

**OFFER TO PURCHASE AND INTERIM
TRAIL USE/RAILBANKING AGREEMENT**

This Offer to Purchase and Interim Trail Use/Railbanking Agreement entered into this ___ day of _____, 20xx, by and between [TRAIL MANAGER], **a non-profit entity organized under the laws of the state of [STATE] or [The City of _____ / _____ County], a political subdivision in the state of [State]** with its principal office at [0000 X Plaza, 000 Main Street, CITY, STATE, ZIP], (hereinafter called “Buyer”), and [RAILROAD], a corporation organized under the laws of the State of [STATE], with its principal office at [0000 X Plaza, 000 Main Street, CITY, STATE, ZIP] (hereinafter called “Seller”);

WHEREAS in Surface Transportation Board (“STB”) Docket Nos. _____ Seller has sought authority from and has been granted authority by the STB for interim trail use/railbanking or abandonment of railroad operations over its rights-of-way described herein.

WHEREAS during this proceeding, Buyer initiated a request for interim trail use of paid rights-of-way under and pursuant to the National Trails Systems Act, 16 U.S.C. § 1247(d), to which request for negotiation Seller has acceded.

WHEREAS in said dockets, the STB has issued its Notice of Interim Trail Use (“NITU”) for the stated rights-of-way, under which the jurisdiction of the STB over the property remains effective, BN to date not having effected the abandonment of all or any portion of said rights-of-way.

WHEREAS Buyer seeks to purchase pursuant to the National Trails Systems Act all of Seller’s right, title and interest in and to portions of the following rail corridors and all track structures (with some exceptions herein defined) approximately situated between the following mileposts:

And more particularly describe in Exhibit "A" attached hereto and made a part hereof (said parcel of land being hereinafter called the "premises") at the price and upon the terms and conditions as follows:

1. Purchase of Premises and Track Materials

Buyer agrees to pay to Seller the purchase price of *\$insert price here* for said premises and all track structures except as otherwise provided herein, of which the amount of *\$insert price here* hereinafter called the "deposit", is paid by check or by wire transfer on the date of execution of this Agreement by both parties to Seller to be applied on the purchase price. After commencement of salvage pursuant to paragraph 26 any deposits paid shall be non-refundable. In the event Buyer elects to exercise its right to enter on the premises to salvage certain materials prior closing pursuant to paragraph 26 hereof, Buyer shall remit immediately on or before the date of entry an additional deposit payment by check or by wire transfer in the amount of *\$insert price here* to Seller to be applied on the purchase price. The balance of said purchase price shall be paid in cash by wire transfer or by certified check to Seller at the time Seller's deed to the premises is delivered to Buyer. Delivery of the deed(s) shall be made at Seller's above stated office, or at a location mutually agreeable to the parties hereto. Acceptance of this offer by Seller shall be evidenced by delivery to Buyer of the duplicate copy properly executed by Seller. Buyer shall not be entitled to any refund or any deposit upon salvage of the premises regardless of whether closing is effectuated.

2. Terms of Conveyance

Seller shall convey or cause to be conveyed, all of Seller's right, title and interest, if any, in the premises described in Exhibit A to Buyer by quitclaim deed(s) properly invoking section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) subject to all rights, easements and reservations in place or of record and in accordance with the other terms, conditions and reservations contained herein.

In the event Seller's description of the premises as used in the deed(s) is not acceptable to Buyer, Buyer shall so advise Seller of their objections to said description and within fifteen (15) days thereof, Buyer shall, at its expense, arrange for a survey of the premises to be furnished to the Seller.

3. Buyer's Right of Entry for Surveys

Prior to closing, the Buyer and duly authorized employees or agents shall have the right to enter upon the premises to perform soil tests and surveys upon execution of this Agreement by the Buyer and execution by Seller and Buyer of Seller's standard Right of Entry Agreement.

4. Structures

This offer shall include the conveyance of any interest Seller may have in all bridges and culverts located on the premises. Additionally, this offer shall include all of Seller's right, title and interest (if any) to all track structures, materials and appurtenances on the premises except that Seller shall retain:_____. This conveyance shall also include all track materials, bridges and all appurtenances (but not the underlying real estate) on the [name of corridor: e.g., Johnstown to Warrenton] right-of-way from milepost ___ to milepost ___. Buyer warrants that it has examined the premises, track materials, and structures and purchases said premises, materials and structures **AS IS, WHERE IS**. Seller makes no warranties, express or implied, as to the fitness for a particular purpose or quality of the track structures and appurtenances thereto.

5. Bill of Sale

It is agreed that, except as expressly provided otherwise, all bridges, culverts, and other structures (including rails, ties, wires, signals and other track materials, hereinafter referred to as "salvage materials") on said premises shall remain in

place and become the property of Buyer upon conveyance of said premises; provided, however, those materials and appurtenances expressly excepted herein shall not be included in the sale. The price of all such structures not expressly excepted herein is the included in the total purchase price, and Seller agrees to furnish Buyer a Bill of Sale for all such structures at no additional cost to Buyer. If Buyer elects to enter and salvage pursuant to paragraph 26 hereof and pays the entire deposit of *\$insert price here* plus *\$insert price here*, Seller shall deliver unto Buyer immediately upon receipt of said payment a Bill of Sale(s) as to all properties described herein except that covered by the *[name of corridor: e.g., Johnstown-Warrenton]* segment. The Bill of Sale on said segment shall issue promptly upon the STB's lifting of the condition barring any disposition of the properties. If Buyer does not elect to enter and salvage prior to Closing, all Bill of Sale(s) shall issue upon Closing.

6. Management, Operation and Maintenance of the Premises

Buyer assumes full and complete responsibility for the management, operation and maintenance of the conveyed premises and under no circumstances shall Seller be required to manage, operate or maintain the conveyed premises after the Closing of title hereunder. This agreement shall not be construed to create a joint enterprise for the operation of premises.

7. Buyer's Indemnity

Buyer will indemnify and hold Seller harmless from any and all liability, cost or expense, including attorneys' fees, arising after the date of closing or as a result of this sale, including injuries, death, or property loss or damage. Buyer shall protect, hold harmless and indemnify Seller against any claim or liability arising from or based on the violation of any law, ordinance, regulation, injunction, or final order or decree of bodies or tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, whether by Buyer or

its employee agents, or subcontractors. Buyer shall be responsible for defense of any litigation contesting the right of the parties hereto to enter into or effectuate this Agreement under the National Trails Systems Act, 16 U.S.C. § 1247(d). Buyer agrees to pay Seller its out-of-pocket expenses, including reasonable attorneys' fees in the event Buyer does not assume the defense, incurred by Seller in connection with litigation arising out of the transfer or use of the premises covered by this Agreement for interim trail use and railbanking purposes.

Buyer warrants to Seller that the Buyer shall, at its own expense, obtain and maintain in force during the pendency of Trail Use/Railbanking hereunder Commercial General Liability Insurance for all claims arising out of bodily injury, illness and death and from damages to or destruction or property of others, including loss or use thereof, and including liability of Seller, with minimum limits for bodily injury and property damage of *\$insert price* per occurrence, with an aggregate of *\$insert price*. In the event the real estate is conveyed to a public agency, the public agency may fulfill this obligation through sufficiently funded self-insurance. Evidence of insurance (or certificate of self-insurance) shall be provided to Seller prior to Closing. In the event Buyer elects to enter and salvage the properties pursuant to paragraph 26 hereof, prior to such entry, Buyer shall provide evidence of insurance required by that paragraph in addition to insurance required hereunder. Buyer may supply evidence of insurance for activity upon entry and prior to Closing separate from evidence of insurance applicable after Closing. In the event of restoration of rail service by Buyer's assignee, pursuant to the terms of paragraph 24 hereof, the minimum limits shall be increased for the particular line to *\$insert price* per occurrence, with an aggregate of *\$insert price* for bodily injury and property damage.

8. Seller's Indemnity

Seller will indemnify and hold Buyer harmless from any and all liability, cost or expense, including attorneys' fees, incurred by or assessed against Buyer arising

before the date of closing on account of injuries death or property loss or damage resulting from Seller's acts or omissions in connection with Seller's use, operation or maintenance of the premises.

9. Environment Liability

Seller shall retain and bear all liability relating to environmental or hazardous conditions, materials or substances, to the extent arising out of, relating to or resulting from any act, omission or even occurring prior to the date of Closing or condition of the Premises created prior to the date of Closing regardless of when discovered; provided, however this provision shall not relieve Buyer from any liability addressed in paragraph 26 herein. Buyer shall assume and bear all liability relating to environmental or hazardous conditions, materials or substances to the extent occurring or created after the date of Closing, or during occupancy of the premises for salvage under advance right of entry hereunder, regardless of when discovered. The party to whom responsibility is allocated for a particular liability or liabilities pursuant to this subsection shall defend and hold harmless the other party from any and all suits, claims, loss, costs, damage or injury, on account of that liability or liabilities. These indemnity obligations shall survive termination of this Agreement; provided, however, that Buyer shall not indemnify Seller for any liability arising on that portion of the Premises which Seller reenters for purposes of reinstating rail service from the date Seller first so reenters.

10. National Historic Preservation Condition

11. Successors and Assigns

Wherever referred to herein, the term Buyer shall imply, mean and apply to the Buyer, any successors, assigns, heirs, or duly authorized agents, who shall be severally and collectively liable for any and all performance hereunder. Wherever

referred to herein the term Seller shall imply, mean and apply to the Seller, any successors, assigns, or duly authorized agents, who shall be severally and collectively liable for any and all performance hereunder. Upon issuance of deeds by Seller pursuant to this contract Buyer's successors, assigns, heirs or duly authorized agents shall be liable for the specific real estate conveyed in the deed in which the particular successor, assign, heir or agent accepts for purposes of performance hereunder. Said successor, assign, heir or agent shall be liable for actions or failures of another successor or assignee to other real estate. This provision shall not however relieve any entity of liability resulting from that person's or entity's own actions or failures to act.

12. Retained Interest

Seller reserves all rights for underground utilities or pipelines extending more than one mile in length on any corridor covered by this contract, subject to the following provisions: (a) any person (which reference shall include any entity) exercising a right under this reservation shall indemnify and hold harmless (including from court costs and attorney's fees) Buyer and its assigns for any personal injury or damage to property, including the trial or trial amenities, related to such exercise; (b) any right exercised under this reservation shall be compatible with, and not unduly burden, trail use and possible future rail use; and (c) Buyer and its assigns may require any person exercising a right under this reservation, as a condition of entry and continued occupancy, to pay an annual maintenance fee for work performed by Buyer or its assigns on the corridor where such work results in a benefit to that person, or results in an avoidance of cost by that person. Any fee charged under this subparagraph (c) shall be limited to *\$insert price* per mile per year, per user under the reserved right, with an aggregate limit of *\$insert price* per mile per year for any segment in which there are multiple users up to three per year under the reserved right. The charge for further users is subject to negotiation. Any fees paid under subparagraph (c) shall

be employed exclusively for maintenance of the corridor involved or otherwise refunded in whole or in part.

13. Natural Resources

A reservation to Seller of all coal, oil, gas, casinghead gas and all ores and minerals of every kind and nature (excluding sand and gravel) underlying the surface of the premises, together with the full right, privilege and license at any and all times to explore, or drill for by directional drilling or pooling and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the premises, together with the right of access at all times to exercise said rights; provided exercise of such rights does not unreasonably interfere with interim trail use, railbanking, or restored rail use. Any person or entity exercising a right under this reservation shall indemnify and hold harmless (including court and attorney's fees) Buyer and its assigns for any personal injury or damage to property, including the trail or trail amenities, related to such exercise.

14. Real Estate Commissions

If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used his services in connection with the purchase of the premises, all of such commission or other compensation shall be paid by Buyer.

15. Liens of Seller's Mortgages

Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of Seller's mortgages, where required under the terms of any

mortgage on the premises, within a reasonable period of time after closing. In the event the Seller shall be unable to obtain said releases for any reason within two (2) years from the date of closing, the Seller shall have the right to terminate this agreement upon serving written notice of termination upon the Buyer within thirty (30) days thereafter, and both parties shall thereupon be released and discharged from all liabilities and obligations hereunder, except that Seller shall repay to Buyer an deposit paid by Buyer to Seller upon a reconveyance of title to the premises to Seller free and clear of defects or objections to the same extent as if no conveyance had been made to Buyer hereunder.

16. Other Liens

Any judgment against Seller which may appear of record as a lien against the premises shall be settled and satisfied by Seller if and when it is judicially determined to be valid, and Seller hereby indemnifies the Buyer for all loss arising out of Seller's Failure to have a judgment lien so settled and satisfied.

17. General Real Estate Taxes

Real estate taxes payable or paid in the year the deed is delivered shall be prorated by Seller and Buyer as of the date on which the deed is delivered on the basis of the most recent ascertainable taxes assessed against the subject property, or as may be equitably apportioned thereto by the Seller if the property is not separately assessed. Buy shall be responsible for the payment of any and all taxes that may be levied or assessed against the conveyed premises from and after the date of purchase.

18. Transfer Taxes

Buyer agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes,

excise taxes and any and all fees incidental to recordation of the conveyance instrument. In the event of Buyer's failure so to do, if the Seller shall be obligated so to do, the Buyer shall be liable for all costs, expenses and judgments to or against the Seller, including all of Seller's legal fees and expenses and same shall constitute a lien against the premises to be conveyed until paid by the Buyer.

19. Notices and Demands

All notices, demands, payments and other instruments required or permitted to be given or served by either party shall be in writing and deemed to have been given or served by either party if sent by registered or certified mail, addressed to the other party at the address shown herein.

20. Government Approvals

This sale is entered into pursuant to the National Trails Systems Act 16 U.S.C. § 1247(d) and other applicable authorities.

In the event the Surface Transportation Board ("STB"), or any other federal or state authority having jurisdiction over any part of this conveyance, shall impose additional terms or conditions upon this conveyance, either party may terminate this agreement without liability to the other, except that Seller shall return any deposit to Buyer. Notwithstanding the foregoing, the entity or its agents or assigns to perform salvage operations as described herein shall satisfy the following environmental conditions, imposed by the STB on the salvage of the properties:

21. Closing

The obligation of Seller to convey the premises and to comply with all of the terms and conditions of this Agreement, as well as the obligation of Buyer to pay the purchase price and comply with all other terms and conditions of this Agreement, is subject to the prior satisfaction of the conditions set forth in this Agreement, unless waived in writing by both parties. After execution of this Agreement, satisfaction of the conditions precedent, and at mutually agreeable date after signing, the parties agree to fix a time, date and location for consummation and closing of the transactions contemplated in this Agreement (“Closing”) on or before [insert date], (unless this time period is extended by mutual agreement in writing). If Closing on any of the properties is barred by reason of conditions imposed by the STB, then the parties shall nevertheless close the transaction with respect to all other lines to which the conditions do not apply and Closing of the conditioned line(s) shall be postponed until a date no later than thirty days after the condition has been modified or withdrawn to permit Closing. In the event that Closing is not permitted on the [name of corridor: e.g., Johnstown-Warrenton] segment, the payment of \$*insert price* of the total purchase price due Seller shall be postponed until Closing as to that portion occurs.

22. Deposit Authorization

Buyer hereby authorizes Seller to cash any checks that may be delivered to Seller as a deposit or option payment, and to take the amount of any such deposit or option payment into its accounts.

23. Title Defects

If, within the ten (10) day period following Seller's notice to Buyer that Seller's deed is ready for delivery, Buyer notifies Seller that Buyer has requested evidence of title to the premises or any portion thereof, the Buyer shall furnish to Seller at Buyer's expense such evidence of title within thirty (30) days of said notice from Buyer in the form of an abstract of title or a title commitment, and a written statement specifying the matters or defects other than said permitted exception and reservations and other than such usual exceptions contained in Owner's policies and the matters to which this sale is subject by the terms hereof, the time of payment of the balance of the purchase price shall be extended for a period of sixty (60) days after the receipt of said evidence of title and statement. If Seller is unable or unwilling to cure such matters or defects within said sixty (60) day period, and Buyer is unwilling to accept the deed subject to such matters or defects then either party may terminate this Agreement by serving written notice of termination upon the other party within fifteen (15) days thereafter and all further rights and liabilities under this Agreement shall cease and terminate except that Seller shall return the deposit to Buyer and Seller shall reimburse Buyer for the actual amount paid by Buyer, if any, to an abstractor for an abstract of title or to a title company for a title report (but not for title insurance), provided that said abstract or title report shall be delivered an assigned to Seller.

In the event said evidence of title shows no title defects, Buyer shall pay to Seller the purchase price within ten (10) days of receipt of said evidence of title, provided Seller's deed is then ready for delivery.

24. National Trails System Act

This Agreement and any subsequent conveyance or agreement shall be interpreted to conform to Section 8(d) of the National Trails System Act, 16 U.S.C. § 1247, and Buyer shall assume all financial, managerial and legal responsibility and liability for use of said premises upon conveyance, and agrees to defend, indemnify and hold Seller harmless therefore. It is agreed and understood that any conservation/recreation use by Buyer (or its assignees) shall not impair future restoration of rail service pursuant to the National Trails System Act. Should Buyer assign this contract to any unit of government of the State of [State], that unit of government shall have the right to restore rail service (pursuant to applicable law) on the premises without any payment to Seller. However, the grant of the right to restore rail service shall not create any obligations on Seller's part to interchange traffic. Further, restoration of rail services hereunder shall not impart any obligations on the Seller to facilitate said restoration. Should any such assignee of Buyer not exercise this right, Seller or its assigns may exercise such right. In that event Buyer (or its assigns) will allow reactivation of rail service on said premises pursuant to applicable federal and state laws after repurchase of said premises and any improvements thereon at the purchase price stated herein or then fair market value, whichever is the lower; provided however, that the price shall be adequate to reimburse for any rail or trail-related improvements constructed by or on behalf of Buyer or its assigns. Buyer further agrees to take all steps necessary, at no expense to Seller, to comply with any and all state and federal requirements relating to such interim use and reactivation. The fair market value shall be determined by an appraisal process acceptable to all parties, upon the request of any party. Buyer shall reconvey the premises free and clear of any encumbrances those in effect on the date hereof, except those subsequently approved in writing by Seller, or those compatible with restoration of rail service.

25. Assignments

All leases, licenses, permits and easements of any kind whatsoever in the premises, whether or not of record, shall be assigned to the Buyer, or cancelled, upon transfer of the premises to the Buyer.

26. Advance Right of Entry for Salvage

Upon payment of all deposits required pursuant to paragraph 1 hereof the Buyer, Buyer's employees, agents or contractors shall have the right to enter upon the premises to perform and remove track materials conveyed herein except those materials expressly excepted herein upon execution of this agreement by Seller. In consideration of said entry, notwithstanding any provision in this Agreement to the contrary Buyer agrees to indemnify and hold harmless Seller from and against and defend Seller from and against any and all claims, loss, costs, suits or damages arising out of injuries to or death of any and all persons whomsoever, including, but not limited to, the parties hereto, their agents and employees, or damage to property (including environmental damage) to whomsoever belonging, including property owned by or in the care, custody and control of either Buyer or of Seller, in any manner connected with or resulting from, either directly or indirectly, the occupancy and use of said premises by the Buyer, its employees, agents, contractors or subcontractors and their employees, REGARDLESS OF WHETHER OR NOT SUCH INJURY, DEATH OR PROPERTY DAMAGE MAY HAVE BEEN CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF THE SELLER, ITS AGENTS, CONTRACTORS OR SUBCONTRACTORS AND THEIR EMPLOYEES. In the event Buyer elects to exercise this right to enter and salvage prior to Closing, Buyer shall ensure that the Buyer, its employees, agents or contractors shall have a Railroad Protective Liability Insurance Policy issued in the name of the Seller which limits of *\$insert price* for bodily injury and property damage per occurrence, with and aggregate of *\$insert price*. Such policy must be in force prior to entry upon the premises.

27. Internal Revenue Code

Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1954, as amended and the regulations promulgated thereunder. Seller shall upon request of Buyer and deliver it to Buyer on or before closing of said sale.

28. Delivery of Deed

At Closing Seller is authorized to deliver a deed unto and in the name of any assignee(s) designated by Seller provide Buyer and its assignee(s) have duly and properly executed an assignment(s) of this Agreement prior to Closing and such assignment(s) is forwarded to Seller within fifteen days prior to Closing.

Accepted by Buyer this ____ day of _____, 20xx.

[TRAIL MANAGER]

By: _____

Title: _____

Accepted by Seller this ____ day of _____, 20xx.

[RAILROAD]

By: _____

Title: _____