

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT is dated as of April 1, 1993 by and between ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation having its office at 421 Montgomery Street, 14th Floor, Syracuse, New York 13202 (the "Agency") and Syracuse, Binghamton and New York Railroad Corporation a New York corporation, having an office at One Railroad Avenue, Cooperstown, New York 13326 (the "Company").

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State, as amended, and Chapter 435 of the Laws of 1970 of the State, as amended (collectively, the "Act") to promote, develop, encourage and assist in the acquiring, constructing, renovating, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, civic and recreation facilities, including railroad facilities, for the purpose of promoting, attracting, encouraging and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to prevent unemployment and economic deterioration; and

WHEREAS, the Agency has undertaken a project (the "Project") consisting of: (A) (1) the Agency's acquisition from Consolidated Rail Corporation ("Conrail") of certain real property containing a total of 10 route miles of railroad line located in Onondaga County, New York consisting of a portion of Conrail's Jamesville Industrial Track, Lake Industrial Track (including the Saltland Spur) and Track 7 of the Chicago Line together with all interests of Conrail in and to any leases, licenses, permits, agreements and privileges pertaining thereto all as more particularly described on Exhibit A attached hereto (collectively, the "Land") and all buildings, improvements, structures and related facilities (including all track, bridges, signals, switches and related railroad transportation equipment) affixed or attached to the Land (the "Improvements") (the Land and the Improvements are referred to collectively as the "Facility"); (2) the improvement and upgrading of the Facility by constructing, reconstructing and/or rehabilitating track and constructing passenger platforms and other railroad supporting service facilities (collectively, the "Facility Upgrades"), and (3) the acquisition and installation on the Facility of certain equipment in connection with the Facility Upgrades (the "Equipment") (the Land, Improvements and Equipment are referred to collectively as the "Project Facility"); (B) the granting of trackage rights to Conrail for the exclusive operation of rail common carrier freight service over the Facility; (C) the lease of the Facility to the Company for the exclusive operation of shuttle/excursion rail services and for the overall management

and maintenance of the Facility pursuant to a Lease Agreement of even date (the "Lease Agreement") between the Company and the Agency; and (D) the financing of a portion of the costs of the Facility Upgrades through \$771,200 to be provided by the New York State Department of Transportation; and

WHEREAS, the Agency has undertaken the Project for the primary purpose of preserving and enhancing rail freight service and for the secondary purpose of providing shuttle/excursion rail services as a tourist attraction and to link important tourist, commercial, educational and recreational centers in the greater Syracuse, New York area; and

WHEREAS, under the current provisions of the Act and Section 412-a of the Real Property Tax Law of the State, the Agency is required to pay no taxes upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, in order to induce the Agency to undertake the Project, the Company is willing to enter into this Agreement.

NOW, THEREFORE, the parties, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS. The following terms shall have the meanings set forth below unless the context or use indicates another or different meaning:

Annual Net Cash Flow. An amount equal to the Company's Gross Revenues minus (i) Direct Operating Expenses and (ii) Equity Return.

Direct Operating Expenses. Expenses incurred by the Company in the ordinary course of operating shuttle and/or excursion rail service on the Facility and operating, managing and maintaining the Project Facility as required under the Lease Agreement including, without limitation, salaries, fuel, insurance, maintenance and payments made by the Company to the Agency pursuant to Section 3(a) and (b) hereunder, but excluding depreciation.

Equity. The cash and book value of property (excluding railroad rolling stock) from time to time contributed as equity by the Company's shareholder to the Company and used exclusively with respect to the Project Facility.

Equity Return. An amount equal to 20% of the Company's Equity.

Force Majeure. Acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, government orders, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes, droughts, floods, civil disturbances, failure of utilities or any other cause not reasonably within the control of the party claiming inability to perform.

Gross Revenues. The total revenues derived from the Company's operation of the Project Facility including, without limitation, revenue from ticket sales, gift and concession sales and other ancillary income related in any way to the Project Facility.

Minimum Service Level. During any Operating Year, conducting railroad shuttle service on a regularly scheduled basis for at least 250 days and running at least 1,250 regularly scheduled round trip shuttles, 315 of which shall use a steam engine. The Minimum Service Level for any Operating Year, including the obligation to use a steam engine, shall be reduced in the event that regularly scheduled rail operations are unable to be conducted for more than 30 days as a result of Force Majeure.

Operating Year. January 1 through December 31.

2. TAX-EXEMPT STATUS OF PROJECT FACILITY.

(a) Assessment of Project Facility. Pursuant to Section 874 of the General Municipal Law of the State and Section 412-a of the Real Property Tax Law, upon acquisition of the Project Facility by the Agency, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the City of Syracuse (the "City") and by the various other taxing entities having jurisdiction over the Project Facility including, without limitation, the Town of Dewitt ("Dewitt"), the Town of Onondaga ("Onondaga") Onondaga County (the "County"), the Jamesville-Dewitt District (the "School District") and any other political unit or units wherein the Project Facility is located (the City, Dewitt, Onondaga, the County, the School District and such other taxing entities being sometimes collectively referred to herein as the "Taxing Entities" and each of such Taxing Entities being sometimes individually referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of title to the Project Facility.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special

assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

3. **AGREEMENT TO MAKE PAYMENTS IN LIEU OF TAXES.** The Company agrees that during the term of this Agreement it will make payments in lieu of taxes to the Agency in the amounts and on the terms set forth below:

(a) Base Payment in Lieu of Taxes.

- (i) The Company shall pay the Agency an amount equal to 5% of the Company's ticket revenue attributable to shuttle or excursion services conducted on the Facility. In the event that a shuttle or excursion trip extends beyond the boundaries of the Facility, the ticket revenue subject to the 5% charge shall be prorated based on percentage that the miles travelled on the Facility bears to the total mileage of the trip. The Company may specifically identify such 5% charge on its tickets, subject to the Agency's prior written approval of the description thereof.
- (ii) The Company shall pay to the Agency an amount equal to 5% of the Company's quarterly Gross Revenues not attributable to ticket sales. Such payment shall be due and payable 30 days following the end of each calendar quarter.
- (iii) The Company shall pay to the Agency an amount equal to 45% of the Company's Annual Net Cash Flow. Such payment shall be made within 90 days following the end of the Company's fiscal year.
- (iv) The amounts payable by the Company pursuant to subparagraphs (i), (ii) and (iii) hereof shall not exceed in any year, the lesser of (x) \$190,000 or (y) the amount of real property taxes that would have been payable on the Project Facility if it were owned by the Company and not by the Agency, but not less than \$100,000.

(b) Additional Payments in Lieu of Taxes. If the level of the Company's operations are less than the Minimum Service Level for the 1994, 1995, 1996 or 1997 Operating Years (a "Deficiency Year"), the Company shall pay to the Agency, as an additional payment in lieu of taxes for the Deficiency Year, an amount equal

to \$100,000 minus any payment made by the Company pursuant to sections 3(a)(i) and (ii) hereof. Such additional payment in lieu of taxes shall be due within 90 days following the end of the company's fiscal year.

(c) Payment Terms.

- (i) Within 90 days after the end of each of the Company's fiscal years, the Company shall deliver to the Agency a copy of the Company's audited financial statement for the preceding fiscal year. The Company shall also provide to the Agency, contemporaneously with the Company's payment of any amounts under subsections (a) or (b) above, a Certificate signed by the chief executive officer of the Company certifying as to the calculation of the payments made by the Company and as to the Company's level of operations during the Operating Year then ended.
- (ii) The Company shall be entitled to receive receipts for all payments in lieu of taxes made hereunder.
- (iii) Each payment by the Company hereunder shall be paid in lawful money of the United States of America.

(d) Audit Right. The Agency shall have the right to have the information contained in the Company's Certificate audited by a nationally recognized firm of independent certified public accountants reasonably satisfactory to the Company.

4. INTEREST. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon at the rate of 18% per annum until so paid in full.

5. TERM OF AGREEMENT. This Agreement shall commence as of the date hereof and shall terminate upon the termination of the Lease Agreement.

6. AMENDMENT OF AGREEMENT. This Agreement may not be amended, changed, modified, altered or terminated by either party without the prior written consent the other party hereto.

7. BINDING EFFECT. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns.

8. DEFAULT. In the event any payment is not paid to the Agency when due, the Agency may, in addition to collecting the interest provided for in Section 4 hereof, sue or take such other at law or in equity as it deems appropriate to collect amounts due hereunder.

9. NOTICES. All notices, certificates, and other communications hereunder shall be in writing and shall be sufficiently deemed given when sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other method as shall provide the sender with documentary evidence of such delivery. The addresses to which notices, certificates or other communications hereunder shall be delivered are as follows:

If to the Company:
Syracuse, Binghamton and
New York Railroad Corporation
One Railroad Avenue
Cooperstown, New York 13326
ATTN.: President

If to the Agency:

Onondaga County Industrial Development Agency
421 Montgomery Street, 14th Floor
Syracuse, New York 13202
ATTN.: Chairman

10. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision, or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct, and independent, and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

11. COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

13. NO RECOURSE; SPECIAL OBLIGATION. The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency, and not of any member,

officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State or of the County of Onondaga, and neither the State nor the County of Onondaga shall be liable hereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (A) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and 10 days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than 10 days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (B) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request, and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names by their respective authorized officers, all as of the day and year first above written.

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: Marilyn H Rohde
CHAIRMAN

SYRACUSE, BINGHAMTON AND NEW YORK RAILROAD CORPORATION

By: [Signature]

Title: President

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On this 15th day of April, 1993 before me personally came Marilyn Higgins-Rohde, to me known, who, being by me duly sworn, did depose and say that she resides in Syracuse, New York, that she is Chairman of Onondaga County Industrial Development Agency, the public benefit corporation described in and which executed the foregoing Agreement; and that she signed her name thereby by authority of the members of said public benefit corporation.

[Signature]
NOTARY PUBLIC
BRUCE A. SMITH
Notary Public, State of New York
Qualified in Onon. Co. No. 4961729
My Commission Expires February 5, 1994

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On this 15th day of April, 1993 before me personally came Walter G. Rich to me know, who being duly sworn, did depose and say that he resides in Franklin, NY that is he is the President of Syracuse, Binghamton and New York Railroad Corporation the corporation described in and which executed the foregoing Agreement; and that he signed his name thereby by authority of the board of directors of said corporation.

[Signature]
NOTARY PUBLIC
NATHAN B. TENNIO
Notary Public, State of New York
Onondaga County No. 4726561
My Commission Expires 11/30/95