

PANHANDLE RAIL LINE LEASE AND OPERATING AGREEMENT

February 17, 2012

THIS LEASE AND OPERATING AGREEMENT ("Agreement") is made this ___ day of _____, 2012, between the STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION, hereinafter referred to as "ORDC", with principal offices at 1980 West Broad Street, 2nd Floor, Columbus, Ohio 43223; and THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY, hereinafter referred to as "C&OR" with principal offices at 47849 Papermill Road, Coshocton, Ohio 43812.

WHEREAS, ORDC, created by Chapter 4981 of the Ohio Revised Code, has the authority to lease real property in which it has an interest for the continuation and operation of rail service; and

WHEREAS, ORDC is authorized by Chapter 4981 to exercise all powers necessary or appropriate to carry out its corporate purposes including the authority to make and enter all agreements necessary to the performance of its duties and the execution of its powers; and

WHEREAS, on May 17, 2007, ORDC entered into an Operating Agreement with C&OR for the operation of the Panhandle Rail Line which expires on June 30, 2012; and

WHEREAS, upon expiration of the May 17, 2007 Operating Agreement, this Agreement shall take effect;

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration, and intending to be legally bound, the parties agree as follows:

Article I. DEFINITIONS

Section 1.01 "Effective Date" means July 1, 2012.

Section 1.02 "Mingo Connector" means any property hereinafter solely owned by C&OR during the Term or any Renewal Term of this Agreement generally located on the rail line at the easternmost portion of the Panhandle Rail Line at Milepost 49.5 at Mingo Junction, and the connection to the Norfolk Southern Railway, or its successors ("Norfolk Southern").

Section 1.03 "Neilston Connector" means the specific portion of the C&OR rail line called the Neilston Secondary between Milepost 135.9 and Milepost 136.45, which was purchased by C&OR from Consolidated Rail Corporation and is located at the western most portion of the Panhandle Rail Line at approximately Milepost 191 and which connects the Panhandle Rail Line with the Norfolk Southern Cleveland to Columbus mainline at a railroad control point called CP 138.

Section 1.04 "Panhandle Mainline" means the so called Weirton Secondary rail line situated between Milepost 157.8 at Newark, Ohio, and Milepost 49.5 at the east side of Gould's Tunnel and the so called C&N rail line between Milepost 191.0 at approximately 1,141 feet easterly of the intersection of the existing I-670 centerline, as measured along the railroad centerline, being the Westbound Home Signal at CP 138 in the City of Columbus and Milepost 157.8 at Newark, containing a total of 141.50 route miles of rail line.

Section 1.05 "Panhandle Branchlines" means the Cadiz Running Track situated between Milepost 0.0 at Cadiz Junction and Milepost 12.8 at the site of the former Georgetown Mine; the Hebron Industrial Track between Milepost 133.0 at Heath and Milepost 138.5 at Hebron, Ohio; and the Trinway Secondary Track situated between Milepost 0.3 at its connection to the Panhandle Mainline, and Milepost 1.43 at Trinway, Ohio, containing a total of 19.43 route miles of rail line.

Section 1.06 "Panhandle Rail Line" means the Panhandle Mainline and the Panhandle Branchlines, and all property conveyed by Conrail to Caprail.

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Article II. COMMON CARRIER RIGHTS

Section 2.01 C&OR shall have full right and responsibility to provide common carrier rail service on the Panhandle Rail Line, and to use and manage the Panhandle Rail Line for all purposes consistent with the duties, rights, obligations and responsibilities of a rail carrier under the jurisdiction of the Surface Transportation Board (the "STB"), the Federal Railroad Administration (the "FRA"), and other governing bodies or laws. Such rights shall include, but shall not be limited to, all rights of a rail carrier under the Revised Interstate Commerce Act, 49 United States Code § 10101, et seq. and the ICC Termination Act (Public Law 104-88, 109 Stat. 803).

Section 2.02 ORDC shall not undertake, and, subject to the terms of this Agreement, hereby waives any right it may have, to conduct, or hold itself out to conduct, common carrier rail service on the Panhandle Rail Line, for the term of this Agreement. C&OR shall not grant overhead rights, operating rights or trackage rights on the Panhandle Rail Line to any party without the advance written consent of the ORDC. Notwithstanding anything herein to the contrary, C&OR shall retain the right to provide haulage services to third parties. Subject to the provisions of this Agreement, ORDC shall provide C&OR with quiet enjoyment of the Panhandle Rail Line throughout the term of this Agreement.

Article III. NON-EXCLUSIVE FREIGHT OPERATIONS

Section 3.01 This Agreement does not convey to C&OR exclusive freight rights to use the Panhandle Rail Line. ORDC, in its sole discretion, may grant to other rail freight carrier(s) the right to jointly use all, or any portion of, the Panhandle Rail Line as provided in this Article 3, Non-Exclusive Freight Operations and as stated below.

Section 3.02 ORDC may grant joint use access to another rail freight carrier if C&OR has petitioned the Surface Transportation Board (STB) for authority to abandon or discontinue operations over all, or any portion of the Panhandle Rail Line, or has ceased to provide common carrier rail service over all, or a portion of the Panhandle Rail Line for a period of 30 days, other than pursuant to a lawful embargo or because of lack of demand for service or force majeure.

Section 3.03 Subject to Section 3.05 and excluding Section 3.02, ORDC may only grant other freight rail carrier(s) limited access to jointly use any portion of the Panhandle Rail Line, if such other carrier:

- (a) agrees in writing to defend, indemnify and hold C&OR and its subsidiaries, parent and affiliates, harmless against any and all liability arising in any way whatsoever from the other carrier(s) use of the Panhandle Rail Line;
- (b) is an existing rail freight carrier or newly created and can demonstrate its financial and operational capabilities to competently operate a railroad and procures insurance as required under Article XVII. In determining the operational capabilities of a carrier, the following items will be considered by the ORDC in its sole discretion, with input from C&OR: safety record, accident and incident records, management expertise, personnel expertise, operating rules and practices and suitability of equipment. Other criteria may be considered in addition to those listed above.
- (c) agrees that at all times, the operations of the other freight rail carrier(s) shall be conducted in a manner which does not unduly interfere with the C&OR's operations and shall be in compliance with all dispatching orders, operating rules, safety rules, directives and schedules of the C&OR;
- (d) agrees to pay to C&OR: 1) a maintenance fee per each car and locomotive moved by such other user based on actual costs of maintaining the Panhandle Rail Line; and 2) a usage fee per each car and locomotive moved by such other user. The actual cost component for the maintenance fee

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per car and locomotive is hereinafter referred to as "Actual Costs Per Car" and shall be defined and calculated as follows: the total maintenance and capital improvement costs expended by the C&OR, with its own funds, not counting any expenditure of public funds, for the maintenance and improvement of track, fixtures, and appurtenances on the Panhandle Rail Line for the three year period defined below, divided by the total number of loaded cars for this same three year period. The total maintenance and capital improvement costs shall consist of costs incurred in accordance with Section 11.01 of this Agreement. The initial three year period will be defined as the period of time from January 1, 2009 to December 31, 2011 and will be used as the basis of the Actual Costs Per Car until December 31, 2014. Beginning January 1, 2015, and occurring every year thereafter, the Actual Cost Per Car will be recalculated. A locomotive will be treated as the equivalent of a single car using the same formulas as delineated above. By February 15th of each year, the C&OR will provide the information and supporting documentation to the ORDC. The usage fee per each car and locomotive moved by the other carrier across the Panhandle Rail Line shall be an amount equal to the C&OR's current payment under Section 5.01(a) on an annual basis divided by the number of loaded cars moved by the C&OR on the Panhandle Rail Line that originate or terminate on the Panhandle Rail Line. By February 15th of each year, the C&OR will provide the information and supporting documentation to the ORDC.

- (e) In the event other freight rail carrier(s) agrees to meet and comply with Sections 3.03 (a) to (d) above, the C&OR will make reasonable good faith efforts to accommodate the other carrier(s) operational requests.

Section 3.04 Any other provision of this Article notwithstanding, any joint use or operations over the Panhandle Rail Line by any freight carrier other than C&OR shall be subject to such prior approval of the STB or other governmental bodies with jurisdiction over the premises as may be required under otherwise applicable law.

Section 3.05 Except as provided in Section 3.02, ORDC shall in no event grant any rail freight carrier other than C&OR the right to jointly use or operate over the Panhandle Rail Line during the term of this Agreement pursuant to the above provisions for the purpose of (1) providing transportation service of any kind to an Existing Rail User; (2) utilizing the Panhandle Rail Line as a through route without serving a Rail User or (3) transporting traffic that is the subject of a valid contract between the C&OR and a shipper. For purpose of this Agreement, "Existing Rail User" is defined as any shipper, customer, facility or rail patron (irrespective of ownership) located along the Panhandle Rail Line that shipped or received a rail car or cars via the C&OR over the Panhandle Rail Line at any time during the three years prior to the request of service and a "Rail User" is a shipper, customer, facility or rail patron (irrespective of ownership) located along the Panhandle Rail Line that has not shipped or received a rail car or cars via the C&OR over the Panhandle Rail Line at any time during the three years prior to the request of service. For the avoidance of doubt, a plant or facility that changes ownership after that plant or facility has been closed for the period of two years shall not be considered an Existing Rail User for the purposes of this Section 3.05.

Section 3.06 Subject to Section 3.05, the procedure by which ORDC will determine whether to grant limited operating rights under Section 3.05 to a freight rail carrier other than the C&OR pursuant to this Article shall be as follows:

- (a) The freight rail carrier will have been in discussion with the C&OR to move the rail cars under normal commercial terms. Only when the freight rail carrier has demonstrated that the commercial terms cannot be met in a cooperative manner will this section be applicable. Normal commercial terms will include joint line freight rates, haulage, limited trackage rights agreed to by

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- the parties and/or any other means by which the parties can agree acting reasonably.
- (b) Upon receipt of a written request for limited rights to jointly use any portion of the Panhandle Rail Line under provisions of this Article 3, NON-EXCLUSIVE FREIGHT OPERATIONS, ORDC will provide a copy of the request to the C&OR.
 - (c) Within forty-five (45) days after receipt of the request, the C&OR shall (i) provide ORDC and the requesting freight rail carrier with a written explanation of the terms and conditions (excluding terms already defined in this Agreement) that will apply to the requesting freight rail carrier's operations over the Panhandle Rail Line, consistent with this Article 3; and (ii) at the C&OR's option, discuss with ORDC a confidential proposal of terms, including, where appropriate, rates or division of rates under which the C&OR would agree to provide the service proposed to be provided by the requesting freight rail carrier. In the event C&OR provides a more advantageous proposal, in the opinion of the customer, to the customer than the requesting freight rail carrier, the requesting freight rail carrier will not be entitled to jointly use any portion of the Panhandle Rail Line.
 - (d) If the requesting freight rail carrier reasonably objects to terms or conditions provided by the C&OR under Paragraph 3.06(c) above (other than the conditions set forth in Section 3.03), it shall so inform ORDC and promptly thereafter ORDC shall confer with the C&OR with respect to the establishment of revised terms and conditions. If the C&OR and ORDC have not agreed upon such revised terms or conditions within thirty (30) days after the C&OR's response under Paragraph 3.06(c) above, then subject to Paragraph (e), below, ORDC, acting reasonably, may determine the revised terms and conditions that will apply.
 - (e) In making its determination whether to grant joint rights to a requesting railroad under this Article 3, Non-Exclusive Freight Operations, ORDC shall consider the following:
 - (i) The profitability of the C&OR, especially any increase in C&OR operating or maintenance costs resulting from the provision of rights to the requesting railroad.
 - (ii) The ability of the C&OR to continue to meet the requirements of this lease Agreement, including track maintenance and repairs, the C&OR's ability to invest in needed capital improvements on the Panhandle Rail Line, and the ability of the C&OR to provide effective service to Panhandle Rail Line shippers.
 - (iii) The extent to which the requesting railroad is willing to trade rights on the Panhandle for rights of the C&OR or its affiliated railroads to operate over lines of the requesting railroad at terms and values similar to those the requesting railroad seeks from ORDC on the Panhandle.
 - (f) If ORDC grants joint rights to freight rail carriers, in no event shall C&OR be obligated to bear any additional capital costs associated with the grant of such rights.
 - (g) C&OR agrees, however, that C&OR will cooperate as needed with ORDC before the Surface Transportation Board, and/or any other federal or state entity with jurisdiction over the granting of joint rights, to provide any C&OR filings or documentation which is required for ORDC to grant joint use rights as allowed in this Article. ORDC agrees that any agreement with another carrier will require such other carrier to enter into an Access Rights Agreement with C&OR in a form substantially similar to Exhibit A (the "Access Rights Agreement"). ORDC shall retain the exclusive right to grant joint rights to freight rail carriers other than the C&OR, subject to the terms and

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conditions of this Article.

- (h) Any other provision of this Agreement notwithstanding, and subject to any necessary regulatory approval, in the event that ORDC grants joint rights to another freight rail carrier under this Article 3, Non-Exclusive Operations over the C&OR's objection, the C&OR shall have the right to terminate this Agreement without further obligation to ORDC, except for the duty to facilitate the orderly change in service from the C&OR to another carrier, and cease to operate over the Panhandle, upon one hundred eighty (180) days prior written notice to ORDC.

Section 3.07 The C&OR will grant emergency detour rights to other rail carriers when requested in line with normal industry standard terms and conditions.

Article IV. TERM

Section 4.01 The term of this Agreement shall be from July 1, 2012 through and including June 30, 2037 (the "Initial Term") unless sooner terminated in accordance with the provisions of Article XIX of this Agreement.

Section 4.02 This Agreement shall automatically renew for successive five (5) year terms ("Renewal Terms") following the Initial Term unless terminated by either party upon one (1) year advance written notice to the other party either prior to the end of the Initial Term or prior to the end of any Renewal Term, provided any such termination shall meet STB regulatory requirements.

Article V. RENT

Section 5.01 The following payments must be paid by C&OR to ORDC:

- (a) Fixed Rent Payments. Fixed Rent in the amount of Eighty Three thousand three hundred and thirty three dollars and thirty four cents (\$83,333.34) per month, to be paid on or before the first day of each month.
- (b) Per Car Payments. Within 30 days after the end of each calendar quarter starting with the quarter ending September 30, 2012, the C&OR shall provide a report showing the number of cars moved on the Panhandle Rail Line during that quarter that uses the categories of traffic identified in items (i) to (iii) below. If the C&OR moves more than 25,000 cars in a quarter, then within 30 days after the end of that quarter C&OR shall make the following payments based on the number of cars moved during that quarter by C&OR:
- (i) C&OR shall pay additional rent to ORDC in the amount of \$3.00 for every loaded car moved by C&OR over the Panhandle Rail Line that originates or terminates (A) on a rail line of an Affiliate of C&OR in Ohio or (B) on the segments of rail line owned or operated by the C&OR that are not covered by this Agreement; and
 - (ii) C&OR shall pay additional rent to ORDC in the amount of \$1.50 for every loaded car moved by C&OR over the Panhandle Rail Line that originates and terminates on a rail line other than that of an Affiliate of C&OR in Ohio.
 - (iii) Cars originating or terminating on the Panhandle Rail Line are not subject to any additional or Per Car Payments.

With respect to this Section 5.01(b), "Affiliates" shall mean the Ohio Central Railroad and the Ohio Southern Railroad as they exist as of the Effective Date (or any new entities or railroads that replace such Affiliates as a result of any corporate reorganizations, restructurings or name changes).

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Section 5.02 The Fixed Rent Payments required by Section 5.01(a) and the Per Car Payments required by Section 5.01(b) shall be subject to annual escalation from July 1, 2013, based upon the year over year percentage change in the most recently published Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics.

Section 5.03 The Per Car Payments required by Section 5.01(b) shall be considered "Variable Rent". The Variable Rent may be reduced in any one year and on a carryover basis based on Extraordinary Capital Expenditures (as hereinafter defined), subject to ORDC approval.

Section 5.04 "Extraordinary Capital Expenditures" means C&OR individual investments in track and fixture beyond the activities and investments needed to maintain the Panhandle Rail Line pursuant to Article 11 of this Agreement including:

- (a) Significant expenditures which are in an amount equal to or greater than 33% of C&OR average of capital and maintenance expenditures for the previous three calendar years;
- (b) Expenditures which are only required to be done periodically in normal circumstances (i.e. every 30 years or more) or as a result of unfunded legislative mandates;
- (c) Expenditures which result from an Act of God or from a natural or manmade disaster; or
- (d) Expenditures, including economic development investments or investments in a grade crossing surface renewal program, which are considered extraordinary by the Executive Director of ORDC.

Section 5.05 In order for an Extraordinary Capital Expenditure to qualify for a deduction from the Variable Rent:

- (a) C&OR must submit a proposal to the Executive Director of ORDC prior to undertaking the project(s). The proposal must include, at a minimum, a description of the work being undertaken, the need for the project, the estimated cost to complete the project, and the proposed amount and timing of the requested deduction from the Variable Rent.
- (b) The Executive Director of ORDC will review the proposal, determine whether the project will be eligible for a deduction, and notify C&OR of the decision.
- (c) The ORDC will review the request within sixty (60) days of the receipt of a deduction request.
- (d) Within eighty (80) days of the request, the ORDC shall notify C&OR in writing of the amount the Variable Rent for the following year(s) of the Agreement will be reduced because of the Extraordinary Capital Expenditures made by C&OR.
- (e) Within sixty (60) days of the completion of a project qualifying for a reduction in Variable Rent under this paragraph, the C&OR shall provide the ORDC with a final accounting of all project costs and other supporting documentation that ORDC requests. ORDC may inspect the completed project and may modify the amount of the Variable Rent reduction based on the final project costs.

Section 5.06 ORDC will review on an expedited basis any request that, absent eligibility of deduction as an Extraordinary Capital Expenditure, will require a cessation in service by C&OR.

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Article VI. PERFORMANCE MEASURES

Section 6.01 At five (5) year intervals throughout the term of this Agreement ORDC shall conduct a review of C&OR performance in relation to this Agreement, and such review will consist of the following:

- (a) Track Maintenance: ORDC shall deem C&OR's performance to be satisfactory in this category if C&OR maintains the Panhandle Rail Line in accordance with the standards set out in Article 11 of this Agreement.
- (b) Connectivity/Value Added: ORDC shall deem C&OR's performance to be satisfactory in this category if C&OR, or its affiliated rail companies, maintains effective interchanges with Norfolk Southern and CSX Transportation at Columbus, Ohio and Norfolk Southern at Mingo Junction, or at points equivalent to these locations.

In the event that ORDC deems C&OR's performance in all of the categories included in this Section 6.01 to be satisfactory, the Agreement shall continue in its current form. In the event that ORDC deems C&OR's performance unsatisfactory in any category included in this Section 6.01, ORDC will then conduct a review of that category on an annual basis. If, after three consecutive years of additional review, C&OR's performance is still unsatisfactory, C&OR will be considered in default under Article 27 of this Agreement.

Section 6.02 At two (2) year intervals throughout the term of this Agreement, ORDC shall conduct a review of C&OR performance in relation to this Agreement, and such review will consist of the following:

- (a) Shipper Satisfaction: C&OR shall provide overall satisfaction survey results from a nationally recognized customer survey organization to the ORDC for the Panhandle Rail Line. ORDC shall deem the performance of the C&OR to be satisfactory in this category if the overall satisfaction for the Ohio Region is materially equivalent to or better than the overall satisfaction for the railroad industry as a whole. C&OR and ORDC agree that the first survey will be conducted in 2013.
- (b) Safety: ORDC shall contact the Federal Rail Administration (FRA) to determine the C&OR's safety performance one year after the Effective Date of this Agreement and every two years thereafter. For the purposes of this Agreement, ORDC will examine the safety performance for the C&OR. ORDC will examine the C&OR safety for the following Ratios: FRA Employee On Duty Rate per 200,000 person hours worked (Deaths and Nonfatal Injuries and Illnesses); and the Total Train Accidents per Million Train Miles Operated. ORDC shall deem the C&OR's performance to be satisfactory if the C&OR averages for these categories are lower than the average of the appropriate FRA classification of railroad types based on C&OR train miles operated and employee hours worked for the period being examined. Injuries or accidents that were induced by third party events will be removed from the calculation of FRA injury rates and Train Accidents.

In the event that ORDC deems C&OR's performance unsatisfactory in any category included in this Article 6.02, ORDC will then conduct a review of that category on an annual basis, for a period of three years, and corrective actions as agreed to by C&OR and ORDC per (c) and (d) below shall be implemented. If the results in either of the categories is not satisfactory after three years, the C&OR will face a penalty in the form of an increase in the Fixed Rent under Section 5.01(a) of five (5) percent over CPI for the following year. The performance in this Article will be reviewed at the end of the following year. If the performance of the C&OR remains unsatisfactory after a period of three additional years of

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penalty payments and implementing the corrective actions as agreed to by C&OR and ORDC per (c) and (d) below, C&OR may be considered in default under Article 27 of this Agreement. If the performance is satisfactory, the escalation rate will be returned to the CPI rate as described in Article V, and the Base Rent amount for the upcoming year will be re-calculated to remove the impact of any penalty paid in prior years.

- (c) Shipper satisfaction survey results will be reviewed by ORDC and the C&OR in an effort to identify the areas of dissatisfaction expressed by shippers within C&OR's control. ORDC acknowledges that not all issues raised by customers in the survey will be directly related to the specific service provided by the C&OR. For example, a Shipper may express dissatisfaction with items such as freight rates, transit times, service schedules and other items that do not necessarily reflect on C&OR's service performance. Following identification of the correctable areas of dissatisfaction, C&OR will present a plan of corrective actions to ORDC designed to improve on the areas under the control of the C&OR, in a manner that allows the C&OR to operate effectively and efficiently. C&OR will provide ORDC with quarterly reports summarizing the implementation of this plan, and additional actions taken by C&OR, if any. The shipper satisfaction survey will continue to be conducted annually until the results meet the requirements of 6.02(a) above.
- (d) C&OR and ORDC will review the injuries and incidents that occurred on the C&OR, the actions taken by the C&OR to rectify the causes of the events and the ongoing action plans to prevent such incidents in the future. ORDC may monitor compliance with the action plan with the cooperation of C&OR as long as such cooperation does not adversely impact C&OR's attorney client privilege or legal standing in any pending or threatened litigation related to an injury or incident.

Article VII. INSPECTION AND AUDIT

Section 7.01 C&OR agrees that ORDC, or its duly authorized representatives, shall, during ORDC normal business hours, upon reasonable notice, in accordance with C&OR safety rules and regulations, and accompanied by C&OR personnel, be permitted to inspect the Panhandle Rail Line. C&OR shall permit ORDC and its authorized representatives to examine and audit those books, records, and the accounting procedures and practices of the C&OR relevant to this Agreement. The financial records shall be kept in accordance with Generally Accepted Accounting Principles (GAAP). The records shall be retained for three years after the last remittance to ORDC. C&OR agrees that ORDC, or its duly authorized representatives shall be permitted to request an interview with any officer or employee of the C&OR regarding such records and data; provided however that in no event shall ORDC inspect such records or interview officers more frequently than twice each year.

Section 7.02 C&OR shall provide to ORDC by February 15th, confidential carloading information in connection with operations over the Panhandle Rail Line by customer, commodity, origin and destination, and interchange point(s) for the C&OR's prior fiscal year, and further, provide to ORDC gross ton miles/mile information broken down by various segments as reasonably requested by ORDC. ORDC shall maintain the confidentiality of this information in accordance with ORC 4981.03(d) and 49 USC 11904.

Section 7.03 C&OR and ORDC agree that it is the interest of both parties to develop new business along the Panhandle Rail Line, including the facilitation of plant and business expansion, as well as the facilitation of new businesses locating along the line. Upon the written request of ORDC, but not more often than once every fiscal year, C&OR shall provide to ORDC a written narrative of the marketing and

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development efforts undertaken by C&OR in the previous year to advance business expansion and location along the Panhandle Rail Line.

Article VIII. CONFIDENTIALITY

Section 8.01 To the extent possible under applicable law, all aspects of ORDC's exercise of audit rights under Section 7.1 and the results thereof, and any and all information disclosed by C&OR to the ORDC under this Agreement, including without limitation under Sections 7.01-7.03, shall be held confidential, and shall not be disclosed without C&OR's prior written consent. Nothing in this Agreement shall be construed to restrict the ORDC from disclosing such confidential information as required by law or by court or administrative order, provided in each case the ORDC shall timely inform C&OR, if legally permissible, of the request.

Article IX. ALTERATIONS AND IMPROVEMENTS

Section 9.01 The prior written approval of the Executive Director of ORDC shall be required before C&OR makes Alterations and Improvements. "Alterations and Improvements" shall mean any activity which substantially changes the nature of the Panhandle Rail Line, including but not limited to, the taking up of any portion of rail or track (mainline, branchline, or siding), or construction of significant new track, structure or appurtenances on or along the Panhandle Rail Line; for greater certainty, Alterations and Improvements shall not include Maintenance (hereinafter defined in Article 11). The Executive Director of ORDC shall not unreasonably withhold approval of Alterations and Improvements that: (1) are necessary to support rail operations; (2) do not unduly negatively impact rail service to rail shippers; and (3) are kept in good order, repair and in a safe condition.

Section 9.02 Except as set forth in Section 9.04, it is specifically understood and agreed to by the parties that all Alterations and Improvements to the Panhandle Rail Line are owned by ORDC. Nothing in this Article shall be construed to grant to C&OR the right to sell, trade or otherwise profit from the removal of track, track structures or appurtenances. C&OR agrees that ORDC reserves the right to be the sole beneficiary of the proceeds of any salvaging of any track, track structure or appurtenances on the Panhandle Rail Line; however, C&OR shall have the right to request in writing to the Executive Director of ORDC that C&OR be allowed to salvage un-needed track or track structures. C&OR's written request shall contain the reasons why the track or track structures are no longer needed for the operation of the Panhandle Rail Line, an estimation of the Net Liquidation Value (as defined in 49 C.F.R. § 1152.34(c)) of the items to be salvaged, and a detailed description of the improvements to the Panhandle Rail Line which will be made with the proceeds from the salvaging, including the exact location of such improvements. C&OR may commence with the salvaging of materials and retain the proceeds from such salvaging upon written permission to do so by the Executive Director of ORDC, and such permission will not be unreasonably withheld. For purposes of this Article, the sale of materials removed in Maintenance activities or for Alterations and Improvements; provided, however, the materials so removed are replaced in like kind or better condition, shall not be considered salvage and such sale is permitted by this Agreement.

Section 9.03 Upon the written request of ORDC, C&OR shall, at its sole cost and expense, remove any Alterations or Improvements and restore the Panhandle Rail Line to its condition previous to the construction of any Alterations or Improvements which were performed by C&OR without the express written consent of the Executive Director of ORDC.

Section 9.04 Notwithstanding anything to the contrary contained herein, the parties agree (i) the following segments of track set forth below and (ii) any new track siding or new structure constructed at C&OR's sole expense and approved by the ORDC shall be owned by C&OR following the termination of

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this Agreement, so long as such improvements are not necessary for the operation of a contiguous Panhandle Rail Line.

- Carmen Connection at MP 62.10
- Miller Siding between MP 63 and MP 65
- Rosebud Siding between MP 88 and MP 90
- Morgan Run Shops and Sidings at MP 118.30

Following termination of this Agreement, in the event that C&OR accepts an offer to purchase any new track siding or new structure retained under this Section 9.04 ("Retained Construction Offer"), C&OR shall provide ORDC a right of first refusal to purchase such new track siding or new structure at the price and on substantially the same terms as the Retained Construction Offer. C&OR shall provide written notice of the Retained Construction Offer to ORDC containing a copy of the Retained Construction Offer and all other terms and conditions applicable thereto. ORDC shall exercise its right of first refusal, if at all, by making a purchase offer to C&OR for such track siding or structure no later than the ninety (90) days after ORDC's receipt of the notice from C&OR. If the purchase offer is accepted by C&OR, ORDC shall have a period of one hundred twenty (120) days from C&OR's acceptance to procure funds needed to close on the transaction.

Article X. UTILITIES

Section 10.01 C&OR, at its sole cost and expense, shall arrange for and obtain necessary water, electricity and other utility services required for its use. ORDC shall not be liable for any such services, or the suspension of such services.

Article XI. MAINTENANCE AND REPAIRS

Section 11.01 C&OR shall have the right and responsibility to maintain the Panhandle Rail Line and shall be allowed to perform normal Maintenance without prior approval of ORDC. "Maintenance" includes, but is not limited to, track inspection; bridge and culvert inspection; grade crossing inspection and maintenance; grade crossing renewal; roadway vegetation control; crosstie replacement; ballast; lining and surfacing; rail replacement; rail welding; rail end, switchpoint and frog welding; rail joint maintenance; turnout renewal; drainage, ditching and culverts; bridge and tunnel maintenance; property management; and other normal railroad maintenance activities. C&OR shall have no right, responsibility or obligation to maintain, repair or remove any structure that carries a highway, road or street over the Panhandle Rail Line.

Section 11.02 C&OR has inspected and accepts the Panhandle Rail Line in its present condition and agrees that no representations or warranties with regard to condition and fitness for use of the Panhandle Rail Line have been made.

Section 11.03 C&OR agrees, at C&OR's sole cost and expense, to put, keep, and maintain the Panhandle Rail Line in good order, repair and safe condition. The C&OR agrees that the following level of FRA Track Class will be attained and maintained in the following territories:

- (a) Main Line – Newark to Columbus: FRA III
- (b) Main Line - Newark to Coshocton: FRA III

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- (c) Main Line – Coshocton to Bowerston: FRA II
- (d) Main Line – Bowerston to Jewett: FRA III
- (e) Main Line – Jewett to Gould: FRA II
- (f) Cadiz Running Track - MP 0.0 to 6.5: FRA I
- (g) Cadiz Running Track – MP 6.5 to 12. 8: Out of Service
- (h) Trinway Secondary Track: Excepted
- (i) Hebron Industrial Track: FRA I

Section 11.04 C&OR may request in writing to the Executive Director of ORDC that ORDC downgrade any segment of the track at any time during the period of this Agreement. In any event, with every fifth anniversary after the Effective Date of this Agreement, C&OR and ORDC shall review the FRA designations of all segments of the Panhandle Rail Line. In the event that C&OR and ORDC cannot mutually agree on the FRA designations for all segments of the Panhandle Rail Line, ORDC shall have the option to establish the FRA class of track and may obtain an expert evaluation as to what FRA class the tracks should be maintained. This expert evaluation shall include, but not limited to, the following considerations: (1) the train speeds needed for efficient rail freight operation; (2) the costs to C&OR of maintaining track to a particular FRA class compared to the economic benefits to C&OR of that level of maintenance; (3) safety of C&OR operations; and (4) current and anticipated freight volumes over the Panhandle Rail Line. The expert evaluation will exclude any maintenance requirements or track standard requirements related to passenger operations. ORDC and C&OR must mutually agree on the person or firm, as well as the methodology, for providing ORDC with this expert evaluation. ORDC shall undertake this expert evaluation at its sole cost and expense.

Section 11.05 The C&OR and ORDC acknowledge burial grounds of the Newark Earthworks may be located between mileposts N104.89 and N104.94 of the CN Subdivision. The parties agree to use their best efforts to avoid excavation, other than work needed for ordinary maintenance under this Article, in this location. If excavation work beyond ordinary maintenance is required, the parties will follow all applicable state and federal laws related to such sites.

Article XII. PASSENGER SERVICE

Section 12.01 ORDC reserves the right to permit qualified rail passenger operators other than C&OR to operate Passenger Service on the Panhandle Rail Line subject to the terms and conditions set forth herein. "Passenger Service" means any intercity passenger, commuter, or high speed rail transportation service. In order to qualify to conduct Passenger Service on the Panhandle Rail Line, the proposed Passenger Service operator shall:

- (a) Agree in writing to indemnify, defend and hold harmless C&OR, and its officers, directors, employees, agents, subsidiaries and affiliates against any and all claims, damages, liability or costs that would not have arisen but for the Passenger Service operator's use of the Panhandle Rail Line.
- (b) Provide and maintain the insurance up to the limit on liability set forth in 49 U.S.C. §28103, as the same may be amended, with reasonable proof that the self-insured retention under any such insurance policy can be satisfied. If at any time for any reason said insurance shall lapse, be cancelled or otherwise cease to be in effect, ORDC shall require the passenger service operator to immediately vacate the Panhandle Rail Line and refrain from any use thereof or operation thereof until said insurance is again fully effective and C&OR shall not be required to allow the Passenger

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Service to continue to operate on the Panhandle Rail Line.

- (c) Demonstrate its financial and operational capabilities to competently operate a Passenger Service to the satisfaction of the ORDC.
- (d) Abide by special operating terms and conditions concerning radios, telemetry, safety, flagging and other matters which C&OR may from time to time bring to the attention of ORDC.

Section 12.02 ORDC agrees that C&OR will not be compelled to operate or accept for operation passenger equipment which does not meet passenger car standards as determined by C&OR and a qualified independent passenger car inspector who shall be selected by ORDC and C&OR. Charges of the inspector will be paid by the party offering the passenger equipment for operation. In no event shall passenger equipment which has not been certified by Amtrak to meet its operating standards and requirements, and has not been FRA approved, registered in the RailincUmler™/Equipment Management Information System (Umler), and has current Automatic Equipment Identification (AEI) tags and Cleaning, Oiling, Testing, and Stencil (COTS) dates, be accepted for Passenger Service. The passenger service operator will be required to meet all Federal and state regulations concerning Passenger Service operations.

Section 12.03 C&OR will not be required to provide personnel, equipment, track upgrades or services for the operation of Passenger Service by a third party.

Section 12.04 C&OR and the Passenger Service operator seeking to use the Panhandle Rail Line will negotiate the compensation to be paid to C&OR for allowing Passenger Service, but such compensation shall be approximately equal to the actual costs to C&OR caused by the Passenger Service on the Panhandle Rail Line, including additional insurance costs, costs incurred to meet government regulations regarding Passenger Service, a management fee, maintenance and capital expenditures and other C&OR personnel costs, including any necessary flagging services. In no event will C&OR be compelled to subsidize or otherwise underwrite expenses of the Passenger Service operator on the Panhandle Rail Line. ORDC, acting reasonably, shall be the final arbiter in determining compensation to be paid to C&OR in accordance with the terms and conditions of this Article.

Section 12.05 In any grant of passenger rights to an operator ORDC will not require C&OR to pay for or maintain track or signals or related equipment to a higher standard than is noted in Article 11 of this Agreement.

Section 12.06 The Passenger Service operator will agree to comply with C&OR operating rules and safety regulations.

Section 12.07 Any Passenger Service must not unduly interfere with freight operations and shall be structured in Passenger Service operator windows to avoid any commingling of freight and passenger operations. In the event that there is a conflict between freight train movement and a Passenger Service movement, the freight train movement shall have priority. All parties shall make best faith efforts to coordinate any Passenger Service with the freight movements so that the freight service is not unduly interrupted.

Section 12.08 In the event C&OR desires to run Passenger Service on the Panhandle Rail Line, C&OR must comply with the requirements of this Article.

Article XIII. EXCURSION SERVICE

Section 13.01 "Excursion Services" means any rail transportation service that originates on, terminates on or moves along the Panhandle Rail Line and is undertaken primarily for education, entertainment,

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recreation or scenic observation and that does not involve any of the following: the carrying of freight other than personal luggage of the passengers or crew, or supplies and equipment necessary to serve the needs of the passengers or crew; or the carrying of passengers who are commuting to work; or the carrying of passengers who are traveling to a final destination solely for business or commercial purposes. An "Excursion Service Operator" is any non-profit entity that:

- (a) can supply qualified railroad equipment and qualified personnel necessary to operate Excursion Service, excluding train service provided by the C&OR, on the Panhandle Rail Line;
- (b) can supply the required insurance coverage required by this Agreement or commercially acceptable to the C&OR; and
- (c) agrees to follow and be bound by C&OR operating rules and safety regulations.

Section 13.02 Any Excursion Service and Excursion Service Operator must comply with all state and Federal laws, including but not limited to FRA standards for operations, equipment and track.

Section 13.03 The C&OR may enter into commercially acceptable terms with an Excursion Service Operator, or another freight carrier, for the purpose of providing Excursion Service on the Panhandle Rail Line. In such cases, the C&OR will provide a copy of the agreement to the ORDC prior to the commencement of service which shall in all cases include indemnification and defense of the ORDC in accordance with Section 13.04(b)(4).

Section 13.04 If the C&OR cannot reach commercially acceptable terms with an Excursion Service Operator, ORDC reserves the right to compel the C&OR to contract with qualified Excursion Service Operators to permit Excursion Services on the Panhandle Rail Line; provided the following criteria are met and the proposal is accepted by a vote of the ORDC:

- (a) ORDC will not require C&OR to pay for or maintain the track, signals or related equipment to a higher standard than is noted in Article XI of this Agreement.
- (b) Any Excursion Service Operator wishing to operate an Excursion Service on the Panhandle Rail Line must submit a proposal to the ORDC one hundred eighty (180) days prior to any planned excursion on the Panhandle Rail Line. The proposal must contain the following information:
 - (i) Detailed information regarding the identification and source of equipment including rail cars, and Federal and state documentation certifying the safety of the equipment to FRA standards, Umler registration, and current AEI tags and COTS dates in a form satisfactory to ORDC.
 - (ii) Detailed information regarding crew qualifications to operate equipment proposed, including a complete list of names of the individuals together with their current certification card and contact information for the issuing railroad.
 - (iii) Proposed dates of service, route and number of trips per day. All trips must be completed within a standard train crew hours of service schedule for a single crew including transit time to and from the crews on duty point.
 - (iv) Indemnification and defense of the State of Ohio and C&OR and its subsidiaries and affiliates in accordance with ORC 4981.033.
 - (v) Provide proof of, and maintain, the insurance set forth on Article XVII.

PANHANDLE RAIL LINE LEASE AND OPERATING AGREEMENT

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- (vi) Safe and proper boarding and debarking locations, which locations shall include level walking surfaces with appropriate crushed walking stone and proper wheel chair lifting device for physically challenged at any boarding or debarking location.
 - (vii) At least two C&OR safety trained car attendants per rail car. These car attendants will be supplied by the Excursion Service Operator at their cost. All training costs from the C&OR will be the responsibility of the Excursion Service Operator.
 - (viii) At least one trained paramedic crew consisting of at least two people per train and a licensed law enforcement official on the train at all times, each at the cost of the Excursion Service Operator.
 - (ix) Law enforcement officials to protect all grade crossings located throughout the excursion's route, at the cost of the Excursion Service Operator.
 - (x) A plan that provides for the physical inspection of the track by a rail flaw inspection service selected by the C&OR and a certified track inspector within 30 days of the start of the excursion service at the cost of the Excursion Service Operator to minimize the risk associated with the Excursion Service prior to each Excursion Service movement. C&OR shall be permitted to suspend the Excursion Service in its sole discretion following such inspections.
 - (xi) Agreement that any Excursion Service Operator will abide by special operating terms and conditions concerning radios, telemetry, safety, flagging, and other matters which C&OR may from time-to-time bring to ORDC's attention.
 - (xii) Agreement that any Excursion Service must not unduly interfere with C&OR freight operations. In the event that there is a conflict between freight train movement and an Excursion Service movement, the freight train movement shall have priority. All parties shall make best faith efforts to coordinate any Excursion Service with freight movements so that freight service is not unduly interrupted.
 - (xiii) Agreement to indemnify, defend and hold harmless C&OR, and its officers, directors, employees, agents, subsidiaries, parent and affiliates against any and all claims, damages or liability that would not have arisen but for Excursion Service.
- (c) The ORDC shall provide any Excursion Service proposal to C&OR within seven (7) days of receipt and within forty five (45) days of receipt of such proposal, C&OR will provide to ORDC and the Excursion Service Provider:
- (i) Validation of the qualifications of the proposed crew and a training schedule for operating rules and safety regulations of C&OR and a fee associated with this training.
 - (ii) Windows of track time for the Excursion Service or alternative dates and/or times when the track will be available for use.
 - (iii) A cost to supply locomotives and crews for the Excursion Service.
- (d) C&OR and the Excursion Service Operator seeking to use the Panhandle Rail Line will negotiate the compensation to be paid for allowing Excursion Service but such compensation shall be

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approximately equal to the actual costs to C&OR caused by the Excursion Service on the Panhandle Rail Line, including a management fee and all other C&OR personnel costs associated with the provision of the Excursion Service. In no event will C&OR be compelled to subsidize or otherwise underwrite expenses of a passenger or Excursion Service Operator on the Panhandle Rail Line. ORDC shall be the final arbiter in determining compensation to be paid to C&OR in accordance with the terms and conditions of this Article in the event of any dispute.

Section 13.05 Under no circumstances:

- (a) will the C&OR be required by the ORDC to run more than ten (10) days of Excursions Services (collectively under Section 13.03 or 13.04) annually, noting that priority shall be given to those proposals that are developed with the C&OR as permitted in Section 13.03 and cause the least disruption to freight rail service;
- (b) will the ORDC require the C&OR to run any excursion service that is not covered by the then-existing insurance provisions of the C&OR without reimbursement from the Excursion Service Operator.

Article XIV. ORDC RIGHTS ON CONTIGUOUS LINES

Section 14.01 The C&OR currently owns the Neilston Connector; and may in the future own, lease, or otherwise control and operate the Mingo Connector. In the event C&OR decides to abandon either the Neilston Connector or the Mingo Connector, C&OR shall first offer the ORDC the opportunity to purchase the Neilston Connector and/or the Mingo Connector at Net Liquidation Value as defined in 49 C.F.R. § 1152.34(c).

Section 14.02 The C&OR acknowledges that it may be necessary for trains to move over the Neilston Connector or the Mingo Connector to connect the Panhandle Rail Line with CSX Transportation and Norfolk Southern or successor railroads at Columbus or at Mingo Junction. The C&OR therefore agrees that in the event the ORDC grants joint rights over the Panhandle Rail Line to another rail carrier in accordance with Article III hereof, and this Agreement remains in effect, the C&OR will enter into an appropriate access agreement with such other carrier allowing the carrier to traverse the Mingo Junction and/or the Neilston Connector, as applicable, in exchange for payment consistent with the provisions of Article V of this Agreement solely for the purposes of exercising the limited rights as set forth in Section 3.05.

Section 14.03 In the event that C&OR accepts an offer to purchase (the "C&OR Offer") either the Neilston Connector or the Mingo Connector (the "Sale Property") C&OR shall provide ORDC the right of first refusal ("ROFR") to purchase the Sale Property at the price and on substantially the same terms of the C&OR Offer. C&OR shall provide written notice (the "Notice of C&OR Offer") of the C&OR Offer to ORDC containing a copy of the C&OR Offer and all other terms and conditions applicable to the C&OR Offer. ORDC shall exercise its ROFR, if at all, by making a purchase offer ("ORDC Offer") to C&OR no later than ninety (90) days after ORDC's receipt of the Notice of C&OR Offer. ORDC shall have a period of one hundred twenty (120) days from C&OR's receipt of the ORDC Offer to procure funds needed to close on the property acquisition.

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Section 14.04 If ORDC does not exercise its ROFR in regard to a C&OR Offer of which it has been given notice in accordance with Section 14.03, and if within one hundred twenty (120) days after the date of the Notice of C&OR Offer, the Sale Property is conveyed in accordance with the C&OR Offer specified in the Notice of C&OR Offer, ORDC's ROFR shall terminate with respect to Sale Property so sold and conveyed, provided that:

- (a) the ROFR shall remain in effect with respect to the balance of the Sale Property, if any, not conveyed pursuant to the C&OR Offer; and
- (b) once a C&OR Offer of which a Notice of C&OR Offer has been provided to ORDC is accepted by C&OR, C&OR shall not agree to a reduction of the purchase price, more favorable terms or any change in the nature or amount of the consideration to be given in exchange for the Sale Property without first giving ORDC notice of the reduction, more favorable term or change, and upon receipt of that notice, ORDC shall again, in accordance with the provisions of Section 14.03, have the ROFR to purchase the Sale Property at the new price and new terms.

Section 14.05 If a C&OR Offer is not accepted by C&OR or if the Sale Property is not conveyed in accordance with an accepted C&OR Offer, the ORDC's ROFR shall be applicable to any subsequent C&OR Offer. Nothing contained in this Article concerning either the termination of ORDC's ROFR or ORDC's failure to exercise the same shall in any way affect any of ORDC's other rights and privileges under this Agreement.

Section 14.06 Upon request of C&OR, ORDC shall furnish to C&OR, or the purchaser of the Sale Property, an affidavit in recordable form stating the extent to which ORDC's ROFR has terminated in accordance with this Article and setting forth such other matters as ORDC shall deem necessary to appropriate.

Section 14.07 In the event this Agreement expires or is terminated and the C&OR, or any affiliate, no longer conducts rail freight operations over the Panhandle Rail Line, the C&OR, or an affiliate, shall agree to sell to ORDC and ORDC reserves the right to purchase from the C&OR, or a related entity, the Neilston Connector and/or the Mingo Connector for the then fair market value.

Section 14.08 In the event this Agreement expires or is terminated and the C&OR, or a related entity, continues to conduct rail freight operations over the Panhandle Rail Line, the C&OR, or a related entity, agrees to negotiate market rates in good faith with any future operator seeking to traverse the Neilston Connector or the Mingo Connector.

Article XV. C&OR RIGHT OF FIRST REFUSAL

Section 15.01 If, during the Initial Term or any Renewal Term of this Agreement, ORDC receives and desires to accept any bona fide offer or to make any offer (an "ORDC Offer") for the sale of the Panhandle Rail Line, or any portion thereof, ORDC shall notify C&OR in writing of each ORDC Offer ("Notice of ORDC Offer") containing a copy of the ORDC Offer and all other terms and conditions applicable to the ORDC Offer. The whole or that part of the Panhandle Rail Line to which the ORDC Offer applies is referred to as the "ORDC Offer Panhandle Rail Line." C&OR shall have the right to purchase ("Right of First Refusal") the ORDC Offer Panhandle Rail Line at the purchase price set forth in the ORDC Offer. C&OR shall exercise its Right of First Refusal, if at all, by giving written notice of exercise to ORDC no later than the ninety (90) days after C&OR's receipt of the Notice of ORDC Offer.

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Notwithstanding anything to the contrary in this Article, any ORDC Offer must obtain an acknowledgement that this Agreement will remain in full force and effect over the Panhandle Rail Line following the consummation of any transaction.

Section 15.02 If C&OR does not exercise the Right of First Refusal in regard to an ORDC Offer of which it has been given notice in accordance with Section 15.01, and if within one hundred twenty (120) days after C&OR's receipt of the Notice of ORDC Offer, the ORDC Offer Panhandle Rail Line are conveyed in accordance with the ORDC Offer, C&OR's Right of First Refusal shall terminate with respect to the ORDC Offer Panhandle Rail Line, so sold and conveyed, provided that:

- (a) the Right of First Refusal shall remain in effect with respect to the balance of the Panhandle Rail Line, if any, not conveyed pursuant to the ORDC Offer;
- (b) once an ORDC Offer, of which a Notice of ORDC Offer has been provided to C&OR, is accepted by ORDC, ORDC shall not agree to a reduction of the purchase price, more favorable terms or any change in the nature or amount of the consideration to be given in exchange for the ORDC Offer Panhandle Rail Line without first giving C&OR notice of the reduction, more favorable term or change, and upon receipt of that notice, C&OR shall again, in accordance with the provisions of Section 15.01, have the Right of First Refusal to purchase the ORDC Offer Panhandle Rail Line at the new price and new terms.

Section 15.03 If any ORDC Offer is not accepted by ORDC or if the ORDC Offer Panhandle Rail Line are not conveyed in accordance with the accepted ORDC Offer within one hundred twenty (120) days after the date C&OR received the Notice of ORDC Offer, then C&OR's Right of First Refusal shall be applicable to the ORDC Offer Panhandle Rail Line and to any subsequent offer received by ORDC with respect to the Panhandle Rail Line or any part thereof during the Initial Term or any Renewal Term of this Agreement. Nothing contained in this Article concerning either the termination of C&OR's Right of First Refusal or C&OR's failure to exercise the same shall in any way affect any of C&OR's other rights and privileges under this Agreement.

Section 15.04 Upon request of ORDC, C&OR shall furnish to ORDC, or the purchaser of the ORDC Offer Panhandle Rail Line, an affidavit in recordable form stating the extent to which C&OR's Right of First Refusal has terminated in accordance with this Article and setting forth such other matters as C&OR shall deem necessary or appropriate.

Article XVI. ASSIGNMENT AND SUBLETTING

Section 16.01 This Agreement and all the terms and conditions hereof shall inure in favor of, and be binding upon, the parties hereto and upon their respective successors and permitted assigns.

Section 16.02 C&OR shall not assign or transfer this Agreement in whole or in part, or sublet the Panhandle Rail Line, or any part thereof without the prior written consent of the Executive Director of ORDC, which consent shall not be unreasonably withheld. An assignment, or transfer, or merger or consolidation by operation of law, or proceeding in equity, bankruptcy, insolvency or reorganization, or a transfer of any controlling interest of the stock of C&OR to a person or persons not now in control, shall be deemed to be an assignment within the meaning of this provision; provided, however, C&OR shall be allowed to assign to a parent, subsidiary or corporate affiliate of C&OR and/or to a voting trustee under 49 C.F.R. Part 1013, a controlling interest of stock in C&OR without prior ORDC approval.

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Article XVII. INSURANCE AND INDEMNIFICATION

Section 17.01 This Agreement is without force and effect until such time that C&OR demonstrates to the satisfaction of ORDC that C&OR has railroad liability insurance coverage (i.e., bodily injury and property damage coverage) in amounts not less than one hundred million dollars (\$100,000,000.00) for each individual claim with regard to the operation of the Panhandle Rail Line. Such insurance shall include ORDC as an additional insured under such policy(ies). C&OR shall provide a certificate of insurance to ORDC not less than ten (10) days prior to the execution of this Agreement. Each such policy of insurance shall be evidenced as follows: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." C&OR shall deliver to ORDC verification as to the replacement or renewal of each such policy prior to or upon the expiration (or other termination) date of any such policy.

Section 17.02 On every fifth anniversary after the Effective Date of this Agreement, the amount of insurance coverage required for C&OR shall be reviewed by ORDC. This review shall be done by mutual agreement, or, if no mutual agreement can be obtained, ORDC shall establish the level of insurance required by obtaining expert evaluation as to what the level of insurance should be. This expert evaluation shall include, but not be limited to, the following considerations: (1) the level of risk inherent in C&OR freight operations over the Panhandle Rail Line; (2) the costs to C&OR of the insurance premium compared to the risks of C&OR operations; (3) the insurance coverage being purchased by other comparable rail operations within the State of Ohio; and (4) the availability of insurance coverage in the market. ORDC and C&OR must mutually agree to the person or firm, as well as the methodology, for providing ORDC this expert evaluation. ORDC shall undertake this expert evaluation at its sole cost and expense. In no event shall the insurance levels in Section 17.01 ever be less than those set forth above unless Ohio law requires otherwise.

Section 17.03 C&OR agrees to indemnify and hold ORDC and the State of Ohio harmless from and against any loss, claim, damage, cause of action or absolute liability (including without limitation, reasonable counsel fees) caused by the negligence, reckless, intentional or willful misconduct of C&OR, its employees, agents, contractors or subcontractors.

Section 17.04 C&OR agrees to defend, indemnify, and to hold ORDC harmless from and against any liability and/or responsibility to mitigate damages attributable to environmental contamination resulting from C&OR's use and management of the Panhandle Rail Line, with the exception of any liability and/or responsibility to mitigate damages attributable to environmental contamination as a result ORDC's grant of joint rights to another freight rail carrier under Article 3 of this Agreement.

Section 17.05 Nothing in this Article shall be construed as imposing on C&OR any liability or duty of indemnification whatsoever with respect to any acts or omission of rail carriers other than C&OR conducting operations on or over the Panhandle Rail Line pursuant to this Agreement.

Section 17.06 In no event shall C&OR or any of its employees, agents, contractors or subcontractors be considered agents or employees of ORDC or the State of Ohio. C&OR agrees to use its reasonable best efforts to ensure that none of its employees, agents, contractors or subcontractors hold themselves out as, or claim to be, agents, officers or employees of ORDC or the State of Ohio, and will not, by reason of

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any relationship with ORDC and the State of Ohio, make any claim, demand or application to any agent, officer or employee of the State of Ohio including, but not limited to, rights and privileges concerning worker's compensation benefits, social security coverage or retirement membership or credit.

Section 17.07 The parties' obligations under this Article shall survive the termination of this Agreement.

Article XVIII. FEDERAL AND STATE LEGAL COMPLIANCE

Section 18.01 C&OR, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

Article XIX. TERMINATION

Section 19.01 Notwithstanding Article 4.01 or 4.02, (i) C&OR shall have the right to terminate this Agreement at its discretion upon written notification to the Executive Director of ORDC one hundred eighty (180) days in advance of C&OR's actual cessation of service and (ii) ORDC shall have the right to terminate this Agreement, or any renewal of this Agreement, only in accordance with the provisions of Article 27 of this Agreement.

Section 19.02 Upon expiration or termination of this agreement C&OR shall immediately file for discontinuance of its service on the Panhandle Rail Line with the Surface Transportation Board. In the event that C&OR does not promptly file for discontinuance of its service C&OR specifically authorizes ORDC to file for such discontinuance on its behalf and to reimburse ORDC for the legal fees and all expenses related to such filing.

Article XX. TAXES AND ASSESSMENTS

Section 20.01 C&OR shall have the sole responsibility to pay all taxes and assessments arising after the Effective Date of this Agreement for the Panhandle Rail Line, or C&OR's use of the Panhandle Rail Line including, but not limited to, real estate taxes and other assessments if any, throughout the Initial Term and any Renewal Term of this Agreement. C&OR shall pay such taxes and assessments directly to the taxing or assessing authority before such payments become delinquent and shall certify to ORDC that these tax obligations have been met. It is further agreed that C&OR shall have the right, at its sole cost and expense, to challenge the application, assessment or computation of any tax, as provided under applicable law. C&OR agrees to pay any penalties assessed to ORDC or to C&OR due to lack of payment or late payment by C&OR of any taxes described in this Article.

Article XXI. FORCE MAJEURE

Section 21.01 In the event of an occurrence beyond the reasonable control of C&OR, including but not limited to, a material derailment, an act of God, a flood, act of terrorism, a major explosion or fire, or an act of any government, which prevents or materially impairs C&OR's ability to provide rail service ("Force Majeure") over all or a part of the Panhandle Rail Line (the "Damaged Panhandle Rail Line"), C&OR's obligation to provide rail service over the Damaged Panhandle Rail Line under this Agreement is excused until such time as the Damaged Panhandle Rail Line becomes operational. In the event of such an occurrence, ORDC and C&OR shall determine jointly and in good faith how the expense of repairing or rebuilding the Damaged Panhandle Rail Line shall be divided between ORDC and C&OR; provided,

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however, that in the absence of ORDC's commitment to pay for same, C&OR shall not be obligated to undertake any repair or replacement of asset or equipment that would not be required under otherwise applicable law. An incidence of Force Majeure shall excuse C&OR from its obligations under Article V Rent for the Damaged Panhandle Rail Line for the duration of the event, provided that C&OR's Fixed Rent Payments shall be pro-rated for the number of days a Force Majeure was declared in any month and the carload impact of the Force Majeure.

Section 21.02 It is expressly agreed that ORDC or the C&OR retains the option to terminate the Agreement in accordance with Article XIX, Termination, upon the occurrence of any act deemed to be "Force Majeure" under this Article in the event such Force Majeure is not remedied within 180 consecutive days; provided, however, that the ORDC shall not be entitled to terminate this Agreement under this Section 21.02 if the Force Majeure is caused, in whole or in part, by the acts or omissions of any party other than the C&OR.

Article XXII. PROPERTY MANAGEMENT

Section 22.01 The C&OR shall be obligated to fulfill all responsibilities, obligations and duties in managing and negotiating all property leases, crossings and other similar agreements, excluding easements, related to the Panhandle Rail Line, hereinafter referred to as Property Transactions. The C&OR will invest the funds received from such activities into the maintenance of the property.

Section 22.02 Notwithstanding Section 22.01, property leases, licenses, crossings and other similar agreements requested by public agencies will be charged based on the following schedule:

- (a) A Preparation fee of \$1,000 per agreement; and an additional annual fee of \$10 per foot for the length of the occupancy on the property with a minimum of \$500 per year with discretion provided to the C&OR to reduce or waive the fees in consideration of extraordinary circumstances; and all costs associated with the construction and maintenance of the occupancy including restoration of the rail line will be the responsibility of the public agency.
- (b) The Preparation fee and per foot annual fees shall be subject to annual escalation from July 1, 2012, based upon the Consumer Price Index (CPI).

Section 22.03 The C&OR shall submit third party requests for Property Transactions, along with C&OR's proposed agreement, to the ORDC in writing to secure the ORDC's advance written approval, which will not be unreasonably withheld.

Article XXIII. NOTICES

Section 23.01 All notices, requests, demands, directions and other communications (collectively "notices") given to or made upon any party hereto under the provisions of this Agreement shall be in writing (including electronic mail) and shall be delivered or sent by first class, certified, return receipt requested, or first class express mail or overnight air courier service, or by electronic mail with confirmation in writing mailed first class, in all cases with postage or charges prepaid, to the applicable party, addressed:

- (a) If to ORDC: Executive Director, Ohio Rail Development Commission, 1980 West Broad Street, 2nd Floor, Columbus, Ohio 43223.

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(b) If to C&OR: President, Columbus & Ohio River Rail Road Company, 47849 Papermill Road,
Coshocton, Ohio 43812

Section 23.02 Or, notice may be given to another party and/or at another address in accordance with any unrevoked written direction from any party to any other party hereto. Each such notice shall be deemed to have been given or received on the date sent except when sent by first class express mail or overnight air courier service, in which case on the next Columbus Banking Day thereafter, and except when sent by first class mail, in which case on the third Columbus Banking Day thereafter.

Article XXIV. REMEDIES

Section 24.01 No remedy herein conferred upon or reserved by either party is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be, in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity.

Article XXV. NO WAIVER

Section 25.01 No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by the non-breaching party. Further, if any term, provision, covenant or condition contained in this Agreement is breached by either party and thereafter such breach is waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. A written record of such waiver shall be included in the records of this Agreement.

Article XXVI. NO ABANDONMENT

Section 26.01 C&OR shall not apply for abandonment of or discontinuance of service over any portion of the Panhandle Rail Line without securing the advance written consent of the ORDC, which written consent shall not be unreasonably withheld.

Article XXVII. DEFAULT

Section 27.01 ORDC shall notify the C&OR in writing that the C&OR is in default of this agreement if the C&OR is not performing or complying with any condition or provision of this Agreement, or if the C&OR is insolvent or files, or consents to the filing against it of a petition for relief or reorganization in bankruptcy or insolvency under the laws of any jurisdiction.

Section 27.02 In the event that ORDC informs the C&OR in writing of a C&OR default, the C&OR shall have Ninety (90) days to cure the default except that: 1) there shall be no grace period for the payment of any monetary obligations, which shall be due immediately upon notification from ORDC; and 2) for obligations that would be reasonably expected to take more than Ninety (90) days to cure, the C&OR shall begin steps to cure the default within Thirty (30) days and thereafter make good faith efforts to prosecute same with due diligence so that the cure shall take place in a reasonable amount of time. If C&OR fails to so cure within this period, or pay all monetary amounts when due, then ORDC may terminate this Agreement. In the event ORDC terminates this Agreement, in addition to any other

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action or remedy which ORDC may have at law or in equity to recover damages or otherwise by reason of breach by C&OR of any provision of this Agreement, ORDC shall have the right to remove C&OR from the Panhandle Rail Line and take possession thereof by all available legal means, including, but not limited to, the assignment of trackage operating rights to another carrier at ORDC's discretion without regard to Article 3, "Non-Exclusive Operation" of this Agreement, free and clear and discharged of this Agreement and of all right of the C&OR hereunder.

Section 27.03 At its discretion, ORDC may request that the C&OR continue operations on the line for an agreed upon period of time after ORDC's termination of this Agreement because of C&OR default to facilitate the orderly change in service from the C&OR to another carrier. In accordance with Section 19.02 C&OR agrees that it will promptly file for discontinuance of service or in the alternative it will support an appropriate filing with the STB for a change in operator of the Panhandle Rail Line in order to facilitate and orderly transition. Such continued operations shall be governed by the terms of this Agreement but shall not constitute a reinstatement of this Agreement.

Article XXVIII. GOVERNING LAW AND VENUE

Section 28.01 This Agreement shall be construed, interpreted, and the right of all parties determined, in accordance with the laws of the State of Ohio. The parties agree that the exclusive venue for any dispute regarding this Agreement shall be in a court of competent jurisdiction located in Franklin County, Ohio.

Article XXIX. ALTERNATIVE DISPUTE RESOLUTION

Section 29.01 The parties hereby agree that they will attempt in good faith to promptly resolve any controversy or claim arising out of or relating to this Agreement through negotiation. If a disputed matter cannot be timely resolved between the parties, ORDC and C&OR further agree to pursue the alternative dispute mechanism of mediation, and to share in the costs of the same, to resolve any controversy or claim under this agreement before pursuing litigation.

Article XXX. NO THIRD PARTY BENEFICIARIES

Section 30.01 This Agreement and each and every provision throughout are for the exclusive benefit of the parties to this Agreement and not for the benefit of any third party.

Article XXXI. DRUG FREE WORKPLACE

Section 31.01 C&OR agrees to comply with all applicable state and Federal laws regarding drug-free workplace. C&OR shall make good faith efforts to ensure that all of its employees while working on the Panhandle Rail Line will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any manner.

Article XXXII. SEVERABILITY

Section 32.01 If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

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Article XXXIII. LIMITATIONS

Section 33.01 Notwithstanding anything stated in this Agreement to the contrary, any provision, agreement, condition, understanding, or the like contained in this Agreement which contravenes, violates, conflicts with or is not authorized by the Constitution or Statutes of the State of Ohio shall be void ab initio.

Article XXXIV. ENTIRE AGREEMENT

Section 34.01 This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. No terms shall be altered or otherwise amended except by an instrument in writing signed by each party hereto.

Article XXXV. CAPTIONS

Section 35.01 The article captions in this Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or any part hereof and shall not be considered in any construction hereof.

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