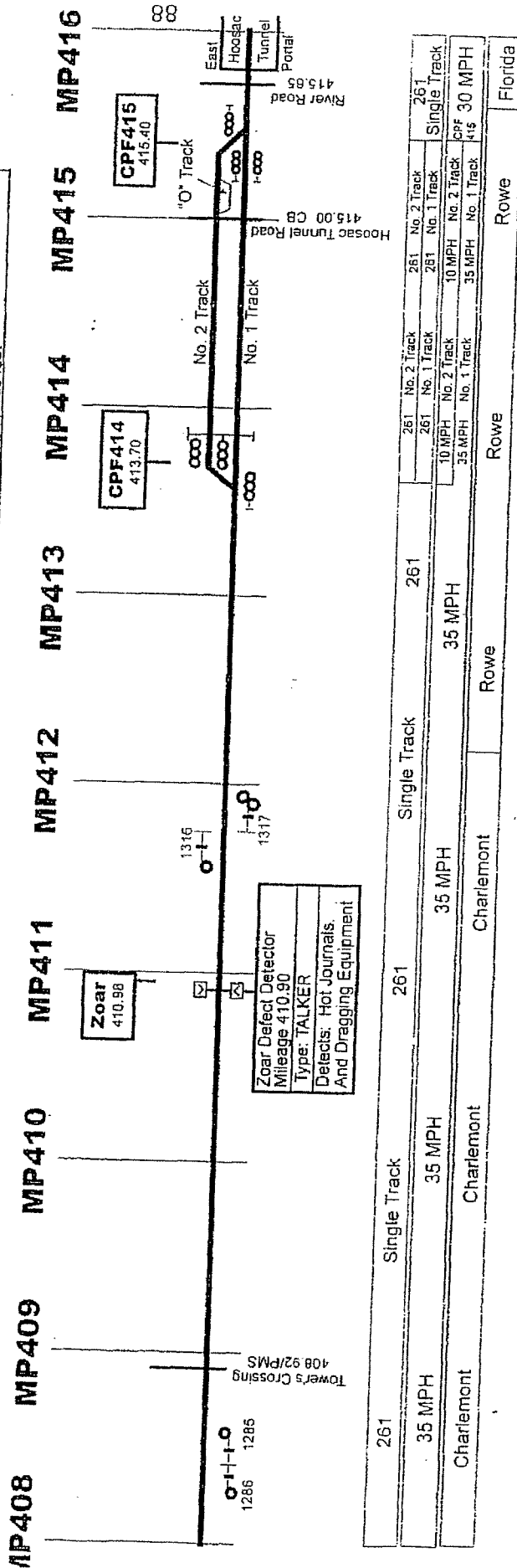
The phone boxes are designated as follows:

.....Tunnel doors.....	Bracket No. 0	Central Shaft.	Bracket No. 123
.....10000 West.....	Bracket No. 31	10000 East	Bracket No. 153
.....5000 West.....	Bracket No. 49	9000 East	Bracket No. 161
.....5000 West.....	Bracket No. 61	5000 East	Bracket No. 191
.....5000 West.....	Bracket No. 91	5000 East	Bracket No. 201
.....10000 West.....	Bracket No. 101	3000 East	Bracket No. 221

Bracket numbers are painted in white numbers on the North wall

Bracket numbers times 100 feet equal the distance measured from West Portal

Eastward into the tunnel bracket numbers are located every 100 feet

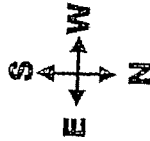


Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West

83: Tunnel Instructions/Hoosac Tunnel



Passenger Trains Before a passenger train is allowed to operate through the tunnel, the tunnel must be clear of any preceding movement and no following movement is to be made until the passenger train is clear of the tunnel.		Speed If, in the determination of the conductor and/or engineer, a speed of at least 10 mph cannot be maintained while operating through the tunnel, the movement must not be made until appropriate corrective action has been taken.						
Signal Failure In the event of signal failure, a preceding train movement must be clear of the tunnel before another is authorized to move through the tunnel.		Telephones Telephones providing communication with the District 4 Train Operations Manager are located at the following: each automatic Block Signal, each manhole located within the tunnel, Central Shaft and at tunnel doors. The phone boxes are designated as follows: Tunnel doors.....Bracket No. 0 3000 West.....Bracket No. 31 5000 West.....Bracket No. 49 6000 West.....Bracket No. 61 9000 West.....Bracket No. 91 10000 West.....Bracket No. 101 Bracket numbers are painted in white numbers on the North wall Bracket numbers times 100 feet equal the distance measured from West Portal Eastward into the tunnel bracket numbers are located every 100 feet						
119.3: Routing of Automobile Rack Cars and Double Stack Container Cars Note: Clearance must not exceed 19 feet, 3 inches. Automobile Rack Cars and Doublestack Container Cars must not be moved on No. 1 track between switch to Adams Industrial Track and CPF423.		Central Shaft Bracket No. 123 Bracket No. 153 Bracket No. 161 Bracket No. 191 Bracket No. 201 Bracket No. 221						
MP416	MP417	MP418	MP419	MP420	MP421	MP422	MP423	MP424

Central Shaft
Hoosac Tunnel
418.15

Hoosac Tunnel
1357

Hoosac Tunnel
1394

241: Automatic Block Signal With No Number Plate.
The following automatic block signal does not have a number plate affixed to the mast. When this signal displays "Stop" (Rule 292), it must not be passed until authority to do so is obtained from the Train Operations Manager in accordance with Rule 241.

Signal	Governs Movement	Track	Train Operations Manager	Note
Distant Signal to CPF421	Westward	Single	4	1

Note 1: If the Train Operations Manager cannot be contacted by telephone, train may proceed at restricted speed to a point just east of the tunnel door where a stop must be made and the Train Operations Manager contacted.

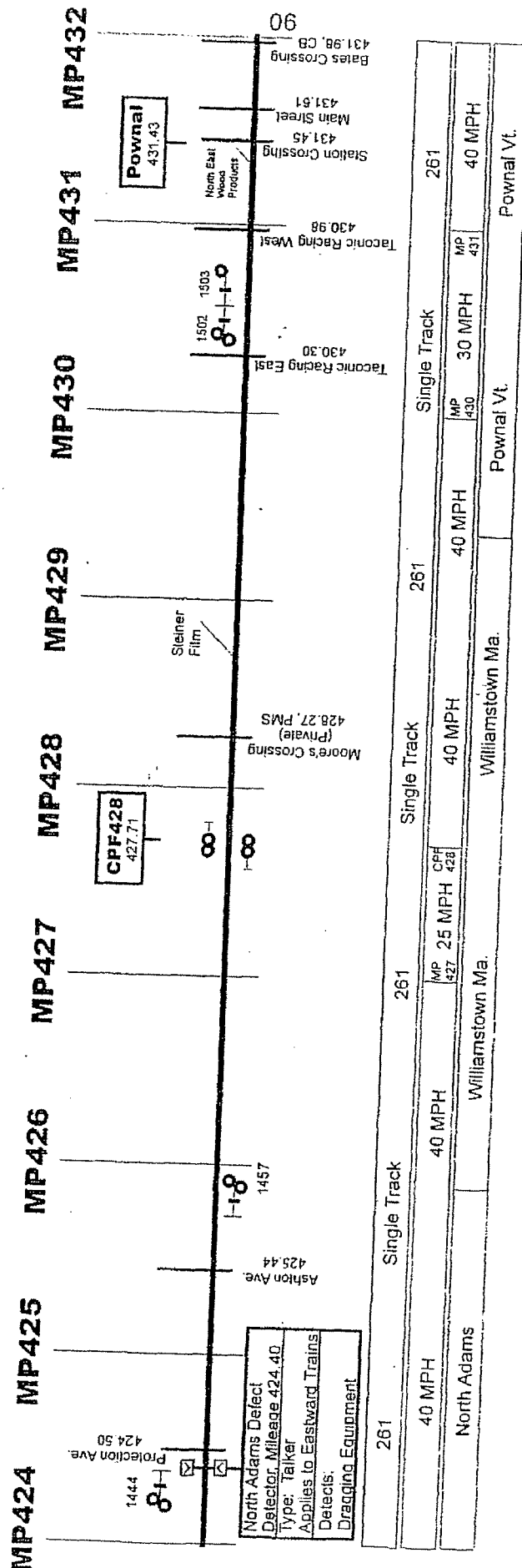
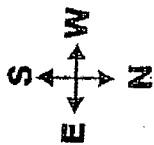
No Double Stacks or
Auto Racks

Auto Racks									
If a manager cannot be contacted by telephone, train may proceed at restricted speed to a point just east of the tunnel door where a stop must be made and the Train Operations Manager contacted.									
261	Single Track	261	Single Track	261	No 2 Track	261	No 1 Track	261	Single Track
30 MPH	30 MPH	30 MPH	30 MPH	CPB 421	No. 2 Track 30 MPH	CPB 421	No. 1 Track 10 MPH	30 MPH	Single Track
Florida	Florida	Florida	Florida		No. 2 Track 30 MPH	CPB 421	No. 1 Track 10 MPH	30 MPH	Single Track
				North Adams	North Adams				North Adams

Freight Main Line

Keag to CPF467

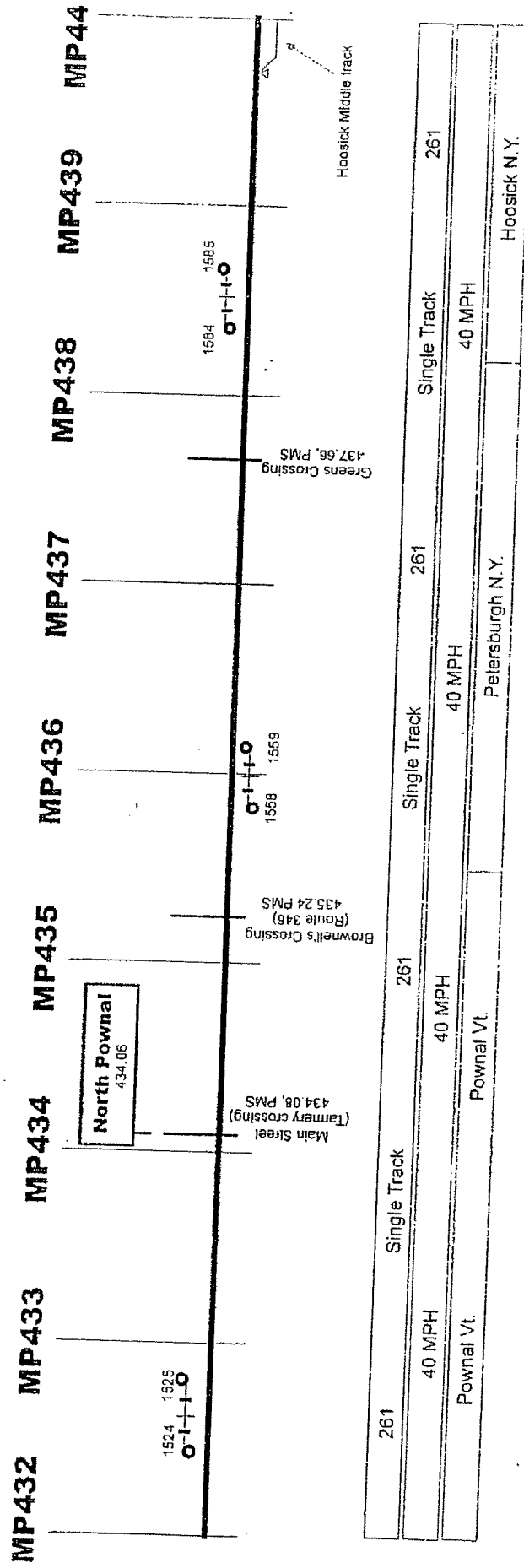
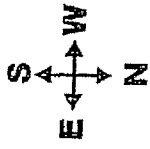
The Direction from Keag to CPF467 is West



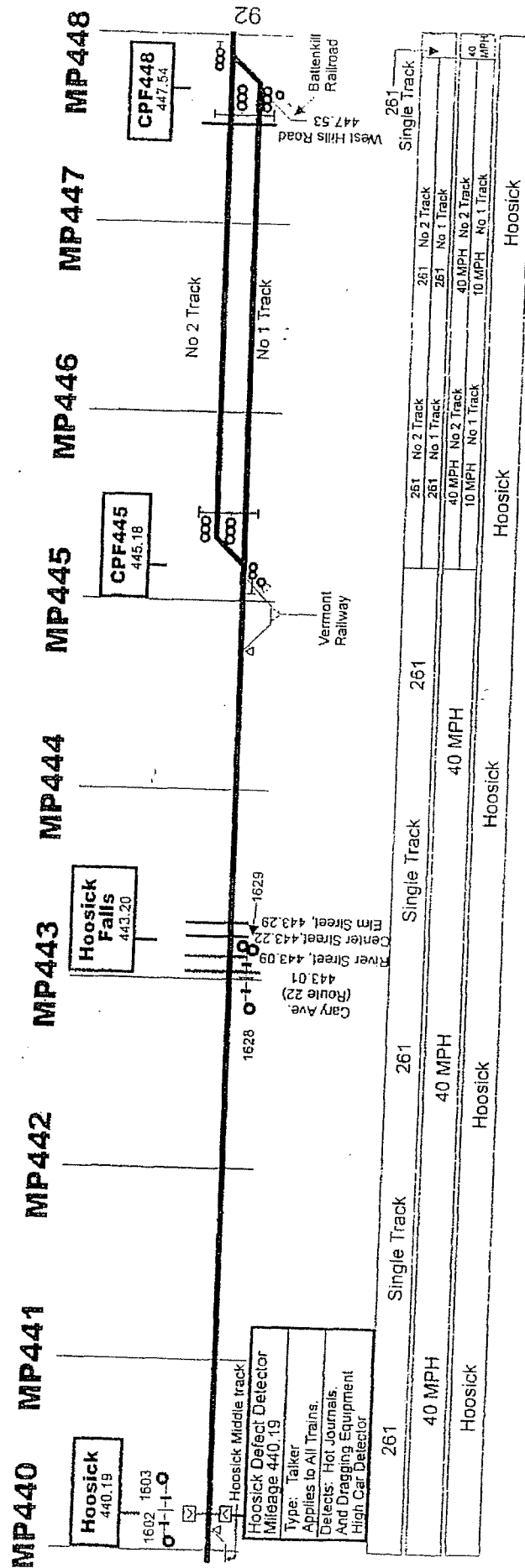
Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West



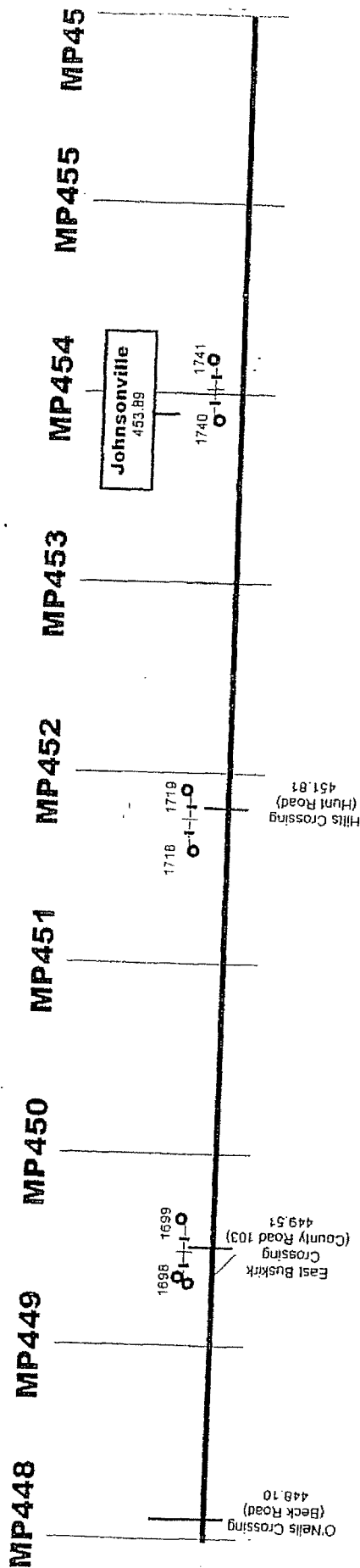
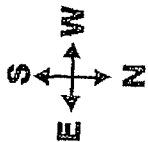
Keag to CPF467



Freight Main Line

Keag to CPF467

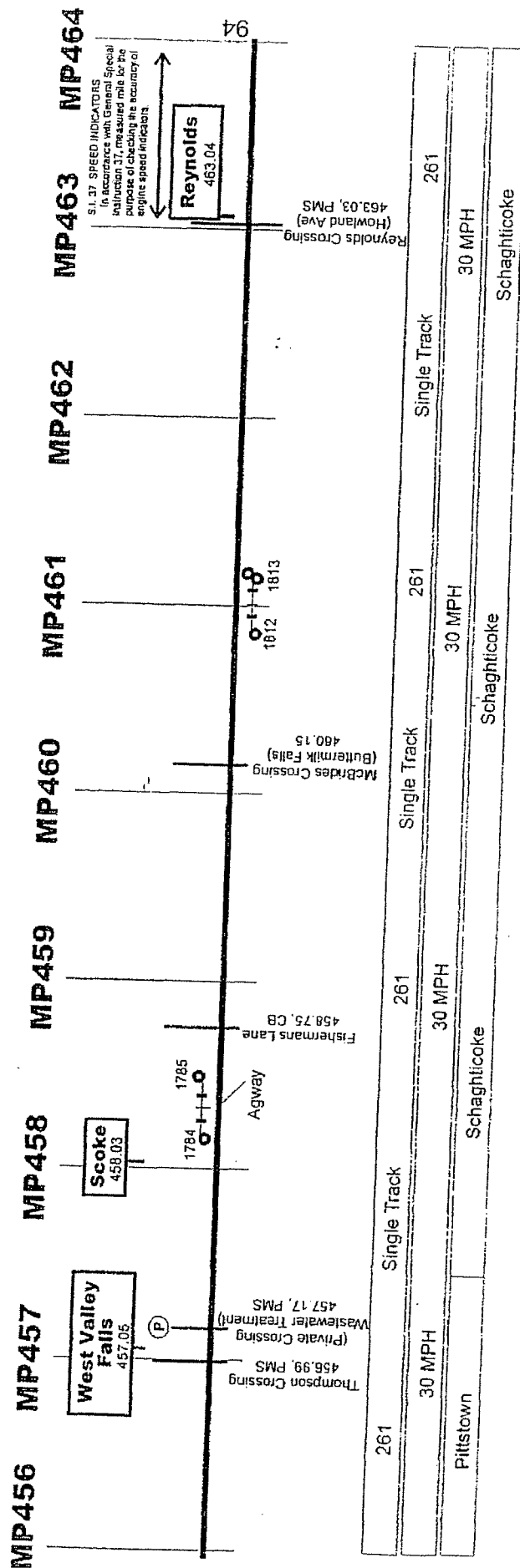
The Direction from Keag to CPF467 is West



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

Keag to CPF467

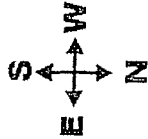
The Direction from Keag to CPF467 is West



Freight Main Line

Keag to CPF467

The Direction from Keag to CPF467 is West



600.1: CPF467, EASTWARD TRAINS.

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

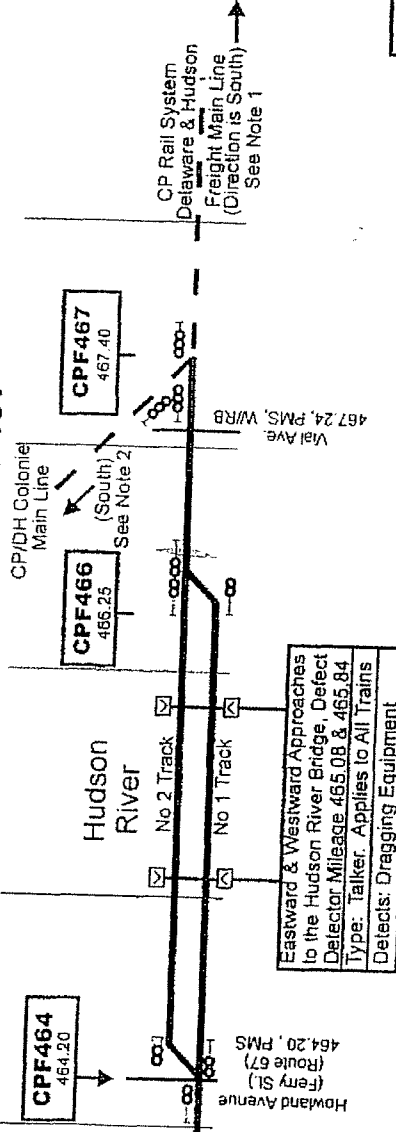
600.2: CPF467.

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

905: CPF467

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

MP464 MP465 MP466 MP467



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

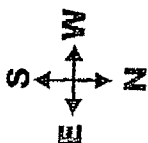
Note 2

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

Single Track	261 No 2 Track	261 No 2 Track	Single Track 261
261	261 No 1 Track	261 No 1 Track	
30 Mileage	No 2 Track 10 MPH	No 1 Track 10 MPH	
MPH 464.20	No 1 Track 30 MPH 465		
Schaghticoke		Stillwater	Mechanicville

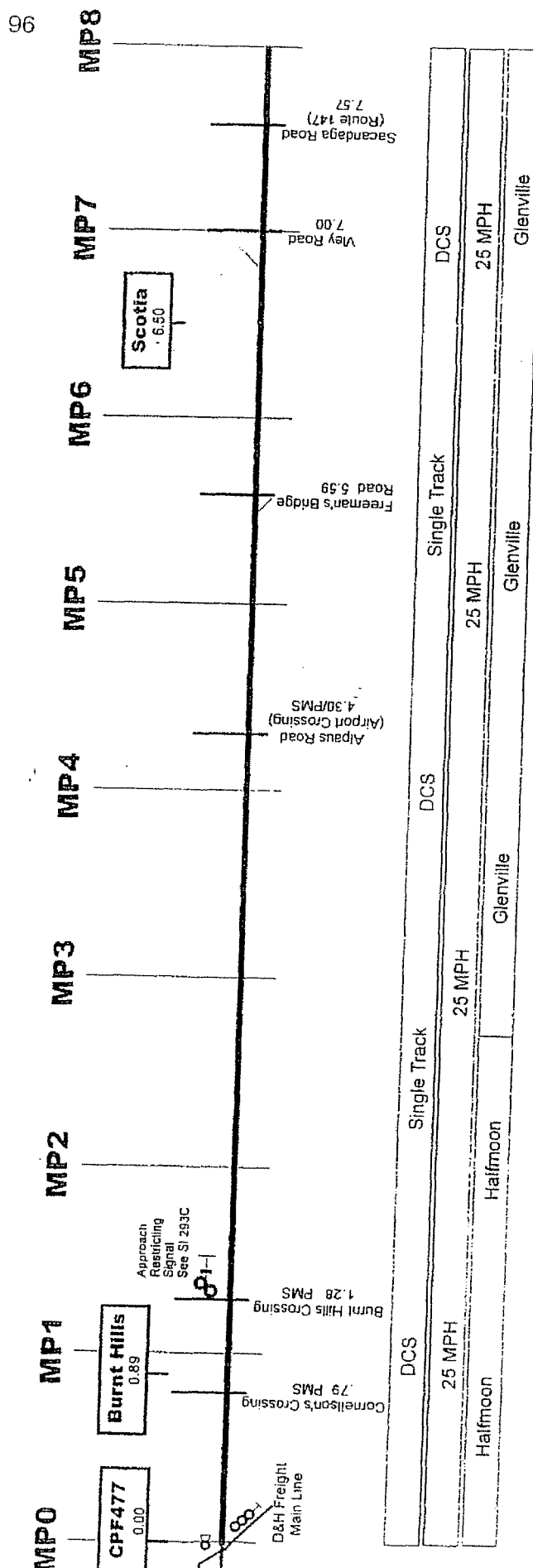
Rotterdam Branch
CPF477 to CPRJ

The direction from CPF477 to CPRJ is West



293C: Obstructing Public Crossing At Grade.

Eastward trains of more than 50 cars must not pass the Approach Restricting signal (Rule 233c) at mileage 1.50 without permission of the D&H North End Dispatcher.



6650318

PROPOSED CAPITAL EXPENDITURE PLAN

REVISED BY PAN AM 5/12/08

ITEM	Amount	Unit	Unit Cost	Estimated Cost	2008	2009	2010	2011	Comments
1	128,998	Tie	\$42.00	\$11,674,432	0%	40%	60%	0%	\$0
2	139	Mill	\$15,800	\$2,184,200	0%	40%	60%	0%	\$0
3	25	TM	\$443,520	\$11,088,000	0%	100%	0%	0%	\$0
4	400	TF	\$300	\$80,000	0%	0%	50%	50%	\$0
5	30	EA	\$7,500	\$225,000	0%	0%	100%	0%	\$0
6	310	EA	\$800	\$248,000	0%	0%	100%	0%	\$0
7	91	EA	\$5,000	\$455,000	0%	100%	0%	0%	\$0
8	1886	EA	\$160	\$301,760	0%	100%	0%	0%	\$0
9	1	LS	\$350,000	\$350,000	0%	30%	30%	40%	\$105,000
10	1	LS	\$350,000	\$350,000	0%	30%	30%	40%	\$105,000
11	1	LS	\$5,650,318	\$5,650,318	2%	35%	35%	28%	\$133,008
12	1626	EA	\$400	\$650,400	0%	40%	40%	20%	\$0
13	1	LS	\$5,430,750	\$5,430,750	2%	30%	30%	35%	\$108,615
Subtotal for Rehabilitation					\$241,621	\$21,600,349	\$12,788,176	\$4,379,854	
14	1	LS	\$250,000	\$250,000	0%	100%	0%	0%	\$0
15	1	EA	\$3,830,000	\$3,830,000	0%	20%	60%	20%	\$0
16	1	LS	\$4,160,000	\$4,160,000	2%	35%	35%	30%	\$83,200
Subtotal for Core Capacity Improvements					\$83,200	\$2,472,000	\$3,754,000	\$1,930,800	
17	1	LS	\$2,050,000	\$2,050,000	0%	0%	50%	50%	\$0
18	1	LS	\$200,000	\$200,000	0%	100%	0%	0%	\$0
19	1	LS	\$37,500,000	\$37,500,000	5%	45%	50%	0%	\$1,875,000
Subtotal for Facilities					\$1,875,000	\$17,075,000	\$19,775,000	\$1,025,000	
TOTAL					\$2,199,821	\$44,147,349	\$36,317,176	\$7,835,654	

Notes

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

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

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

Transaction Agreement Appendices

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

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

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

**MISCELLANEOUS ASSIGNMENT AND
ASSUMPTION AGREEMENT**

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

RECITALS:

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

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

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

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally.

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

(b) Construction of Certain Terms and Phrases.

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

SECTION 2. ASSIGNMENTS.

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

SECTION 3. ASSUMPTION.

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

SECTION 4. DELIVERY OF ASSIGNED AGREEMENTS.

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

SECTION 5. ERRONEOUS ASSIGNMENT.

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

SECTION 6. AFTER-DISCOVERED AGREEMENTS AND INTANGIBLES.

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

SECTION 7. THE TRANSACTION AGREEMENT.

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

SECTION 8. GOVERNING LAW.

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

SECTION 9. COUNTERPARTS.

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

SECTION 10. SUCCESSORS AND ASSIGNS.

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

SECTION 11. FURTHER ASSURANCES.

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

The effective date of this Agreement is _____, 2008.

DATED this _____ day of _____, 2008.

PAN AM SOUTHERN LLC

PAN AM RAILWAYS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

**BOSTON AND MAINE
CORPORATION**

**SPRINGFIELD TERMINAL
RAILWAY COMPANY**

By: _____
Name:
Title:

By: _____
Name:
Title:

APPENDIX H - REDACTED

AYER SWITCHING AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally.

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

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

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

(b) Capitalized Terms.

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

“**Agreement**” shall have the meaning given to that term in the introductory paragraph.

“**AAR**” shall mean the Association of American Railroads.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Loss or Damage” shall have the meaning given to that term in Section 10.

“Management Committee” shall mean the Management Committee of Pan Am Southern as provided in the LLC Agreement.

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

“Norfolk Southern” shall have the meaning given to that term in the Recitals.

“Pan Am” shall have the meaning given to that term in the Recitals.

“Pan Am Southern” shall have the meaning given to that term in the introductory paragraph.

“Pan Am System Parties” shall have the meaning given to that term in the Recitals.

“Parties” shall have the meaning given to that term in the introductory paragraph.

“Party” shall have the meaning given to that term in the introductory paragraph.

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

“Railroad Operator” shall have the meaning given to that term in the Recitals.

“Remaining Pan Am” shall have the meaning given to that term in the Recitals.

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

“Springfield Terminal” shall have the meaning given to that term in the Recitals.

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

“Springfield Terminal Traffic” shall have the meaning given to that term in the Recitals.

“STB” shall mean the Surface Transportation Board or any successor entity thereto.

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

“Transaction Agreement” shall have the meaning given to that term in the Recitals.

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

(c) Successor Laws.

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

SECTION 2. INDUSTRY SWITCHING

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

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

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

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

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

SECTION 3. DELIVERY AND RECEIPT OF CARS

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

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

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

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

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

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

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

SECTION 4. INSPECTION

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

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS AND RULES

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

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

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

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

SECTION 6. INTENTIONALLY OMITTED

SECTION 7. INVOICES AND PAYMENT OF BILLS

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

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

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

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

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

SECTION 8. INTERRUPTION; RERAILING

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

(b) Rerailing, Wrecking, Bad Orders and Repairs.

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

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

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

SECTION 9. COMPENSATION; MILEAGE AND CAR HIRE

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

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

SECTION 10. LIABILITY

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

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

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

conjunction with a third party.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. EMPLOYEE CLAIMS

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

SECTION 12. TERM AND TERMINATION

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

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

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

underlying right of commercial access to the Industrial Locations.

SECTION 13. SUCCESSORS AND ASSIGNS

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

SECTION 14. MISCELLANEOUS

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

If to Pan Am Southern:	Chairman Pan Am Southern LLC c/o Pan Am Railways Iron Horse Park North Billerica, MA 01862-1692
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With a copy to Norfolk Southern:	Mike R. McClellan Vice President – Intermodal and Automotive Marketing Norfolk Southern Corporation Three Commercial Place Norfolk, Virginia 23510-2191
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and

Vice President – Law
Norfolk Southern Corporation
Three Commercial Place

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. DISPUTE RESOLUTION

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

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

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

(c) Formal Dispute Resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 16. INDEMNITY COVERAGE

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

SECTION 17. FORCE MAJEURE

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

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

PAN AM SOUTHERN LLC

By:

Title:

Date:

SPRINGFIELD TERMINAL

RAILWAY COMPANY

By:

Title:

Date:

APPENDIX A. COMPENSATION

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

(b) Switching Charge Adjustment

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

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

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

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

(5) Notwithstanding any of the foregoing, under no circumstances shall the Switching Charge be less than those reflected in the tables above except as provided in subsection (a).

(c) Fuel Surcharge:

[REDACTED]		[REDACTED]	
[REDACTED]	[REDACTED]		[REDACTED]
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		
	[REDACTED]		

The surcharge will be applied to the overall monthly invoice. For a given month, take the average of the DOE's Index value released on each of the Mondays during that month. Using the above scale, determine the appropriate fuel surcharge to apply.

(d) Pan Am Southern shall keep and maintain an accurate account of all loaded Cars handled by it for the account of Springfield Terminal, and shall at the end of each month, render an itemized bill, computed in accordance with the provisions herein, to Springfield Terminal for payment, provided, however, that for so long as Springfield Terminal is the Railroad Operator, the bill shall be deemed delivered when prepared.

(e) Should Springfield Terminal Intermodal Traffic volumes moved to or from the Ayer Intermodal Facility exceed, on average, twenty (20) revenue loads per week, and if such volumes result in additional switching, terminal labor, utilities, maintenance or other fixed costs, or result in the need to expand the Ayer Intermodal Facility, then Springfield Terminal, Norfolk Southern and Pan Am Southern agree to work together in good faith to develop adjustments to access fees in order to better allocate the costs of the facility.

(f) Springfield Terminal shall pay within thirty (30) days from receipt thereof, and any errors or omissions in such bills shall be adjusted in subsequent billing.

APPENDIX B. AYER CUSTOMER MAP

LIMITED LIABILITY
COMPANY AGREEMENT
OF
PAN AM SOUTHERN LLC

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

[], 2008

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

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

RECITALS

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

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

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

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

DEFINITIONS

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

“AAA” means the American Arbitration Association.

“Acceptance Agreement” shall have the meaning set forth in Section 10.2(d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Claims” shall have the meaning set forth in Section 5.9(a).

“Closing Date” shall be the date the initial Capital Contributions are made under Section 2.1(a).

“CN” shall mean Canadian National Railway Company.

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

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

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

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

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

“CSX” shall mean CSX Transportation, Inc.

“Damages” shall have the meaning set forth in Section 10.2(b).

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

“Delaware Courts” shall have the meaning set forth in Section 13.3(a).

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

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

“Dissolution Event” shall have the meaning set forth in Section 11.1.

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

“Exchange Act” means the Securities Exchange Act of 1934.

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

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

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

“Fiscal Quarter” means any of the following:

- (a) the period commencing on the date hereof and ending on the earliest to follow the Closing Date of March 31, June 30 and September 30 of the year in which the Closing Date occurs,
- (b) any subsequent three (3) month period commencing on each of January 1, April 1, July 1 and October 1 and ending on the last date before the next such date, and
- (c) the period commencing on the immediately preceding January 1, April 1, July 1, or October 1, as the case may be, and ending on the date on which all Property is distributed to the Members pursuant to Section 11.

“Fiscal Year” means any of the following:

- (a) the period commencing on the date hereof and ending on December 31 of the year in which the Closing Date occurs,
- (b) any subsequent twelve (12) month period commencing on January 1, and
- (c) the period commencing on the immediately preceding January 1, and ending on the date on which all Property is distributed to the Members pursuant to Section 11.

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

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

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

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

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

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

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

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

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

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

“Indemnified Parties” shall have the meaning set forth in Section 10.2(f).

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

“Investment Policies” shall have the meaning set forth in Section 5.7(b).

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

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

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

“IRS” means the Internal Revenue Service.

“Issuance Items” shall have the meaning set forth in Section 3.3(h).

“Items” shall have the meaning set forth in Section 3.4.

“Joint Operating Committee” or **“JOC”** shall have the meaning set forth in Section 5.3(c).

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

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

“Liquidation Period” shall have the meaning set forth in Section 11.7.

“Liquidator” shall have the meaning set forth in Section 11.9(a).

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

“Major Decision” shall have the meaning set forth in Section 5.6.

“Management Committee” shall have the meaning set forth in Section 5.2(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“NS Member’s Membership Interests” shall have the meaning set forth in Section 3.8.

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

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

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

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

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

“Pan Am” shall have the meaning set forth in the Recitals.

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

“Pan Am Member” shall have the meaning set forth in the Recitals.

“Pan Am Member’s Membership Interests” shall have the meaning set forth in Section 3.8.

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

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

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

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

“Permitted Transfer” shall have the meaning set forth in Section 9.2.

“Permitted Transferees” means a transferee pursuant to a Permitted Transfer.

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

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

“Profit and Loss Allocation Percentage Interest” shall be each Member’s Membership Interest as reflected on Exhibit A.

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

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

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

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

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

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

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

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

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

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

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

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

“Rail Carrier” means a Freight Rail Common Carrier or a passenger rail carrier.

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

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

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

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

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

“Securities Act” means the Securities Act of 1933.

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

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

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

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

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

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

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

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

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

“Wholly-Owned Affiliate” of any Person means

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

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

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

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

SECTION 1

THE COMPANY

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

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

1.3 Purpose; Powers.

(a) Generally.

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

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

(b) Carrier Status.

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

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

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

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

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

1.6 Filings; Agent for Service of Process.

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

- (i) A change in the Company name,
- (ii) A correction of false or erroneous statements in the Certificate of Formation or the desire of the Members to make a change in any statement therein in order that it shall accurately represent the agreement among the Members, or
- (iii) A change in the time for dissolution of the Company if approved by the Members as evidenced by an amendment to this Agreement (approved as provided herein).

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

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

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

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

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

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

SECTION 2

MEMBERS' CAPITAL CONTRIBUTIONS

2.1 Initial Capital Contributions.

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

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

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

2.3 Subsequent Capital Contributions.

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

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

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

SECTION 3 **ALLOCATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5 Other Allocation Rules.

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

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

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

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

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

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

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

3.6 Tax Allocations; Code Section 704(c).

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

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

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

3.9 Special Election.

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

SECTION 4 **DISTRIBUTIONS**

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

4.2 Priority Distributions.

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

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

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

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

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

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

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

SECTION 5

MANAGEMENT

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

5.2 Management Committee.

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

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

need for any action of any Member or any other Person, five (5) committee representatives, two (2) of whom shall be designated by the Pan Am Member and three (3) of whom shall be designated by the NS Member, in each case with alternates appointed by the Pan Am Member and the NS Member, respectively, to serve in the absence or unavailability of a committee representative (each, including alternates, a "Committee Representative"). Each Committee Representative shall serve at the pleasure of the Member or Members who designated such Committee Representative. The initial Committee Representatives are identified in Exhibit 5.2(b) attached hereto. Any Committee Representative may resign upon written notice to the Member who designated such Committee Representative and to the Company. The resignation of any such Committee Representative shall take effect upon receipt of such notice, or at such later time as shall be specified in such notice. A Committee Representative may be removed at any time with or without cause by the Member who originally designated such Committee Representative. Except as governed by Section 10 for an Event of Default by a Member, any vacancy occurring for any reason in the number of Committee Representatives shall be filled by the Member who originally designated the Committee Representative whose position has become vacant. A Member shall provide written notice to all other Members of the identity of a new Committee Representative when that new Committee Representative is designated, provided, however, that the provision of said written notice shall not be a prerequisite to said designation nor the ability of said Committee Representative to participate in the governance of the Company. The Chairman of the Management Committee shall be appointed by the Pan Am Member in all even numbered calendar years and by the NS Member in all odd numbered calendar years, provided that, upon and after a Pan Am Change in Control, the Chairman of the Management Committee shall be appointed by the NS Member.

(c) *Independent Activities.* Except as otherwise restricted by the provisions of this Agreement or any other agreement between the Company and the Person acting as Committee Representative, each Committee Representative in his capacity as a Committee Representative shall be required to devote such time to the affairs of the Company as may be necessary to serve the Company in such capacity and shall be free to serve any other Person or enterprise in any capacity that such Committee Representative may deem appropriate in his discretion.

5.3 Committees of, or reporting to, the Management Committee.

(a) *Creation of Committees.* Subject to Section 5.6, the Management Committee shall have the power and right (but not the obligation) to create and disband committees and to determine the duties, responsibilities, activities and composition thereof. Except as otherwise provided herein, prior to a Pan Am Change in Control, the Pan Am Member and the NS Member shall each be entitled to equal representation on any such committee, and, upon and after a Pan Am Change in Control, the NS Member shall be entitled to a majority of the representation on any such committee.

(b) *Capital Project Committee.* The Members hereby agree that there shall be created a Capital Project Committee consisting of: (1) prior to a Pan Am Change in Control, four Committee Representatives, two of whom shall be designated by the Pan Am Member and two of whom shall be designated by the NS Member; and (2) upon and after a Pan Am Change in Control, three Committee Representatives, two of whom shall be designated by

the NS Member and one of whom shall be designated by the Pan Am Member. The Capital Project Committee shall establish a process (the "Capital Project Process") utilizing capacity modeling and field input to determine capacity needs and capital expenditures with respect to Capital Projects. The Capital Project Process will specify that the engineering specifications and instructions applicable to any particular Capital Project shall conform to the then-current NSR internal specifications and instruction for constructing a similar capital project. The Capital Project Committee shall be responsible for (i) determining the optimum use of capital expenditures provided for in the Company's Budget (including any Rollover Budget) or Business Plan in accordance with the Capital Project Process and (ii) performing the functions allocated to it pursuant to the Capital Projects and Facility Management Agreement. The initial designees to the Capital Project Committee shall be those persons identified in Exhibit 5.3(b)(i) hereto. Except as provided in Section 5.12, the Capital Project Committee shall follow any protocols approved by the Management Committee in accordance with Section 5.6 to guide capital expenditures decisions.

(c) *Joint Operating Committee.* The Members hereby agree that there shall be created a Joint Operating Committee (the "Joint Operating Committee" or the "JOC") consisting of the Chief Operations Officer, Chief Marketing Officer and one other appointed representative, or their respective designees, of Springfield Terminal and NSR. Prior to a Pan Am Change in Control, the Joint Operating Committee shall make decisions by the unanimous vote of its members. Upon and after a Pan Am Change in Control, the NS Member shall have the right to appoint an additional member to the Joint Operating Committee, and the Joint Operating Committee shall make decisions based upon a majority vote. The Joint Operating Committee shall have responsibility for (i) having direct, day-to-day interface with the General Manager, (ii) monitoring such matters as operations, performance and scheduling, (iii) seeking the resolution of disputes with respect to such matters, (iv) reviewing the operating efficiencies of the East Deerfield repair shops on or before the three-year anniversary of the Closing Date and (v) reviewing the operation of Springfield Terminal as the Railroad Operator, and overall railroad operations and business, by focusing on the following five (5) key performance areas, which review shall be based upon specific performance metrics that the Joint Operating Committee shall develop: (A) safety metrics, including injury ratios and accident ratios; (B) service metrics, including on-time train and service performance; (C) engineering and maintenance quality, including miles slow-ordered; (D) performance to budget, including operating ratio; and (E) commercial metrics, including revenue growth and customer satisfaction.

(d) The Capital Project Committee and the Joint Operating Committee may meet by telephone or in any manner or place as shall be agreeable to its members. If, prior to a Pan Am Change in Control, the Capital Project Committee and the Joint Operating Committee is unable to reach a unanimous vote on any matter, it shall refer that matter to the Management Committee for resolution.

5.4 Meetings of Management Committee.

(a) *Notices.* Meetings of the Management Committee shall be held at least once each calendar quarter and may be called by any Committee Representative. All meetings shall be held upon fifteen (15) Business Days' notice by mail or four (4) Business Days' notice delivered personally or by telephone, e-mail or facsimile stating the business to be

transacted at such meeting; provided, that at least thirty (30) Business Days' notice shall be provided for any meeting in which approval of any action of the type set forth in clauses (xxi) or (xxii) of Section 5.6 is sought. The Committee Representatives present may adjourn any meeting to another time and place. Notice of any adjourned meeting shall be given to the Committee Representatives who are not present at the time of the adjournment thereof in accordance with the second sentence of this Section 5.4. Meetings of the Management Committee shall be held at the offices of the Company unless another location shall have been designated in the notice of the meeting or at such place as may be approved by the Management Committee. Members of the Management Committee may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Committee Representatives participating in such meeting can hear one another. Participation in a meeting in such manner constitutes presence in person at such meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all of the Committee Representatives. Any Committee Representative may authorize in writing any Person to act for it by proxy on all matters on which a Committee Representative is entitled to act, including waiving notice of, or voting or participating at, any meeting.

(b) *Quorum.* The presence in person of a majority of the Committee Representatives (at least one of whom shall be a Committee Representative appointed by the NS Member if a Major Decision is to be made) shall constitute a quorum for the transaction of business at a meeting of the Management Committee duly called in accordance with Section 5.4(a), provided that, upon and after a Pan Am Change in Control, the presence of at least two Committee Representatives appointed by the NS Member shall be required so as to constitute a quorum.

(c) *Vote.* Each Committee Representative shall have one vote to cast in person or by proxy.

(d) *Action of the Committee.* Except to the extent that this Agreement expressly requires otherwise (including as provided in Section 5.6), every action or resolution done or made by the majority approval of the Management Committee at a duly noticed meeting at which a quorum is present is the action of the Management Committee.

5.5 Action by Unanimous Written Consent. Any action required or permitted to be taken by the Management Committee may be taken by the Committee Representatives without a meeting without prior notice and without a vote, but only if a consent or consents in writing shall be signed by all of the Committee Representatives.

5.6 Management Committee Decisions. Notwithstanding anything to the contrary contained in this Agreement (other than Section 5.11), the following actions are reserved and require the approval of the Management Committee, including the approval of at least one of the Committee Representatives appointed by the NS Member, and no committee thereof, nor any officer, agent or other representative of the Company shall be entitled to authorize or effect any such action absent such approval (each such action, a "Major Decision"):

(i) Repealing, modifying or amending this Agreement or any of the JV Transaction Agreements to which the Company is a party, or waiving

compliance with any provision of this Agreement or any of the JV Transaction Agreements to which the Company is a party;

- (ii) Repealing, modifying or amending the Investment Policies;
- (iii) Entering into any agreement with respect to or consummating any (A) acquisition, divestiture, spin-off, merger, consolidation, business combination or similar transaction involving equity interests or assets of the Company, (B) sale, transfer, lease, sublease, license or other disposition of any property or asset to a third party other than in the ordinary course of business, or (C) formation of, investment of the funds or assets of the Company in or other participation in any joint venture or partnership;
- (iv) Entering into any transactions with any Member or any Affiliate of any Member, other than as contemplated by the Capital Projects and Facility Management Agreement, the distributions contemplated in Section 2.4 or Section 4 or pursuant to the JV Transaction Agreements;
- (v) Approving the Budget or the Business Plan or any changes in, amendments to or deviations from, the Budget (including any Rollover Budget) or the Business Plan; provided, however, in the event the Management Committee cannot agree on (A) a Capital Project or (B) the Operating or Maintenance Budgets, the prior year's budget shall roll forward as provided in Section 5.7(a);
- (vi) Appointing, setting the rate of compensation of, approving bonuses for, or terminating any employees or Officers of the Company, if any;
- (vii) Approving any change in the number of members of the Management Committee;
- (viii) Declaring, making or paying any dividend or any other distribution (whether in cash, securities or other property) on any equity interests of the Company, other than the distributions contemplated in Section 4;
- (ix) Incurring any indebtedness, guarantee or lien or making any loans (including any Notes), advances or capital contributions to, or investments in, any Person, except (A) as provided in the Budget or Rollover Budget, (B) purchase money financing of assets used in the conduct of the business of the Company, and (C) as may be reasonable or necessary, in light of force majeure events or other eventualities, to maintain operations of the Company and, if any, NSR, on the Line;
- (x) Creating any employee equity option, structured equity, employee stock option plan or other similar plan, making any grants under any such plan or materially modifying any employee benefit plan;

- (xi) Requiring any Capital Contribution beyond those contributions specified in this Agreement, the JV Transaction Agreements and any Budget (including any Rollover Budget) adopted pursuant to the terms of this Agreement;
- (xii) Initiating or consenting to the filing of any petition to place the Company in insolvency, bankruptcy or similar proceedings;
- (xiii) Admitting new Members to the Company;
- (xiv) Approving any changes in the Profit and Loss Allocation Percentage Interests of the Members other than as contemplated by Section 2.3;
- (xv) Commencing, settling or disposing of any litigation against the Company or any of its assets or properties, except any settlement or disposition not exceeding \$250,000;
- (xvi) Except as contemplated by the Capital Projects and Facility Management Agreement, entering into any agreement, license, program or arrangement pursuant to which the Company is obligated to make or receive payments or forgive debt, or amending, terminating or failing to renew any such contract other than those specified in the Budget (including any Rollover Budget), other than as may be reasonable or necessary, in light of force majeure events or other eventualities, to maintain operations of the Company and, if any, NSR, on the Line;
- (xvii) Approving the formation and composition of any committees of the Management Committee (other than self-effecting changes in such composition pursuant to this Agreement) and the formation and composition of the boards or equivalent governing bodies of any subsidiary of the Company;
- (xviii) Making any material change in the Company's accounting practices or policies (other than as required by GAAP) or, prior to a Pan Am Change in Control, any change in the Auditors;
- (xix) Taking any of the actions set forth in clauses (i) through (xviii) above with respect to any entity of which the Company owns, directly or indirectly, securities or other ownership interests having the power to elect a majority of the board of directors or other persons performing similar functions, or otherwise having the power to direct, manage or control the conduct of business of such entity or otherwise owning at least ten percent (10%) of the outstanding ownership interests of such entity;
- (xx) Making operating expenses or capital expenditures beyond those contained in the Budget (including any Rollover Budget), except as may be reasonable or necessary, in light of force majeure events or other eventualities, to maintain operations of the Company and, if any, NSR, on the Line;

(xxi) Entering into an agreement, program or other arrangement pursuant to which the Company grants or provides to any Person any operating, haulage, trackage or any other rights that allow access over the Line, or otherwise expands any such current access rights; or

(xxii) Permitting any Freight Rail Common Carrier to perform haulage for any rail carrier, whether such Freight Rail Common Carrier is operating over the Line in haulage or on trackage rights.

5.7 Budget and Business Plan; Investment Policies.

(a) Attached as Exhibit 5.7(a) to this Agreement is a forecast of the budget (the "Budget") for the first Fiscal Year, a forecast of a business plan (a "Business Plan") for the first Fiscal Year, and a forecast of net cash flow (which, by definition, will reflect any reasonably necessary cash reserve requirements) (a "Net Cash Flow Forecast") for the first Fiscal Year. On or prior to the date which is sixty days before the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2008, the Management Committee shall review, and, if acceptable, approve, a Budget, Business Plan and Net Cash Flow Forecast for the following Fiscal Year, in each case to be prepared by the Railroad Operator. The Budget shall consist of a Maintenance Budget and an Operating Budget (which such Operating Budget shall be prepared in conformance with the Operating Expense Accounting Plan attached as Appendix D to the Railroad Operating Agreement), and the Business Plan shall consist of a Maintenance Plan and an Operating Plan. The Budget, Business Plan and Net Cash Flow Forecast for the next succeeding Fiscal Year shall upon approval of the Management Committee in accordance with Section 5.6 become the Budget, Business Plan and Net Cash Flow Forecast for such Fiscal Year. If the Management Committee does not approve a Budget, Business Plan or Net Cash Flow Forecast for any Fiscal Year prior to the commencement of such year, then the Budget, Business Plan or Net Cash Flow Forecast for that Fiscal Year shall be the Budget, Business Plan or Net Cash Flow Forecast, as the case may be, from the prior Fiscal Year (excluding the prior Fiscal Year's extraordinary and nonrecurring items, but including any contractually obligated or legally required commitments or expenditures for the current year), as the case may be, adjusted, in the case of the Budget based on the "AAR Railroad Cost Indexes – Table A – Annual indexes of charge-out prices and wage rates (1977 = 100) – East – Materials prices, wage rates and supplements combined (excluding fuel)," together with any adjustment of contractual commitments in accordance with their terms (a "Rollover Budget"). Notwithstanding anything to the contrary set forth herein, the Budget (including any Rollover Budget), Business Plan and Net Cash Flow Forecast for any Fiscal Year shall take into account the capital expenditures for such Fiscal Year set forth in Schedule 2.5 to the Transaction Agreement and any reserves the Management Committee deems to be reasonably necessary to conduct the business of the Company as reflected in the Budget and Business Plan.

(b) Attached as Exhibit 5.7(b) to this Agreement are the investment policies (the "Investment Policies") pursuant to which the initial Capital Contribution of the NS Member described in Section 2.1(a), any additional cash Capital Contributions to the Company, and any other funds shall be invested by the Company. The Company shall provide a monthly report to the NS Member and the Pan Am Member detailing the investments made by the Company and the extent of such holdings.

5.8 Officers.

(a) Officers. Subject to Section 5.6, the Management Committee shall have the authority to appoint and terminate Officers of the Company and retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such Officers, employees, agents and consultants as the Management Committee deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties. The setting and modifications of compensation levels (including bonuses and benefits, if any) for any such Officers, employees, agents or consultants shall be set by the approval of the Management Committee in accordance with Section 5.6.

(b) General Manager. Subject to Section 5.6, the Management Committee shall have the authority to ratify the appointment of the General Manager, such appointment to be made by the Railroad Operator.

5.9 Exculpation and Indemnification.

(a) Indemnified Persons. The Committee Representatives, the Officers (if any) and each Member and its Affiliates, and the partners, members, shareholders, officers, directors, advisory directors, managers, employees and control persons (as such term is defined in the Securities Act) of each Member and its Affiliates (collectively, the “Indemnified Persons”) shall not be liable, directly or indirectly, to the Company, any other Member or any other Person who has an interest in the Company for any act or omission (in relation to the Company or this Agreement) taken or omitted by such Indemnified Person in good faith in their capacity as such, provided that such act or omission did not constitute gross negligence, fraud or willful violation of the law, this Agreement or the fiduciary duties set forth in Section 5.10(a). To the fullest extent permitted by applicable law, the Company shall indemnify and hold harmless each Indemnified Person and may indemnify any other Person subject to approval and designation of such person for such indemnification by approval of the Management Committee against all claims, damages, losses, liabilities and expenses of whatever nature (including reasonable attorneys’ fees and disbursements) (“Claims”) relating to activities undertaken in connection with the Company in their capacity as such, including, but not limited to, amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees and expenses reasonably incurred in connection with the investigation, defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative body in which such Indemnified Person may be or may have been involved as a party or otherwise, or with which such Indemnified Person may be or may have been threatened, while acting as such Indemnified Person; provided that no indemnity shall be payable hereunder against any liability incurred by such Indemnified Person by reason of gross negligence, fraud, a willful violation of the law or a breach of this Agreement or the fiduciary duties set forth in Section 5.10(a). No Indemnified Person shall settle or compromise any Claim without the written consent, which consent shall not be unreasonably withheld, of the Management Committee, subject to Section 5.6.

(b) Advance of Expenses. Expenses incurred by an Indemnified Person in defense or settlement of any Claim that may be subject to a right of indemnification

hereunder may be advanced (and must be advanced to Members, the Committee Representatives and Officers, if any, of the Company) by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall ultimately be determined that the Indemnified Person is not entitled to be indemnified by the Company.

(c) Non-Exclusivity. The right of any Indemnified Person to the indemnification provided herein shall be cumulative of and in addition to any and all rights to which such Indemnified Person may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Indemnified Person's successors, assigns and legal representatives.

(d) Satisfaction from Company Assets. All judgments against the Company or an Indemnified Person, in respect of which such Indemnified Person is entitled to indemnification, shall only be satisfied from Company assets and no other Person shall have any liability with respect thereto.

(e) Expenses. The Company is authorized to pay expenses, fees, withholding taxes and other costs reasonably incurred by the Company, including, without limitation, expenses incurred in connection with acquisitions or investments and expenses incurred under this Section 5.9.

(f) Report to the Management Committee. The Company shall report in writing to the Management Committee details of any payments made pursuant to Section 5.9(d) or Section 5.9(e).

5.10 Fiduciary Duty; Exculpation.

(a) Notwithstanding any other provisions of this Agreement, whether express or implied, or applicable law, the Members agree that, except as to the matters set forth in Section 5.12(b), to the fullest extent permitted by Section 18-1101(c) of the Act, no Member shall owe any duties at law or in equity (including fiduciary duties) to the Company or any other Member; provided, that an Indemnified Person who is a Committee Representative and who shall also be an employee of a Member shall have a fiduciary duty to such Member and not to the Company. Notwithstanding the foregoing, nothing in this Section 5.10 shall eliminate any implied covenant of good faith and fair dealing between any Member and the Company or the other Members. With regard to matters set forth in Section 5.12(b), the Members shall require their respective Committee Representatives to act in the best interests of the Company.

(b) The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity, are agreed by the Members hereunder to replace such other duties and liabilities of such Indemnified Person.

5.11 Interparty Matters. Notwithstanding anything to the contrary contained in this Agreement, in the event of any disagreement, dispute or controversy between any Member or any of its Affiliates (other than the Company), on the one hand, and the Company, on the other hand, arising out of or relating to this Agreement or any of the JV Transaction Agreements

to which the Company is a party or is subject or the breach, termination or validity thereof, the Committee Representatives designated by the other Member shall control (on behalf of the Company) the conduct or settlement of any such disagreement, dispute or controversy or any proceedings relating thereto.

5.12 Industrial Development Projects.

(a) Notwithstanding anything to the contrary herein, each Member, acting in its individual capacity and not as a Member or otherwise on behalf of the Company, shall have the right to directly contract with any new or existing customer of that Member so as to induce said customer to locate or expand facilities on the Line.

(b) The Company shall construct and maintain one or more Industrial Development Projects if said Industrial Development Project(s) are in the Company's best interest, giving due consideration to costs, revenues, contributions, safety, security, and capacity needs of current and projected expansions of existing or authorized traffic.

5.13 Public Funds.

The Company shall solicit public funding for the capital projects appearing on Exhibit B hereto, provided, however, that nothing in this Section 5.13 shall require the Company to receive, without an affirmative vote of the Management Committee, public funding that would require the Company to provide third party access to the Company's facilities.

SECTION 6
ROLE OF MEMBERS

6.1 Rights or Powers. The Members in their capacity as Members shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. A Member shall cease to be a Member at the time such Member ceases to own any Membership Interests.

6.2 Voting Rights. No Member has any voting right except with respect to those matters specifically reserved for a Member vote which are set forth in this Agreement and as required in the Act.

6.3 Meetings of the Members.

(a) Meetings of the Members may be called upon the written request of any Member. The call shall state the location of the meeting and the nature of the business to be transacted. Notice of any such meeting, including any meeting that has been adjourned, shall be given to each Member not less than fifteen (15) Business Days (or four (4) Business Days if delivered personally or by telephone, email or facsimile) nor more than forty-five (45) days prior to the date of such meeting. Members may vote in person, by proxy or by telephone at such meeting and may waive advance notice of such meeting. Whenever the vote or consent of

Members is permitted or required under the Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in Section 6.3(f). No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all of the Members entitled to vote thereat.

(b) For the purpose of determining the Members entitled to vote on, or to vote at, any meeting of the Members or any adjournment thereof, the Management Committee or the Member requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) days nor less than ten (10) days before any such meeting, unless between the setting of the record date and the record date there is a Pan Am Change in Control. If between the setting of the record date and the record date there is a Pan Am Change in Control, the NS Member shall be given notice and the opportunity to set a new record date, which record date may be a date following the acquisition of any Governmental Approvals as may be reasonable or necessary for the NS Member to acquire and exercise control of the Company.

(c) Each Member may authorize any Person or Persons to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

(d) Each meeting of Members shall be conducted by an individual Person selected by the Member entitled to appoint the Chairman of the Management Committee for the calendar year in which the meeting is held. Except as otherwise required by law, the presence in person or by proxy of Members able to appoint more than fifty-nine percent (59%) of the voting members of the Management Committee shall constitute a quorum for the transaction of business at a meeting of the Members duly called in accordance with Section 6.3(a). In case a quorum shall not be present at any meeting, any Member present thereat, in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite number of Members shall be present.

(e) At a meeting, any proposal shall be approved if it receives the affirmative vote of the Members able to appoint more than fifty-nine percent (59%) of the voting members of the Management Committee.

(f) Notwithstanding this Section 6.3, any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by each and every Member.

6.4 Required Member Consents. Notwithstanding any other provision of this Agreement no action may be taken by the Company (whether by the Management Committee, or otherwise) in connection with any of the following matters without the written consent of all of the Members: