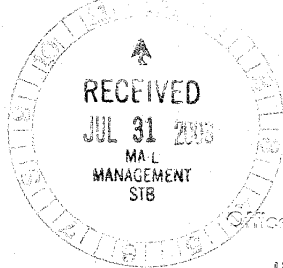


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July 31, 2003



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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

ENTERED
Office of Proceedings

JUL 31 2003

Part of
Public Record

**Re: Finance Docket No. 33838, Metro Regional Transit Authority –
Acquisition Exemption – Certain Assets of CSX
Transportation, Inc.**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Amended Motion of Metro Regional Transit Authority To Dismiss Notice of Exemption.**

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

cc: John Coyne
William Sippel

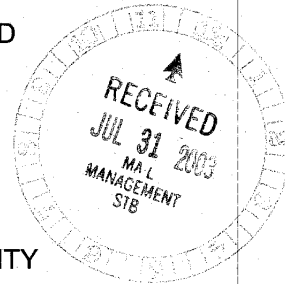
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BOSTON ■ DALLAS ■ HARRISBURG ■ LOS ANGELES ■ MIAMI ■ NEWARK ■ NEW YORK ■ PITTSBURGH ■ SAN FRANCISCO ■ WASHINGTON

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33838

METRO REGIONAL TRANSIT AUTHORITY
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.



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

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**ATTORNEYS FOR METRO REGIONAL
TRANSIT AUTHORITY**

Dated: July 31, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33838
METRO REGIONAL TRANSIT AUTHORITY
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

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

I. INTRODUCTION

Metro Regional Transit Authority ("METRO") hereby files this Amended Motion to Dismiss the Verified Notice of Exemption that it filed on May 24, 2000 in this docket in connection with its acquisition from CSX Transportation, Inc. ("CSXT") of the railroad line, right of way and related physical assets between Akron, Ohio and Canton, Ohio. The METRO acquisition was subject to CSXT's retention of a perpetual freight railroad easement on the entire line and subject to a lease held by the Wheeling & Lake Erie Railway Company ("W&LE") on the southern portion of the line between Aultman, Ohio and Canton, Ohio. METRO is filing this Amended Motion to Dismiss in order to supplement and amend the record to reflect a settlement reached by METRO and W&LE that resolves W&LE's concerns over the Motion to Dismiss filed by METRO on May 24, 2000 in connection with its Notice of Exemption.

Specifically, this Amended Motion describes the relevant terms of a Shared Use Agreement, dated July 1, 2003, entered into by and between METRO and W&LE

(hereinafter referred to as the "METRO/W&LE Shared Use Agreement")¹ that will govern METRO's and W&LE's respective operations over the middle and southern portions of the Akron-Canton rail line, as more particularly described herein. METRO respectfully requests that the Board dismiss METRO's Notice of Exemption on an expedited basis based on the information set forth in Metro's May 24, 2000 Motion to Dismiss as supplemented and amended by this Amended Motion to Dismiss.

II. STATEMENT OF FACTS

On May 24, 2000, METRO filed a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.31 et seq. to acquire from CSXT the railroad assets of CSXT's line of railroad extending between approximately milepost 16.38 in Canton, Ohio and approximately milepost 40.42 in Akron, Ohio (the "Subject Line"), a distance of approximately 24.42 miles.² The Subject Line is located in Stark and Summit Counties, Ohio. See Finance Docket No. 33838, Metro Regional Transit Authority – Acquisition Exemption – Certain Assets of CSX Transportation, Inc. (STB filed May 24, 2000).

Concurrently therewith, METRO filed a Motion to Dismiss the Notice of Exemption as unnecessary because METRO would not acquire the right or obligation to

¹ A complete copy of the METRO/W&LE Shared Use Agreement (including a map of the Subject Line) is attached hereto as Exhibit A. The parties have elected not to file the METRO/W&LE Shared Use Agreement under seal.

² Although the Notice of Exemption indicated that the southern endpoint of the Subject Line is located at approximately milepost 16.38 in Canton, it has since been determined based on valuation station data that the southern endpoint is located at approximately milepost 16.00 (equivalent to valuation station 3120+64.5). As a result, the actual total distance of the Subject Line is approximately 24.42 miles (not 24.58 miles as indicated in the Notice of Exemption). Metro does not believe that a separate correction to the Notice of Exemption will be necessary if the Board determines that it did not have jurisdiction over the transaction.

conduct any freight rail operations on the Subject Line. Instead, CSXT would retain a perpetual freight railroad easement on the Subject Line (the "Freight Easement") and METRO's acquisition also would be subject to a lease held by W&LE (the "W&LE Lease") on the portion of the Subject Line between approximately milepost 25.55 at Aultman, Ohio and approximately milepost 16.00 at Canton, Ohio (hereinafter referred to as the "Southern Segment").³ In connection with its Motion to Dismiss, METRO filed with the STB a copy of the Shared Use Agreement that would govern operations by METRO and CSXT on the Subject Line (the "METRO/CSXT Shared Use Agreement").⁴

On May 31, 2000, METRO and CSXT consummated the sale of the Subject Line to METRO subject to the Freight Easement and the W&LE Lease. By letters dated June 7, 2000 and July 11, 2000, W&LE advised the STB that it opposed METRO's Motion to Dismiss because of concerns regarding W&LE's lease rights and common carrier operations on the Southern Segment.⁵ By decision served June 23, 2000, the STB served notice of METRO's Notice of Exemption to acquire the Subject Line and indicated that it would address the jurisdictional issues in a subsequent decision. See Finance Docket No. 33838, Metro Regional Transit Authority – Acquisition Exemption – Certain Assets of CSX Transportation, Inc. (STB served June 23, 2000).

³ The leased line originally extended to the W&LE diamond in Canton at approximately milepost 15.3. In 1997, CSXT abandoned and W&LE discontinued service over a short segment of the leased line in Canton. See Docket No. AB-55 (Sub-No. 535X), CSX Transportation, Inc. – Abandonment Exemption – In Stark County, OH (STB served April 1, 1997). W&LE currently uses other lines and trackage rights within Canton to access the leased line.

⁴ A complete copy of the METRO/CSXT Shared Use Agreement was filed under seal pursuant to a protective order issued by the Board in this docket.

⁵ METRO submitted a Reply to W&LE's June 7, 2000 letter on June 22, 2000.

Until recently, CSXT provided all freight rail service on the portion of the Subject Line between approximately milepost 40.42 (Valuation Station 1856+40) near Howard Street in Akron, Ohio and approximately milepost 33.70 (Valuation Station 2206+60) in Krumroy, Ohio (hereinafter referred to as the "Northern Segment"), pursuant to the Freight Easement and the METRO/CSXT Shared Use Agreement. W&LE currently provides freight rail service along the Southern Segment pursuant to the W&LE Lease. Freight rail service on the remaining portion of the Subject Line – extending between approximately milepost 33.70 (Valuation Station 2206+60) at Krumroy, Ohio and approximately milepost 25.55 (Valuation Station 2637+01) at Aultman, Ohio (hereinafter referred to as the "Middle Segment") – was discontinued by CSXT in 1993 pursuant to ICC exemption authority, although the segment was not abandoned. See Docket No. AB-55 (Sub-No. 447X), CSX Transportation, Inc. – Abandonment Exemption – In Summit County, Ohio (ICC served January 12, 1993).

On June 24, 2003, METRO acquired the Freight Easement over the Northern Segment from CSXT and leased it to the Akron Barberton Cluster Railway Company ("ABC"), an affiliate of W&LE. See Finance Docket No. 34361, Metro Regional Transit Authority – Acquisition Exemption – Certain Assets of CSX Transportation, Inc. (STB served July 11, 2003); Finance Docket No. 34362, Akron Barberton Cluster Railway Company – Lease and Operation Exemption – Metro Regional Transit Authority (STB served July 11, 2003). Pursuant to a Freight Operations Lease Agreement dated June 24, 2003 between METRO and ABC (the "FOL Agreement"), ABC now provides all freight rail service on the Northern Segment. As a result of the transaction in Finance Docket No. 34361, METRO became a rail carrier with respect to the Northern Segment,

and METRO does not seek here any jurisdictional determination regarding its ownership of the Northern Segment after July 2, 2003 or any review of the terms of the FOL Agreement.

METRO has now decided, with the concurrence of CSXT, to exercise a contractual option to have CSXT transfer the remainder of the Freight Easement, over the Middle and Southern Segments of the Subject Line between Krumroy and Canton (hereinafter referred to as the "Middle/Southern Segment Freight Easement"), to W&LE as METRO's designee. Pursuant to that arrangement, CSXT will assign to W&LE all of CSXT's right, title and interest in and to the Middle/Southern Segment Freight Easement, together with any common carrier obligations related thereto.⁶ Simultaneously, CSXT also will assign its right, title and interest as lessor in the existing W&LE Lease of the Southern Segment to W&LE, thus merging that interest with W&LE's lessee interest and W&LE's ownership of the Middle/Southern Segment Freight Easement.

METRO and W&LE have entered into the METROW&LE Shared Use Agreement to govern the terms and conditions of their respective operations on the Middle and Southern Segments. The METROW&LE Shared Use Agreement is patterned after, and contains terms similar to, the original METRO/CSXT Shared Use Agreement that was submitted to the Board under seal in connection with METRO's Motion to Dismiss. Effective July 2, 2003, the terms of the METROW&LE Shared Use

⁶ W&LE will shortly file with the Board a petition for exemption to acquire the Middle/Southern Segment Freight Easement from CSXT. That petition will be docketed as Finance Docket No. 34341, Wheeling & Lake Erie Railway Company – Acquisition Exemption – CSX Transportation, Inc.

Agreement replaced the terms of the METRO/CSXT Shared Use Agreement with respect to freight and passenger rail operations over the Middle and Southern Segments. The METRO/CSXT Shared Use Agreement will be formally terminated upon conveyance of the Middle/Southern Segment Freight Easement to W&LE.⁷

Pursuant to the METRO/W&LE Shared Use Agreement, METRO does not have the right or obligation to provide freight rail service on the Middle and Southern Segments. See METRO/W&LE Shared Use Agreement, Article 2.A. The Middle/Southern Segment Freight Easement (in conjunction with the METRO/W&LE Shared Use Agreement) will give W&LE the exclusive right and obligation to provide freight rail service to all rail customers located now or in the future along the Middle and Southern Segments. See METRO/W&LE Shared Use Agreement, Article 2.A. METRO (or METRO's designee) has the exclusive right to provide any and all passenger rail service (including excursion service and commuter rail service) on the Middle and Southern Segments. However, such passenger rail service must not unreasonably interfere with W&LE's freight rail service. See METRO/W&LE Shared Use Agreement, Article 2.C.

Under the METRO/W&LE Shared Use Agreement, W&LE has the right to operate on the Middle and Southern Segments during an eight-hour freight window, six

⁷ As discussed above, on June 24, 2003 CSXT conveyed to METRO that portion of the Freight Easement on the Northern Segment. Upon conveyance to W&LE of that portion of the Freight Easement on the Middle/Southern Segment, CSXT will no longer have any property interest in the Subject Line or any right or obligation to provide rail service on the Subject Line.

days per week (the "Freight Window").⁸ METRO (or its designee) has the right to perform passenger rail service on the Middle and Southern Segments during all other times (the "Passenger Window"). In addition, W&LE has the right to operate freight rail service during the Passenger Window upon twenty-four (24) hours prior notice to METRO. Likewise, METRO (or METRO's designee) has the right to perform passenger rail service during the Freight Window, upon twenty-four (24) hours prior notice to W&LE. The Freight Window and Passenger Window are automatically modified in cases of emergency that cannot be remedied during the respective windows. See METRO/W&LE Shared Use Agreement, Article 3.D.

The METRO/W&LE Shared Use Agreement provides that METRO will assume responsibility for dispatching all trains on the Middle and Southern Segments once METRO or its designee begins providing commuter or any other non-excursion passenger train service on the Middle and Southern Segments. See METRO/W&LE Shared Use Agreement, Article 3.B. Until such time, W&LE will coordinate and control all of its own trains on the Middle and Southern Segments during the Freight Window, and METRO or its agent will coordinate and control all of its own trains (i.e., excursion passenger trains) over the Middle and Southern Segments during the Passenger Window. See METRO/W&LE Shared Use Agreement, Article 3.A.

⁸ Under the Track Coordination Agreement, an additional agreement between the parties discussed further below, W&LE has agreed to conduct its freight operations between 10:00 p.m. and 5:59 a.m. on Sunday through Thursday nights.

Upon execution of the METRO/W&LE Shared Use Agreement, METRO designated Cuyahoga Valley Scenic Railroad ("CVSR")⁹ as its agent to fulfill its responsibility to coordinate and control excursion train passenger operations on the Middle and Southern Segments during the Passenger Window. METRO, CVSR and W&LE simultaneously entered into a Track Coordination Agreement ("TCA") that governs train control and coordination on the Middle and Southern Segments. As indicated above, prior to the commencement of any commuter passenger service on the Middle and Southern Segments, METRO and W&LE will enter into a dispatching agreement under which METRO will assume responsibility for dispatching all trains. See METRO/W&LE Shared Use Agreement, Article 3.B.

As provided in the METRO/W&LE Shared Use Agreement, on July 2, 2003 METRO assumed responsibility for maintenance of the Middle and Southern Segments. METRO (or its agent) is required to maintain the Middle and Southern Segments to a minimum of FRA Class I condition, and all maintenance and track inspections must be performed by METRO during the Passenger Window, unless otherwise permitted by W&LE. See METRO/W&LE Shared Use Agreement, Article 7.A. W&LE is responsible for routine and non-routine maintenance of all appurtenances and devices located within the right-of-way of the Middle and Southern Segments (beyond the point of clearance for passenger rail service) used solely by W&LE for freight rail operations. See METRO/W&LE Shared Use Agreement, Article 7.B.

⁹ METRO and W&LE have acknowledged CVSR as a third-party operator permitted under the Shared Use Agreement to conduct excursion train service. See METRO/W&LE Shared Use Agreement, Article 2.A.

METRO's maintenance activities are subject to W&LE's right to inspect and to request METRO to promptly cure any track defects. If METRO fails to correct such defects, W&LE may perform the necessary maintenance, provided that W&LE gives METRO seventy-two (72) hours advance written notice. W&LE also has the right to make emergency repairs that are reasonably necessary for conducting its freight service, without prior notice to METRO. See METRO/W&LE Shared Use Agreement, Article 7.E.

In the event that METRO and its designees subsequently discontinue all passenger rail service on the Middle and Southern Segments for a period of one (1) year, or at the expiration of a period of not less than one (1) year after written notice to W&LE of METRO's intent to cease all such passenger rail service, all of METRO's maintenance obligations on the Middle and Southern Segments will terminate. Upon such cessation, W&LE will have the right to perform any maintenance on the Middle and Southern Segments deemed necessary by W&LE for its performance of freight rail service. See METRO/W&LE Shared Use Agreement, Article 7.F.

W&LE may provide additional freight connections on the Middle and Southern Segments, as necessary for the operation of its freight rail service. See METRO/W&LE Shared Use Agreement, Article 8.A(1). W&LE is responsible for construction and maintenance of any such tracks located on its right-of-way or that of third parties, while METRO would be responsible for construction and maintenance of such tracks on its right-of-way. See METRO/W&LE Shared Use Agreement, Article 8.A(2) and (3). In either case, neither party's construction may unreasonably interfere with the other's operations. See METRO/W&LE Shared Use Agreement, Article 8.A(4). In addition, if

METRO fails to perform its construction and maintenance obligations, and does not cure such failure within thirty (30) days of written notice from W&LE, W&LE has the right to carry out such activities on METRO's behalf and at METRO's expense. See METRO/W&LE Shared Use Agreement, Article 8.C.

Although METRO may make capital improvements and track upgrades to the Middle and Southern Segments, such changes may not impair W&LE's ability to provide freight service on the Middle and Southern Segments. See METRO/W&LE Shared Use Agreement, Article 9.A. If W&LE reasonably believes that capital improvements or track upgrades are required to accommodate W&LE's rail freight operations, METRO must make such changes upon W&LE's request. See METRO/W&LE Shared Use Agreement, Article 9.B and C.

III. ARGUMENT

As discussed in the Motion to Dismiss, the State of Maine case and subsequent cases establish that an entity may acquire the physical assets of a rail line without becoming a rail carrier subject to STB jurisdiction, provided that another entity retains sufficient interest to operate as a rail carrier on the line and has autonomy to conduct common carrier freight operations. As stated in the Motion to Dismiss, the transaction between METRO and CSXT, as modified by the forthcoming conveyance of the Middle/Southern Segment Freight Easement to W&LE and the execution of the METRO/W&LE Shared Use Agreement, has several distinguishing and important features that support a finding of no jurisdiction in this case.

The METRO/W&LE Shared Use Agreement gives METRO the contract rights it requires to operate passenger rail service on the Middle and Southern Segments.

However, under that agreement and the Middle/Southern Segment Freight Easement, W&LE will retain the property and contract rights required to conduct freight rail operations on the Middle and Southern Segments. METRO does not have the right or ability to unreasonably interfere with rail freight operations. METRO does not conduct rail freight operations on the Middle and Southern Segments, and will not hold itself out as willing or able to do so.

As the statement of facts above demonstrates, METRO's use and maintenance of the Middle and Southern Segments will not interfere with W&LE's ability to provide freight rail service. Pursuant to the transaction to be proposed in Finance Docket No. 34341 (see note 6, supra), W&LE will obtain a perpetual easement on the Middle and Southern Segments to provide freight rail service to all present and future rail shippers on those segments. Under the METRO/W&LE Shared Use Agreement, METRO (or METRO's designee) has the right to use the Middle and Southern Segments for passenger rail service, but does not have the right or ability to provide freight rail service. Since the METRO/W&LE Shared Use Agreement requires that W&LE's and METRO's respective freight and passenger rail operations occur during exclusive Freight and Passenger Windows, METRO's use of the Middle and Southern Segments will not interfere with W&LE's freight rail operations. Under the METRO/W&LE Shared Use Agreement, METRO is required to maintain the Middle and Southern Segments to a minimum of FRA Class I conditions. W&LE has the right to inspect the Middle and Southern Segments, to require METRO to promptly cure any track defects, and to perform any necessary maintenance if METRO fails to correct such defects.

Even if METRO constructs additional connections, or makes capital improvements or track upgrades, to the Middle and Southern Segments, such activities must not interfere with W&LE's ability to provide freight service. METRO will be responsible for the construction of additional connections on its right-of-way, and if METRO fails to perform such construction, W&LE will have the right to perform such construction on METRO's behalf. In the event that METRO decides to make capital improvements or track upgrades to the Middle and Southern Segments, the METRO/W&LE Shared Use Agreement provides that METRO may not make changes that impair W&LE's ability to provide freight rail service. Furthermore, if W&LE necessitates capital improvements or track upgrades as a result of METRO's changes to the Middle and Southern Segments, METRO must make such changes, upon W&LE's request.

The METRO/W&LE Shared Use Agreement and the assignment of the Middle/Southern Segment Freight Easement to W&LE assure W&LE's ability to continue providing freight rail service on the Southern Segment and to reinstitute freight service on the Middle Segment should future circumstances warrant. The initial METRO/CSXT Shared Use Agreement provided similar protections on the entire Subject Line during the period from METRO's acquisition of the line in May, 2000 until the current arrangements were implemented on July 2, 2003. Under these circumstances, METRO's acquisition of the Subject Line in 2000 was not a transaction subject to the STB's jurisdiction and METRO's Notice of Exemption in this docket should be dismissed.

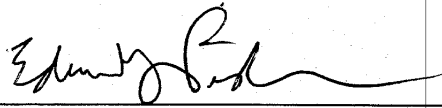
IV. REQUEST FOR EXPEDITED CONSIDERATION

METRO respectfully requests that the STB expedite its consideration of this Amended Motion to Dismiss. METRO's Notice of Exemption and Motion to Dismiss were filed more than three (3) years ago and – while the intervening delay is in no way of the Board's making – the parties desire to implement their agreements and remove any remaining uncertainty regarding this transaction as quickly as possible. W&LE initially opposed the Motion to Dismiss because of concerns regarding its lease rights and common carrier operations on the Southern Segment. However, METRO and W&LE have reached a settlement that resolves W&LE's concerns. METRO understands that W&LE is filing a letter withdrawing its objections to METRO's Motion to Dismiss and supporting METRO's request for expedited consideration. Therefore, due to the resolution of W&LE's concerns and given the amount of time that has elapsed since METRO filed its Motion to Dismiss, METRO seeks expedited consideration so that the rights and interests of the parties can be clarified as soon as possible.

V. CONCLUSION

For the reasons set forth in METRO's May 24, 2000 Motion to Dismiss filed in this docket as supplemented and amended by this Amended Motion to Dismiss, METRO respectfully requests that the Board dismiss the notice of exemption filed herein for lack of jurisdiction.

Respectfully submitted,

By: 

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**ATTORNEYS FOR METRO REGIONAL
TRANSIT AUTHORITY**

Dated: July 31, 2003

EXHIBIT A – METRO/W&LE SHARED USE AGREEMENT

SHARED USE AGREEMENT

THIS SHARED USE AGREEMENT ("Agreement") is entered into as of this 1st day of July, 2003, by and between **METRO REGIONAL TRANSIT AUTHORITY**, a regional transit authority created and existing under Ohio Revised Code § 306 (hereinafter referred to as "Owner"), and **WHEELING & LAKE ERIE RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as "User").

Recitals:

A. Owner owns the rail line located between Valuation Station 1851+40 near Howard Street in Akron, Ohio and Valuation Station 3120+64.5 near Canton, Ohio (the "Canton-Akron Line"), a map of which is attached hereto as Exhibit A; and

B. CSX Transportation, Inc., a Virginia corporation ("CSXT"), has a perpetual and exclusive freight easement over that portion of the Canton-Akron Line between Valuation Station 2206+60 at Krumroy, Ohio and Valuation Station 3120+64.5 near Canton, Ohio (hereinafter the "Subject Line Freight Easement" or "SL Freight Easement"); and

C. Pursuant to an exemption from the Surface Transportation Board ("STB"), in STB Docket No. AB-55 (Sub - No. 447X), CSX Transportation, Inc. Abandonment Exemption in Summit County, Ohio, CSXT has discontinued freight rail service over, but has not abandoned, the portion of the Canton-Akron Line between Valuation Station 2206+60 at Krumroy, Ohio and Valuation Station 2637+01 at Aultman, Ohio (the "Middle Segment"), as shown on Exhibit A attached hereto; and

D. User currently operates freight rail service along that portion of the Canton-Akron Line between Valuation Station 2637+01 at Aultman, Ohio and Valuation Station 3120+64.5

near Canton, Ohio (the "Southern Segment"), as shown on Exhibit A attached hereto, pursuant to a lease between User and CSXT dated October 23, 1992, as amended ("W&LE Lease"); and

E. Owner has the option ("Option") to acquire the SL Freight Easement from CSXT; and

F. Owner has exercised the Option and designated User as the recipient of the SL Freight Easement which will cause CSXT to assign all of its right, title and interest in and to the SL Freight Easement to User, and User desires to accept assignment of the SL Freight Easement from CSXT, together with any common carrier obligations related thereto, to enable User to provide freight rail service to existing and future rail customers between Valuation Station 2206+60 at Krumroy, Ohio and Valuation Station 3120+64.5 near Canton, Ohio (the "Subject Line"); and

G. Simultaneously with the transfer of the SL Freight Easement to User, User desires to simultaneously transfer to Owner all of User's right, title and interest in and to certain contracts, agreements, leases and other documents pertaining to the Southern Segment as listed on Exhibit B attached hereto and incorporated herein ("Assignment Agreements"), and to accept assignment from CSXT of all of CSXT's right, title and interest in and to the W&LE Lease; and

H. Owner and User desire to establish additional terms and conditions governing their respective operations on the Subject Line.

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

ARTICLE 1.

FREIGHT EASEMENT; OPTION; W&LE LEASE

A. The terms and conditions of this Agreement shall be construed to be consistent with the rights and obligations of the parties under the SL Freight Easement, but in the event of a conflict, the SL Freight Easement shall govern.

B. On the date that the STB's approval or exemption of the transfer of the SL Freight Easement to User becomes effective, Owner shall cause CSXT to assign all of its right, title and interest in and to the SL Freight Easement to User. The SL Freight Easement to be assigned by CSXT to User shall be in the form attached as Exhibit C. User agrees to accept the SL Freight Easement and (if User shall not previously have done so) notify CSXT of User's intention to accept assignment of all of CSXT's right, title and interest in and to the W&LE Lease, which assignment shall be effective upon the transfer of the SL Freight Easement to User. Simultaneous with the execution of this Agreement by User, User shall withdraw its objection to Owner's May 24, 2000 Motion to Dismiss Notice of Exemption filed with the STB in Finance Docket No. 33838. User shall fully cooperate with Owner to effectuate the transfer of the SL Freight Easement to User, including the withdrawal of User's objection to Owner's Motion to Dismiss Notice of Exemption. If User fails to file its petition for exemption, including the withdrawal of User's objection, within thirty (30) days after the date of this Agreement, this Agreement shall be null and void. As a condition to the execution of this Agreement by Owner, and the subsequent transfer of the SL Freight Easement to User, User agrees to be responsible for, and hereby indemnifies and agrees to defend and hold Owner and any employee, officer or director of Owner harmless from and against, any and all costs, liability, losses, damages, demands, actions, claims, expenses, including reasonable attorneys' fees and expenses, or

judgments of any nature associated with any claims for New York Dock or other government-mandated labor protection or any negotiated labor protection with respect to employees of CSXT who had worked on the Subject Line and were adversely affected as a result of User's acquisition of the SL Freight Easement. The above indemnity and agreement shall survive the expiration or termination of this Agreement.

C. User shall, at User's sole cost, file all necessary documentation with the STB to obtain exemption or approval under 49 U.S.C. § 10902 of the transfer of the SL Freight Easement to User.

D. Upon CSXT's assignment of all of its right, title and interest in and to the W&LE Lease to User, User shall provide (to the extent of its ability to do so) an assignment from User to Owner of all User's right, title and interest in and to the Assignment Agreements. The form and substance of the assignment document shall be acceptable to Owner. Except as provided below, all compensation, revenue or other monies paid to User pursuant to such Assignment Agreements prior to such assignment shall be retained by User. User agrees not to accept any pre-payments of any monies due and payable to User under the Assignment Agreements from and after the date of this Agreement, and further agrees that any pre-payments made to User prior to the date of this Agreement and covering periods after the date of this Agreement shall be prorated between the parties upon transfer of the SL Freight Easement to User. User represents and warrants to Owner that, to the best of User's knowledge, User is not in default of any material provisions of the W&LE Lease. User hereby indemnifies and agrees to defend and hold harmless Owner, its employees, directors, officers and agents from and against all liabilities, costs, losses, damages and expenses, including reasonable attorneys' fees and expenses and title expenses, as a result of User's breach of the foregoing representation and warranty. User shall

use its best efforts to obtain a similar assignment from CSXT to Owner, if necessary, pursuant to an assignment document acceptable to Owner.

E. Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate if the STB denies an exemption or approval to User regarding transfer of the SL Freight Easement to User.

F. User acknowledges and agrees that Owner has no obligation to rehabilitate the Middle Segment. If Owner elects to rehabilitate the Middle Segment, such rehabilitation shall be at Owner's sole cost and expense and pursuant to a time frame and to a standard deemed appropriate by Owner. If Owner rehabilitates the Middle Segment, Owner shall continue to maintain the Middle Segment, after rehabilitation, in accordance with Article 7 herein. User shall have no obligation to maintain the Middle Segment. If User wants to provide freight rail service on the Middle Segment, Owner and User shall negotiate in good faith an appropriate adjustment to the Current Charge to reflect the change. If Owner and User are not able to reach an agreement on the Current Charge within sixty (60) days, the matter shall be arbitrated pursuant to Article 17. If the parties agree on an appropriate adjustment to the Current Charge, or the Current Charge is established through arbitration, User shall then have the right to seek STB exemption or approval to commence freight rail operations over the Middle Segment.

G. Owner reserves the right, subject to the terms of this Agreement, to occupy, possess, collect revenue, and use the Subject Line for any and all purposes, excluding the provision of freight rail service, but including, without limitation, the right to grant easements, licenses, agreements and other facilities on, above or below the Subject Line; provided, however, the same does not unreasonably interfere with User's ability to conduct safe operations, and

fulfill its common carrier obligation to provide freight rail service over the Subject Line, and provided further that Owner complies with the requirements of Article 3.C and 9.A.

ARTICLE 2.

USE

A. User shall have the exclusive right to provide freight rail service to all rail customers located now or in the future along the Subject Line. User shall only have the right and obligation to provide freight rail service on the Subject Line. Except as otherwise provided in Article 16, Owner shall never have the right or the obligation to provide freight rail service on the Subject Line. Owner's use of the Subject Line shall not unreasonably interfere with User's ability to provide freight rail service. Owner, or Owner's designee ("Third Party Operator"), shall have the exclusive right to provide any and all passenger train service, including commuter and excursion train service, on the Subject Line. The parties hereto acknowledge that Owner may admit Cuyahoga Valley Scenic Railroad ("CVSR") as a Third Party Operator under this Agreement to conduct excursion train operations and not commuter train service on the Subject Line.

B. User may use the Subject Line, or any part thereof, at any time, for any and all reasonable freight railroad purposes including, but not limited to, freight rail service to industries, switching, storage and servicing of cars and of equipment, and making up or breaking up of trains to serve all rail customers located along the Subject Line only, provided, however, that beginning on July 2, 2003, User's use of the Subject Line shall be limited to the Freight Window (as defined herein), unless otherwise provided herein.

C. In addition to providing commuter train service, Owner shall have the right to operate excursion trains on the Subject Line; provided, however, that Owner's operation of such

trains does not unreasonably interfere with User's ability to provide freight rail service. For purposes of this Agreement, excursion trains are defined as trains that operate for promotional, entertainment, recreational or amusement purposes.

D. User shall not grant any operating rights over the Subject Line to any third party operator or, grant any third party operator permission to enter upon the Subject Line for the purpose of operating over the Subject Line without first obtaining the written consent of Owner, which consent may be withheld in Owner's sole discretion. Notwithstanding the foregoing sentence, User shall have the right without the prior consent of Owner to allow a third party contractor to temporarily enter upon the Subject Line or the right of way of the Subject Line where there is an urgent operational need to do so; provided a Track Release Form (as defined in Article 3 herein) is given to each party listed on the Distribution List (as defined in Article 3 herein), and further provided such third party contractor admitted by User shall be considered a Third Party under this Agreement. As owner of the Subject Line, Owner shall be responsible for and shall take all reasonable actions to ensure that any Third Party authorized by Owner to enter upon the right of way of the Subject Line shall conduct its activities on the right of way with due regard for the safety of rail operations thereover and shall not create a safety risk or interfere with such operations. Owner shall ensure that User is notified that such Third Party is on the Subject Line and complies with the standard safety rules promulgated by Owner pertaining to activities conducted on the right of way of railroad lines. Likewise, User shall be responsible for and shall take all reasonable actions to ensure that any Third Party authorized by User to enter upon the right of way of the Subject Line or the Subject Line for operational purposes shall conduct its activities with due regard for the safety of rail operations thereover and shall not create a safety risk or interfere with such operations. User shall ensure that Owner is notified

that such Third Party is on the Subject Line and complies with the standard safety rules promulgated by Owner pertaining to activities conducted on the right of way of railroad lines. Prior to Owner admitting a Third Party on the Subject Line during the Freight Window, Owner shall provide User with a copy of Owner's Rules, which Rules shall include the requirement that a flagman be present at all times when the Third Party is on the Subject Line during the Freight Window. Likewise, prior to User admitting a Third Party on the Subject Line during the Passenger Window, User shall provide Owner with a copy of User's Rules, which Rules shall include the requirement that a flagman be present at all times when the Third Party is on the Subject Line during the Passenger Window.

E. The cessation of passenger train service including excursion train service on the Subject Line by Owner or any Third Party Operator shall not in any manner modify, amend, limit or restrict User's perpetual SL Freight Easement or User's rights hereunder respecting the provision of freight rail service on the Subject Line.

ARTICLE 3.

TRACK RELEASE FORM/DISPATCHING

A. Except as otherwise provided herein, User shall coordinate and control all of its own trains and other traffic moving over the Subject Line during the term of this Agreement, and Owner or its Third Party Operator shall coordinate and control all of its own trains moving over the Subject Line during the term of this Agreement.

B. Owner by itself or through an agent shall assume responsibility for dispatching the Subject Line as a condition to operating or admitting a Third Party Operator to the Subject Line for the purpose of operating commuter or other passenger train service other than excursion train service on the Subject Line. Prior to Owner operating or admitting such Third Party

Operator to the Subject Line, Owner and User shall enter into a dispatching agreement detailing how dispatching on the Subject Line will be handled. Until Owner assumes responsibility for dispatching the Subject Line, prior to Owner admitting any Third Party Operator for the purpose of operating excursion train service on the Subject Line, User, Owner and such Third Party Operator shall enter into a Track Coordination Agreement (as defined herein) detailing how each party will coordinate their own operations over the Subject Line. Each party agrees to be solely responsible for its costs associated with the negotiation of such agreement.

C. Beginning on July 2, 2003, User and Owner, together with their respective Third Parties, and any of their respective officers, agents or employees, shall gain access to the Subject Line for purposes involving the operation of trains or equipment over the track, or for any purpose not involving operation of trains or equipment over the track, including without limitation, inspections (provided any such access by User or its Third Party shall occur within the Freight Window (as defined herein), and any such access by Owner or its Third Party shall occur within the Passenger Window) and the party hereto obtaining such access or the party providing any Third Party with such access completes, executes and distributes the notice form attached hereto as Exhibit D ("Track Release Form") to each party listed on the distribution list attached hereto as Exhibit E ("Distribution List"). Each party listed on the Distribution List shall sign the track coordination agreement attached hereto as Exhibit F ("Track Coordination Agreement"), acknowledging their obligation to distribute the Track Release Form to those parties listed on the Distribution List prior to accessing the Subject Line, and upon exiting the Subject Line to inform the parties that the Subject Line is clear. User and Owner shall have the right to add names to (in the case of new operators admitted to the Subject Line pursuant to the provisions of this Agreement) or remove names from (in the case of former operators no longer admitted to the

Subject Line) the Distribution List from time to time; provided each new addition to the Distribution List acknowledges and agrees, in writing, to comply with the terms and conditions of the Track Coordination Agreement. In addition to the foregoing, prior to any entry upon the Subject Line by User and Owner, or their respective Third Parties, and any of their respective officers, agents or employees, for operation of hi-rail equipment over the track or for any purpose not involving the operation of a train, Owner or User, as the case may be, shall have provided the other, or have their respective Third Party provide the other, with a copy of the entering party's current commercial general liability insurance policy insuring all claims for personal injury, death or property damage with a minimum single combined limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence. Certificates of insurance evidencing the existence and amount of coverage required hereunder shall be delivered prior to the first entry on the Subject Line for the purposes set forth above. Further the certificates must include an endorsement whereby the insurer agrees not to cancel or non-renew the policy, without at least thirty (30) days prior written notice to the other. The limits of this insurance may be increased from time to time, upon mutual agreement between User and Owner to reflect the then current commercially reasonable limits.

D. Once Owner assumes the responsibility for dispatching the Subject Line as set forth in Article 3.B above, the trains, locomotives, cars and equipment of User and Owner shall be operated over the Subject Line without prejudice or partiality to either party and in such manner as will afford the most economical and efficient manner of movement of all rail traffic over the Subject Line. Beginning on July 2, 2003, User shall perform freight rail service to customers on the Subject Line during a freight window eight (8) continuous hours in duration and six (6) days per week (the "Freight Window"). Owner by itself or through an agent or

agents shall have the right to perform passenger train service on the Subject Line during all other times ("Passenger Window"). Notwithstanding the foregoing, User shall also have the right to operate freight rail service during the Passenger Window upon twenty four (24) hours prior notice to Owner, provided such operation does not unreasonably interfere with Owner's or Owner's agents' ability to provide passenger train service. Likewise, Owner or Owner's agent shall have the right to operate passenger train service during the Freight Window upon twenty four (24) hours prior notice to User, provided such operation does not unreasonably interfere with User's ability to provide freight rail service. The Passenger Window and Freight Window shall automatically be modified in cases of emergency that cannot be remedied within the Passenger Window, with respect to Owner or its agent, or the Freight Window, with respect to User. The foregoing shall only apply if the other party is notified of the emergency and good faith efforts are used to diligently rectify the cause of the emergency. Notwithstanding the foregoing, User and Owner may agree to modify the Freight Window and Passenger Window during periods that CVSR operates excursion train service over the Subject Line. Temporary schedules may be established under separate letter agreement and distributed to the parties listed on the Distribution List prior to any implementation thereof.

E. In no event shall either party be liable under this Agreement to the other for liability of any kind arising out of or attributable to any reasonable interruption or delay of normal rail operations because of dispatching and maintenance delay.

F. Owner shall have the right to meet any or all of its obligations in this Article through one or more third party contractors, provided that, as between Owner and User (provided User is not performing the work), Owner shall remain responsible for liability resulting from non-performance.

ARTICLE 4.

COMPENSATION

A. Beginning on July 2, 2003, User shall pay to Owner annually in arrears for the use it makes of the Subject Line, a sum to be hereinafter referred to as the "Current Charge." The Current Charge for the first year will be the number of loaded cars moved by User during the preceding twelve (12) months over all or any portion of the Subject Line times a base revenue rate per car of One Hundred Fifty Dollars (\$150.00) times 0.14 to reflect the percentage rate maintenance contribution. Locomotive units operated by User over the Subject Line shall be counted as cars subject to the Current Charge.

B. At the end of each year that User operates over the Subject Line and subject to this Agreement, User shall furnish to Owner, upon request, a statement of the number of loaded cars and locomotive units operated by User during that preceding year. Based on this statement, User will pay the Current Charge for the preceding one year term.

C. The Current Charge shall be subsequently further revised each year to reflect any revisions in the aforesaid per car revenue charge in accordance with Article 5.

D. Notwithstanding the foregoing, and provided User is not in default of any material terms or conditions of this Agreement, User may run overhead traffic on the Subject Line; provided, however, that User notify Owner in writing of its intention, and Owner and User negotiate the terms and conditions, including additional compensation to Owner, by which overhead traffic shall run over the Subject Line prior to the commencement of overhead traffic running over the Subject Line. If Owner and User are unable to negotiate the terms and conditions governing overhead traffic on the Subject Line within thirty (30) days of User's written notice of its intention to Owner, the matter shall be submitted to arbitration pursuant to

Article 17 herein for resolution. User shall have no right to run overhead traffic on the Subject Line until the arbitrator's decision is final.

ARTICLE 5.

REVISION OF BASE CURRENT CHANGE

A. The per car base revenue component of the Current Charge (the "Car Rate") shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.

B. The Car Rate shall be revised upward or downward each year, beginning on July 1, 2004, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Car Rate shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year and applying that percent to the Car Rate.

C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2002; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2003; "C" to be the Car Rate and "D" to be the percent of increase or decrease; the revised Car Rate stated herein would be revised by the following formula:

$$(1) \quad \frac{B - A}{A} = D$$

$$(2) \quad (D \times C) + C = \text{revised Car Rate, effective July 1, 2004.}$$

D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided in Article 17.

ARTICLE 6.

PAYMENT OF BILLS

A. All payments called for under this Agreement shall be paid by User to Owner within thirty (30) days after receipt of bills by User. Payments not made within forty-five (45) days after receipt of bills, therefor, shall bear interest at a rate of one percent (1%) per month until paid. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, including the records relating to the commodities transported by User over the Subject Line, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing; provided, however, that except as otherwise required by law, regulation or court order, Owner shall not have the right to copy and shall not disclose to any person other than the officers, agents and employees of Owner, any information relating to the transportation provided by User or the commodities transported by User for any rail customer of User on the Subject Line. Owner shall protect, defend, indemnify and hold harmless User, its officers, agents and employees, from and against all liability, cost and expense, including

reasonable attorneys' fees and expenses incurred by User as a result of Owner's failure to comply with the foregoing provision.

B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 4.A, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner.

C. Bills rendered pursuant to this Agreement shall be delivered to the Chief Financial Officer of User at the address provided in Article 19.

D. For any bills for services provided by one party hereto to the other party reimbursable under any provision of this Agreement, the party providing such service shall provide the other party with appropriate documentation of the services provided and a detailed break down of the costs incurred in providing such services. In the event that the party receiving the bill disputes the appropriateness of the services provided by the other party or the costs incurred in providing such services, the party disputing the bill may request that the other party appoint a representative to discuss and resolve the dispute with an appointed representative of the disputing party. If such designated representatives are unable to reach an agreement within thirty (30) days, the party disputing the bill may invoke arbitration pursuant to Article 17 hereof. The invocation of arbitration, however, shall not prevent the party providing such services from performing such services as it deems necessary pursuant to this Agreement.

ARTICLE 7.

MAINTENANCE

A. Prior to July 2, 2003, User shall maintain, repair and renew, at its own expense, and with its own supervision and labor, that portion of the Subject Line used by User for freight

rail service. User shall keep and maintain such portion of the Subject Line to a minimum of FRA Class 1 condition, subject to force majeure, and temporary slow orders related to track maintenance. Notwithstanding anything to the contrary contained in this Agreement, Owner by itself or through an agent or agents shall have the right to make rail and track bed infrastructure safety improvements to the Subject Line without triggering Owner's maintenance or dispatching obligations over the Subject Line as contemplated herein. Any track upgrades and other capital or safety improvements made by Owner or Owner's agents to the Subject Line shall be at the sole discretion and cost of Owner. Except for upgrades or improvements to the track that do not raise the FRA Class of the track above Class 1 condition, User shall not be responsible for the cost of maintaining any such upgrades or improvements.

B. Beginning on July 2, 2003, Owner by itself or through an agent or agents shall assume responsibility for maintenance of the Subject Line. Owner by itself or through an agent or agents shall maintain, repair and renew the Subject Line, at its own expense, with its own supervision and labor. All maintenance and all track inspections of the Subject Line shall be performed by Owner by itself or through an agent or agents during its Passenger Window, unless otherwise permitted by User, which permission shall not be unreasonably withheld, delayed or conditioned. Prior to entering and exiting the Subject Line to perform any maintenance, Owner shall notify CVSR and CVSR shall execute a Track Release Form and distribute the same to the parties listed on the Distribution List. Owner by itself or through an agent or agents shall keep and maintain the Subject Line to a minimum of FRA Class 1 condition, subject to force majeure and temporary slow orders related to track maintenance. Notwithstanding the foregoing, User shall (at its sole cost and expense) be solely responsible for routine and non-routine maintenance of all appurtenances and devices, including turnouts and crossovers, used solely by User for

freight rail operations located within the right of way of the Subject Line beyond the point of clearance for passenger train service. For purposes hereof the point of clearance is defined on Exhibit G.

C. Except as otherwise provided in Article 4, neither party shall charge the other an access fee or other similar fee to enter upon the Subject Line. Prior to Owner assuming the dispatching obligations as provided in Article 3.B, entry on the Subject Line for the purpose of operation over the track shall at all times be subject to the notice procedures as set forth in Article 3.C, and each party shall be solely responsible for coordinating the operation of their own trains over the Subject Line.

D. Except to the extent otherwise provided in this Article 7 and Article 13 hereof, neither Owner nor User shall, by reason of failure or neglect on the part of the other to maintain, repair or renew the Subject Line, have or make any claim or demand against the other or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature resulting from any such failure or neglect, except for a third party claim in the event that a third party seeks compensation of any kind from Owner or User as a result of personal injury, death or property damage.

E. Once Owner by itself or through an agent or agents takes over the maintenance of the Subject Line, and subject to the notice and insurance requirement as set forth in Article 3, User shall have the right, but not the obligation, to inspect the Subject Line, and to request that Owner by itself or through an agent or agents promptly correct any track defects detected by User and determined by User to be out of compliance with the aforementioned standards. In the

event of Owner's failure, by itself or through an agent or agents, to timely perform maintenance and repairs necessary to meet the maintenance standard set forth in this Article 7, User shall, upon seventy-two (72) hours' advance written notice to Owner and subject to the notice and insurance requirements as set forth in Article 3, have the right to perform the maintenance and repairs necessary to meet the aforementioned standards with its own forces or contractors, and the cost of such maintenance and repairs shall be billed to Owner; provided, however, Owner by itself or through an agent or agents has not started the necessary maintenance and/or repairs within said seventy-two (72) hour period. However, User shall have the right to make emergency repairs reasonably necessary for the provision of freight rail service without notice to Owner and Owner shall reimburse User for the reasonable cost of such repairs and hold User harmless from any damages caused thereby.

F. Upon the cessation of all passenger train service, including excursion train service, by Owner and any Third Party Operator over the Subject Line for a period of one (1) year, or at the expiration of a period of not less than one (1) year after written notice to User of the intent of Owner and any Third Party Operator to cease all passenger train service including excursion train service over the Subject Line, all of Owner's maintenance and dispatching obligations set forth in this Agreement with regard to the Subject Line shall terminate. Upon such cessation, User shall have the right, but not the obligation, to perform any maintenance on the Subject Line for the performance of freight rail service, at User's sole cost and expense, and the Current Charge shall be modified to provide only for a reasonable rental charge to Owner for User's use of the Subject Line. If Owner and User are not able to reach an agreement on the Current Charge within sixty (60) days, the matter shall be arbitrated pursuant to Article 17 and all monies related to the Current Charge may be deposited into escrow by User until the decision

of the arbitrator is final. Owner shall have the right, but not the obligation, at any time after the termination of all of Owner's maintenance and dispatching obligations as set forth above, to reassume the dispatching and maintenance obligations by delivering written notice to User at least ninety (90) days prior to Owner's reactivation of its use on the Subject Line.

G. Owner shall have the right to meet any or all of its obligations in this Article through one or more third party contractors, provided that, as between Owner and User, Owner shall remain responsible for liability resulting from non-performance.

H. Once Owner by itself or through an agent or agents has assumed responsibility for maintenance of the Subject Line, Owner shall indemnify and hold harmless User, its employees, directors, officers and agents from and against any fines or penalties assessed by the Federal Railroad Administration ("FRA"), including reasonable attorneys' fees and expenses incurred by User, that relate to Owner's maintenance of the Subject Line. The intent of the parties hereto is that the above indemnification not apply to User's operational obligations to the FRA.

ARTICLE 8.

CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

A. Any additional freight connections to the Subject Line which may be required by User shall be constructed, maintained, repaired and renewed as follows:

(1) The design of such connections shall be subject to Owner's prior review and written approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(2) User or others shall furnish all labor and material and shall construct, maintain, repair and renew, at its sole cost and expense, such portions of the tracks located on the

right-of-way of User or others. User shall also be responsible for securing all necessary zoning changes, plans and third party approvals for said construction, at its sole cost.

(3) Owner shall furnish all labor and material and shall construct, maintain, repair and renew, at User's sole cost and expense, such portions of the tracks located on the right-of-way of Owner; provided, however, Owner may permit User to perform said construction, maintenance and repair under this Section.

(4) Neither party's construction shall unreasonably interfere with the other party's operations.

(5) Within one (1) year after the termination of this Agreement, User may, at its option, and at its sole cost and expense, remove trackage and appurtenances installed or paid for by User during the term of this Agreement. User shall restore the property of Owner substantially to the overall condition (FRA classification shall be equal to adjoining trackage) of Owner's adjoining trackage and right of way. The salvage material removed shall be the property of User. Any removal shall be coordinated with Owner's dispatcher so as to not interfere with Owner's operations. If not so removed within one (1) year after termination of this Agreement, such trackage and appurtenances shall become the property of Owner. Both parties understand that all trackage and appurtenances at the time of execution of this Agreement are property of Owner.

B. Owner shall have the right to meet any or all of its obligations in this Article through one or more third party contractors, provided that, as between Owner and User (provided User is not performing the work), Owner shall remain responsible for liability resulting from non-performance.

C. In the event Owner fails to perform its obligations as set forth in this Article, and does not commence to cure any such failure within thirty (30) days after written notification from User of such failure, and fails to diligently proceed to remedy or cure the same within a reasonable time period thereafter, User shall have the right to perform such obligations on behalf of Owner at Owner's sole cost and expense.

ARTICLE 9.

ADDITIONS, RETIREMENTS AND ALTERATIONS

A. Subject to Article 7.A, Owner, from time to time, at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Line as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Line and such retirements shall be excluded from the Subject Line. Owner shall not make any changes nor allow any third party to make any changes, including, but not limited to, changes resulting from Owner's grant of any easement, licenses, agreement or other facilities that would impose any greater width, height, weight or other restrictions on the Subject Line than in effect on the date of this Agreement or that would affect the integrity or stability of the track, sub-grade or roadbed of the Subject Line, without first obtaining the prior approval of User, which approval shall not be unreasonably withheld, conditioned or delayed. If User fails to respond to a request for approval within thirty (30) days after the delivery of the request to User and confirmation of receipt by User, the submitted request shall be deemed approved by User. In no event will Owner make any changes that would impair User's ability to provide common carrier service on the Subject

Line or User's ability to utilize the Subject Line for any and all reasonable freight railroad purposes in accordance with the terms of this Agreement.

B. If User reasonably believes that changes in or additions and betterments to the Subject Line, including changes in communication or signal facilities, and additional or replacement turnouts or sidetracks, are required to accommodate User's freight railroad operations, User shall have the right to request that Owner construct such changes, provided User shall pay the entire cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

C. In addition, if the parties agree that changes in or additions and betterments to the Subject Line, including changes in communication or signal facilities, and additional turnouts or sidetracks, are required to accommodate User's freight rail operations beyond that required by Owner to accommodate its passenger train operations, Owner shall construct the additional or altered facilities at User's request and User shall pay to Owner the entire cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities. Except as otherwise provided herein, the cost and expense of any other changes in, or additions and betterments to, the Subject Line, including the cost and expense of the maintenance of such additions and betterments, shall be borne solely by Owner.

D. Owner shall have the right to meet any or all of its obligations in this Article through one or more third party contractors, provided that, as between Owner and User (provided User is not performing the work), Owner shall remain responsible for liability resulting from non-performance.

E. Notwithstanding anything to the contrary contained in this Agreement, if User requests or requires bridges or other similar structures to be designed and constructed to a

standard equal to or greater than Cooper E-80 standards, User shall reimburse Owner for all costs and expenses, including but not limited to, design and engineering expenses associated with User's increased rating over currently existing ratings located on the Subject Line.

ARTICLE 10.

MANAGEMENT AND OPERATIONS

A. User and Owner shall each comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its respective trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Line.

B. The rules, special instructions, timetables, practices, regulations and orders governing operations on the Subject Line ("Rules") of Owner shall apply during the Passenger Window and the Rules of User shall apply during the Freight Window hereunder. As a condition to the execution of this Agreement by Owner, User shall provide Owner with a copy of User's Rules and Owner, prior to commencement of any passenger train service including excursion train service on the Subject Line, shall provide a copy of its Rules to User. User in its use of the Subject Line shall comply in all respects with all applicable safety rules, operating rules and other regulations. User's trains shall not include locomotives, cars or equipment that exceed width, height, weight or other restrictions or capacities of the Subject Line. On the date upon which Owner assumes dispatching obligations over the Subject Line, Owner shall adopt User's Rules on the Subject Line and supplement them with its own Rules related to its operations. Owner's supplemental Rules shall be subject to the review and written approval of User, which approval shall not be unreasonably withheld, delayed or conditioned. Any subsequent

modification or amendment to the adopted and supplemented Rules shall be subject to the non-changing party's prior review and written approval, which written approval shall not be unreasonably withheld, delayed or conditioned. Any such supplements, modifications or amendments to either party's Rules shall not contradict the terms or spirit of this Agreement.

C. Either party shall have the right to exclude from the Subject Line any employee of the other party determined to be in violation of applicable rules, special instructions, timetables, practices or regulations, or who otherwise presents a danger to himself or others, or to the other party's operations. In the event of any investigation or hearing concerning the violation of any operating rule or practice by a party's employee(s), that party shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by that party, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to the employee(s) required to attend such hearings.

D. The trains, locomotives, cars and equipment of User and Owner and any Third Party Operator admitted to the Subject Line shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient manner of movement of all traffic over the Subject Line.

E. In the event that a train of User shall be forced to stop on the Subject Line, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Line, User shall notify Owner's designee and Owner shall have the option to furnish motive power or such other assistance (including but

not limited to the option to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Line, and User shall reimburse Owner for the entire reasonable cost of rendering any such assistance, and hold Owner harmless from any damages caused thereby.

F. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Line, such work may be done by Owner by itself or through an agent or agents, and in such event User shall reimburse Owner for the entire reasonable cost thereof, and hold Owner harmless from any and all costs, expenses and damages caused thereby.

ARTICLE 11.

MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Line shall be assumed by User and reported and paid by it directly to the owner of such cars.

ARTICLE 12.

CLEARING OF WRECKS

Whenever User's use of the Subject Line requires rerailing, wrecking service or wrecking train service, User shall perform or provide such service, including the repair or restoration of the roadbed, track and structures for all instances involving User. Beginning on July 2, 2003, whenever User's use of the Subject Line requires rerailing, wrecking service or wrecking train service, Owner by itself or through an agent or agents shall have the option to perform or provide such service, including the repair and restoration of roadbed, track and structures, for all instances involving User. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death

of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, and the reasonable cost and expense of performing or providing rerailling, wrecking service or wrecking train service shall be allocated in accordance with the provisions of Article 13 hereof. Each party agrees to notify the other party upon the occurrence of any accident or derailment on the Subject Line within twenty-four (24) hours after its occurrence. Additionally, each party agrees to immediately notify the other party of any property damage and/or vandalism along the Subject Line, provided, however, that the inadvertent failure to notify the other party shall not constitute a breach of this Agreement.

ARTICLE 13.

LIABILITY

A. **Definition.** For purposes of this Article 13, the term "Rail Passenger(s)" shall mean and include any and all persons ticketed or unticketed using rail passenger service of any kind, provided or sponsored by Owner or which Owner allows on the Subject Line: first, while on board trains, locomotives, rail cars or rail equipment employed in rail passenger service and/or entraining and detraining therefrom and, second, while on or about the Subject Line for any purpose related to passenger train service, including, without limitation, parking, inquiring about passenger train service, or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing trains, locomotives, rail cars or rail equipment; the term "Rail Passenger(s)" shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence; the term "passenger train service" shall include commuter and excursion trains of all varieties. Notwithstanding the

above, the term Rail Passengers shall not include officers, agents or employees of Owner while engaged in work related activities.

B. **Indemnity.** Notwithstanding any other provision of this Agreement to the contrary, whenever any liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any of the provisions of this Article 13, then that party shall, to the extent permitted by law, forever protect, defend, indemnify and hold harmless the other party to this Agreement, its officers, agents and employees, from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether or not the loss, damage, destruction, injury or death giving rise to any such liability, cost or expense is caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitor, indemnitee or its or their officers, agents and employees, and/or any other person or persons whomsoever, and whether or not it is designated as "punitive" or "exemplary" damages. Owner hereby indemnifies and agrees to defend and hold harmless User, its employees, directors, officers and agents from and against all liability, costs, losses, damages and expenses, including reasonable attorneys' fees and expenses, as a result of the failure of any agent of Owner to meet its obligations specified in any dispatching agreement or Track Coordination Agreement Between User and such agent. Likewise, User hereby indemnifies and agrees to defend and hold harmless Owner, its employees, directors, officers and agents from and against all liability, costs, losses, damages and expenses, including reasonable attorney's fees and expenses, as a result of the failure of any agent of User to meet its obligations specified in any dispatching agreement or Track Coordination Agreement between Owner and such agent.

C. **Property Damage.** The responsibility of the parties hereto, as between themselves, for loss of, damage to, and destruction of any property whatsoever, including but not

limited to environmental contamination and/or damage, resulting from, arising out of, incidental to, or occurring in connection with this Agreement and/or the Subject Line, shall be borne and apportioned as follows:

(1) **User Only Involved.** Whenever any loss of, damage to or destruction of any property whatsoever occurs and such loss, damage or destruction exclusively arises out of, results from or is connected with User's operation of trains, dispatching of trains, locomotives, rail cars or equipment or its performance of maintenance, repair, improvements and/or retirements, to the extent authorized under this Agreement, or User's maintenance or repair of trains, locomotives, rail cars or rail equipment, exclusively and without the involvement of the Owner, then, any and all liability, cost and expense for the loss, damage or destruction so occurring shall be borne entirely by User.

(2) **Owner Only Involved.** Whenever any loss of, damage to or destruction of any property whatsoever occurs and such loss, damage or destruction exclusively arises out of, results from or is connected with Owner's operation of trains, or its dispatching of trains, locomotives, rail cars or equipment, or its performance of maintenance, repair, improvements and/or retirements; or Owner's maintenance or repair of the trains, locomotives, rail cars or rail equipment used for the provision of passenger train service, exclusively and without the involvement of User, then, any and all liability, cost and expense for the loss, damage or destruction so occurring shall be borne entirely by Owner.

(3) **Both Parties Involved.** Whenever any loss of, damage to or destruction of any property whatsoever occurs and such loss, damage or destruction arises out of, results from or is connected with both User's activities and Owner's activities, then each party shall be responsible for any and all liability, cost and expense for the loss, damage or destruction to its

own property and any and all liability, cost and expense for the loss, damage or destruction to property of third parties shall be borne jointly, based on the proportion of fault, by Owner and User.

D. **Injury or Death.** The responsibility of the parties hereto, as between themselves, for liability, cost and expense relating to the personal injury or death of any person, resulting from, arising out of, incidental to, or occurring in connection with this Agreement, shall be borne and apportioned as follows:

(1) **Rail Passengers.** User shall not be responsible for any liability, cost and expense, however arising, for personal injury or death of Rail Passengers, regardless of fault, without any recourse against User.

(2) **Owner Only Involved.** Whenever any injury to or death of any person or persons whomsoever (including, without limitation, Rail Passengers) occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only Owner being involved, then Owner shall assume all liability therefor, and bear all cost and expense in connection therewith.

(3) **User Only Involved.** Whenever any injury to or death of any person or persons whomsoever (excluding Rail Passengers) occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only User being involved, then (except for the liability, cost and expense for personal injury or death to Rail Passengers, the liability, cost and expense for which shall be solely assumed by Owner) User shall assume all liability therefor, and bear all cost and expense in connection therewith.

(4) **Both Parties Involved.** Whenever any injury to or death of any person or persons whomsoever (including, without limitation, Rail Passengers) occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both Owner and User being

involved, then: (i) Owner shall assume and bear any and all liability, cost and expense for injury to and death of Rail Passengers and Owner's officers, agents and employees; (ii) User shall assume and bear any and all liability, cost and expense for injury to and death of User's officers, agents and employees; and (iii) Owner and User shall jointly, based on the proportion of fault, assume and bear all liability, cost and expense for injury to and death of any other person or persons.

E. **Third Parties.** Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Passengers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, one party to this Agreement ("Admitting Party") and any other third party railroad or operator admitted by the Admitting Party ("Third Party"), with or without the trains, locomotives, rail cars or rail equipment of, or in the account of the other party to this Agreement being involved, then any such Third Party shall jointly be considered as that Admitting Party and a single party to this Agreement for the purpose of determining as between Owner and User, that Admitting Party's assumption and apportionment of liability, cost and expense under this Article. Nothing contained in this paragraph shall be construed as modifying or superceding the provisions of Article 13.D(1) above.

F. **Installment Payments.** In every case of death or injury suffered by an employee of either Owner or User, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of the parties, under the provisions of this Agreement, is required to pay such compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments

by reason of the assignment, expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

G. **Delays.** The parties hereto understand that liability pertaining to interruptions and delays is governed by Article 3.E herein.

H. **Third Party Rights.** Except as provided in Article 13.E above, nothing expressed or implied in this Article 13 is intended to or shall be construed to: (i) confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors and assigns any right or benefit under or by reason of this Article 13; or (ii) limit or restrict either party hereto from seeking damages, indemnification, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

I. **Notice and Defense.** If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, such other party shall be promptly notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

ARTICLE 14.

INSURANCE

A. To secure its contractual indemnity and liability obligations under this Agreement, the User must maintain at all times, in full force and effect, commercial liability insurance, as set forth herein:

1. For any freight rail service over the Subject Line pursuant to this Agreement, User agrees to obtain, or require any agent operator of User to obtain, at its (or the operator's) sole cost and expense, and to maintain during the term of this Agreement an insurance policy in effect with available limits of no less than Ten Million Dollars (\$10,000,000) per occurrence and Twenty Million Dollars (\$20,000,000) in the aggregate excess of a retention no greater than Five Hundred Thousand Dollars (\$500,000).

2. Such insurance policy must name Owner, and each Third Party Operator, if any, as a named insured and must cover the liabilities associated with User's obligations and use of the Subject Line, including but not limited to personal injury, property damage, employers' liability (FELA), contractual liability, and sudden and accidental pollution coverage, and must affirmatively cover punitive or exemplary damages. Such policy shall be in a form and from an insurer reasonably acceptable to Owner and specified Third Party Operator.

3. Upon execution of this Agreement, User shall furnish certified copies to Owner of the policy of insurance or any other evidence Owner requests evidencing User's insurance coverage pursuant to this Agreement, at the following address:

General Manager (Rail)
Metro Regional Transit Authority
416 Kenmore Boulevard
Akron, Ohio 44310

4. User's satisfaction of the insurance requirements of Article 14.A is a condition precedent to the provision of freight rail service under this Agreement, and the procurement and maintenance of this insurance in full force and effect shall thereafter throughout the term of this Agreement be considered a condition subsequent to the continuation of its operations over the Subject Line. Should User fail in its performance of these contractual obligations to Owner, then User (or its operator) shall, subject to applicable law, immediately

cease operation until such time, if any, that User (or its operator) shall obtain and thereafter maintain insurance in like amounts and coverage protection required by this Agreement.

B. To secure its contractual indemnity and liability obligations under this Agreement, Owner must maintain at all times, in full force and effect, commercial liability insurance, as set forth herein:

1. For any passenger train service, except for excursion train service over the Subject Line pursuant to this Agreement, Owner agrees to obtain, or require any Third Party Operator to obtain, at its (or the Third Party Operator's) sole cost and expense, and to maintain during the term of this Agreement, an insurance policy in effect with available limits of no less than Ten Million Dollars (\$10,000,000) per occurrence and Twenty Million Dollars (\$20,000,000) in the aggregate excess of a retention no greater than Five Hundred Thousand Dollars (\$500,000).

2. For any excursion train operations over the Subject Line pursuant to the terms of this Agreement, Owner agrees to obtain, or require any Third Party Operator to obtain, at its (or the Third Party Operator's) sole cost and expense, and to maintain during the term of this Agreement an insurance policy in effect with available limits of no less than Ten Million Dollars (\$10,000,000) per occurrence and Twenty Million Dollars (\$20,000,000) in the aggregate excess of a retention no greater than Five Hundred Thousand Dollars (\$500,000).

3. Such insurance policies must name User as a named insured and must cover the liabilities associated with Owner's use and any Third Party Operator's use of the Subject Line, including but not limited to personal injury, property damage, employers' liability (FELA), contractual liability, and sudden and accidental pollution coverage, and must

affirmatively cover punitive or exemplary damages. Such policies shall be in a form and from an insurer reasonably acceptable to User.

4. Upon execution of this Agreement, Owner shall furnish certified copies to User of the policies of insurance or any other evidence User requests evidencing Owner's insurance coverage pursuant to this Agreement at the following address:

Vice President - Transportation
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613

5. Owner's satisfaction of the insurance requirements of Article 14.B is a condition precedent to the provision of passenger train service over the Subject Line, and the procurement and maintenance of this insurance in full force and effect shall thereafter throughout the term of this Agreement be considered a condition subsequent to the continuation of its operations over the Subject Line. Should Owner fail in its performance of these contractual obligations, then Owner (or Third Party Operator) shall, subject to applicable law, immediately cease operation until such time, if any, that Owner (or Third Party Operator) shall obtain and thereafter maintain insurance in like amounts and coverage protection required by this Agreement.

ARTICLE 15.

CLAIMS

A. Except as provided in Article 15.B, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

B. User shall be responsible for and shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.

C. In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit. The party receiving notice of the filing of a claim will promptly notify the other of such filing where liability therefore may be joint or that of the other party. Owner and User will cooperate in the defense of any and all claims relating to the Subject Line or rail operations undertaken thereon.

D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries and wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

E. Neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).

F. Nothing in this Article 15 shall modify, impair, or diminish the indemnity and insurance obligations, or any other provision, of Article 13 and Article 14.

ARTICLE 16.

TERM; DEFAULT; REPURCHASE RIGHTS

A. This Agreement shall be effective on the date first written above and shall remain in full force and effect for ninety-nine (99) years including after transfer of the SL Freight Easement to User, unless sooner terminated as provided herein, or terminated by User upon sixty (60) days advance written notice to Owner. Termination of this Agreement shall not alter any obligation of User under applicable law to provide freight rail service on the Subject Line.

B. During the term of this Agreement User shall have the right, subject to securing any necessary regulatory approval, to discontinue its own operations over all or part of the Subject Line. Should User seek such regulatory authority, Owner agrees not to oppose or in any way interfere with User's attempt to secure and exercise such authority. User shall not effect discontinuance of its operations over the Subject Line, or any portion thereof, without first giving Owner sixty (60) days written notice of User's intent to do so. If Owner files a request for trail use on any portion of the Subject Line subject to abandonment, User shall (i) notify the STB that it is willing to negotiate a trail use agreement, (ii) negotiate with Owner for an agreement granting Owner an option to acquire User's right to reactivate freight rail service on such portion of the Subject Line, and (iii) do all other things necessary and reasonable to effectuate rail banking and interim trail use under the rails-to-trails provisions of the National Trails Act.

C. If one or more of the following events shall happen during the term of this Agreement: (i) User fails to make punctual payment of the amounts due and payable hereunder to be paid by User within forty-five (45) days of receipt of written notice from Owner of User's failure to pay such amounts; (ii) User obtains approval from the STB or exemption therefrom to discontinue its operations over all or part of the Subject Line; (iii) User 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; (iv) User unreasonably interferes with Owner's ability to provide passenger train service; (v) User fails to comply with the insurance obligations, or any other provision, of Article 14 and said failure continues for a period of thirty (30) days after written notice from Owner; subject, however, to matters submitted to arbitration; or (vi) User fails to comply with a final judgment issued in favor of Owner, Owner shall have the right, but not the obligation, in addition to all other remedies available at law or in equity, to repurchase the SL Freight Easement covering the Subject Line, or to designate a third party to purchase said SL Freight Easement from User for Ten Dollars (\$10.00) payable to User. Owner shall give User thirty (30) days' advance written notice of its intent to repurchase said SL Freight Easement. User agrees to execute and, if necessary, assist in the preparation of, all documents necessary to effectuate such transfer, including, but not limited to, any filings required by the STB. Owner shall have the right to assign its interests in said SL Freight Easement. The failure of Owner to notify User of its intention to repurchase, or the giving of express notice of intention not to purchase, shall release User from any obligation to Owner under this Section, and User may thereafter permanently discontinue its operations over the Subject Line. Notwithstanding the provisions of this Section, User may sell or transfer its interest in the SL Freight Easement to a third party without the consent of Owner (provided User notify Owner of such sale or transfer) if such sale or transfer is part of a sale of all or substantially all of User's rail assets to such third party.

D. During the term of this Agreement or any renewals thereof, and subject to the terms contained herein, User shall have the right, subject to securing any necessary regulatory approval, to sell its SL Freight Easement to a third party when such sale is not part of a sale of all or substantially all of User's rail assets, provided that User shall first give Owner sixty (60) days'

advance written notice of User's intent to do so. Owner shall have the first option to repurchase the SL Freight Easement, or a portion thereof, for Ten Dollars (\$10.00). Owner shall have thirty (30) days after receipt of User's notice in which to notify User of Owner's intent to repurchase the SL Freight Easement or portion thereof. The failure of Owner to notify User of its intention to repurchase, or the giving of express notice of intention not to purchase within said thirty (30) day period, shall release User from any further obligation to Owner under this Section, and User may thereafter sell the SL Freight Easement, or portion thereof, to any third person User shall decide.

E. Termination or assignment of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

ARTICLE 17.

ARBITRATION

Any dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Notwithstanding the above, this Article 17 shall also apply to the reacquisition of the SL Freight Easement by Owner as provided in Article 16.

ARTICLE 18.

SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement, except if part of a sale of all or substantially all of the party's rail assets.

ARTICLE 19.

NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to Owner: Metro Regional Transit Authority
416 Kenmore Boulevard
Akron, OH 44301
Attn: General Manager (Rail)

If to User: Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
Attn: President

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 20.

GENERAL PROVISIONS

A. This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be

taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.

B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.

C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.

D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of such other party under this Agreement.

G. This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

H. The parties agree that this Agreement does not require STB approval. However, Owner, at its sole cost and expense, may submit this Agreement to the STB for a jurisdictional determination.

I. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute one and the same instrument.

J. Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder (except obligations involving the payment of money), during the time when such non-performance is occasioned by events beyond the control of such party, including but not limited to fire, earthquake, flood, explosion, casualty, strike, riot, insurrection, civil disturbance, act of public enemy, war, act of God, inability to obtain labor, materials or supplies or any other similar cause beyond the parties' reasonable control.

K. The parties agree that if any provision of this Agreement shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remaining provisions could then continue to conform with the purposes of this Agreement and the terms and requirements of applicable law.

L. This Agreement shall be construed under the laws of the State of Ohio. The User agrees to submit to the jurisdiction of Summit County, Ohio Courts.

M. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary, affiliate company or Third Party Operator, without the written consent of the other party, except as otherwise required by law, regulation or ruling,

provided that nothing herein shall prevent the disclosure of this Agreement by a party to its attorneys or auditors.

N. User shall be solely responsible only for such property and other taxes as are appropriate to its use of the Subject Line for freight rail service. User agrees to cooperate with Owner and to join in the execution, if necessary, of any application required for real property tax exemption of the Subject Line. User's cooperation includes, without limitation, attending and giving testimony at any hearing on the applications and meeting with and providing information to any governmental entity reviewing the applications.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**WHEELING & LAKE ERIE RAILWAY
COMPANY**

Witness:

By: _____

Its: _____

**METRO REGIONAL TRANSIT
AUTHORITY**

Witness:

By: _____

Its: _____

provided that nothing herein shall prevent the disclosure of this Agreement by a party to its attorneys or auditors.

N. User shall be solely responsible only for such property and other taxes as are appropriate to its use of the Subject Line for freight rail service. User agrees to cooperate with Owner and to join in the execution, if necessary, of any application required for real property tax exemption of the Subject Line. User's cooperation includes, without limitation, attending and giving testimony at any hearing on the applications and meeting with and providing information to any governmental entity reviewing the applications.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**WHEELING & LAKE ERIE RAILWAY
COMPANY**

Witness:



By:



LARRY R. PARSONS

Its: CHAIRMAN & CEO

**METRO REGIONAL TRANSIT
AUTHORITY**

Witness:



By:

Its:

JUL-01-2003 05:09PM FROM-Metro RTA

+3307620854

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provided that nothing herein shall prevent the disclosure of this Agreement by a party to its attorneys or auditors.

N. User shall be solely responsible only for such property and other taxes as are appropriate to its use of the Subject Line for freight rail service. User agrees to cooperate with Owner and to join in the execution, if necessary, of any application required for real property tax exemption of the Subject Line. User's cooperation includes, without limitation, attending and giving testimony at any hearing on the applications and meeting with and providing information to any governmental entity reviewing the applications.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**WHEELING & LAKE ERIE RAILWAY
COMPANY**

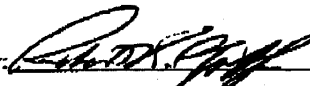
Witness:

By: _____

Its: _____

**METRO REGIONAL TRANSIT
AUTHORITY**

Witness:

By:  _____

Its: *Executive Director*
Secretary Treasurer

Jun-18-2003 14:51

From-FLETCHER & SIPPEL LLC

+3125409098

T-048 P.002/002 F-012

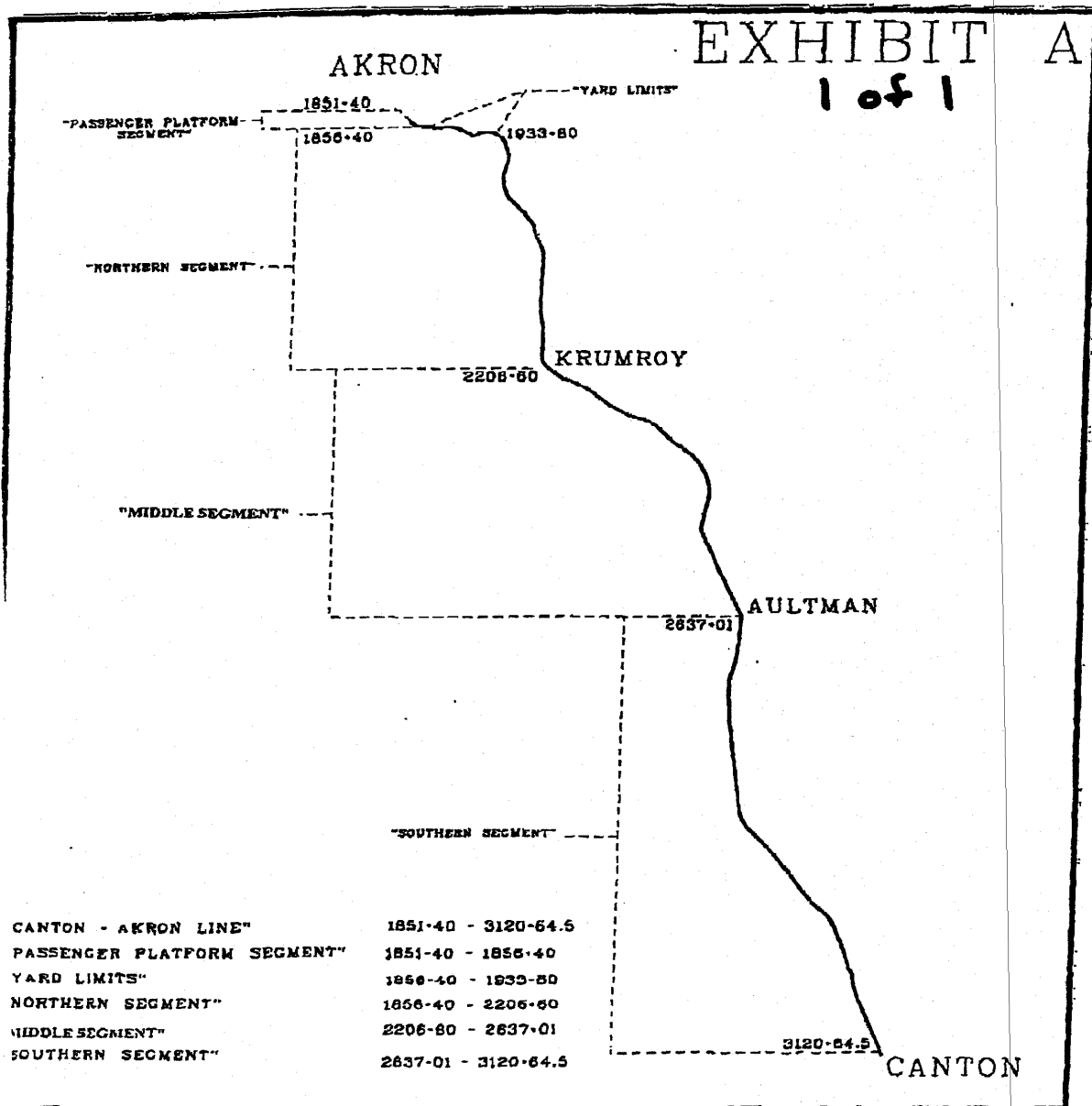


EXHIBIT B
LIST OF
ASSIGNMENT AGREEMENTS
[TO BE ADDED AT A LATER DATE]

1 of 1

EXHIBIT C

THIS DEED DELIVERED IN DUPLICATE
FOR SIMULTANEOUS RECORDING IN
SUMMIT AND STARK COUNTIES, OH:
_____ OF 2

THIS QUITCLAIM DEED, made this ____ day of _____, 2003, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Grantor", and WHEELING & LAKE ERIE RAILWAY COMPANY, an Ohio corporation, whose mailing address is 100 East First Street, Brewster, Ohio 44613, hereinafter called "Grantee", WITNESSETH:

(Wherever 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 the successors and assigns of corporations.)

WHEREAS, by deed dated May 26, 2000, recorded as Instrument No. 54433119 in Summit County, OH and as Instrument No. 2000035339 in Stark County, OH (the "Deed"), Grantor sold to Metro Regional Transit Authority ("Metro") certain operating properties and associated track and rail assets between Railroad Valuation Station 1851+40 near Akron, OH and Railroad Valuation Station 3120+64.5 at Canton, OH, and

WHEREAS, the Grantor retained an exclusive perpetual easement to continue to use the operating properties and associated track and rail assets for the provision of rail freight transportation and common carrier obligations to current and future rail customers located thereon (the "Freight Easement"),

WHEREAS, Grantor has agreed to quitclaim to Grantee, its successors or assigns, any right, title and interest in and to that segment of the Freight Easement lying between Railroad Valuation Station 2206+60 near Krumroy, OH and Railroad Valuation Station 3120+64.5 at Canton, OH.

NOW, THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS, and other good and valuable consideration, to it in hand paid by Grantee, the receipt of which is hereby acknowledged, Grantor does hereby RELEASE, REMISE and forever QUITCLAIM unto Grantee, all right, title and interest of Grantor, if any, in and to that certain segment of the Freight Easement being in Summit and Stark Counties, State of Ohio, hereinafter designated as "the Premises," more particularly described in Exhibit A, generally shown in Exhibit A-1 and A-2, attached hereto and incorporated herein, but excluding all of Grantor's right, title and interest in that certain Shared Use Agreement between Grantor and Metro dated May 31, 2000, as supplemented and/or amended.

- 2 -

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, Grantee's heirs and assigns or successors and assigns, forever.

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC., 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.

Signed, sealed and delivered
in the presence of:

CSX TRANSPORTATION, INC.

By: _____
Print Name: _____
Print Title: _____

Attest _____ (SEAL)
Secretary

Print Name: _____

This instrument prepared by
or under the direction of:

William C. Basney
Senior Counsel
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

RETURN TO: Bill Callison
Wheeling & Lake Erie Railway
100 East First Street
Brewster, OH 44613

2 of 4

- 3 -

STATE OF FLORIDA)
) SS.
COUNTY OF DUVAL)

I, _____ a Notary Public of the State of Florida and the County of Duval, do certify that, on the date below, before me in said County came _____, () to me known, and/or () proven by satisfactory current evidence to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did make oath, acknowledge and say that: (s)he resides in Jacksonville, Duval County, Florida; (s)he is _____ of CSX Transportation, Inc., the corporation described in and which executed said instrument; (s)he is fully informed of the contents of the instrument; (s)he knows the seal of said company; the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of said company; (s)he signed his/her name thereto for said company pursuant to Board authority; and instrument is the free act and deed of said company; and the conveyance herein is not part of a transaction, sale, lease, exchange or other transfer or conveyance of all or substantially all of the property and/or assets of the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this _____ day of _____, 20____.

My commission expires on:

_____(SEAL)
Notary Public
Print Name: _____

3 of 4

EXHIBIT A

Description of Freight Easement: Summit and Stark Counties, Ohio
To: Wheeling & Lake Erie Railway Company
Deed File No.: _____

ALL THAT PORTION of a freight easement reserved in deed dated May 26, 2000 from CSX Transportation, Inc. to METRO Regional Transit Authority recorded as Instrument No. 54433119 in Summit County and as Instrument No. 2000035339 in Stark County, Ohio, **BEGINNING** at Railroad Valuation Station 2206+60 at or near Krumroy and extending generally in a southerly direction a distance of 17.31 miles, more or less, and **ENDING** at Railroad Valuation Station 3120+64.5 approximately eighty (80) feet south of the centerline of Marion Avenue, S.W. at or near Canton, as generally shown on Exhibits A-1 and A-2, attached hereto.

4 of 4

EXHIBIT D

Track Coordination Agreement

ANNEX ALPHA

**CANTON-AKRON LINE – Station 2637+01 (Mayfair Road/Aultman) to Station
3120+64.5 (McKinley/Canton)
SOUTHERN SEGMENT
TRACK RELEASE FORM**

**Confirmation of completion of use of track and end of occupancy, and release to
other authorized operation of the Southern Segment of the Canton-Akron Line
from Station 2637+01 (Mayfair/Aultman) to Station 3120+64.5 (McKinley/
Canton)**

**Wheeling & Lake Erie Railway Company is clear of that portion of the Canton-Akron Line
known as the Southern Segment running from Station 2637+01 (Mayfair/Aultman) to Station
3120+64.5 McKinley/Canton (the "Southern Segment").**

**Wheeling & Lake Erie Railway Company hereby releases its authority to operate on the
Southern Segment in favor of Cuyahoga Valley Scenic Railroad to the extent of its rights therein.**

Date Issued: _____ Time Issued: _____

**Issued By: _____, for WHEELING & LAKE ERIE RAILWAY
COMPANY**

**CUYAHOGA VALLEY SCENIC RAILROAD is clear of the Southern Segment [Station
2637+01 (Mayfair/Aultman) to Station 3120+64.5 (McKinley/Canton), Canton-Akron Line].**

**CUYAHOGA VALLEY SCENIC RAILROAD hereby releases its authority to operate on the
Southern Segment in favor of Wheeling & Lake Erie Railway Company to the extent of its rights
therein.**

Date Issued: _____ Time Issued: _____

Issued By: _____, for CUYAHOGA VALLEY SCENIC RAILROAD

Phone and FAX Numbers

**Cuyahoga Valley Scenic Railroad
Director of Operations: (440) 526-7128
FAX: 440 526-7612**

**Wheeling & Lake Erie Railway Company
Chief Dispatcher (330) 767-7215**

FAX: (330) 767-4519

**METRO Regional Transit Authority
Executive Director (800) 227-9905,
ext. 3100
FAX: (330) 761-2215 _____**

ANNEX ALPHA

1 of 1

EXHIBIT E

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613
Phone: (330) 767-7299
FAX: (330) 767-3754

Attn: James Northcraft
Attn: James Hill

Cuyahoga Valley Scenic Railroad
1664 Main Street
P. O. Box 158
Peninsula, Ohio 44264-0158
Phone: (800) 468-4070

Attn: Brian Allan
Attn: Douglas Verner

Metro Regional Transit Authority
416 Kenmore Boulevard
Akron, Ohio 44301
Phone: (800) 227-9905, Ext. 3100
FAX: (330) 761-2215

Attn: Robert Pfaff
Attn: Kirt Conrad

1086096_1

1081

EXHIBIT F

TRACK COORDINATION AGREEMENT

(Canton-Krumroy)

THIS TRACK COORDINATION AGREEMENT (this "Agreement") is entered into as of the 1st day of July, 2003, by and among **METRO Regional Transit Authority**, a regional transit authority created and existing under Ohio Revised Code § 306 ("METRO"), **Cuyahoga Valley Preservation and Scenic Railway Association, dba, Cuyahoga Valley Scenic Railroad ("CVSR")**, an Ohio not-for-profit corporation, and **Wheeling & Lake Erie Railway Company**, an Ohio corporation ("WLE").

Background Facts:

A. METRO owns the rail line located between Valuation Station 1851 + 40 near Howard Street in Akron, Ohio and Valuation Station 3120 + 64.5 near Canton, Ohio (the "Canton-Akron Line");

B. METRO and WLE have entered into a Shared Use Agreement dated July 1, 2003 (the "SUA") which establishes the terms and conditions between them governing their respective operations over that portion of the Canton-Akron Line between Valuation Station 2206 + 60 at Krumroy, Ohio, and Valuation Station 2637+01 at Aultman, Ohio (the "Middle Segment") and Valuation Station 2637+01 at Aultman, Ohio, and Valuation Station 3120+64.5 near Canton, Ohio (the "Southern Segment"), with future freight operations by WLE over or across the Middle Segment subject to further negotiations and agreements between METRO and WLE as contemplated by the SUA;

C. CVSR (i) currently operates scenic excursion passenger rail service north of Akron over tracks owned and maintained by Cuyahoga Valley National Park, a unit of the National Park Service ("CVNP"), (ii) plans to extend such excursion rail service over the Canton-Akron Line including over the Southern and Middle Segments as contemplated by separate agreements with CVNP and METRO, and (iii) as contemplated by the SUA, is a "Third Party Operator" with respect to the Southern and Middle Segments but only as an operator of "excursion trains" and not "commuter rail service;"

D. Pursuant to an agreement (the "Three-Party Agreement") with METRO and CVSR, CVNP is METRO's agent for track maintenance of the Canton-Akron Line (including the Southern and Middle Segments) to the extent and subject to the terms of the Three-Party Agreement; and

E. WLE, METRO and CVSR wish to set forth in this Agreement their understandings regarding the operation of freight rail service by WLE and the operation of excursion train service by CVSR.

Agreements:

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. **Incorporation of Words and Terms.** Words and terms used herein shall have the same meanings prescribed for them in the SUA whether or not defined herein. For purposes of carrying out this Agreement, in the event of any conflict between the terms of this Agreement and the SUA, the terms of this Agreement shall control.

2. **WLE and CVSR to Coordinate Own Operations.** Subject to the provisions of Section 4, METRO hereby confirms its designation of: i) WLE as having exclusive track

authority for freight rail operations only over the Southern Segment and, subject to the terms of the SUA, the Middle Segment during its "Freight Window" as described in and subject to the SUA; and ii) CVSR as having exclusive track authority for excursion rail operations and maintenance by CVNP and its contractors only over the Southern and Middle Segments of and incident to CVSR's excursion train service all during the "Excursion Window" as described in and subject to the Three-Party Agreement. No party hereto shall have any duty, authority, obligation or liability to any other party or otherwise for dispatching traffic over the Southern and Middle Segments, but shall be limited to exercising the aforementioned track authority, respectively.

3. **Acknowledgement of Excursion Third-Party Operator.** WLE hereby acknowledges and consents to METRO's designation of CVSR as a Third Party Operator under the SUA to conduct excursion train operations on the Southern and Middle Segments. WLE further acknowledges that CVSR, by conducting excursion train operations, exercising the aforementioned track authority incidental thereto as described in Section 2 above or entering into and performing this Agreement shall not be deemed a dispatcher, common carrier or otherwise be subject to any other statutory, common law or contractual obligations beyond those expressed herein, and shall have no responsibility whatsoever for METRO's maintenance duties as Owner under the SUA or otherwise, except as may be expressly agreed to herein or elsewhere in writing.

4. **Windows of Operation.** Subject and pursuant to the agreements and procedures as prescribed herein, WLE agrees to conduct its freight rail operations during the "Freight Window" and CVSR agrees to conduct its excursion train operations during the "Excursion Window." The Freight Window and Excursion Window (as a subset of the "Passenger

Window") shall be as prescribed in the SUA, as modified by this Agreement and any subsequent agreement[s] pursuant hereto. The Windows for the initial term of this Agreement (ending December 31, 2003) shall be as follows (all times specified herein are Eastern time and are given in 24 hour time):

Freight Window: During the ten-hour period beginning at 2000 on each of the following five consecutive days: Sunday, Monday, Tuesday, Wednesday and Thursday and ending at 0559 the following morning during each week of the calendar year. It is understood that if WLE experiences situations beyond its control causing the need for its operations to exceed the times of the Freight Window, WLE will proceed as set forth in Section 6 below.

Excursion Window: During all times other than during the Freight Window herein, to wit: from 0600 through 1959 on each of the five consecutive days: Sunday, Monday, Tuesday, Wednesday, and Thursday and during the balance of the week not committed to the Freight Window, as provided above. It is understood that if CVSR experiences situations beyond its control causing the need for its operations to exceed the times of the Excursion Window, CVSR will proceed as set forth in Section 6 below.

5. **Track Clearance Responsibility.**

A. **Freight Clearance.** So long as CVSR has released the line prior to the end of its Window in accordance with the procedures set forth in this Section 5, WLE may

commence its operations under its Rules (as defined in the SUA) at the earlier of (i) the beginning of its Window, or (ii) its receipt of a Form (as defined herein) from CVSR. WLE shall be responsible to FAX (as defined herein) to METRO and CVSR a completed and executed Track Release Form ("Form"), substantially in the form of "Annex Alpha" attached hereto and made a part hereof, after it has cleared the line.

B. **Excursion Clearance.** So long as WLE has released the line prior to the end of its Window in accordance with the procedures set forth in this Section 5, CVSR may commence its operations under its Rules (as defined in the SUA) at the earlier of (i) the beginning of its Window, or (ii) its receipt of a Form (as defined herein) from WLE. CVSR shall be responsible to FAX to METRO and WLE a completed and executed Form after it has cleared the line.

C. **Effect of Forms.** A completed Form transmitted by FAX shall be evidence of the assurance by the issuer that all its equipment is off the track and not an impediment to rail operations. No Form shall (i) constitute authorization or direction for track access or conduct of rail operations, (ii) be deemed to make the issuer a "dispatcher", or (iii) diminish or otherwise adversely affect the issuer's rights under its Window or otherwise in the Southern and Middle Segments. Such issuer shall be entitled to rights within its next scheduled Window as agreed. Completed Forms transmitted by FAX shall be effective upon receipt by the addressees (as evidenced by an executed reply FAX or voice {radio or telephone} confirmation, and shall be deemed valid against the issuer only upon execution on behalf of the issuing party by one of the individuals listed below for each issuing party:

- 1) WLE: James Northcraft _____ (signature)
James Hill _____ (signature)
- 2) CVSR: Brian Allan _____ (signature)
Douglas Verner _____ (signature)

FAX and voice phone numbers and addresses for the parties are set forth on Annex Alpha. Each party shall have the right to change Form signatories by informing all other parties of the change by FAX, and at all times shall have no fewer than two (2) qualified employees authorized to execute and issue Forms on its behalf. The inability of WLE to exit the Southern Segment or CVSR to exit the Southern and Middle Segments by the end of the applicable Window shall be communicated by such party to all other parties by FAX.

6. Operations in Other Window. WLE and CVSR expressly acknowledge and adopt for purposes of this Agreement the provisions of the SUA permitting CVSR to operate excursion train service in the Freight Window and permitting WLE to operate freight rail service in the Passenger Window; provided, however, any language to the contrary in the SUA notwithstanding, that the party exercising that right gives the other parties not less than 24 hours prior written notice or such lesser notice as the parties mutually agree and provided further that the exercise of such right does not interfere in any respect with the operations of the other party within its Window. Notwithstanding the foregoing, the parties acknowledge the need to accommodate extraordinary circumstances to facilitate mutually beneficial use of the Southern and Middle Segments while maintaining the complete independence of operations by observing strict temporal separation between freight rail service and excursion train service, and agree to cooperate reasonably to that end. In addition, WLE acknowledges the desire of METRO and CVSR to market and expand the frequency of excursion train service over the Southern and

Middle Segments and METRO's need to perform track maintenance and track inspections during daylight hours during the term of this Agreement. METRO and CVSR acknowledge WLE's desire to market and expand freight rail service on the Southern Segment and, subject to the terms of the SUA, the Middle Segment, WLE's need to meet its common carrier obligation to provide freight rail service to customers on the Southern Segment and, subject to the terms of the SUA, the Middle Segment during the term of this Agreement. METRO and CVSR agree to take all reasonable actions to cause any track maintenance and track inspections to be performed during the Excursion Window. Notwithstanding the preceding sentence and the parameters of the Freight Window and Excursion Window specified in Section 4 and any other provision of this Agreement, in the event METRO reasonably determines that it is necessary to conduct track maintenance, track inspections or operate excursion train service during the Freight Window, WLE agrees that such activities shall have priority over freight operations during the Freight Window and WLE shall take all reasonable actions to adjust its operations to accommodate such activities, while maintaining the complete independence of operations by observing strict temporal separation between freight rail service and excursion train service.

7. **Emergency Notification.** In the event that either WLE or CVSR is unable to clear the line for any reason, including but not limited to accident, derailment or mechanical problems, prior to the end of its Window, that party shall notify METRO by telephone and by FAX as soon as possible but in any event before the expiration of such Window and METRO shall notify the other party before expiration of such Window.

8. **Notices.** Facsimile transmission ("FAX"), electronic transmission ("e-mail") and cellular phones as appropriate under the circumstances shall be utilized for communications hereunder as appropriate and as specified herein provided that all Forms shall be transmitted by

FAX. Otherwise, any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to CVSR: Cuyahoga Valley Scenic Railroad
Fitzwater Maintenance Facility
7600 Canal Road
Valley View, OH 44125
Attn: Director of Operations
Phone: (440) 526-7128
FAX: (440) 526-7612

With a copy to: Cuyahoga Valley Scenic Railroad
1664 Main Street
P.O. Box 158
Peninsula, Ohio 44264-0158
Attn: President
Phone: (800) 468-4070, ext. 3019
FAX: (330) 657-2080

If to WLE: Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613
Attn: President
Phone: (330) 767-7299
FAX: (330) 767-3754

If to METRO: Metro Regional Transit Authority
416 Kenmore Boulevard
Akron, Ohio 44301
Attn: Executive Director/Secretary Treasurer
Phone: (800) 227-9905, ext. 3100
FAX: (330) 761-2215

Any party may provide notice of changes in the above to the other parties by personal service or U.S. mail for notice only.

9. Amendments. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by all parties to this Agreement.

10. **Term of this Agreement; Termination.** This Agreement shall remain in effect for an initial term commencing on the date of this Agreement and ending December 31, 2003, and shall be extended automatically from year to year thereafter without notice or other action from either party. This Agreement shall terminate automatically upon the termination of either of the SUA or the Three-Party Agreement, or upon written notice by any party that it has received notice from METRO that it intends to commence commuter or other passenger rail service on or to assume dispatching responsibility for the Southern Segment or Middle Segment, or upon not less than thirty (30) days written notice from CVSR that it intends to cease the operation of excursion trains on the Southern Segment or Middle Segment and to terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Track Coordination Agreement to be executed in multiple counterparts (each constituting an original of one and the same single contract) as of the day and year first above written.

ATTEST:

WHEELING & LAKE ERIE RAILWAY
COMPANY

By: _____

Title: _____

Title: _____

ATTEST:

CUYAHOGA VALLEY PRESERVATION
AND SCENIC RAILWAY
ASSOCIATION, dba, CUYAHOGA
VALLEY SCENIC RAILROAD

By: _____

Title: _____

Title: _____

ATTEST:

METRO REGIONAL TRANSIT
AUTHORITY

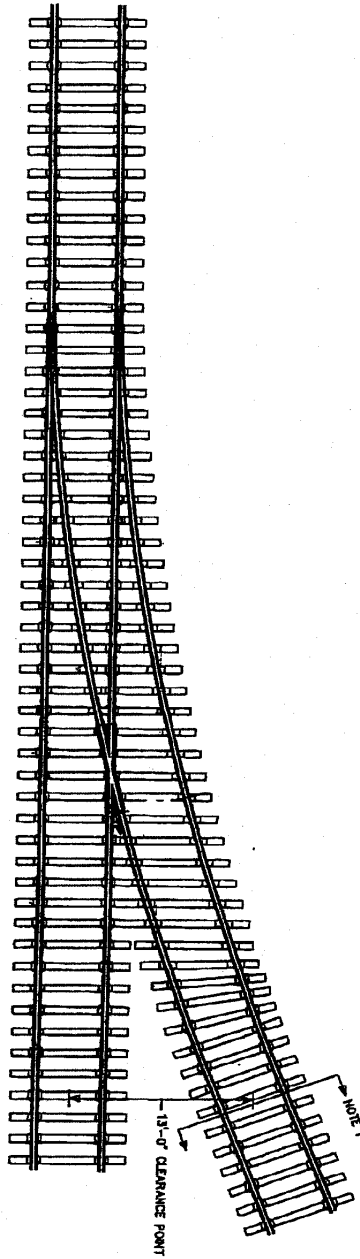
By: _____

Title: _____

Title: _____

* * * * *

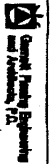
EXHIBIT G



TYPICAL TURNOUT CLEARANCE POINTS

NOTES
1. CANS STORED ON SOWERS SHALL BE PLACED SUCH THAT NO PORTION OF THE CAN SHALL EXTEND BEYOND THE PLANE LOCATED 15 FEET FROM THE CENTERLINE OF TRACK.

NO.	DATE BY	DESCRIPTION	NO.	DATE BY	DESCRIPTION	NO.	DATE BY	DESCRIPTION



METRO REGIONAL TRANSIT AUTHORITY
1000 Lakeside Blvd.
Akron, OH 44301

SANDYVILLE BRANCH
TURNOUT CLEARANCES AND

PLANNING
TOL
SECTION

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