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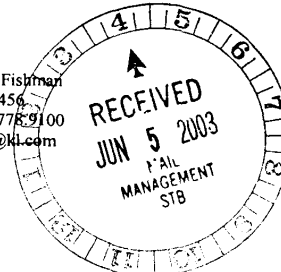
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VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

209977

Edward J. Fishman
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efishman@kl.com



**Re: Finance Docket No. 34338, Metro
Regional Transit Authority –
Acquisition Exemption – Certain Assets Of Akron Barberton
Cluster Railway Company**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Motion Of Metro Regional Transit Authority To Dismiss Notice Of Exemption**. The Verified Notice of Exemption to which this motion to dismiss relates was filed with the Board on April 14, 2003.

Pursuant to 49 C.F.R. § 1002.2(e)(1), Metro Regional Transit Authority respectfully requests a waiver refund of the \$1,300 filing fee submitted by Metro Regional Transit Authority in connection with the Verified Notice of Exemption filed in the above-captioned proceeding. As explained in the Motion to Dismiss, Metro Regional Transit Authority is a state government entity dedicated to providing regional passenger rail service. Metro Regional Transit Authority filed the Notice of Exemption at issue in furtherance of this public purpose and is filing the Motion to Dismiss in order to obtain a jurisdictional determination that it is not subject to Board jurisdiction as a result of its ownership of certain assets. The benefits from participation in this proceeding will flow to the general public. Therefore, Metro Regional Transit Authority believes that it is entitled to a waiver and refund of the filing fee pursuant to 49 C.F.R. § 1002.2(e)(1).

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

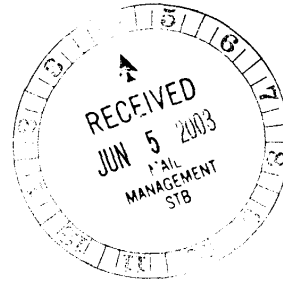

Edward J. Fishman
Attorney for Metro Regional Transit
Authority

Enclosures

DC-564384 v1 0306348-0100

BOSTON ■ DALLAS ■ HARRISBURG ■ LOS ANGELES ■ MIAMI ■ NEWARK ■ NEW YORK ■ PITTSBURGH ■ SAN FRANCISCO ■ WASHINGTON

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34338

METRO REGIONAL TRANSIT AUTHORITY
--ACQUISITION EXEMPTION--
CERTAIN ASSETS OF AKRON BARBERTON CLUSTER RAILWAY COMPANY

**MOTION OF
METRO REGIONAL TRANSIT AUTHORITY
TO DISMISS NOTICE OF EXEMPTION.**

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**ATTORNEYS FOR METRO
REGIONAL TRANSIT AUTHORITY**

Dated: June 5, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34338

METRO REGIONAL TRANSIT AUTHORITY
--ACQUISITION EXEMPTION--
CERTAIN ASSETS OF AKRON BARBERTON CLUSTER RAILWAY COMPANY

**MOTION OF
METRO REGIONAL TRANSIT AUTHORITY
TO DISMISS NOTICE OF EXEMPTION**

Pursuant to an Agreement of Sale (the "Agreement of Sale")¹ between Metro Regional Transit Authority ("METRO") and Akron Barberton Cluster Railway Company ("ABC"), METRO acquired certain interests in ABC's rail line and right-of-way, totaling approximately 3.49 route miles, between MP 11.49 in Akron, Ohio and MP 8.00 in Cuyahoga Falls, Ohio (the "Subject Line"). ABC retained an exclusive freight rail operations easement for purposes of providing, or having a third party provide, freight rail service on the Subject Line (the "Operations Easement").² There are no freight rail customers located on the Subject Line and there has not been any local or overhead freight rail service on the Subject Line for the past several years.

On April 14, 2003, METRO filed a Verified Notice of Exemption (the "Notice"), pursuant to 49 C.F.R. § 1150.31, et seq. to acquire the Subject Line. METRO hereby moves the Surface Transportation Board ("STB" or "Board") to dismiss the Notice. METRO submits that,

¹ The Agreement of Sale is attached hereto as Exhibit A.

² The Operations Easement is set forth in the Quitclaim Deed attached hereto as Exhibit B.

because of the nature and terms of the transaction as described in the Notice and as set forth in the Agreement of Sale and the Operations Easement, this transaction was not subject to Board jurisdiction and consummation of the transaction did not make METRO a rail carrier as a result of its ownership of the Subject Line.

II. STATEMENT OF FACTS

METRO is a regional transit authority created and existing under Ohio Revised Code Chapter 306 to provide regional passenger transportation services for the citizens of Summit County, Ohio. METRO receives funding from the federal government, state government, and locally through a sales tax. METRO acquired the Subject Line in order to preserve it for future transportation use. METRO plans to explore the possibility of establishing a regional passenger rail transportation system on the Subject Line. METRO does not provide and has no plans to provide freight rail operations.³

Under the Agreement of Sale, METRO acquired, inter alia, all of ABC's right, title, and interest in and to the Subject Line and associated track/railroad facilities. ABC retained an exclusive freight rail operations easement on the Subject Line to conduct or have third parties conduct freight rail service (the "Operations Easement"). By virtue of the Operations Easement,

³ In 2000, METRO acquired the physical assets of the rail line between Akron and Canton from CSX Transportation, Inc. ("CSXT") subject to (1) CSXT's retention of an exclusive freight easement on the northern segment and (2) a lease agreement between CSXT and the Wheeling & Lake Erie Railway Company ("W&LE") on the southern segment. See Finance Docket No. 33838, Metro Regional Transit Authority – Acquisition Exemption – CSX Transportation, Inc. (STB served June 23, 2000). Although its motion to dismiss that notice is still pending, METRO continues to take the position that it did not acquire rail carrier status as a result of that transaction and currently anticipates that the W&LE will shortly withdraw a pending objection to that motion.

ABC retained all common carrier rights and obligations on the Subject Line. METRO will not hold itself out to conduct any freight rail operations on the Subject Line.

Pursuant to the Agreement of Sale, METRO did not acquire the right or obligation to operate rail freight service on any portion of the Subject Line. The Agreement of Sale preserves ABC's exclusive right to serve or have a third party serve future freight rail customers on the Subject Line. No freight rail customers are currently located on the Subject Line and there has not been any local or overhead freight rail service on the Subject Line for the past several years. However, ABC retained the exclusive right and obligation to provide rail freight service over the Subject Line if the need arises in the future.

The Agreement of Sale will give METRO the property and contract rights it requires to operate a passenger rail transportation system on the Subject Line if it determines to establish such a system. However, ABC will retain the property and contract rights it requires to conduct common carrier rail freight operations on the Subject Line. In the event that ABC elects to exercise its Operations Easement in order to provide common carrier freight rail operations on the Subject Line, ABC's use of the Subject Line shall be governed by a Shared Use Agreement to be entered into by and between METRO and ABC. Although it owns the Subject Line, METRO does not have sufficient property or contract rights to unreasonably interfere with any such rail freight operations and ABC will have the ability to meet any common carrier freight rail obligations. METRO will not conduct any rail freight operations on the Subject Line, and it will not hold itself out as willing or able to do so.

III. ARGUMENT

A. METRO's Acquisition Is Not Subject To Board Jurisdiction Because It Did Not Acquire Property and Contractual Rights Necessary To Provide Rail Carrier Service on The Subject Line

Under 49 U.S.C. Section 10901, the Board has exclusive jurisdiction over the acquisition of a railroad line by a non-carrier (including a public entity such as METRO), where common carrier rights and obligations also are being transferred. Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Whether a particular transaction is an acquisition of a railroad line depends on whether the acquiring company is holding itself out to provide common carrier rail service and has the ability to provide common carrier rail service. Status of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973). This is an objective test; the Board (like the former Interstate Commerce Commission ("ICC")) looks at what the acquiring entity will do, as opposed to how it labels itself. Los Angeles County Transportation Commission – Petition for Exemption – Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374 (Board served July 23, 1996) ("LACTC/UP"); see United States v. California, 297 U.S. 175, 181 (1936).

Subtitle IV of Title 49 defines "railroad" to include "...the road used by a rail carrier and owned by it or operated under an agreement..." 49 U.S.C. § 10102(6)(B). It defines "rail carrier" as a "person providing common carrier railroad transportation for compensation..." 49 U.S.C. § 10102(5). The typical acquisition of a railroad line includes the conveyance of a property interest sufficient to permit the buyer to provide (or at least control) railroad transportation for compensation, and that interest forms the basis of the Board's jurisdiction over the transaction and the buyer. However, the Board (and the former ICC) have consistently recognized that under certain circumstances the acquisition of the physical assets of a rail line is not subject to

STB/ICC jurisdiction and does not make the buyer a rail carrier. Such precedent is applicable to and should govern the transaction here.

In State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C.2d 835 (1991) (“State of Maine”), the State of Maine, acting by and through its Department of Transportation (“MDOT”), sought an exemption to acquire certain railroad right-of-way and trackage from Maine Central Railroad Company (“MEC”), subject to MEC’s retained easement for common carrier railroad operations. MDOT acquired the line for possible establishment of a public transit system using the acquired assets. MEC’s retained easement included access rights for maintenance and renewal of the line and was permanent. As a result, MDOT’s acquisition of the line’s underlying physical assets did not impair freight railroad operations. The ICC found that no common carrier rights or obligations were transferred to MDOT, because nothing in the transaction disabled MEC’s affiliate and lessee, Springfield Terminal Railroad (“STR”), from meeting its common carrier obligation, and STR could not cease to offer service on the line without ICC approval. For these reasons, the ICC saw “no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation.” State of Maine, 8 I.C.C.2d at 837.

In State of Georgia, Department of Transportation – Acquisition Exemption – Georgia Southwestern Railroad, Inc., Finance Docket No. 33876 (STB served July 7, 2000), the State of Georgia, acting by and through its Department of Transportation (“GDOT”), filed a motion to dismiss its notice of exemption for the acquisition of rail line owned by Georgia Southwestern Railroad, Inc. (“GSWR”). Pursuant to an agreement with GSWR, GDOT acquired the rail line, but not the right or obligation to conduct common carrier freight operations on the line. Instead,

pursuant to a separate easement agreement, Heart of Georgia Railroad, Inc. ("HOG") acquired an exclusive rail freight service easement over the line from GSWR.

The Board specifically noted that "under the easement agreement, HOG has the ability to provide unrestricted freight service as a railroad common carrier over the line." The Board also noted that "HOG's easement agreement enables it to carry out its common carrier obligation and gives it more than sufficient power over the operation and maintenance of the line to avoid any undue interference by GDOT." The Board acknowledged that based upon the representations made by the parties, GDOT would not conduct any common carrier freight rail operations over the line or hold itself out to do so. Accordingly, the Board held that the proposed transaction did not require Board approval and granted GDOT's motion to dismiss the notice of exemption.

In Massachusetts Port Authority – Acquisition Exemption – Certain Assets of Boston and Maine Corporation, Finance Docket No. 34276 (STB served Mar. 25, 2003), the Massachusetts Port Authority ("Massport") filed a motion to dismiss its notice of exemption for the acquisition of a rail line owned by the Boston and Maine Corporation ("B&M"). Massport acquired the right-of-way, track and related improvements on the rail line subject to B&M's retention of an exclusive easement to provide freight rail service on the line. Although there were no active freight rail customers on the rail line, Massport acquired the railroad assets primarily in order to preserve them for possible future freight rail operations by B&M (or its affiliates) in connection with Massport's port facilities.

The Board concluded that Massport would not become a rail carrier subject to STB jurisdiction as a result of its acquisition. The Board based its jurisdictional determination on the fact that Massport did not acquire the right or obligation to conduct any freight rail operations on the line and would not hold itself out as a common carrier performing freight rail service. As a

result, the STB determined that the transaction fell within the ambit of State of Maine and other related cases and granted the motion to dismiss.

Taken together, State of Maine and subsequent cases establish that an entity may acquire the physical assets of a rail line without becoming a carrier, provided that another company retains sufficient interest to operate as a rail carrier on the line and has autonomy to conduct carrier operations. Stated somewhat differently, if an acquisition of a rail line and trackage is subject to the existing operating interests of a common carrier and the acquiring entity does not control the carrier's operations, the acquiring entity is not a rail carrier subject to Board jurisdiction.

B. METRO's Acquisition of the Subject Line is Not Subject to Board Jurisdiction

Like the transaction in the State of Maine case and the other cases discussed above, the transaction between METRO and ABC includes several distinguishing and important features. Although METRO acquired certain real property, METRO did not, in this transaction, acquire the property and contractual rights necessary to conduct or control rail carrier freight operations on the Subject Line. Instead, ABC retained such exclusive rights on the Subject Line by virtue of the Operations Easement. Although METRO acquired track that constitutes part of a "line of railroad" as that term is statutorily defined, METRO did not acquire the right or ability to provide or control rail freight transportation. ABC retained all common carrier rights and obligations on the Subject Line.

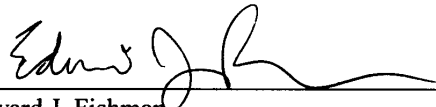
Pursuant to the instant transaction, no rail carrier rights or obligations were transferred to METRO. METRO acquired the Subject Line, but ABC retained an Operations Easement on the Subject Line and the exclusive right to conduct or have third parties conduct rail freight service

to future rail shippers on the Subject Line. METRO's ownership of the Subject Line did not make METRO a rail carrier, because METRO will not have the right to interfere with freight rail service and will not hold itself out as willing or able to provide rail freight service on the Subject Line. Therefore, METRO's acquisition of the Subject Line did not constitute an acquisition of a railroad line subject to the Board's jurisdiction.

V. CONCLUSION

For the reasons set forth above, METRO respectfully requests that the Board dismiss its notice of exemption filed herein for lack of jurisdiction.

Respectfully submitted,



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**ATTORNEYS FOR METRO REGIONAL
TRANSIT AUTHORITY**

Dated: June 5, 2003

LIST OF EXHIBITS

Exhibit A	METRO/ABC Agreement of Sale
Exhibit B	Quit Claim Deed

ORIGINAL

EXHIBIT A

AGREEMENT OF SALE

Between

Akron Barberton Cluster Railway Company

AND

Metro Regional Transit Authority

FOR PROPERTY LOCATED IN THE

Cities of Akron and Cuyahoga Falls

Summit County

State of Ohio

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To	Ed Fishman	From	Kirt Conner
Co./Dept.		Co.	
Phone #		Phone #	
Fax #	202-778-7800	Fax #	

AGREEMENT OF SALE

THIS AGREEMENT OF SALE ("Agreement") is made as of the 2 day of October, 2002, between **Akron Barberton Cluster Railway Company** (the "ABC"), an Ohio corporation, whose address is 100 East 1st Street, Brewster, Ohio 44613, (the "Seller"), and **Metro Regional Transit Authority**, a regional transit authority created and existing under Ohio Revised Code § 306, whose address is 416 Kenmore Boulevard, Akron, Ohio 44301 (the "Buyer").

WITNESSETH:

WHEREAS, the Seller is the beneficial owner of the right-of-way and associated property and track/railroad facilities thereon from Mile Post 8.00 to Mile Post 11.49, situated in the City of Akron and Cuyahoga Falls, Summit County, State of Ohio, more particularly described on Exhibit A; and

WHEREAS, Seller desires to sell and Buyer desires to purchase the Property (defined in Section 1.3 below), "as is, where is", on the terms and conditions hereinafter set forth.

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

ARTICLE I **DEFINITIONS**

1.1 The Term Closing Date.

The term "Closing Date" means the date on which the settlement under this Agreement is held as set forth in Section 2.1 below.

1.2 Permitted Encumbrances.

The terms "Permitted Encumbrances" means the encumbrances on the title of the Property as set forth on Exhibit B.

1.3 Property.

The term "Property" means the tract of land containing Twenty Seven and 29/100 (27.29) acres, more or less, as more particularly described on Exhibit A, together with any improvements now or hereinafter erected thereon, and the exclusive use of all the easements, rights, privileges, tenements and appurtenances thereunto belonging or in any way appertaining.

The Property shall include any and all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings and fixtures located thereon, signals, crossing protection devices, communication lines and poles that are affixed to the land between Mile Post 8.00 and Mile Post 11.49.

1.4 Purchase Price.

The term "Purchase Price" means Four Hundred Ninety Six Thousand Three Hundred Fifty and No/100 dollars (\$496,350.00).

1.5 Title Company.

The term "Title Company" means a reputable title insurance company of Buyer's choice.

1.6. Survey.

Buyer agrees that it will after receipt of copy of this Agreement signed by Seller order a survey with a metes and bounds description of the Property by a licensed or registered surveyor, at Buyer's sole cost and expense, and agrees to furnish to Seller a reproducible tracing and description. The legal description on the survey shall be used in the Deed at closing. The Survey shall be certified to the Buyer.

ARTICLE II
CONVEYANCE

2.1 Conveyance of Property.

Seller shall, on the date hereinafter specified, grant, sell, assign and convey the Property, "as is, where is", to Buyer by quitclaim deed ("Deed") free and clear of all liens, restrictions and encumbrances except Permitted Encumbrances, including a reservation by the Seller of a freight easement over the Property, subject to terms and conditions contained herein ("Operating Easement"), which shall not contain any exception other than Permitted Encumbrances. The Deed shall be in form and substance satisfactory to Buyer. If Buyer is not satisfied with the quality of title for the Property, Buyer may elect not to close.

Additionally, Seller shall execute a bill of sale reasonably acceptable to Buyer conveying to Buyer all rail, other track materials and all other property and appurtenances, both fixed and movable, located on the Property that constitute personal property under the laws of the State of Ohio. The form of the bill of sale shall be acceptable to Buyer.

2.2 Closing Date.

The date of the settlement of the transaction contemplated hereunder shall be a date mutually agreeable to Buyer and Seller within thirty (30) business days after the later of (i) the fulfillment of all conditions set forth in Section 3.1 hereof (or the waiver in writing by Buyer), or (ii) the expiration or termination of the Due Diligence Period (including any extensions of such period) set forth in Section 2.5 below. If the conditions set forth in Sections 3.1 have not been fulfilled (or waived in writing by Buyer) on or before Jan 11, 2003 then Buyer may at any time thereafter terminate this Agreement without liability and receive back all sums paid on account of the Purchase Price or, if such failure of conditions is the fault of Seller, pursue such remedies as may be provided for in law and equity. Except as set forth below, if such conditions have not been fulfilled (through no fault of Seller) on or before Jan 11, 2003, then Seller may at any time thereafter terminate this Agreement without liability, in which event Buyer shall receive back all sums paid on account of the Purchase Price. The closing shall occur at a mutually agreeable location.

2.3 Purchase Price.

2.3.1 Subject to the terms and conditions contained in this Agreement, Buyer shall purchase the Property on the Closing Date and pay Seller the Purchase Price. At the closing, Buyer shall deliver to Seller or Title Company by immediately available funds, the Purchase Price.

2.3.2 The tax identification numbers of the parties are as follows:

Seller: Akron Barberton Cluster Railway Company
54-1533727

Buyer: Metro Regional Transit Authority
34-1113793

2.4 Closing Adjustments, Costs and Expenses.

The cost of real estate transfer taxes shall be borne by Buyer. All water and sewer, municipal charges, real estate taxes, utilities, and all other charges of an annual or recurrent nature assessed against or paid in conjunction with the ownership or operation of the Property shall be prorated as of the Closing Date. Additionally, all rents, prepaid fees or other income, if any, shall be prorated on the Closing Date. Real estate taxes shall be prorated on a fiscal year basis for the year in which the taxes are assessed. Seller shall be responsible for all prorations through and including the Closing Date.

2.5 Due Diligence Period.

During the period commencing on the date of execution and delivery of this Agreement by Seller and Buyer, and ending ninety (90) days thereafter (the "Due Diligence Period"), Buyer may perform, or have performed, at its expense, such studies, permitting, rezoning and investigations (including environmental investigations) of the Property as it deems desirable. Buyer may, *interalia*, do all such matters permitted under Section 7.1 below. Buyer may, in its sole discretion, terminate this Agreement by providing written notice to Seller at any time prior to the fifth (5th) business day after the expiration of the Due Diligence Period, in which event all rights, obligation, and liabilities of the parties hereunder shall be released and discharged. If the Buyer fails to deliver such notice before the fifth (5th) business day after the expiration of the due Diligence Period, Buyer shall be deemed to have waived its right to terminate this Agreement under this Section.

2.6 Restoration.

Should Buyer terminate this Agreement, it shall restore the Property to its condition or equivalent condition immediately prior to Buyer's entry onto the Property.

2.7 Deed Reservations.

At Seller's request, the Deed may contain the following reservations:

2.7.1 Reservation of the Operating Easement over said property to serve, or to have a third party operator serve, existing or future rail customers between Mile Post 11.49 to Mile Post 8.0. The terms of the Operating Easement shall be acceptable to Buyer and include a provision that any assignment shall be made subject to terms and conditions substantially similar to those contained in that certain Shared Use Agreement between Buyer and CSX Transportation, Inc. ("CSXT") dated May 31, 2000. Furthermore, any assignment to a third party operator other than CSXT shall trigger Buyer's right of first refusal as contained herein. Notwithstanding the above, if Seller retains the Operating Easement and provides freight rail service, Seller shall be subject to the terms and condition of that certain Shared Use Agreement between Buyer and Seller dated

2.7.2 Seller shall not be liable or obligated to construct or maintain any fence between the Property and land of Seller adjoining the Property; or be liable or obligated to pay for any part of the cost of expense of constructing or maintaining such a fence or any part thereof; or be liable for any compensation for any damage that may result by reason of the non-existence of such a fence.

2.7.3 That a right or means of ingress, egress, or passageway to or from the land hereinbefore described is not hereby granted, specifically or by implication, and that Seller shall not and will not be liable or obligated to obtain for Buyer such means of ingress, egress or passageway and also that Buyer will obtain a means of access to and from said land at Buyer's own cost and expense.

2.7.4 That should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Seller herein, excluding claims of fraud and willful misrepresentation.

2.7.5 Except as described in the Operating Easement, that Seller shall not be liable or obligated to provide lateral support for the surface of the land hereinbefore described or any part thereof; and that Buyer shall not, at any time hereafter, ask, demand, recover or receive any compensation whatever for any damage that may be caused by the sliding of any part of the slope or embankment supporting the surface of the land hereinbefore described.

2.7.6 Except as described in the Operating Easement, that in the event the tracks of the railroad of Seller are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over said railroad in the vicinity of the land hereinbefore described are changed so that they shall pass overhead or underneath the said tracks and railroad, or in the event any grade crossing is vacated and closed, Buyer, as owner of the land hereinbefore described, shall not ask, demand, recover or receive any compensation whatsoever for any damages of whatsoever nature caused by or in any manner growing out of the separation or change of grades of said railroad and/or said streets, avenues, roads, lanes, highways or alleys or out of vacation and closing of any grade crossings.

ARTICLE III BUYER'S CONDITIONS

3.1 Conditions of Buyer's Obligations to Purchase.

Buyer's obligation to purchase the Property is conditioned upon the:

3.1.1 Accuracy of the representations and warranties of Seller set forth in Section 4.1 below and in any other certificates, instruments or documents to be delivered to Buyer by Seller or on Seller's behalf as provided in this Agreement as of the date of this Agreement and as of the Closing Date.

3.1.2 Seller's observance and performance of each covenant and agreement to be observed and performed by it hereunder.

3.1.3 Buyer shall have received approval from its Board.

3.1.4 Buyer shall have found the Assignment Agreements acceptable in its sole discretion.

3.1.5 Buyer shall have obtained STB Board approval, if necessary.

3.1.6 The delivery by Seller to Buyer at the closing of fully executed and acknowledged Deed, bill of sale to the personal property and Assignment Agreements in form and substance satisfactory to Buyer.

3.1.7 The delivery to Buyer, at Buyer's expense, on or before the Closing Date of one or more detailed environmental assessment reports, soils test reports and wetlands studies for the Property and all improvements located thereon that are satisfactory in all respects to Buyer. Buyer may obtain, at Buyer's expense, from the appropriate environmental consultants all reports and studies (except for such reports and studies as are updates as of the time of the closing from the original reports and studies) during the Due Diligence period set forth in Section 2.5 above. The updates of all such reports and studies shall be satisfactory in all respects to Buyer, in its sole discretion, as of the time of the closing.

3.1.8 The delivery of such other instruments and documents as may reasonably be required by Buyer or which may be required by Title Company to consummate the transaction herein contemplated.

3.1.9 Final subdivision approval, at Buyer's expense, as may be necessary from all government entities having jurisdiction for Seller to convey the Property to Buyer separate from the remainder of their property.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Seller's Representations and Warranties.

Seller represents and warrants that the following are true and correct on the date hereof and shall be true and correct on the Closing Date:

4.1.1 There are no adverse or other parties in possession of the Property or any part thereof. No party other than the Seller or its predecessors, has been granted any license, lease or other right or interest relating to the use or possession of the Property, or any part thereof.

4.1.2 Seller has the full right, power and authority to sell and convey the Property and to carry out Seller's obligations hereunder. The joinder of no person or entity other than Seller will be necessary to convey the Property in accordance with the requirements of this Agreement to Buyer on the Closing Date. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated will not conflict with, or with or without notice or the passage of time, or both, result in a breach of any of the terms or provisions of, or constitute a default under any indenture, mortgage loan agreement, license, lease, instrument or other agreement to which Seller is a party or by which Seller or the Property is bound. This Agreement and each document to be delivered hereunder by Seller when duly executed and delivered will be valid, legal and binding obligations of Seller enforceable in accordance with their respective terms.

4.1.3 There are no permits and authorizations required by any federal, state, county or municipal authority or public body with respect to the conditions at, or use of the Property.

4.1.4 To the best of Seller's knowledge and except for the Assignment Agreements, there are no lease, license, grazing, farming, cutting, service, maintenance, management, employment or other agreements which in any way affect the Property or the use, occupancy or ownership thereof.

4.1.5 There is no, nor have Seller received any notice of any claim, action or proceeding, actual or threatened by any organization, person, individual or governmental agency which would affect the use, occupancy or value of the Property or any part thereof.

4.1.6 There is no, nor have Seller received any notice of any defect in or contamination of the Property or any of the improvements located therein or thereon.

4.1.7 To Seller's knowledge, there was not and is no toxic waste, hazardous material or other wastes, substances or materials requiring remediation or clean-up under any federal, state or local law present, being stored, or currently or previously disposed at, seeping or leaking in, across, under or onto the Property.

4.1.8 No assessments or charges have been levied, are proposed, or are pending against all or any part of the Property, and any assessments or charges which may be levied, proposed or pending before the Closing Date shall be paid or discharged in full before the closing, or provision made therefore out of the closing proceeds otherwise payable to Seller.

4.1.9 There are no pending or planned municipal improvements that would result in an assessment against the Property.

4.1.10

Seller is not a foreign person as defined in Section 1445 (f) of the Internal Revenue Code of 1986, as amended.

Seller shall fully disclose to Buyer, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the Closing Date, which may affect the representations and warranties set forth herein. All representations, warranties, and covenants made by Seller shall survive closing and the transfer of the Property from Seller to Buyer. Seller shall indemnify and hold Buyer harmless from any and all loss or damage resulting in connection with any breach of the foregoing warranties.

4.2 Buyer's Representations and Warranties.

Buyer represents and warrants that the following are true and correct on the date hereof and shall be true and correct on the Closing Date: Buyer has been duly organized and exists in good standing under the laws of Ohio. Buyer has the full right, power, and authority to buy the Property and to carry out Buyer's obligations hereunder. All requisite partnership or other actions necessary to authorize Buyer to enter into this Agreement and to perform its obligations hereunder have been taken; the joinder of no person or entity other than Buyer is necessary to the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with, or with or without notice or the passage of time, or both, result in a breach of any of the terms of provisions of, or constitute a default under any agreement or instrument to which Buyer is a party. This Agreement and each document to be delivered hereunder when duly executed and delivered will be valid, legal and binding obligations of Buyer or such signatory, enforceable in accordance with their respective terms.

**ARTICLE V
COVENANTS**

5.1 Seller's Pre-Closing Covenants.

Seller covenants that, between the date hereof and the time of the closing, Seller will:

5.1.1 Continue to maintain the Property, including its vegetation, in good condition as heretofore maintained and in accordance with good business practices;

5.1.2 Afford Buyer and its representatives and prospective lenders full access to the Property at a reasonable times with proper notice without charge;

5.1.3 Pay, in the normal course of business, and, in any event, before the Closing Date, all sums due for taxes, work, materials or services furnished or otherwise incurred by Seller in the ownership and maintenance of the Property up to and including the Closing Date;

5.1.4 Not enter into any lease, easement or license for all or part of the Property without the prior written consent of Buyer, which consent may be withheld in Buyer's sole discretion.

5.1.5 Not grant or transfer or permit the grant or transfer or any interest in the Property; and

5.1.6 Not submit, without Buyer's prior written approval, which approval may be withheld in Buyer's sole discretion, any subdivision or development plans, studies, requests or applications or documents of any type (except tax returns) relating to the Property or any governmental body or agency.

ARTICLE VI **SPECIAL PROVISIONS**

6.1 Reports, Etc.

Seller shall, upon the execution and delivery of this Agreement by Buyer, as soon as reasonably practical but no later than ten (10) days after execution by Buyer, deliver to Buyer copies of all environmental reports data and any other information, and the like which, if any, Seller has in its possession or under its control, and Seller is unaware of any other environmental reports or information related to the Property. If this transaction does not close for any reason, all such documents shall be returned to Seller. Buyer shall not disclose the provisions of any reports or other information delivered to Buyer by Seller as outlined above, without the written consent of the Seller, except as otherwise required by law, regulation or ruling, provided nothing herein shall prevent the disclosure of any information to Buyer's attorneys or auditors.

ARTICLE VII **ADMINISTRATIVE PROVISIONS**

7.1 Pre-Closing Inspections and Testing.

Before the closing, Buyer, its agents and contractors, shall be permitted without charge and, upon reasonable notice and at reasonable times, to enter the Property for the

purposes of permitting, rezoning, inspecting, appraising, testing and surveying the Property, including but not limited to taking samples of the Property and staking, trenching and core boring the Property. Buyer shall keep the results of its environmental investigations confidential except as required by law, regulation or ruling, and shall pay for all such investigations.

7.2 Risk of Loss.

In the event of material damage to the Property before the Closing Date by fire, flood windstorm or other casualty, Buyer shall have the option of canceling this Agreement or proceed to closing without deduction for damage.

7.3 Condemnation.

If before the Closing Date the Property or any part thereof shall be taken by condemnation or eminent domain, then Buyer may, at Buyer's sole option:

7.3.1 Elect to cancel this Agreement, in which event all payments (with interest) on account of the Purchase Price shall be refunded to Buyer and neither party shall have any further liability or obligation to the other hereunder; or

7.3.2 Elect not to cancel this Agreement, accept title to the Property subject to the taking, and on the Closing Date, receive Seller's right to that portion of the proceeds that affect the Property.

7.4 Notices.

Any notices required to be given under the terms of this Agreement must be sent by: (i) certified or registered United States mail, return receipt request, postage prepaid, (ii) courier service, (iii) by fax, with return acknowledgment, or (iv) personally delivered to the parties at the addresses set forth below:

Buyer: Metro Regional Transit Authority
416 Kenmore Boulevard
Akron, Ohio 44301
Attention: Robert Pfaff

Copy to: John M. Coyne, III, Esq.
Roetzel & Andress
222 South Main Street
Akron, Ohio 44308

Seller: Akron Barberton Cluster Railway Company
100 East First Street
Brewster, OH 44613
Attn: Clarence W. Jaeger

Notice shall be deemed to be given on the date of receipt if personally delivered or as evidenced by return receipt if sent by mail.

7.5 Modification and Termination.

This Agreement cannot be changed or terminated orally or in any manner other than by a written agreement executed by both parties.

7.6 Binding Effect.

The provisions of this Agreement shall be extended to, bind and inure to the benefit of the parties hereto and their successors and assigns.

7.7 Construction.

This Agreement shall be governed by the law of Ohio. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

7.8 Merger of Prior Agreements and Representations.

This Agreement constitutes the entire agreement between the parties hereto with respect to the Property, and all undertakings and agreements heretofore made between Buyer and Seller are merged herein. No representation, promise or inducement not included herein shall be binding upon any part hereto.

7.9 Survival.

Notwithstanding any presumption to the contrary, all covenants, conditions, representations, and warranties contained in this Agreement shall survive the closing.

7.10 Assignment of Agreement.

The Buyer may assign this Agreement and all of its rights hereunder at any time of any of its affiliates or to a new affiliate under common control with Buyer.

7.11 Exhibits.

All exhibits referred to herein are attached hereto and incorporated herein by reference as if fully set forth in the body of this Agreement.

7.12 Recording.

Except as provided below, this Agreement may not be recorded without the express written consent of Seller and any recording or attempt to record this Agreement by Buyer without such consent shall render it automatically null and void at Seller's option.

7.13 Governmental Authority.

Buyer may file with the appropriate governmental authority with jurisdiction over the Property, any and all applications, petitions or notices that may be required for Buyer's acquisition and operation of the Property. Buyer shall be responsible for any filing fees with respect to the aforesaid filings.

7.14 Assignment of Agreements.

7.14.1

No later than thirty (30) days before the Closing Date, Seller shall make available to Buyer for review the contracts, agreements and leases pertaining to the Property, if any (the "Assignment of Agreements"). On the Closing Date, Seller shall assign to Buyer all of Seller's rights and interests in the documents. Seller shall obtain any third party consents necessary for any assignment prior to the Closing Date. Any and all prepaid fees, charges, rent or income under any of the Assignment of Agreements due or payable prior to the Closing Date and received by Seller shall be retained by Seller.

7.14.2

In the event that subsequent to the Closing Date Seller locates any contracts, agreements, leases, licenses or easements which should have been included in the Assignment of Agreements but were omitted, the parties hereto shall amend the Assignment of Agreements to incorporate any such documents and Buyer shall accept assignment thereof in the manner designated for Assignment of Agreements.

7.15 General Claims Indemnity.

7.15.1

Seller shall defend, indemnify, and hold harmless Buyer, its officers, agents and employees, from and against any and all liability, cost and expense arising out of

or connected with any personal injury, property loss or damage occurring prior to the Closing Date on or about the Property, except for any such claim, liability, cost or expense arising out of or connected with any action of Buyer, its officers, agents or employees on or about the Property prior to the Closing Date.

7.15.2

Buyer shall defend, indemnify, and hold harmless Seller, its officers, agents and employees, from and against any and all liability, cost and expense arising out of or connected with any personal injury, property loss or damage occurring after the Closing Date on or about the Property, except for any such liability, cost or expense arising out of or connected with any action of Seller, its agents or employees on or about the Property after the Closing Date or as otherwise provided in the Operating Easement.

7.15.3

The above indemnifications shall survive the Closing Date and the filing of the Deed.

7.16 Employee Provisions.

Claims for New York Dock or other similar governmental authority mandated labor protection, based on Seller's sale and Buyer's purchase of the Property, and arising solely out of Seller's use of the Property, shall be borne by Seller with respect to employees employed by Seller prior to the Closing Date and be borne by Buyer with respect to employees employed by Buyer after the Closing Date.

7.17 Option to purchase Operating Easement.

As a material inducement of Buyer entering into this Agreement with the Seller to purchase the Property, and subject to the permitted assignment of the Operating Easement as set forth in Section 2.7.1, Seller agrees to grant to Buyer the option to purchase the Operating Easement upon the following terms and conditions. At anytime Seller or permitted third party operator: (i) obtains approval from the STB or exemption therefrom to discontinue its operations over all or part of the track covered under the Operating Easement; or (ii) is found by the STB to be in violation of its common carrier responsibility or its service is found to be inadequate by the STB; or (iii) unreasonably interferes with Buyer's ability to provide passenger rail service; or (iv) fails to comply with any insurance requirements set forth in the Shared Use Agreement as defined in Section 2.7.1; or (v) attempts to assign or transfer any interest in or to the Operating Easement to a third party, without the consent of Buyer, which consent shall not be unreasonably withheld, the Buyer shall have the exclusive option to purchase the Operating Easement for Ten Dollars (\$10.00) payable to Seller. Buyer shall have the right to assign its interests in the above option prior to exercise to a third party designated by the Buyer. The option

shall include the term and conditions contained above and otherwise be in form and substance acceptable to both parties and entered into on the Closing Date.

7.18 Counterparts.

This Agreement may be executed in one or more counterparts and each of such counterpart shall, for the purposes hereof, be deemed to be an original but all such counterparts together shall constitute but one in the same Agreement.

EXECUTION

IN WITNESS WHEREOF, the Buyer and Seller have caused this Agreement to be executed as of the day and year above written.

Witnessed:

Metro Regional Transit Authority

By: [Signature]

By: [Signature]
Title: EXECUTIVE DIRECTOR,
SECY - TREAS.

Witnessed:

Akron Barberton Cluster Railway
Company

By: [Signature]

By: [Signature]
Chairman

Exhibit "A"

ALL THAT CERTAIN property of the Seller, being a portion of the former line of railroad known as the Penn Central Akron Branch identified as the former Consolidated Rail Corporation's Line Code 2421 in the Recorder's Office of Summit County, Ohio in Volume 6130, Page 168, **NOW** the Akron Barberton Cluster Railway Company as recorded in the Recorder's Office of Summit County, Ohio in O.R. 1821 Page 508-554, Instrument No. 220589, **BEGINNING** at Railroad Station 436+98, being Mile Post 8.0 in the City of Cuyahoga Falls, as indicated on sheet -A- of the attached, thence in a general southerly direction, passing through the Townships of Portage and Tallmadge to Railroad Station 621+00, being approximate Mile Post 11.49 in the City of Akron, the place of **ENDING** as indicated on sheet -O- of the attached, and which Railroad Mile Post 11.49 is a division of ownership as identified in a February 5, 1990 deed from Consolidated Rail Corporation to CSX Transportation, Inc.

Exhibit "B"
Permitted Exceptions

Buyer shall take title to the Real Estate subject only to the following Permitted Exceptions; (a) Building and use restrictions of record; (b) Vehicular or pedestrian easements of record affecting the Real Estate and being contiguous to the front, rear, or side lot lines; (c) Water, sewer, gas, electric, cable television, and telephone lines or easements therefor of record or as currently installed; (d) prior grants, reservations, or leases of coal, oil, gas or other minerals as shown by instruments or record; (e) easements apparent upon inspection of the real estate; (f) Operating Easement to the Akron Barberton Cluster Railway Company from Mile Post 11.49 to Mile Post 8.0 (g) any matters disclosed in writing by Seller to Buyer prior to or simultaneously with the execution of this Agreement by Buyer and attached hereto and made a part hereof and (h) any matters which an accurate survey would disclose.

QUITCLAIM DEED

THIS QUITCLAIM DEED, made the 28th day of February, 2003, between the **AKRON BARBERTON CLUSTER RAILWAY COMPANY**, an Ohio Corporation, whose mailing address is 100 East First Street, Brewster, Ohio 44613, hereinafter called "GRANTOR" and **METRO REGIONAL TRANSIT AUTHORITY**, a regional transit authority created and existing under Ohio Revised Code § 306, whose mailing address is 416 Kenmore Boulevard, Akron, Ohio 44301, hereinafter called "GRANTEE".
WITNESSETH:

(Whenever used herein, the terms, "GRANTOR" and "GRANTEE" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or successors and assigns of corporations.)

THAT GRANTOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, to it in hand paid by GRANTEE, the receipt of which is hereby acknowledged, does hereby RELEASE, REMISE and forever QUITCLAIM unto GRANTEE, all right, title and interest of GRANTOR, if any, in and to that section of right-of-way as more particularly described on Exhibit A, and more particularly shown on Exhibit B, which are attached hereto and incorporated herein (the "Premises"), and containing 27.29 acres, more or less.

TOGETHER WITH all buildings, structures and improvements thereon, including any and all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, signals, crossing protection devices, communication lines, and poles, buildings and fixture thereon, that are affixed to the Premises as of the date of this deed; and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to said Premises belonging or in anyway incident or appertaining, including the right to cross or lay tracks in any streets adjacent to the Premises.

RESERVING unto GRANTOR, its successors and assigns, an operating freight easement over the Premises to serve, or to have a third party operator to serve, existing or future freight rail customers between Mile Post 11.49 to Mile Post 8.0 ("Operating Easement"). Before the GRANTOR exercises its rights under the Operating Easement it must first enter into a Shared Use Agreement with the GRANTEE which agreement shall set forth terms and conditions of GRANTOR'S usage of the Premises. Any assignment to a third party operator other than CSXT, its successors and assigns, shall trigger GRANTEE'S right of first refusal as set forth below.

GRANTOR hereby grants to GRANTEE the option to purchase the Operating Easement upon the following terms and conditions. At any time GRANTOR or permitted third-party operator: (i) obtains approval from the Surface Transportation Board ("STB") or exemption therefrom to discontinue its operations over all or part of the track covered under the Operating Easement; or (ii) is found by the STB to be in violation of its common carrier responsibility or its service is found to be inadequate by the STB; or (iii) unreasonably

interferes with GRANTEE'S ability to provide passenger rail service; or (iv) fails to comply with any insurance requirements set forth in the Shared Use Agreement between the parties; or (v) attempts to assign or transfer any interest in or to the Operating Easement to a third party, other than CSXT, its successors or assigns, the GRANTEE shall have the exclusive option to purchase the Operating Easement for Ten Dollars (\$10.00) payable to GRANTOR. GRANTEE shall have the right to assign its interests in the above option prior to exercise to a third party designated by the GRANTEE. Notwithstanding the foregoing, this paragraph and GRANTEE's option hereunder shall inure to and be binding upon CSXT, if such conveyance is made.

TO HAVE AND TO HOLD the Premises, and all the estate, right, title, lien, interest and claim whatsoever of GRANTOR therein, either in law or equity, and all improvements thereon and appurtenances thereto, unto the proper use, benefit and enjoyment of GRANTEE, its successors and assigns, forever.

THIS INSTRUMENT is executed and delivered by GRANTOR, and is accepted by GRANTEE, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the Premises and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of GRANTOR and GRANTEE.

(i) GRANTOR shall not be liable or obligated to construct or maintain any fence between the Premises and land of GRANTOR adjoining the Premises; or liable or obligated to pay for any part of the cost of expense of constructing or maintaining such a fence or any part thereof; or be liable for any compensation for any damage that may result by reason of the non-existence of such a fence.

(ii) That a right or means of ingress, egress, or passageway to or from the land hereinbefore described is not hereby granted, specifically or by implication, and that GRANTOR shall not and will not be liable or obligated to obtain for GRANTEE such means of ingress, egress or passageway and also that GRANTEE will obtain a means of access to and from said land at GRANTEE'S own cost and expense;

(iii) That should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the GRANTOR herein, excluding claims of fraud and willful misrepresentation;

(iv) Except as described in the Operating Easement, that GRANTOR shall not be liable or obligated to provide lateral support for the surface of the land hereinbefore described or any part thereof; and that GRANTEE shall not, at any time hereafter, ask, demand, recover or receive any compensation whatever for any damage that may be caused by the sliding of any part of the slope or embankment supporting the surface of the land hereinbefore described.

(v) Except as described in the Operating Easement, that in the event the tracks of the railroad of GRANTOR are elevated or depressed, or the grades of any streets, avenues,

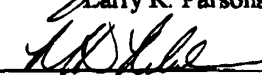
roads, lanes, highways or alleys over said railroad in the vicinity of the land hereinbefore described are changed so that they shall pass overhead or underneath the said tracks and railroad, or in the event any grade crossing is vacated and closed, GRANTEE, as owner of the land hereinbefore described, shall not ask, demand, recover or receive any compensation whatsoever for any damages of whatsoever nature caused by or in any manner growing out of the separation or change of grades of said railroad and/or said streets, avenues, roads, lanes, highways or alleys or out of vacation and closing of any grade crossings.

TO HAVE AND TO HOLD the Operating Easement and rights granted, solely for the purposes herein contained; **SUBJECT**, however, to any public utilities and other facilities located on, over, under or across the Operating Easement, and all agreements, easements and rights granted or reserved therefor, whether the instruments granting or reserving the same be recorded or unrecorded.

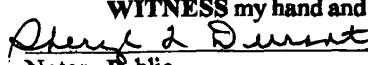
IN WITNESS WHEREOF, AKRON BARBERTON CLUSTER RAILWAY COMPANY, pursuant to due corporate authority, has caused its name to be signed hereto by its officers hereunto duly authorized and its corporate seal, duly attested, to be hereunto affixed.

**AKRON BARBERTON CLUSTER
RAILWAY COMPANY**

By: 
Larry R. Parsons

Attest:  (Seal)
Michael D. Mokodean

BEFORE ME, the undersigned, a Notary Public in and for said State and County, personally appeared Larry R. Parsons as Chairman and CEO of the Akron Barberton Cluster Railway Company, and Michael D. Mokodean, as Vice President of Finance and CFO, respectively of the Akron Barberton Cluster Railway Company, and severally acknowledged the execution of the foregoing Instrument to be the voluntary act and deed of said Akron Barberton Cluster Railway Company, and their voluntary act and deed as such officers.

WITNESS my hand and notarial seal, this 28th day of February, A.D. 2003.

Notary Public

SHERYL L. DURANT
NOTARY PUBLIC, STATE OF OHIO
NO. 24209
COMMISSION EXPIRES AUG. 30, 2004

This Instrument Prepared by:
John M. Coyne, III, Esq.
Roetzel & Andress
A Legal Professional Association
222 South Main Street
Akron, Ohio 44308
(330) 376-2700

Quitclaim Deed
Metro Regional Transit Authority

jcoyne@ralaw.com

EXHIBIT "A"

ALL THAT CERTAIN property of the GRANTOR, being a portion of the former line of railroad known as the Penn Central Akron Branch identified as the former Consolidated Rail Corporation's Line Code 2421 in the Recorder's Office of Summit County, Ohio in Volume 6130, Page 168, **NOW** the Akron Barberton Cluster Railway Company as recorded in the Recorder's Office of Summit County, Ohio in O.R. 1821 Page 508-554, Instrument No. 220589, **BEGINNING** at Railroad Station 436+98, being Mile Post 8.0 in the City of Cuyahoga Falls, as indicated on sheet -A- of the attached, thence in a general southerly direction, passing through the Townships of Portage and Tallmadge to Railroad Station 621+00, being approximate Mile Post 11.49 in the City of Akron, the place of **ENDING** as indicated on sheet -O- of the attached, and which Railroad Mile Post 11.49 is a division of ownership as identified in a February 5, 1990 deed from Consolidated Rail Corporation to CSX Transportation, Inc.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that the **AKRON BARBERTON CLUSTER RAILWAY COMPANY**, an Ohio corporation ("Seller"), in consideration of Ten Dollars (\$10.00) paid by **METRO REGIONAL TRANSIT AUTHORITY**, a regional transit authority created and existing under Ohio Revised Code Section 306 ("Buyer"), the receipt and sufficiency of which is hereby acknowledged and pursuant to that certain Agreement of Sale between Seller and Buyer dated October 2, 2002 ("Agreement"), does hereby grant, bargain, sell, transfer and delivery unto Buyer and Buyer's successors and allowed assigns, all right, title and interest, insofar as its title or right permits it to do so, in all the personal property located on the property between Mile Post 8.0 and Mile Post 11.49, as more particularly described on Exhibit A attached hereto and incorporated herein by reference, including but not limited to all rail, other track materials and all other property and appurtenances, both fixed and moveable, which constitutes personal property under the laws of the State of Ohio (herein referred to as the "Assets").

To have and to hold said Assets unto Buyer, its successors and assigns, forever.

Seller, at any time and from time to time after the date of this Bill of Sale, upon request of Buyer or its counsel, hereby agrees to execute, acknowledge, and deliver all such further acts, deeds, titles, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the better conveying, transferring, assigning and delivering to Buyer, or to its successors and assigns, and for the aiding and assisting in collecting and reducing to possession all of the Assets.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the 28th day of February, 2003.

SELLER:

**AKRON BARBERTON CLUSTER RAILWAY
COMPANY**

By: _____

Larry R. Parsons
Larry R. Parsons

Its: Chairman & CEO

STATE OF OHIO)

) SS:

COUNTY OF SUMMIT)

BEFORE ME, a Notary Public in and for said county and state, personally appeared as Larry R. Parsons, Chairman & CEO of **AKRON BARBERTON CLUSTER RAILWAY COMPANY**, who acknowledged that he did execute the foregoing instrument for and on behalf of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal as of this 28th day of February, 2003.

Sheryl L. Durant
Notary Public

Print Name: Sheryl L. Durant

This Instrument Prepared by:
John M. Coyne, III, Esq.
Roetzel & Andress
A Legal Professional Association
222 South Main Street
Akron, Ohio 44308
(330) 376-2700
jcoyne@ralaw.com

SHERYL L. DURANT
NOTARY PUBLIC, STATE OF OHIO
NO. 24209
COMMISSION EXPIRES AUG. 30, 2004