

FLORIDA EAST COAST RAILWAY, L.L.C.
AGREEMENT

This Motor Carrier Interchange Agreement (the "Agreement") dated this _____ day of _____, 2003 is by and between Florida East Coast Railway, L.L.C. ("FEC"), with offices located at 7411 Fullerton St. Suite 300, Jacksonville, FL 32256, and _____, (the Motor Carrier/Drayman, hereinafter referred to as "Drayman"): _____ located at: _____

Except as otherwise provided in the "Agreement", Motor Carrier is subject to the regulations, rules and charges published in the FEC Intermodal Service Directory.

Whereas, the parties desire to enter into an agreement for interchange and other related services involving trailers and containers;

Now, therefore, in consideration of the mutual promises, the parties agree as follows:

1. **DEFINITIONS:** Agreement terms shall have the following meanings.
 - a. Interchange - the transfer of possession and responsibility of a trailer or container ("trailer") to or from Drayman.
 - b. Terminal - any FEC facility where equipment controlled by FEC is offered for interchange to Drayman.
 - c. Carrier - any subscriber to the AAR Code of Trailer and Container Car Hire and Car Service Rules who voluntarily pays equipment rent to the equipment owner.
 - d. Notification - telephone notice to Drayman which commences the interchange; notification may include electronic data interchange and facsimile transmissions. Notification shall be effective at the time made by the initiating party. For purposes of free time calculation: 1.) Notification given after 12:00 noon shall be considered to have been made on the following day. 2.) Weekend notifications (notifications after 12:00 noon on Friday, Saturday AM/PM, or Sunday AM/PM) shall be considered to have been made on the following Monday.
2. **INTERCHANGE OF TRAILERS:** For the purposes of free time calculation only, interchange of a loaded trailer shall begin at time of notification to Drayman or to the party identified on the bill of lading as the "notify party." If Drayman takes possession of a trailer prior to notification, or, takes possession of an empty trailer, then interchange shall begin at the time of possession.

If Drayman interchanges a trailer to another party, then Drayman shall complete either a J-1 form or Trailer/Container Interchange Certificate (Exhibit A) and return the form to the FEC terminal where picked-up within seven (7) days of the interchange to the other party. The seven (7) day period will begin at 12:01 AM on the day the interchange to the other party takes place. If Drayman fails to complete and return the form within the time period, then a charge of \$50 will be assessed against Drayman.

3. **DRAYMAN'S OBLIGATIONS:** Upon interchange, Drayman shall assume responsibility under this Agreement. Drayman's further obligations are as set forth below:
 - a. Drayman shall promptly use the interchanged trailer and return it to the terminal from which received during normal business hours, unless delivered in interchange to another party or as otherwise agreed by FEC.

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- b. Drayman shall limit the use of the trailer to either movement of the trailer from a terminal to another party, or, movement of a trailer from a shipper to a terminal or to another party.
- c. Trailers made empty by Drayman and not reloaded for another interchange shall be returned to FEC, and trailers picked up empty shall promptly be returned to FEC with a load. Trailers not promptly returned and trailers used for any purpose not permitted by this Agreement shall be considered to be misused by Drayman. Nothing in this Agreement shall be construed to permit Drayman to secure, or place a seal, on an empty trailer not otherwise interchanged; any such action on the part of Drayman will be considered misuse. Penalty charges for misuse of any trailer is set forth in the FEC Intermodal Directory and will be assessed accordingly.
- d. All FECZ 53' trailers will be interchanged in accordance with terms of this Agreement. They may not be interchanged to any other rail or water carrier.

All FECZ 53' trailers are for exclusive use on FEC. FEC will impose a \$350 SURCHARGE PER OCCURRENCE TO THE RESPONSIBLE PARTY (drayman or shipper of record) WHO ROUTES THESE TRAILERS BEYOND FEC. Additionally, if these trailers are routed off-line, the responsible party will also be assessed charges trailer use charges as set forth in Item 440 of the FEC Intermodal Directory without any free time being granted.

- 4. **USER CHARGES:** All drayman shall be subject to user charges as published in the FEC Intermodal Directory.
- 5. **PAYMENT:** Drayman will be invoiced in a timely manner for all use and misuse charges. Separate invoices relating to repairs or replacements, penalties, or any miscellaneous charges will be issued as necessary. Payment in full of a invoice shall be made by Drayman within fifteen (15) days from the date of the invoice. In the event Drayman contests any portion of an invoice, Drayman shall provide a written explanation and submit substantiating documentation to FEC within the fifteen (15) day time period. Drayman promises to pay these charges within fifteen (15) days of FEC's provision of supporting documentation. Notwithstanding the contested portion of any invoice, payment for all portions of the invoice not being contested shall be made by Drayman within the fifteen (15) day time period. If FEC does not receive full payment from Drayman as set forth herein, Drayman agrees to reimburse FEC any and all costs it may incur in the collection from Drayman of such amounts, including, but not limited to, reasonable attorney fees and collection agency fees.
- 6. **INDEPENDENT:** At all times, Drayman shall be independent, and not an agent, servant, or employee of FEC. Drayman shall have the sole power to hire or dismiss any person it uses to perform its services, and shall direct and control the manner in which any service is performed.
- 7. **INDEMNIFICATION:** Drayman shall provide indemnification to FEC and its corporate affiliates as set forth below:
 - a. Drayman releases and agrees to defend, indemnify and hold harmless FEC and its affiliates from and against any and all loss, damage, or liability, cost or expense as a result of injuries or death of any person (including employees, agents or representatives of FEC or Drayman) and loss or damage to property (including property of Drayman or FEC) caused by or arising out of the presence or activity of Drayman, its employees, agents or representatives on FEC property or in connection with this Agreement, including but not limited to, Drayman's pick-up, use, operation, maintenance or possession of an interchanged trailer, chassis, motor vehicle or other equipment (whether belonging to FEC, Drayman or otherwise) AND WHETHER CAUSED OR ATTRIBUTABLE TO THE FAULT, FAILURE OR NEGLIGENCE OF FEC OR OTHERWISE.
 - b. Drayman agrees to thoroughly inspect the trailer prior to taking possession and accepts exclusive responsibility for any loss, damage, or liability resulting from any mechanical defect that reasonably could have been detected in the inspection.

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- c. Drayman shall be responsible for all loss, damage, or destruction of the lading being transported if the loss, damage, or destruction occurs while the trailer is in Drayman's possession.
 - d. Drayman agrees to immediately notify the FEC Police and Special Services and to furnish complete details of any accident or incident whenever a death or injury requiring medical treatment is sustained by any agent, servant, or employee of Drayman while on FEC property or relating to a trailer in Drayman's possession pursuant to the Agreement. Drayman is responsible for the consequences upon its failure to timely notify FEC.
8. **INSURANCE**: Drayman shall obtain, at its sole expense, naming Drayman as the named insured, the insurance coverages and limits as set forth below. Prior to execution of the Agreement, Drayman's insurance agent must provide a facsimile copy of a certificate of insurance showing that the policies have been endorsed to name the FEC as an additional insured setting forth the insurance coverages and limits, and providing for thirty (30) days' notice to FEC prior to any alteration or cancellation. Drayman must supply to FEC, within thirty (30) days of signing this Agreement, the original certificate of insurance. A new certificate must be provided to FEC prior to expiration of any portion of the existing certificate.
- a. Automobile liability insurance covering bodily injury and property damage liabilities arising out of ownership, maintenance and use of owned, non-owned and hired motor vehicles and trailers, including liabilities assumed by Drayman under the Agreement. The limit of liability shall not be less than \$1,000,000 per occurrence. The coverage shall include, but not be limited to, anyone from whom Drayman interchanges a trailer.
 - b. Commercial general liability insurance covering bodily injury and property damage, premises coverage, products and completed operations coverage, contractual liability coverage and independent contractor's liability coverage, including liabilities assumed by Drayman under this Agreement. The limit of liability shall not be less than \$1,000,000 per occurrence. An umbrella policy may be utilized to satisfy the required limits of liability.
 - c. Trailer interchange insurance or physical damage insurance covering physical loss or damage to trailers and chassis not owned by Drayman, from any cause, including comprehensive causes, collision or upset. The limit of liability shall not be less than \$20,000 per trailer.
 - d. Workers compensation insurance covering Drayman's employees in the states in which it operates, with minimum limits of not less than \$500,000 per occurrence or such greater amount as the law may require.
 - e. Employers' liability insurance with the limit of liability not less than \$500,000 per occurrence.
 - f. Motor truck cargo insurance covering all risks of physical loss or damage to cargo handled by Drayman. The limit of liability shall not be less than \$100,000 per trailer.
 - g. All such insurance, directly or indirectly for the benefit of the FEC, shall be in a form satisfactory to its Director of Insurance and General Claims and issued by a casualty company/insurance company authorized to do business in the State of Florida that has a "Best's" rating of A or A+ and a financial category size of Class XII or higher.

Drayman may self insure if Drayman has received approval for self insurance from the Surface Transportation Board or upon presentation to FEC of appropriate credit information to satisfy FEC that Drayman has sufficient financial resources to meet FEC standards for self insurance. Additionally, Drayman must pay, in advance, a fee of \$500 to FEC to cover the costs associated with conducting a credit investigation to determine Drayman's qualification for self insurance.

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Drayman agrees to notify FEC immediately whenever a death or injury requiring medical treatment is sustained by an employee of Drayman while on FEC property, and Drayman agrees to furnish FEC with any and all information which is in the possession of Drayman relating to the incident or accident. Drayman will indemnify and hold harmless FEC and its affiliated companies, from and against Drayman's failure to comply with provisions of this section.

All persons employed or contracted by Drayman shall conduct themselves according to the FEC procedures for the safe and efficient operation of the terminals upon which Drayman enters.

9. TRAILER MAINTENANCE, REPAIRS AND REPLACEMENT:

- a. Maintenance - Ordinary maintenance and owner-related repairs, as defined by the AAR Rules, shall be handled as follows: Any repair estimated to exceed \$200 must be approved by the FEC Mechanical Department. Invoices for repairs are to be sent to the FEC Mechanical Department. All tire repair invoices must be sent to the FEC Mechanical Department with the tire size and location; and if tire is replaced, the manufacturer's DOT tire identification number must be shown for tire removed and tire applied and the reason for the tire replacement. After FEC's inspection and approval of the vendor's tire invoice, it will be attached to Drayman's invoice. Labor and parts shall be billed to the appropriate party on a cost basis. The bill will show the actual time worked and will not exceed the maximum prices and rates listed in Exhibit B. All bills must be reasonable; FEC reserves the right to protest any unreasonable bill amount or improper repair.

Drayman will be responsible for all costs of cleaning and decontaminating trailers that have been loaded with contaminating commodities and for all costs for removing any dunnage or debris. If any repair charge is incurred by Drayman while trailer is in use and providing no revenue to FEC, or, if trailer is damaged while in Drayman's possession, Drayman shall be responsible for the cost of repair, plus all applicable per diem charges while trailer is being repaired.

- b. Repairs - If an interchanged trailer is damaged while in Drayman's possession, then Drayman shall restore it to the condition as received with all repairs to be performed to AAR Standards; however, if the anticipated cost of repair is greater than \$200, the Drayman shall obtain FEC's consent before making the repair. If Drayman fails to make any repair, then the repairs will be made by FEC and billed to Drayman. If Drayman returns a trailer to a terminal other than the terminal where it originally took possession of the trailer, or, if Drayman took possession of the trailer from a party other than FEC, then any damage to the trailer will be charged to Drayman unless it has the appropriate AAR J-2 documentation from subscribers to the AAR Interchange Agreement, or, letter of responsibility from non-subscribers to the AAR Interchange Agreement.
- c. Replacement - If a trailer is lost, stolen, irreparably damaged or destroyed, then user charges will stop on the date Drayman sends a written notice to FEC requesting a depreciated value or casualty statement and will not be reinstated if the parties agree to settle for the depreciated or casualty value. After receipt of the depreciated or casualty value, if Drayman elects to either repair the trailer or return it to FEC for repair, then the user charges will be reinstated as of the date of the original notice and shall continue until all repairs are completed and the trailer is returned to FEC.

Upon determination of lost or stolen trailer, chassis or container, drayman shall contact FEC Police and Special Services Department to obtain required unit information for reporting of incident to local police authorities. Drayman is further requested to file incident report immediately with FEC Police and Special Services Department to stop per diem of unit and for their assistance in investigating incident with local police.

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15. **MISCELLANEOUS PROVISIONS:** Whenever Drayman submits invoices to FEC pursuant to this Agreement, FEC reserves the right, at any time, to request that original invoices from Drayman's vendor be provided. If FEC has reasonable cause to believe that a sum less than the amount FEC was invoiced was actually paid by Drayman, then FEC has the right to further audit Drayman's books and records relating to the payment of these vendor invoices. Additionally, if FEC has reason to suspect

that Drayman has misused trailers supplied by FEC, then FEC reserves the right to inspect and audit Drayman's relevant books and records, within five (5) years of date of interchange, for any interchanges which occurred pursuant to this or a previous agreement between the parties of this Agreement.

This Agreement, together with its Exhibits, represents the full agreement and understanding between the parties. It may not be amended except in writing signed by both parties. The failure of either party to require performance of any provision shall not affect the right at a later time to enforce the provision. Neither party may assign or transfer this Agreement without the written consent of the other party; except, a party may assign or transfer to a parent, subsidiary or corporate affiliate. The other party to this Agreement must be immediately notified of any such transfer of this Agreement to another party and Certificate of Insurance for the proper parties must be provided to FEC as required in Paragraph 8 of this Agreement. In the event any provision shall be held to be invalid, unenforceable, or illegal, such invalidity, unenforceability, or illegality shall not affect any other provision.

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

FLORIDA EAST COAST RAILWAY, L.L.C.

Drayman: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

TRAILER/CONTAINER INTERCHANGE CERTIFICATE

DATE _____

CERTIFICATE NO. _____

To be prepared by consignor when trailer is picked up from one Carrier and delivered to another; both Carriers to be furnished copy of the Certificate.

ADDRESSED TO:

_____ CARRIER

AND

_____ CARRIER

THIS IS TO CERTIFY THAT

TRAILER NO. _____
(4 Alpha) (6 Numeric)

WAS RECEIVED FROM _____ CARRIER ON

_____ AT _____
(Date and Time) (Ramp Location)

AND WAS DELIVERED TO

_____ CARRIER ON

_____ AT _____
(Date and Time) (Ramp Location)

SIGNATURE _____
(Consignee, Consignor or Authorized Representative)

SIGNATURE _____
(Agent or Authorized Representative of Party Receiving Trailer)

EXHIBIT B

**MAXIMUM TIRE AND TUBE
RECLAIM PRICES**

New Tires:

<u>Size</u>	<u>Material Cost</u>
750x15	\$180.00
825x15	\$180.00
900x20	\$180.00
*1000x25	\$180.00
*1100x22.5	\$180.00

NEW RECAPS:

(Includes Casing & Disposal)

<u>Size</u>	<u>Material Cost</u>
750x15	\$110.00
825x15	\$110.00
900x20	\$110.00
1000x20	\$110.00
*1000x22.5	\$110.00
*1100x22.5	\$110.00

NEW TUBES:

<u>Size</u>	<u>Material Cost</u>
750x15	\$20.00
825x15	\$20.00
900x20	\$20.00
1000x20	\$20.00

* - Tubeless Tires

MAXIMUM TIRE REPAIR LABOR CHARGE

Mount and Dismount	\$15.00 Each
Service Calls	NONE
Tolls	NONE

NOTE: All tires must be a minimum of 12 plys.

EXHIBIT C

DEPRECIATED VALUE:

The depreciated value for trailers equals the reproduction cost, less depreciated amount.

1. Reproduction cost is calculated by multiplying the trailer's original cost by the AAR cost factor prior to the year in which the equipment was damaged, and this amount divided by the cost factor for the year the trailer was built.
2. Depreciated amount is calculated by multiplying the reproduction cost by 1/120 and multiplying this value by the number of complete months in service. The maximum depreciation shall be 90% of the reproduction cost.

NOTE: The reproduction cost of mechanical refrigeration units with all component parts, including fuel tanks or bottles, shall be computed on current market price, using the same 10% per annum rate of depreciation, with maximum depreciation of 95%. This shall be added to the depreciated value of the trailer. The date of installation will be considered the date built.

CASUALTY VALUE:

The casualty value for trailers shall equal a percent of Lessor's or Owner's original cost as defined in a schedule provided by Lessor or Owner. Lessor is that individual or company who is leasing the trailer in question to FEC.

SALVAGE VALUE:

The salvage value for trailers shall equal \$53 per tire, plus \$100 for box.

The salvage value for mechanical refrigeration units and all component parts shall be \$225 PER UNIT

PROCEDURE FOR HANDLING DESTROYED EQUIPMENT:

If it is estimated by "DRAYMAN" that cost of complete repairs exceeds the depreciated value less salvage, it shall:

1. Notify FEC of the major items of damage and request settlement for trailer within fifteen (15) days after receipt of depreciated or casualty value statement.
2. FEC shall advise disposition desired within ten (10) days after receipt of notification.
3. If FEC requests trailer to be returned home, the unit must not be unnecessarily cut up to facilitate handling.