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February 28, 2022
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FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

ROBERT A. WIMBISH
(312) 252-1504
rwimbish@fletcher-sippel.com

February 28, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

Re: **FD 36592**
Charlotte Western Railroad, LLC – Change in Operator
Exemption – Line in Gaston County, NC

FD 36593
OPSEU Pension Plan Trust Fund, Jaguar Transport
Holdings, LLC, and Jaguar Rail Holdings, LLC – Continuance
in Control Exemption – Charlotte Western Railroad, LLC

Dear Ms. Brown:

Attached for filing in the above-captioned proceedings are the **Verified Notice of Exemption of Charlotte Western Railroad, LLC** submitted pursuant to **49 C.F.R. Part 1150, subpart D**, and the **Verified Notice of Exemption of OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC** submitted pursuant to **49 C.F.R. § 1180.2(d)(2)**, both dated February 28, 2022. The sums of \$2,100.00 and \$1,500.00, representing the respective fees for these filings, has been made on www.pay.gov.

FILED
February 28, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 28, 2022
SURFACE
TRANSPORTATION BOARD

Ms. Cynthia T. Brown
February 28, 2022
Page 2

If you have any questions regarding these filings, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Charlotte Western Railroad, LLC

RAW:th

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

**VERIFIED NOTICE OF EXEMPTION
OF CHARLOTTE WESTERN RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Thomas J., Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR CHARLOTTE
WESTERN RAILROAD, LLC**

Dated: February 28, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

**VERIFIED NOTICE OF EXEMPTION
OF CHARLOTTE WESTERN RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, Charlotte Western Railroad, LLC (“CWRR”) a non-carrier, hereby files this Verified Notice of Exemption (“Notice”) to assume operation of approximately 13.04 miles of track (the “Line”) owned by the North Carolina Department of Transportation (“NCDOT”) extending between Mt. Holly and Gastonia, and including a branch line toward Belmont, all in Gaston County, North Carolina. The Line is currently operated under lease by Piedmont and Northern Railroad LLC (“PNRW”). Based on projected annual revenues for the Line, CWRR expects to be a Class III rail carrier after consummation of the proposed transaction.

This Notice is related to FD 36593, *OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC – Continuance in Control Exemption – Charlotte Western Railroad, LLC*, in which OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC (collectively “Jaguar”) are concurrently filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of CWRR once

CWRR commences operation of the Line and becomes a carrier. Jaguar are non-carriers that collectively control seven Class III carriers.¹

In accordance with the requirements of 49 C.F.R. Part 1150, subpart D, CWRR submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the rail carrier applicant herein is as follows:

Charlotte Western Railroad, LLC
1027 South Main Street
Joplin, MO 64801
(417) 622 0384

Applicant's Representative: 49 C.F.R. § 1150.33(b)

CWRR's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

PNRW and NCDOT entered into a Lease and Operating Agreement dated as of May 10, 2017 (the "Lease") providing for PNRW's operation of rail common carrier service on the Line. CWRR and PNRW have reached an agreement pursuant to which, with NCDOT's

¹ Southwestern Railroad, Inc., Texas & Eastern Railroad, LLC, Wyoming and Colorado Railroad, Inc. (which also does business under the name "Oregon Eastern Railroad"), Cimarron Valley Railroad, L.C., Washington Eastern Railroad, LLC, West Memphis Base Railroad, L.L.C., and Missouri Eastern Railroad, LLC.

consent, PNRW will assign its rights and obligations under the Lease to operate the Line to CWRR. Upon effectuation of the Lease assignment, CWRR will commence common carrier operations over the Line in place of PNRW.

Operator of the Property: 49 C.F.R. § 1150.33(d)

CWRR will operate the Line and provide all rail common carrier service to customers upon consummation of the proposed transaction. CWRR's operations will replace those of PNRW, the current operator, which, upon the commencement of CWRR's operations, will have no further common carrier obligation with respect to the Line.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

CSX Transportation, Inc. ("CSXT") abandoned the Line in 1991 pursuant to *CSX Transportation, Inc. – Abandonment Exemption – In Gaston County, NC*, AB-55 (Sub-No. 349X) (ICC served Mar. 1, 1991). NCDOT, a non-carrier, acquired the Line that same year after CSXT consummated its abandonment. *See Piedmont & Northern Railway, Inc. – Operation Exemption – North Carolina Department of Transportation*, FD 35402, 1, n.1 (STB served Sep. 3, 2010). PNRW has operated the Line for NCDOT since 2017. *See Piedmont and Northern Railroad LLC – Change in Operator Exemption – Piedmont Railway, LLC*, FD 36120 (STB served Jun. 16, 2017) ("*PNRW Change in Operator*").

CWRR is a newly-formed, non-carrier subsidiary of Jaguar Rail Holdings, LLC. Pursuant to the Lease to be assigned to CWRR, CWRR will operate the Line extending from milepost SFC 11.39 at Mt. Holly to milepost SFC 23.0 at Gastonia, including the Belmont Spur extending from milepost SFF 0.13 at Mt. Holly (milepost SFC 13.6 on the Mt. Holly-Gastonia line) to milepost SFF 1.56 at or near Belmont, a total distance of approximately 13.04 route miles in Gaston County, North Carolina.

Pursuant to *Anthony Macrie – Continuance in Control Exemption – New Jersey Seashore Lines, Inc.*, FD 35296 (STB served August 31, 2010), CWRR is submitting as Exhibit D a copy of the Lease effective as of May 10, 2017 between NCDOT and PNRW.² That agreement does not allow NCDOT, as the non-carrier owner of the Line, to exercise undue control over or interfere with CWRR's operations or ability to provide common carrier service.

The complete name and address of the current operator of the Line to be replaced by CWRR pursuant to this change in operator class exemption notice is as follows:

Piedmont and Northern Railroad LLC
21778 Highview Avenue
Lakeville, Minnesota 55044
(612) 791-3255

PNRW is voluntarily assigning the Lease to operate the Line to CWRR and does not object to the proposed change in operators.

The complete name and address of the non-carrier owner of the Line is as follows:

North Carolina Department of Transportation
Rail Division
1 South Wilmington Street
1553 Mail Service Center
Raleigh, North Carolina 27699-1553

CWRR intends to commence operations over the Line on or after March 30, 2022.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and the surrounding area is attached as Exhibit A.

² The attached Lease was entered into between NCDOT and Progressive Rail, Inc. (“Progressive”), PNRW’s parent company. It was subsequently assigned by Progressive to PNRW. See the Assignment and Assumption Agreement, included in Exhibit D.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g), and a Verification of the contents of this Notice, is attached as Exhibit B.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed change of operators on the Line does not involve, and the Lease between NCDOT and PNRW does not include, any provision or agreement that would limit future interchange with a third-party connecting carrier. See, also, Exhibit B.

Shipper Notice: 49 C.F.R. § 1150.32(b)

CWRR has provided notice of the proposed change in operators to the shippers on the Line. A certification of service of the notice, and a list of the served shippers is attached as Exhibit C; a sample of the notification letter sent to shippers is attached as Exhibit C-1.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual revenue of CWRR does not exceed \$5 million, and accordingly the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B hereto.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), CWRR's proposed operation of the Line is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), CWRR's assumption of operations on the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for

the purpose of continued rail operations. Further Board approval is required to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached as Exhibit E.

Respectfully submitted,

By: /s/ *R. A. Wimbish*
Robert A Wimbish
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR CHARLOTTE
WESTERN RAILROAD, LLC**

Dated: February 28, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

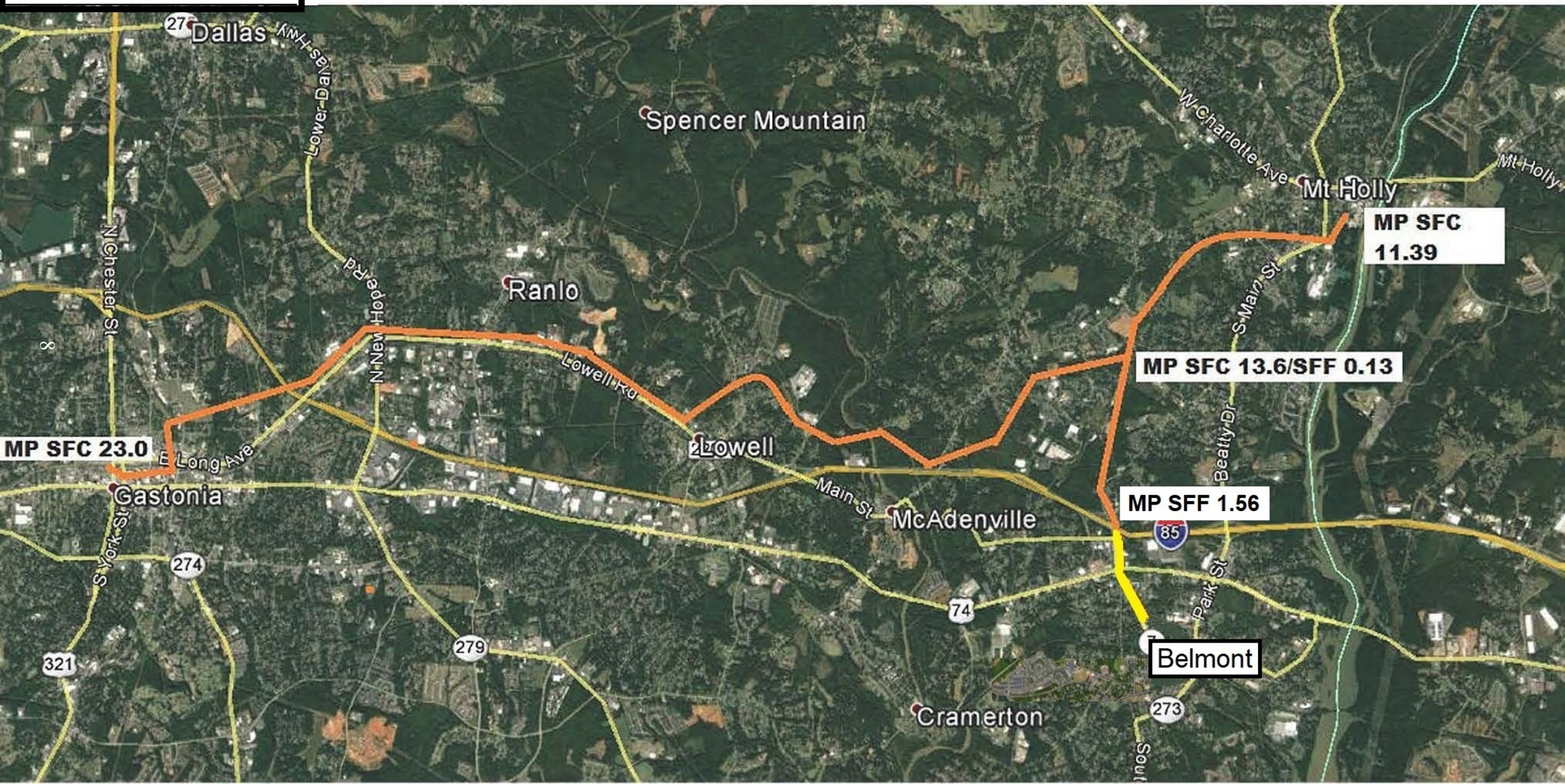
EXHIBIT A
MAP

Key

-  = Lease Track
-  = Abandoned by CSXT; not Included in Lease

Charlotte Western Railroad, LLC

Gaston County, North Carolina



BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

EXHIBIT B
CERTIFICATION AND VERIFICATION

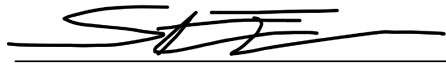
CERTIFICATION AND VERIFICATION

I, J. Stuart Towner, am the President of Charlotte Western Railroad, LLC (“CWRR”).

Under penalty of perjury, I hereby certify and verify as follows:

1. I am authorized to provide the present certification and verification on behalf of CWRR.
2. I certify that CWRR’s annual rail revenues are not expected to exceed \$5 million, and that the transaction that is the subject of this exemption proceeding will not result in CWRR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201(1 1).
3. I certify that the Lease between NCDOT and CWRR does not include any provision or agreement that would limit future interchange with a third-party connecting carrier, per 49 C.F.R. § 1150.33(h).
4. I verify that I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: February 28, 2022



J. Stuart Towner

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

EXHIBIT C
CERTIFICATION OF SERVICE

CERTIFICATION OF SERVICE

I hereby certify that in compliance with the notice requirements of 49 C.F.R. § 1150.32(b), I have today arranged to serve an adapted version of the prototype letter supplied below (along with a copy of the subject notice of exemption) via first class mail, postage prepaid, or via more expeditious means, upon the customers on the subject Line, as listed below.

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Charlotte Western Railroad, LLC

Executed on: February 28, 2022

1. Buckeye Fire Equipment
2. Deacero Steel
3. Elcan and Associates, Inc. or Elcan Industries
4. Elof Hansson USA
5. Hoosier Magnetics
6. Lone Wolf Petroleum
7. PFL Petroleum Services
8. Ravago Americas
9. Seemac Inc.
10. Shamokin Carbons
11. Synergy Recycling

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

EXHIBIT C-1
SAMPLE SHIPPER CERTIFICATION LETTER

VIA ELECTRONIC MAIL

Piedmont and Northern Railroad LLC
Customers

FD 36592

***Charlotte Western Railroad, LLC – Change in Operator
Exemption – Line in Gaston County, NC***

To whom it may concern:

Charlotte Western Railroad, LLC (“CWRR”) seeks to inform you that it has agreed to assume a lease (the “Lease”) currently held and operated by Piedmont and Northern Railroad LLC (“PNRW”) over track owned by North Carolina Department of Transportation in Gaston County, North Carolina, running from SFC 11.39 at Mt. Holly to milepost SFC 23.0 at Gastonia, including the Belmont Spur extending from milepost SFF 0.13 at Mt. Holly (milepost SFC 13.6 on the Mt. Holly-Gastonia line) to milepost SFF 1.56 at or near Belmont (the “Line”). Upon assumption of the Lease, CWRR will replace PNRW as the carrier on the Line.

CWRR has filed a Notice of Exemption for this transaction with the Surface Transportation Board under FD 36592. A copy of CWRR’s notice filing is attached.

This notice intended as information in compliance with applicable Surface Transportation Board advance notice regulations (49 C.F.R. § 1150.32(b)). You are welcome to respond to this notice or the attached filing if you wish, but no such response is required (or expected). If you have any questions concerning this notice or the railroad line transaction that is the subject of the attached regulatory filing, you may contact the Surface Transportation Board at rcpa@stb.gov (202-245-0238) or the undersigned counsel for CWRR.

Sincerely,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Charlotte
Western Railroad, LLC

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

EXHIBIT D
LEASE AND ASSIGNMENT / ASSUMPTION
AGREEMENT

FINAL

LEASE AND OPERATING AGREEMENT

BETWEEN

**THE NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION**

AND

PROGRESSIVE RAIL, INC

RAILROAD LEASE AND OPERATING AGREEMENT

GASTON COUNTY

DATE: 4/19/17

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

AND

RAILROAD LEASE AND OPERATING
AGREEMENT

PROGRESSIVE RAIL, INC.

TIP:
WBS:

THIS LEASE and OPERATING AGREEMENT (this "Agreement" or "Lease") is made and entered into on the last date executed below, by and among the North Carolina Department of Transportation, an agency of the State of North Carolina (the "State"), hereinafter referred to as the "Department and/or Lessor"; and Progressive Rail, Inc., hereinafter referred to as the "Lessee"; and individually, hereinafter referred to as "Party," and collectively, as "Parties."

RECITALS

WHEREAS, the Department in accordance with N.C. Gen. Stat. § 136-44.35, *et seq.* is authorized to preserve rail transportation corridors for future transportation purposes and permit compatible interim uses of such corridors; and,

WHEREAS, the Department has purchased and is the owner of approximately sixteen miles of railroad from CSX Transportation and Norfolk Southern extending from Mount Holly, NC to Gastonia, NC, and from Belmont Junction, NC to Belmont, NC, and Cedar Yard/Cedar Yard Lead in uptown Charlotte, NC, with portions that have remained inactive since its acquisition, and is known as the Piedmont & Northern Rail Corridor, hereinafter referred to as the P&N Rail Corridor; and,

WHEREAS, the Department has determined the Parties shall enter into an agreement for the operation of a portion of the P&N Rail Corridor and that it is in the best interests of the State of North Carolina for the Parties to enter into this Agreement as it enhances economic development in the Central Piedmont region of the State and will result in the continued displacement of freight hauling trucks on state highways with rail car deliveries resulting in reduced energy consumption, competitive freight rates for industries

served on the railroad corridors, and improved environmental quality for the citizens of the State of North Carolina, and,

WHEREAS, the Department desires to lease for active railroad purposes that portion of the P&N Rail Corridor, between Milepost SFC 11.39 at Mt. Holly, NC and Milepost SFC 23.0 at Gastonia, NC and the Belmont Branch between Milepost SFC 13.6/SFF 0.13 and Milepost SFF 1.56; and,

WHEREAS, the principal purpose of this Agreement is to lease the Rail Line from the Department for railroad freight purposes to improve and promote safer and more efficient rail and highway operations along heavily used railroad corridors; and,

WHEREAS, the Lessee desires to lease and operate the Rail Line from the Department for railroad use and the Lessee has agreed to operate the Rail Line as a rail carrier under the terms and conditions set forth herein; and,

WHEREAS, the Lessee shall be responsible to obtain appropriate authorization from the Surface Transportation Board ("STB") to act as a common carrier railroad and operate and maintain the trackage in order to provide the services set forth by this Agreement; and,

WHEREAS, the property to be leased under this Agreement is in Federal Railroad Administration ("FRA") Class 2 condition,

NOW, THEREFORE, in consideration of the mutual benefits derived from such an arrangement, the Parties agree to be mutually bound as follows:

1. LESSOR GRANT OF EXCLUSIVE RIGHT

1.1. Grant of Exclusive Lease. In consideration of the covenants and agreements contained herein to be performed, kept and observed by the Lessee, the Lessor hereby grants to Lessee an exclusive lease to provide Freight Rail Services (as defined in Section 1.2 below) and Passenger Rail Services (as defined in Section 2.1 below) on the following portion of the Department P&N Rail Corridor: between Milepost SFC 11.39 at Mt. Holly, NC and Milepost SFC 23.0 at Gastonia, NC and the Belmont Branch between Milepost SFC 13.6/SFF 0.13 (Belmont Junction) and Milepost SFF 1.56 (Belmont-Mt. Holly Rd.) and includes, for all purposes of this Agreement, the real property, right-of-way, roadbed, main track, sidings, industrial tracks, yards, storage areas, culverts, bridges, fixtures, improvements and all other railroad appurtenances located between the aforementioned railroad mileposts (the "Rail Line"). Except as otherwise provided in this Agreement, the Lessor shall not grant to any third party any rights which are competitive or interfere with the Freight Rail Services or Passenger Rail Services on the Rail Line during the Term (as defined in Section 4.1 below) of this Agreement.

1.2. Provision of Freight Rail Services

A. The Lessee agrees to provide FRA compliant, safe, consistent and reliable Freight Rail Services, which services shall be consistent with providing quality freight rail service as recognized in the rail service industry, to existing and potential customers located on the Rail Line. For purposes of this Agreement, "Freight Rail Services" shall include the movement of freight, the storage of rail cars, cleaning and servicing rail cars and the provision of customary and typical services appurtenant to the freight railroad industry.

B. The Lessee agrees that all fees charged to users of services offered by the Lessee shall be reasonably competitive with similar services offered by rail service providers in the rail service industry.

C. The Lessee shall use its commercially reasonable efforts to provide the freight rail related services.

2. **PASSENGER RAIL SERVICES**

2.1. Lease for Passenger Rail Services. This Agreement provides and permits the Lessee to operate the Rail Line in connection with and related to rail passenger operations, including excursion, tourist, dinner trains, and holiday season trains (collectively, "Passenger Rail Services"). Commuter rail services are excluded from Passenger Rail Services. All plans for Passenger Rail Services shall be submitted to the Lessor for review and concurrence, with such concurrence not to be unreasonably withheld or conditioned and shall be forthcoming within 30 days of notification from the Lessee. In the event that the Department's concurrence is not received by the Lessee in the time period specified, the concurrence in question shall be considered to have been given by the Department. Any future commuter rail service proposed and/or initiated by the Department or public agencies and operated for public transportation over the Rail Line during the Term of this Agreement shall preserve the Lessee's operations of its Freight Rail Services and Passenger Rail Services on the same basis and in the same manner as is conducted pursuant to this Agreement and shall not unduly burden, unreasonably interfere with, or cause an expense to the Lessee or the operations of its Freight Rail Services or Passenger Rail Services being operated by the Lessee with respect to scheduling or for improvements required to operate such commuter rail service. Any indirect expenses that the Lessee may incur as a result of the commencement of commuter rail service by the Department on the Rail Line shall be reimbursed to Lessee pursuant to a separate negotiated agreement. Any direct expenses that the Lessee incurs as a result of the commencement of commuter rail service by the Department on the Rail Line shall be reimbursed by the Department within 30 days of submittal.

2.2. Trolley/Streetcar Services Contemplated. The Parties hereby acknowledge and understand that portions of the Belmont Branch from Milepost SFF 1.56

(Belmont-Mt. Holly Rd.) to SFF 3.13 in downtown Belmont, NC are anticipated to provide Trolley/Streetcar Services; therefore, to the extent such portions constitute part of the Department's P&N Rail Corridor, they are specifically excluded as part of the Rail Line leased pursuant to this Agreement. If the Department decides to provide Trolley/Streetcar Service on this portion of the Belmont Branch, the Department shall notify the Lessee in writing and closely coordinate those activities with the Lessee. Any indirect expenses that the Lessee may incur as a result of the commencement of the Trolley/Streetcar Services described above shall be reimbursed to Lessee pursuant to a separate negotiated agreement. Any direct expenses that the Lessee incurs as a result of the commencement of the Trolley/Streetcar Services described above shall be reimbursed by the Department within 30 days of submittal. All expenses associated with Trolley/Streetcar Service on the Belmont Branch between Mileposts SFF 1.56 and 3.13 shall be borne by the Department and/or the provider of those services. The Lessee's maintenance and insurance obligations relating to the Rail Line in this Agreement do not apply to the Belmont Branch between Mileposts SFF 1.56 and 3.13. The Department is responsible for routine inspections and maintenance on this segment.

3. **OBLIGATIONS OF THE PARTIES**

3.1. Property in FRA Class 2 Condition.

A. The property that is leased under this Agreement is in FRA Class 2 condition, with such Class 2 condition to be verified in a joint inspection by the Lessor and Lessee prior to the Agreement's Effective Date (as defined in Section 4.1 below). The Rail Line is to be leased on an "AS IS, WHERE IS" condition and without any express or implied warranties, including but not limited to any warranties as to (A) the fitness for any purpose or merchantability of the railroad or any component thereof or (B) the design or condition of the roadbed, track structure, communications, and crossing signal facilities, or any other component of the railroad to perform any function, or the compliance thereof with any standards or requirements of the FRA or any other governmental body or agency.

B. In addition to the Main Line between milepost SFC 11.39 at Mt. Holly, NC and Milepost SFC 23.00 in Gastonia and the Belmont Branch between Milepost SFC 13.0/SFF 0.13 and Milepost SFF 1.56, the Department has constructed the following rail sidings to FRA Class 2 conditions:

- (i) Milepost SFC 23.0 (Gastonia): Stub-end track for locomotive and general car storage;
- (ii) Milepost SFC19.0 (Ranlo): Approximately 1130 feet of storage track;

(iii) Milepost SFC 16.8 (Lowell): Approximately 800 feet of storage track; and

(iv) Milepost SFC 13.7: Reinstalled approximately 1,400 feet of main line track and created runaround track.

3.2. Additional Capital Improvements. The Parties understand and acknowledge that additional capital improvement projects may be necessary to meet present and future needs of customers. The Parties hereby agree that any future capital projects may be pursued by the Department, Lessee or any of its affiliates, or any other party(s), separately or jointly, to support rail traffic needs with responsibility for timing, costs, and interference to operations to be negotiated amongst the interested parties. In addition, the Department hereby agrees to cooperate and assist interested parties in obtaining funding for trackage and infrastructure necessary for the establishment of rail related facilities along the Rail Line.

3.3 Maintenance of the Rail Line

A. During the Term of this Agreement, the Lessee shall maintain the Rail Line at no less than a FRA Class 2 condition. Any material repairs required to maintain the Rail Line in FRA Class 2 condition shall be made as soon as practicable following the Lessee's receipt of notice from the Department or FRA, or upon determination by the Lessee that such repairs are needed. The Lessee shall use its best reasonable efforts to complete all needed repairs within sixty (60) days if possible. Following the expiration or upon the effectiveness of the termination of this Agreement, the Lessee shall return the Rail Line to the Department in FRA Class 2 condition at its sole cost and expense, to the reasonable satisfaction of the Department. The Parties acknowledge and agree that the Department shall be solely responsible for the provision of all maintenance costs and expenses associated with commuter rail services, if any, during the term of this Agreement.

B. Except as otherwise provided in this Agreement, including, without limitation, Sections 2.2 and 3.4, during the Term of this Agreement the Lessee shall perform routine maintenance items as set forth on Attachment C attached hereto. In addition, the Lessee shall be responsible for all corridor maintenance such as inspections, grade crossing signals, vegetation spraying, brush cutting, and ditch drainage with respect to any additional portions of the Rail Line which may be incorporated into this Agreement in the future. (Note: The Department will be responsible for the 2017 vegetation spraying of the Rail Line.)

C. Bridge ties and associated maintenance work have been completed by the Department on the SF Catawba River Bridge (as defined in Section 3.5 below). During the Term, the routine maintenance work as described in Attachment A and related to the railroad on the SF Catawba River Bridge

shall be the responsibility of the Lessee. During the Term, the routine maintenance work as described in Attachment A and related to the railroad on the I-85 Underpass (as defined in Section 3.5 below) shall be the responsibility of the Department.

D. Automatic crossing signal protection shall be in service and maintained in operating condition to acceptable operating standards in the industry and to all applicable Federal, State and Local Laws, rules, regulations and/or codes, including but not limited to FRA regulations. In the event an automatic crossing signal becomes inoperative, it shall be the Lessee's responsibility to protect manually by flagging the affected road crossing or take such other action as may be required by FRA regulations. In addition, the Lessee shall ensure that railroad crossbucks are in place and maintained at all public road crossings that do not have automatic crossing signal protection.

3.4 Southernmost 1.5 miles of the Belmont Branch. The Department shall be responsible for the routine inspections, maintenance and vegetation spraying between Mileposts SFF 1.56 and 3.13.

3.5 South Fork Catawba River Bridge and I-85 Underpass.

A. The Department hereby represents and warrants that engineering inspections of the South Fork Catawba River Bridge at Milepost SFC 16.2 (the "SF Catawba River Bridge") and the I-85 Underpass at Milepost SFC 21.5 (the "I-85 Underpass") have been completed which include the analysis and rating of all structural members and components of the bridge. A complete copy of the entire inspection and rating reports prepared by the Department's engineering firm who conducted the inspection of the SF Catawba River Bridge and I-85 Underpass will be provided to the Lessee.

B. The Lessee hereby agrees that at such time as the Lessee commences operations on the rail lines described in Section 3.5 A., all additional required annual FRA inspections on the South Fork Catawba River and I-85 Underpass bridges will become the responsibility of Lessee.

3.6 Rail Corridor Encroachments. The Department shall, as owner of the Rail Line, manage any and all rail corridor encroachments and retain all existing encroachment fees. Fees associated with future encroachments recruited and developed on the Rail Line by the Lessee shall be shared on a 50-50 basis as long as this Agreement remains in effect. The encroaching party shall be responsible for engineering drawings, permits, construction, and costs related to each. The Department shall have the right to review and approve, at its sole cost and expense, any and all encroachments developed by the Lessee to ensure compliance with engineering standards and that future rail transportation use of the corridor is preserved. The Lessee shall have the right to review and approve proposed

encroachments presented by the Department for potential impact on its rail operations.

3.7 Procurement of Leases and Permits. The Lessee shall assume all costs associated with procuring any licenses, permits and/or approvals that may be required for freight and/or passenger use allowed under this Agreement by Federal, State, or local law, rule or regulation including, but not limited to, STB applications and other filings, approvals, consents, rulings or permits.

3.8 Development of Business Plan. The Lessee shall develop a business plan for the Rail Line due no later than thirty (30) days after signing of this Agreement. The Lessee shall update the business plan each quarter or as needed throughout each year of operation. Said plan shall be subject to the review and approval by the Department.

3.9 Development of MOW & Signals Plan, Operations Plan, Performance Plan, and Marketing Effort. Within the first 90 days of the Effective Date, the Lessee will provide to the Department a MOW & Signals Plan, Operations Plan, Performance Plan and Marketing Effort. In addition, the Lessee will take the lead on developing new projects and relevant documents and agreements.

3.10 Planned Service Operation by the Lessee. The Lessee shall provide to the Department a plan at least 30 days prior to beginning service that includes a schedule for transition from the Piedmont Railway, LLC to the Lessee. Said plan shall include a defined timetable for planned service operation once this Agreement has been executed between the Department and the Lessee. The Lessee shall use commercially reasonable efforts to effectuate the transition from Piedmont Railway, LLC, an indirect subsidiary of Iowa Pacific Holdings, LLC, to the Lessee without any break in service or degradation of service to the present customer, Superior Carriers.

3.11 Assignment of Agreement by Sale or Sublease. The Lessee shall not reassign this Agreement by way of sale or sublease without the written approval of the Department. Such approval not to be unreasonably withheld or conditioned provided the purchaser or sublessee complies with the terms of this Agreement and assumes the obligations of the Lessee. Under no circumstances will the Department consider reassignment of this Agreement to any unrelated entity with less than five years of service of active short-line operation experience. Lessee acknowledges that reassignment to an unrelated entity may require a new open solicitation to fairly judge the market for the operations lease.

3.12 New Side and Industrial Track Agreements. The Lessee shall negotiate any new side and industrial track agreement associated with active service of the Rail Line. The Lessee or industry that locates on the line shall assume all responsibilities for design, construction and maintenance associated with any new sidings or industrial tracks. The Department shall be included in the early planning process for

such projects. These agreements and designs shall be submitted to the Department for its review and approval prior to execution. Costs for new sidings and industry tracks shall be negotiated with the Lessee, Department, and industry that will locate on the line.

3.13 Assignment of Norfolk Southern Railway and CSX Transportation Interchange Agreements to the Lessee. The Lessee shall work with Piedmont Railway, LLC to transfer the existing interchange agreements with CSX Transportation dated September 24, 2015 and Norfolk Southern Railway dated September 24, 2015, to the Lessee in a timely and seamless manner. If an assignment of these agreements is not possible, the Lessee shall negotiate interchange agreements with CSX Corporation ("CSX") and Norfolk Southern Corporation ("NS") governing the respective parties' obligations with regard to the interchange of cars and maintenance, repair and operation of tracks and equipment related to that interchange. The Lessee, as part of its interchange agreements, shall develop guidelines for potential handling of any run-through trains with CSX and NS. Copies of interchange agreements shall be provided to the Department.

3.14 Interchange Agreement with Association of American Railroads ("AAR"). The Lessee shall file interchange agreement with AAR that the Lessee will abide by the Code of Rules governing the condition of, repairs to, and settlements for freight cars for the interchange of traffic, as formulated and promulgated by the former Master Car Builders Association and by the AAR.

3.15 Notice of Exemption with the STB. The Lessee shall file a Verified Notice of Exemption with the STB under 49 C.F.R. 1180.2(d) (2) prior to beginning service on the P&N corridor.

3.16 Grade Crossing Protection. Grade crossing protection required at private and public grade crossings has been determined and installed by the Department Rail Crossing Safety Unit. The Department Rail Crossing Safety Unit has also performed the engineering, planning, installation and testing of all new grade crossing signals on the P&N Rail Corridor. The Lessee shall be responsible for all maintenance of all crossing signals per Attachment A. The Department agrees to routinely review and maintain action plan for crossing safety along the corridor. Any changes to that plan shall be mutually agreed to by both Parties.

3.17 Indemnification. The Lessee shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Lease, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Lessee in the performance of this Agreement, to the extent attributable to the negligence or intentionally tortious acts of the Lessee and where any such liability arises out of acts, omissions or events occurring after the Effective Date and during the Term of

this Agreement, but expressly excluding any claims or losses (including any claims or losses related to Environment Problems (as defined below)) arising prior to the Effective Date to the extent caused by the negligence or willful misconduct of the State of North Carolina, its officers, agents or employees. The Lessee represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of the Lessee's services to the State or in the performance of the State's obligations under this Agreement. The representation and warranty in the preceding sentence shall survive the termination or expiration of this lease.

The Lessor shall hold and save the Lessee, its officers, agents, affiliates and employees, harmless from liability of any kind, including all claims and losses for the breach of the State of its obligations under this Agreement and any Environmental Problems, where such liability arises out of acts, omissions or events occurring prior to the Effective Date, but only in the manner and to the extent permitted under North Carolina law, including but not limited to the NC Tort Claims Act, GS 143-291, *et seq.*, and without waiver of its sovereign immunity.

"Environmental Problems" means any cause or action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended) and any cause or action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatever nature which arise from environmental damage, releases, contamination, toxic wastes or similar causes.

4. **TERM, PAYMENT AND DEFAULT**

4.1 Term. This Agreement shall be effective on the date of this Agreement (the "Effective Date") and shall continue in full force and effect for a period of ten (10) years from the Effective Date (the "Initial Term"). Unless the Lessee is in default under this Agreement as described in Section 4.3 hereof and subject to the Lessee's performance of its obligations hereunder, the Lessee shall have the right to extend the Initial Term of this Agreement for three (3) five-year renewable options (each, an "Extension Period", and together with the Initial Term, the "Term") by delivery of written notice to the Department not less than 180 days prior to the end of the Initial Term and within 180 days prior to the end of the then-current Extension Period, as applicable. The failure of the Lessee to deliver such written notice within the specified time period shall be deemed a waiver of the extension rights set forth in this Section.

4.2 Payments.

A. **Lease Fee.** During the Term of this Agreement, the Lessee shall pay to the Department a monthly rent equal to the greater of (i) five percent (5%) of gross revenue received by the Rail Line as a result of Lessee's operations; or (ii) \$2,500 (the "Monthly Rental Payment"). In lieu of Lessee's

obligation to make its Monthly Rental Payment to the Department during the first two (2) years of the Initial Term, the Lessee will reinvest such Monthly Rental Payments into the sidings, industrial spurs, equipment, or other tangible upgrades to better service new or existing clients.

B. Industrial Development Investments. The Lessee shall use its best efforts to deploy at least \$400,000 in capital expenditures to support existing and new industry customers locating along the Rail Line in the first five years of the Term and an additional \$400,000 in years six through ten of the Term aimed at supporting existing and new industry customers locating along the Rail Line.

C. Monthly Business Reports. The Lessee shall provide monthly business reports to the Department outlining dollars received, car count and Actual Rate Per Car ("ARPC").

D. Early Termination Fee. If the Lessee terminates this Agreement for any reason whatsoever within the first five (5) years of contract, the Lessee shall pay to the Department an early termination fee in the amount of \$25,000.

4.3 Default and Termination. If a Party defaults in the performance of any material covenant or material agreement required by this Agreement for a period of sixty (60) days after written notice from the non-defaulting Party specifying such default, or if such default shall reasonably take more than sixty (60) days to cure, the defaulting Party shall not have commenced to cure the same within the sixty (60) days and diligently prosecuted the same to completion, the non-defaulting party may, at its option, in addition to any other legal and/or equitable rights, terminate this Agreement by written notice.

5. **OWNERSHIP AND ACCESS**

5.1. Title to Assets. Title to the Rail Line shall at all times remain with the Department and the Lessee shall make no claim for ownership of the Rail Line other than as expressly provided herein. The Lessee shall not modify, sell, or remove assets from the Rail Line that are subject to restrictions under the terms of this Agreement. Any improvement to the Rail Line other than for regular maintenance purposes made by the Lessee shall become property of the Department, shall be requested to the Department in writing not less than fifteen (15) days prior to the requested change and shall not be made without the Department's approval. Any material modifications to the Rail Line to enhance rail freight efficiency and safety shall be in compliance with all applicable standards and state and federal laws. Notwithstanding the foregoing, title to all locomotives, rolling stock, vehicles, machinery, inventory, and equipment provided or used by the Lessee for the operation of the Rail Line shall remain with the Lessee and not become a part of the Rail Line, and the Department shall make no claim for ownership of such assets.

5.2. Access to the Department Caboose. The Department may elect at its own cost to make available its caboose, RNCX 400500, to the Lessee for use on the Rail Line for corridor inspections, and/or excursions. The Department shall continue to maintain general liability insurance on its caboose at no charge to the Lessee. The Lessee shall provide reasonable notification and secure permission from the Lessor to use its caboose.

5.3. General Access. With the exception of rail car storage limitations as shown on the attached map (see Attachment B) as set forth herein, the Lessee shall have access to all parts of the Rail Line (excepting the Belmont Branch line between Mileposts SSF 1.56 and 3.13) as may be required for a common-carrier conducting Freight Rail Services or Passenger Rail Services.

6. **HAZARDOUS SUBSTANCES AND WASTES.**

6.1. Environmental Definitions. For the purpose of this Section, "Hazardous Materials" shall mean any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation, and "Hazardous Materials Laws" shall mean all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

6.2. The Lessee shall comply with Hazardous Material Laws in performing its railroad services on the Rail Line and shall obtain any necessary permits and identification numbers. The Lessee shall assume all responsibility for and shall indemnify, defend and hold harmless the Department against all costs and claims to the extent associated with (i) a release or leak of any such Hazardous Materials caused by the Lessee on the Rail Line, or (ii) the violation of Hazardous Materials Laws by the Lessee.

6.3. In addition, the Lessee shall not install any above ground or underground storage tanks on the Rail Line without first obtaining the Department's written permission. If such permission is granted the Lessee shall obtain any necessary permits, notify the proper authorities, and provide the Lessor with copies of such permits and notifications. Furthermore, the Lessee shall assume all responsibility for and shall indemnify, defend and hold harmless the Department against all costs and claims to the extent associated with a release or leak of any tank contents, except to

the extent such event was caused by the negligence or willful misconduct of the Department.

6.4. The Lessee shall not be liable for any violations of Hazardous Materials Laws prior to the date of this Agreement.

7. MISCELLANEOUS

7.1. Inspection Rights. During the Term of this Agreement, the Department (or its designated agent) shall have the right to inspect the Rail Line quarterly and at such other times as it reasonably deems necessary to monitor compliance with this Lease. The Department shall have the right to enter the Rail Line to conduct such inspections during normal business hours upon three (3) business days written notice to the Lessee; however, the Department will comply with any instructions of the Lessee reasonably designed to ensure the safety of the personnel and property of the Lessee and the Department. At the Lessee's option, a representative of the Lessee shall accompany the Department (or its agent) during any inspections.

7.2. Status of Lessee.

A. It is understood and agreed that the Lessee (including the Lessee's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. The Lessee's assigned personnel shall not be entitled to any benefits payable to employees of the Department.

B. If, in the performance of this Agreement, any third persons are employed by the Lessee, such persons shall be entirely and exclusively under the direction, supervision, and control of the Lessee. All terms of employment, including hours, wages, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by the Lessee, and the Department shall have no right or authority over such persons or the terms of such employment.

7.3. FRA Notification. The Parties acknowledge and agree that they will jointly meet with the FRA to discuss and determine obligations of both Parties and federal regulations as the Lessee begins operation of Freight Rail Services with respect to the Rail Line. The Lessee agrees that it will comply with FRA regulations in regard to operation of the Rail Line.

7.4. Train Safety Program. The Lessee, in conjunction with the Department's "Be Rail Safe Program" and "Operation Life Saver", shall implement and maintain a community outreach program to educate the area's public on railroad and train safety.

7.5. Regulatory Compliance. The Lessee, as the carrier and operator of the Rail Line, shall materially comply with all applicable local, state and federal laws and

regulations in its operation of, and on the Rail Line. Such material compliance shall include, but not be limited to, compliance with the Railroad Retirement Act, Federal Employers Liability Act, Federal Railroad Safety Act, and all rules and regulations of the FRA, and the STB. The Department shall comply with all applicable local, state and federal laws and regulations related to its ownership of the Rail Line.

7.6. Utilities. The Lessee, at its sole cost and expense, shall arrange for and obtain necessary water, electricity, and other utility services required for the operation of the Rail Line, including ongoing electrical supply to required crossing signal equipment. The Department shall not be liable for any such services, or the suspension of such services.

7.7. Rail Car Storage. Agreements with third parties for long-term storage of loaded and/or empty railcars, locomotives, or other similar rolling stock on mainline track or on sidings are subject to the Department approval which approval shall not be unreasonably withheld or conditioned and shall be forthcoming within one (1) business day of notification from the Lessee. In the event that the Department's approval or disapproval is not received by the Lessee in the time period specified, the agreement in question shall be considered to have been approved by the Department. The storage of railcars on the Rail Line shall in no way impede the regular movement of freight over the Rail Line or access to existing customers or potential business development sites. The Lessee shall be responsible for periodic inspection of any stored cars to ensure safety of the public. Notwithstanding the foregoing, storage of rail freight cars on the Belmont Spur south of Woodlawn Ave. (Milepost SFF 0.9) will not be allowed. Rail car storage shall be limited to the areas so indicated on Attachment B.

7.8. Taxes. Each Party shall be exclusively responsible for any taxes associated with the revenue it derives through this Agreement. The Lessee shall be responsible for any property taxes associated with the lease of the Rail Line from the Department. Specifically, the Lessee shall be responsible for the tax assessed pursuant to N.C. General Statue 105-335(b) (1) as a result of its use of the State-owned Rail Line. In addition, the Lessee shall be responsible for any taxes associated with ownership of equipment used on the Rail Line.

7.9. Insurance and Liability. The Lessee shall procure and maintain in effect for the duration of this Agreement a policy or policies of liability insurance in an amount adequate to cover any occurrence to which the Lessee or the Department may be subject to liability in connection with the operation, use, or maintenance of the Rail Line, including personal injury or death. This insurance coverage shall be provided to the Department and be in force prior to the first day of operation of the Rail Line by the Lessee. The minimum limits of the total coverage once freight service begins will be \$5,000,000.00 per occurrence for freight purposes, and \$50,000,000 for Passenger Rail Services. The subject insurance policy or policies shall specify the Department as an additional insured, as its interest may appear. Insurance coverage limits shall be reviewed biennially by the Department

commencing on the second anniversary of the Effective Date and are subject to adjustment based upon consultation with the North Carolina Department of Insurance ("NCDOI"). Any increase in the required minimum limits of insurance, as determined by the NCDOI, will not cause the Lessee to incur a premium increase of more than ten percent (10%) from the prior year. Should the parties enter into an agreement for the Lessee's provision of passenger service, additional insurance may be required of the operator of the passenger service in such amounts as mutually determined by the Lessee, the Department, and the NC Department of Insurance.

7.10. Audits.

A. To ensure compliance with other terms and conditions of this Lease, the Department may require an annual audit of the Lessee's books and records, including all interchange records pertaining to the Rail Line. Such audit shall be limited to be performed only once per calendar year. The Department, at its own cost and with at least 30 days prior written notice to the Lessee, shall conduct the audit during regular business hours using the Department's employees, and/or its designated agent.

B. Subject to any confidentiality restrictions, if necessary or desirable for audit purposes, the Lessee shall direct that all interchange records pertaining to the Rail Line maintained by third parties, including the AAR and its TRAIN II records, be made available to the auditors. The Lessee shall reasonably cooperate with any such audit. If the Lessee disagrees with the results of the audit and requests another audit, the Lessee and the Department will select an independent auditor, with the cost of the independent auditor split equally between the parties.

7.11. Sole Benefit. This Agreement is intended for the sole benefit of the Parties hereto. Nothing in this Agreement or the provision of the exclusive lease is intended or may be construed to give any person, firm, corporation, or other entity, other than the Parties hereto and their respective officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and permitted assigns, any right pursuant to any provision or term of this Lease, and all provisions and terms of this Lease are and will be for the sole and exclusive benefit of the Parties to this Lease.

7.12 Force Majeure. In the event of a force majeure, including but not limited to acts of God, war, riots, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, and acts of state or governmental action, each Party shall be reasonably relieved of its obligations herein, provided that the affected Party exercises reasonable efforts to, within its ability, mitigate the scope and duration of such force majeure. A Party claiming force majeure under this Agreement must expeditiously notify the other Party of the force majeure situation and any actions being taken toward mitigation.

7.13 Insolvency. If the Lessee 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, such will constitute an event of default under this Agreement.

7.14 Notices. Any notices required or permitted under this Agreement shall be delivered by the most expeditious means and followed in writing by First Class US Mail as follows:

If to the Lessee: Progressive Rail, Inc.
 21778 Highview Ave.
 Lakeville, Minnesota 55044
 Phone: 952-985-7245
 Fax: 952-985-5911
 Attention: Dave Fellon, President
 dfellon@progressiverail.com

If to Lessor: NCDOT, Rail Division
 1553 Mail Service Center
 Raleigh, NC 27699-1553
 Phone: (919) 707-4712
 Fax: (919) 715-6580
 Attention: Allan Paul, Rail Division
 Deputy Director
 E-mail: hapaul@ncdot.gov

7.15 Amendment. No provision of this Lease shall be modified without the written concurrence of the Parties hereto. This Lease includes attachments and exhibits appended hereto and represents the entire understanding of the Parties hereto, and to that extent supersedes any prior understandings, written or oral.

7.16 Liens. The Lessee will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by the Lessee during the Term of this Lease in the construction, repair, maintenance, or removal of the Rail Line and any improvements located thereon, whether said improvements are the property of the Department or of the Lessee. The Lessee will indemnify and save harmless the Department from all such claims, liens, or demands whatsoever arising on or after the Effective Date. In the event the Lease is terminated, the Lessee shall return the Rail Line to the Department free and clear of any such liens, claims, and demands. Notwithstanding the foregoing, in the event that the Lessee participates in any federal or state funding programs after receiving the written consent of the Department for such participation, the Lessee shall comply with all obligations to which it is subject under any such federal or state funding programs. The Lessee expressly agrees that it will not otherwise lien or encumber the subject property without first obtaining the Department's express written consent.

7.17 Assignment. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. Any subsequent assignment or sale by the Lessee of this Agreement shall require the approval of the Department, which approval shall not be unreasonably withheld or conditioned. (Also see Section 3.11)

7.18 No Waiver. 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 as often as may be deemed necessary by the non-breaching Party.

7.19 Severability. 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.

7.20 Governing Law; Jurisdiction and Venue. This Agreement shall be construed and enforced under the laws of the State of North Carolina. Unless a different forum is required by federal or state law, any action commenced pursuant to this Agreement shall be brought in the Superior Court of Wake County, North Carolina.

7.21 Discontinuance of Service. The Lessee shall not apply for discontinuance of service over any portion of the Rail Line without concurrence of the Department.

8. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). By execution of this agreement, Progressive Rail, Inc certifies that to its knowledge neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal or state department or agency and that it will not knowingly enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

9. E-verify. E-verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. The Parties warrant that they and any subcontractor performing work under this agreement: (i) uses e-verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this warranty by any Party will be considered a breach of this Agreement, which entitles the other Party to terminate this Agreement, without penalty, upon notice to the breaching Party.

10. Iran Divestment Act Certification. By signing this Agreement, both Parties certify that, as of the date of this Agreement, each Party is not listed on the Final Divestment List

created by the State Treasurer pursuant to N.C.G.S. 147-86.58, and that each Party is authorized to make this certification.

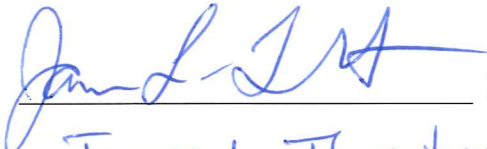
11. By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. Architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any state employee of the governor's cabinet agencies (i.e., Administration, Commerce, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, Revenue, Transportation, and the Office of the Governor). By execution of this Agreement, the Lessee attests, for its entire organization, that it is not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees or agents of Lessee.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate originals, the last day and year set out below, on the part of the Department and Progressive Rail Inc. by authority duly given.

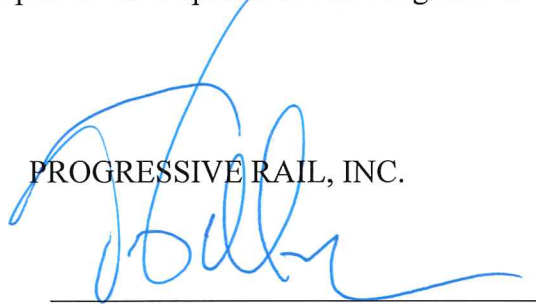
WITNESS

PROGRESSIVE RAIL, INC.

BY:



BY:



NAME:

James L. Thornton

NAME:

Dave Fellon

TITLE:

Managing Director - Legal

TITLE:

President

DATE:

4-24-17

DATE:

4-24-2017

FEDERAL IDENTIFICATION NUMBER

41-1830488

Progressive Rail, Inc.

MAILING ADDRESS

Progressive Rail, Inc.

21778 Highview Avenue

Lakeville, Minnesota 55044

ATTN: Mr. Dave Fellon, President

dfellon@progressiverail.com

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate originals, the last day and year set out below, on the part of the Department and Progressive Rail Inc. by authority duly given.

ATTEST

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY:

Tereca W Batts

BY:

David L Howard

NAME: Tereca Batts

NAME: David L. Howard

TITLE: Processing Agent

TITLE: Chief Deputy Secretary

DATE:

5-10-17

DATE:

5-10-17



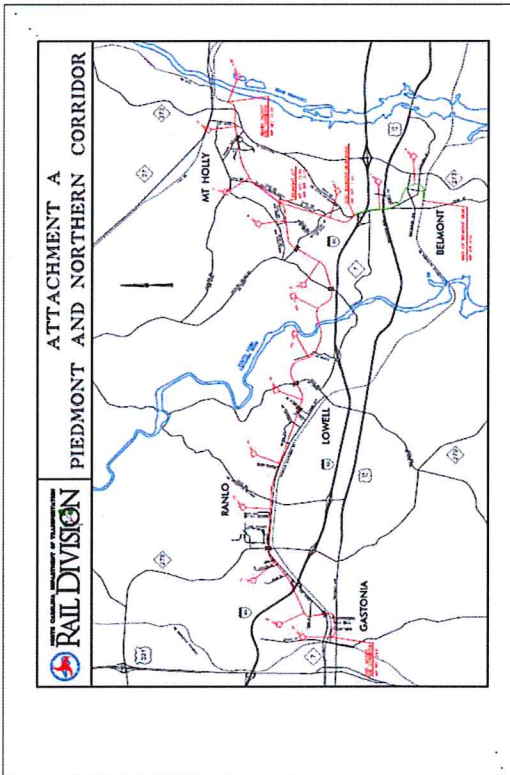
MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Operations & Facilities Branch
1553 Mail Service Center
Raleigh, North Carolina 27699-1553
ATTN: Allan Paul
Deputy Director
hapaul@ncdot.gov

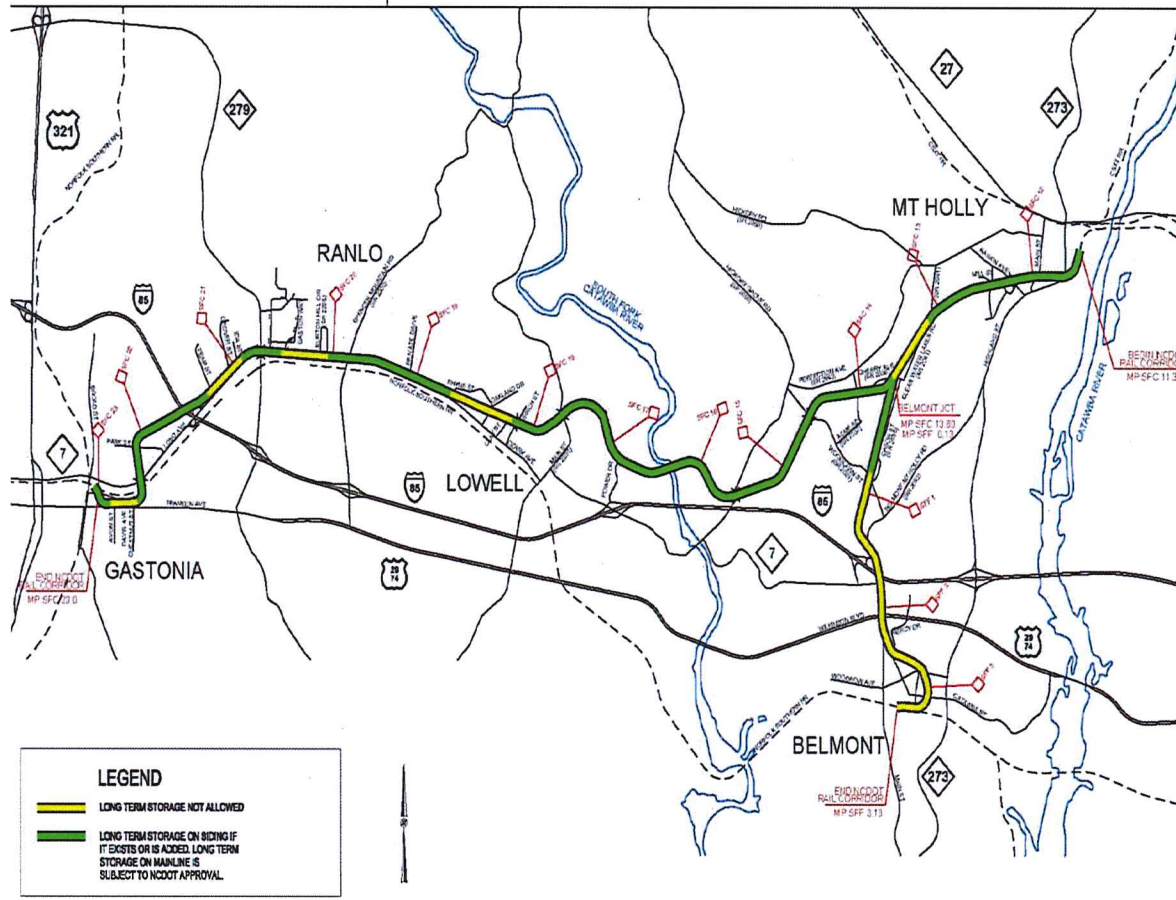
APPROVED BY BOARD OF TRANSPORTATION
ITEM O:

May 4, 2017

(Date)



**PIEDMONT AND NORTHERN CORRIDOR
 ATTACHMENT B
 RAIL CAR STORAGE LIMITS**



ATTACHMENT C

ROUTINE MAINTENANCE

The Lessee shall be responsible for performing the obligations set forth below solely with respect to the portions of the Rail Line which are operational. As additional portions of the Rail Line become operational, these obligations will become applicable to the Lessee.

1. Vegetation control (spraying of the railroad at least annually with a chemical mixture approved by the Lessor), clearing of vegetation obstructions and maintaining site distance quadrants at grade crossings provided with the initial upgrade clearing, removal of downed trees encroaching on the tracks, brush cutting to maintain clearance envelopes provided during initial upgrade clearing, general cleanup of debris and trash. Not included is removal of significant concentrated debris dumped by third parties. Lessor will pursue removal by the offending party (if identified) or otherwise.
2. Maintenance and cleanout of drainage facilities such as ditches and culverts to provide proper drainage of the Rail Line.
3. Roadbed erosion beyond what has been determined to be satisfactory with the initial upgrade work.
4. Grade crossing signal inspection and maintenance (on roads equipped with such) in accordance with FRA regulations and the American Railway Engineering & Maintenance-of-Way (AREMA) signal manual. 50% of the maintenance costs, based on a formulaic value and as defined in NC General Statutes 136-20(h) for state-maintained roads and 160A-298(c) for municipal streets, will be paid to the Lessee by the respective road authority. Maintenance typically includes such items as, but is not limited to, replacement of batteries (including proper disposal), bulbs, lenses, gates, insulated joints, bond wires, above/underground wiring, and removal of graffiti from cabinets. Replacement of cabinets, masts, cantilevers, or signal upgrades is not included. On crossings protected by passive devices, maintenance of the crossbucks and other signs attached to or next to the crossbuck sign mounts as well as whistle posts, mileposts, and other signage along the track. Other advance warning signs and pavement markings are the responsibility of the respective road authority.
5. Grade crossing surface maintenance shall include patching of surface with hot or cold mix, repair of broken rails, crossing timbers, re-driving lags, and other items related to maintenance of the track through the crossing, as well as replacement of any asphalt within six (6) feet of centerline of track that is removed for track maintenance purposes.

6. All FRA required track and bridge inspections, copies available for the Department and FRA upon request, to designated track class.
7. Inspection and maintenance of turnout components such as switches and frogs, lubrication and adjustment of all switches, replacement of loose or missing bolts and cotter pins, replacement of banners as required, re-spiking to gage, welding of points and frogs.
8. Derailments, re-railing of all derailed cars and lading, or repairs to track to return it to the same FRA class as prior to the derailment. Materials to be provided by the Lessee.
9. Joints and replacement/repair of broken rails/pull-aparts/joint bars, tightening of joint bar bolts, repair of missing or failed bolts. Broken rails and joint bars from Rail Line inventory may be used if available.
10. Ties to maintain minimum FRA Class 2 track conditions on the Rail Line.
11. Tie plates and anchoring, reposition of loose plates, re-spike per designated spiking pattern, re-drive loose anchors.
12. Surface, spot jacking and tamping of track to maintain FRA Class 2 track conditions.
13. Bridge inspections and reports, cleaning of drift, erosion control at bridge abutments, rail and attachments to bridge ties across the bridge, bridge ties and attachments to steel spans, platforms/handrails, cleaning bridge seats of debris, and clearing vegetation on and under bridges. Does not include any repairs of a structural nature that affects structural integrity/capacity of the bridge. Structural repairs to maintain structural integrity/capacity of the bridge will be considered capital projects.

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is effective as of May 30, 2017 (the "Effective Date"), by and between Piedmont and Northern Railroad LLC, a Minnesota limited liability company ("Assignee"), and Progressive Rail, Inc., a Minnesota corporation ("Assignor").

WITNESSETH

WHEREAS, the Assignor has entered into that certain Lease and Operating Agreement with the North Carolina Department of Transportation, effective as of May 4, 2017 (the "Assigned Contract"); and

WHEREAS, Assignor desires to transfer, convey and assign to Assignee all of its right, title, and interest in and to the Assigned Contract, and Assignee desires to accept such assignment and assume all duties, obligations and liabilities of Assignor under the Assigned Contract, in accordance with the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

Section 1 Assignment of the Assigned Contract. Assignor hereby transfers, conveys and assigns all of its right, title and interest in, to and under the Assigned Contract to Assignee.

Section 2 Acceptance of Assignment. Assignee, by its execution of this Agreement, hereby accepts the foregoing transfer, conveyance and assignment, and assumes and agrees to perform and be responsible for all duties, obligations and liabilities of Assignor under and with respect to the Assigned Contract.

Section 3 Guarantee of Performance. Notwithstanding the assignment and acceptance above, Assignor guarantees the obligations of the Assignee under the Assigned Contract.

Section 4 Further Assurances. The parties agree to execute and deliver to each other such additional documents, and to do such other acts and things, all as another party may reasonably request for the purposes of carrying out the intent of this Agreement.

Section 5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions (whether written or oral) of the parties with respect to the subject matter hereof.

Section 6 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

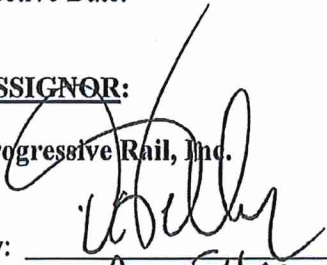
Section 7 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed as of the Effective Date.

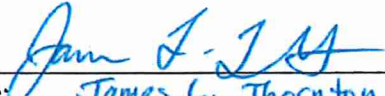
ASSIGNOR:

Progressive Rail, Inc.

By: 
Name: David L. Howard
Title: President

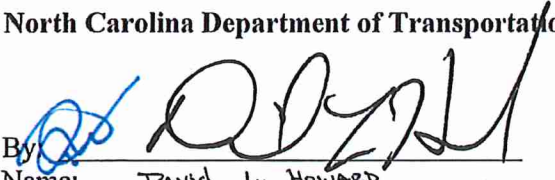
ASSIGNEE:

Piedmont and Northern Railroad LLC

By: 
Name: James L. Thornton
Title: Managing Director - Legal; Secretary

Acknowledged and Agreed:

North Carolina Department of Transportation

By: 
Name: David L. Howard
Title: Chief Deputy Secretary

[Signature Page to Assignment and Assumption Agreement]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
-- CHANGE IN OPERATOR EXEMPTION --
LINE IN GASTON COUNTY, NC

EXHIBIT E
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36592

CHARLOTTE WESTERN RAILROAD, LLC
– CHANGE IN OPERATOR EXEMPTION –
LINE IN GASTON COUNTY, NC

Charlotte Western Railroad, LLC (“CWRR”), a non-carrier, has filed a Verified Notice of Exemption to lease and operate approximately 13.04 miles of rail line in Gaston County, North Carolina, owned by the North Carolina Department of Transportation, and extending from milepost SFC 11.39 at Mt. Holly to milepost SFC 23.0 at Gastonia, including the Belmont Spur extending from milepost SFF 0.13 at Mt. Holly (milepost SFC 13.6 on the Mt. Holly-Gastonia line) to milepost SFF 1.56 at or near Belmont (the “Line”). CWRR will replace Piedmont and Northern Railroad LLC (“PNRW”) as the operator of the Line, thereby ending PNRW’s common carrier obligations over the Line.

CWRR expects to commence operations over the Line in place of PNRW on or after March 30, 2022.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

This proceeding is related to FD 36593, *OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC – Continuance in Control Exemption –*

P&N Acquisition Co., in which OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC have concurrently filed a notice of exemption pursuant to 49 U.S.C. §§ 11323, et seq. and 49 C.F.R. § 1180.2(d)(2) to continue in control of CWRR once CWRR assumes operation of the Line and becomes a carrier.

This Notice is filed under 49 C.F.R. § 1150.31(a)(3). If the Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: March _____, 2022

By the Board

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings