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Before the

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34462

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JUN 12 2004
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MVC TRANSPORTATION, LLC — ACQUISITION EXEMPTION —
P&LE PROPERTIES, INC.

**RESPONSE TO MVC TRANSPORTATION, LLC's
PETITION FOR EXPEDITED DECLARATORY ORDER**

Filed on behalf of:
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Paradise
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Before the
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MVC TRANSPORTATION, LLC — ACQUISITION EXEMPTION —
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**RESPONSE TO MVC TRANSPORTATION, LLC's
PETITION FOR EXPEDITED DECLARATORY ORDER**

ProLine Railroad Track Co. ("ProLine"), by its undersigned counsel, presents this Response to MVC Transportation, LLC's ("MVC's") Petition for Expedited Declaratory Order (the "Declaratory Petition") at the above captioned docket, stating as follows:

I. INTRODUCTION/FACTUAL BACKGROUND

In the Declaratory Petition, MVC seeks a declaratory order from the Surface Transportation Board (the "STB" or "Board") that a Pennsylvania state court is without jurisdiction to decide state law claims involving the ownership of approximately 10.5 miles of Track located in McKees Rocks, Pennsylvania (the "Track") and to declare the ownership of the Track. The Track is located in the former McKees Rocks Yard of the long-defunct Pittsburgh and Lake Erie Railroad Company (the "P&LE Railroad"), which the P&LE Railroad used exclusively for switching, maintenance, warehousing and refueling activities. As detailed in ProLine's Petition to Revoke Verified Notice of Exemption filed at the above docket number contemporaneously with this Response, MVC opened this Finance Docket for the sole strategic purpose of manufacturing jurisdiction in the Board over a common law, state court ownership dispute.

On December 16, 2003, ProLine initiated an action in the Court of Common Pleas of Allegheny County, Pennsylvania alleging state law claims that Mariah Venture Capital & Consulting, Inc. ("Mariah") converted the Track and tortiously interfered with a contract between ProLine and an internet auctioneer to inventory and sell the Track (the "Allegheny County Action"). In the alternative, ProLine sought a declaration regarding ownership of the Track.

On February 18, 2004, Mariah filed an objection to jurisdiction rather than answer the Complaint. While that objection was pending and discovery ongoing, Mariah contrived a plan to open this Finance Docket and invoke STB jurisdiction over the McKees Rocks Yard. Specifically, Mariah proposed a sham transfer of its alleged interest in the Track to MVC, a company with the same initials, address, principals, and counsel as Mariah and likely formed for the sole purpose of facilitating Mariah's plan.

In both the Verified Notice of Exemption and in the Declaratory Petition, MVC claims that an entity known as P&LE Properties, Inc. ("P&LE Properties") holds all "right, title and interest" in the Track; that P&LE Properties allegedly transferred its interest in the Track to Mariah Venture Capital & Consulting, Inc. ("Mariah") in lieu of Mariah foreclosing on a mortgage interest in the Yard; and that Mariah allegedly transferred its interests to MVC; all subsequent to ProLine's initiation of state court litigation. Now, after the state court held that it has jurisdiction over the state court dispute and rejected Mariah's attempt to manufacture jurisdiction, Mariah's alleged assignee and privy, MVC, brings its Declaratory Petition before the Board.

This Board must reject MVC's blatant and bad faith attempt to manufacture jurisdiction in this Board and decline to consider MVC's Declaratory Petition because: (i) MVC has

engaged in forum shopping; (ii) MVC has presented false and misleading facts of ownership to the Board; (iii) the Track is exempt from regulation by the Board, (iv) comity requires this Board to abstain from issuing declaratory orders regarding pending state court litigation; and (v) collateral estoppel requires that this Court accord preclusive effect to the order of the Allegheny County Court regarding that court's jurisdiction.

With regard to MVC's bad faith motives and blatant forum shopping, Mariah/MVC have no legitimate claim to ownership of the Track and have sought to do an end around on the state court litigation by steering the claims to the Board. At the very least, Mariah/MVC significantly increased the cost, inconvenience and complexity to ProLine of obtaining the relief to which it is entitled. MVC's motives are further evidenced by the absence of any apparent substance to the underlying transaction. MVC would have the Board believe that Mariah sat idly upon its alleged rights to foreclose on the mortgage and possess the McKees Rocks Yard and the Track for five years, deciding to transfer those rights to MVC only after ProLine initiated the Allegheny County Action. Moreover, the proposed transaction was not arm's length. The "MVC" in MVC Transportation LLC undoubtedly stands for "Mariah Venture Capital"¹ and the two entities share ownership, addresses and counsel. Finally, MVC has no apparent operations and has stated its intention to sell the Track in the Declaratory Petition.

The Board must also decline to hear the Declaratory Petition because MVC provided the Board with false and misleading facts regarding ownership of the McKees Rocks Yard. As set forth below, P&LE Properties sold the McKees Rocks Yard, including the Track, to Allegheny Railroad Properties, Inc. ("ARP") in 1997 and took a note and mortgage in return. The mortgage

¹ In the Verified Notice of Exemption, MVC identifies Mariah as the "Mariah Capital and Consulting Company." While MVC merely may have been mistaken regarding the actual name of its assignor, it may also have been attempting to obscure the contrived, related nature of the transaction.

and note were assigned to Mariah, which has no other connection to the Track. The mortgage, which extended only to the real estate in the McKees Rocks Yard and not the Track, was **fully discharged and satisfied** on November 24, 1999 with the payment of \$950,000 from various purchasers of the real estate to Mariah. The satisfaction of the note and mortgage was evidenced unmistakably by a publicly-filed satisfaction piece, a true and correct copy of which is attached hereto as Exhibit 1 and incorporated by reference as if set forth in full.

Accordingly, when MVC opened the instant Finance Docket with the Notice of Verified Exemption, P&LE Properties, Inc. was not the owner of the McKees Rocks Yard or Track, and the mortgage forming the sole basis of Mariah's ownership claims was long ago extinguished. The artifice of the MVC transaction is built on a series of falsehoods that should compel this Board to refrain from hearing the Declaratory Petition.

This Board, additionally, cannot entertain the Declaratory Petition because the Track is not common carrier track and is contained within a yard exempt from regulation under 49 U.S.C. § 10906. Mariah admitted in the Allegheny County Action that the Track and Yard have always been used exclusively for traditional, and exempt, yard purposes—switching, maintenance, refueling and repair. Mariah also admitted that the Track has never been used for the common carriage of freight or passengers, or for through rail service. MVC, as the privy of Mariah, is bound by these admissions. Accordingly, there is no basis for the exercise of STB jurisdiction, and the Allegheny County Court of Common Pleas, after considering written briefs and oral argument, was correct in holding that it has proper jurisdiction over the track dispute.

Finally, federal law and respect for comity between two sovereign systems of adjudication permit this Board to abstain from the consideration of petitions for declaratory relief when an action regarding the same matter is pending before a state tribunal. Alternatively, the

doctrine of collateral estoppel requires a tribunal considering similar issues involving the same parties to defer to the decisions made earlier by another tribunal. Because the Allegheny Court of Common Pleas has retained jurisdiction over the complaint filed by ProLine after discovery, briefing and oral argument, rejecting Mariah/MVC's manufactured claim that jurisdiction is only proper before the Board, the STB should invoke either the federal doctrine of abstention or collateral estoppel and refrain from consideration of the Declaratory Petition.

II. ARGUMENT

A. **The Surface Transportation Board should reject MVC's bad faith attempt to manufacture jurisdiction for the Board.**

ProLine initiated a state court civil action in the Court of Common Pleas of Allegheny County, Pennsylvania, at Docket Number GD 03-025297 against Mariah² on December 16, 2003 due to Mariah's interference with ProLine's rights to use, possess, and sell approximately 10.5 miles of the Track (the "Allegheny County Action"). Specifically, Mariah (i) falsely claimed ownership of the Track; (ii) tortiously interfered with a contract between ProLine and an on-line auctioneer, causing an internet auction of the Track to be cancelled; (iii) falsely told prospective purchasers that ProLine does not own the Track; and (iv) refused to acknowledge ProLine's right to immediate use and possession of the Track after a proper demand. ProLine has asserted counts for conversion, tortious interference with contractual relations, and, in the alternative, declaratory judgment with regard to ownership of the Track.

In response to the Complaint, Mariah has engaged in one bad faith act after another. Initially, Mariah failed to respond to the Complaint within the time required by the Pennsylvania

² As the assignee of Mariah, MVC has no greater or lesser rights than Mariah in the Yard and is bound by Mariah's actions, omissions and admission before the state court. *Pines v. Farrell*, 848 A.2d 94, 100 (Pa. 2004); *Himes v. Cameron County Constr. Corp.*, 444 A.2d 98, 100 (Pa. 1982). Moreover, it will be recalled that Mariah and MVC have the same principal investors, mailing address and counsel.

Rules of Civil Procedure. After being served with notice of its failure to respond, Mariah requested an extension of time until February 18, 2004 to answer. Rather than answer, however, Mariah filed a preliminary objection³ asserting that the STB has exclusive jurisdiction over ProLine's state common law claims. Oral argument regarding the preliminary objection was set for May 17, 2004.

In compliance with Allegheny County Local Rule 1028.*8(G), which requires the parties to promptly complete the taking of evidence on the jurisdictional issues by deposition or otherwise, ProLine hand-delivered requests for admissions, interrogatories and document requests to Mariah's then-counsel on March 22, 2004. Mariah failed to respond in any manner to ProLine's discovery, including its requests for admissions. Mariah also failed to propound its own written discovery or take any depositions even though it bore the burden of proof. Finally, Mariah failed to timely file a brief in support of the Preliminary Objection, which by rule was due two weeks prior to the argument, and instead handed-up a brief at the argument.

At the same time that Mariah was refusing to participate in the Allegheny County Action, Mariah and MVC were developing their forum shopping strategy, planning to use false pretenses to invoke the jurisdiction of this Board for strategic purposes. On April 8, 2004, MVC filed the Verified Notice of Exemption stating that Mariah allegedly was planning to assign the note and mortgage for the McKees Rocks Yard to MVC—an entity with the same mailing address, investor principals and legal counsel. Given its timing, the Verified Notice of Exemption was a plain attempt to open an STB docket and obtain the exercise of STB jurisdiction over the McKees Rocks Yard. Mariah then asserted at the argument on the preliminary objection that the

³ Under Pennsylvania state court procedure, a preliminary objection is the equivalent of a motion to dismiss under the Federal Rules of Civil Procedure.

Allegheny County Court of Common Pleas should defer to the STB “proceeding” commenced by the Verified Notice of Exemption.

On April 30, 2004, moreover, Mariah’s then-counsel filed a Petition to Withdraw as Counsel for Defendant, citing “differences...arising from conflicting instructions with regard to responding to discovery served by the Plaintiff, and disagreement between [counsel] and [Mariah] with regard to the strategy to pursue in this matter.” Counsel’s statement in the Petition to Withdraw obviously refers to Mariah’s attempt to maneuver the case before the Board despite the absence of factual basis for the exercise of STB jurisdiction. Moreover Mariah’s prior counsel asserted, in response to a motion for sanctions, that representatives of Mariah/MVC unequivocally instructed counsel not to conduct discovery or schedule depositions. The Petition to Withdraw was granted on May 4, 2004.

On May 17, 2004, the Court issued an Order denying the jurisdictional objection and required Mariah to answer the complaint in 20 days. Mariah then continued its practice of dilatory and bad faith conduct, as it failed to answer the complaint as Ordered and instead sought another bite at the jurisdictional apple by filing the Declaratory Petition through MVC on June 4, 2004. The blatant forum shopping of Mariah and MVC is laid bare by the fact that MVC filed the Declaratory Petition only **after the Court ruled that it has jurisdiction over ProLine’s state court complaint**. Finally, and only after ProLine served a second Notice of Praecepto to Enter Judgment by Default on June 8, 2004 did Mariah finally answer the complaint. Interestingly, the answer contains “counterclaims” brought by MVC against ProLine despite the fact that MVC has not been added as a party to the Allegheny County Action.

Mariah/MVC’s dilatory and bad faith conduct in the Allegheny County Action is readily explained by its lack of any factual basis for the subject matter jurisdiction objection, which was

filed merely to delay and complicate the proceedings and cause ProLine to incur unnecessary expense. MVC's conduct before this Board -- as evidenced by the false and misleading statements contained in the Verified Notice of Exemption and Declaratory Petition, their lack of any factual basis for an ownership claim due to the fully satisfied mortgage, and MVC's continued attempts to manufacture jurisdiction for the Board over a purely state common law dispute -- represents a continuing bad faith attempt to delay and complicate straightforward state law claims while exponentially increasing the cost and frustration for ProLine. This Board should therefore refuse to reward MVC's bad faith attempt to manufacture jurisdiction and instead decline to consider the Declaratory Petition.

B. The claims of MVC and Mariah to ownership of the Track are without merit.

The foundational allegation of MVC's Notice of Exemption—that P&LE Properties owns the Track—is patently false and legally unsupportable. In particular, MVC's assertion that P&LE Properties retained complete ownership of the real property and Track due to the alleged failure of Allegheny Railroad Properties, Inc. ("ARP") to pay for the property cannot be supported by the facts. Instead, as demonstrated below, ProLine owns the Track in the McKees Rocks Yard.⁴

On January 24, 1997, approximately five years after P&LE Properties ceased operating as a common carrier railroad, Allegheny Railroad Properties, Inc. ("ARP") sent P&LE Properties a letter constituting "an offer to purchase the McKees Rocks property located in Allegheny County, Pennsylvania" including "all of the real estate, buildings, **rail facilities**, rights of ways, easements, leases, **and other personal property owned by P&LE Properties, Inc. located on or about the properties.**" A true and correct copy of the offer is attached hereto as Exhibit 2

⁴ A fuller history of the Yard's ownership can be found in the Petition to Revoke the Verified Notice of Exemption, which is incorporated herein by reference.

and incorporated by reference as if set forth in full. The offer is countersigned on behalf of P&LE Properties by John D. Hartman, V.P. – Treasurer under the statement, “AGREED AND ACCEPTED: (Conditioned upon securing all necessary approvals of the U.S. Bankruptcy Court).” In due course, the bankruptcy court entered an Order authorizing P&LE Properties to sell the McKees Rocks Yard property to ARP consistent with the offer.

On April 9, 1997, Mr. Hartman executed, on behalf of P&LE Properties, a Bill of Sale stating that P&LE Properties has sold to ARP “all and singular the furniture, fixtures, **all equipment, track and track materials** and other contents and miscellaneous **personal property on or about the switching yards, maintenance, refueling and other facilities** of the Pittsburgh & Lake Erie Railroad located on approximately 105 acres in McKees Rocks Borough and Stowe Township, Allegheny County, Pennsylvania (**hereinafter “Personal Property”**) ... To have and hold the said **Personal Property** unto the said Allegheny Railroad Properties, Inc., successors and assigns, to and for its own proper use, benefit and behoof, forever.” (emphasis added). A true and correct copy of the Bill of Sale is attached hereto as Exhibit 3 and incorporated by reference as if set forth in full.

On April 22, 1997, Mr. Hartman executed, on behalf of P&LE, an Agreement of Purchase and Sale between Pittsburgh & Lake Erie Properties, Inc. and Allegheny Railroad Properties, Inc. with respect to the real property in the McKees Rocks Yard. A true and correct copy of the Agreement is attached hereto as Exhibit 4 and incorporated by reference as if set forth in full. Paragraph 6.2 of the Agreement provides that P&LE Properties will deed the property to ARP at the closing in exchange for a note and mortgage. In addition, P&LE Properties represented in paragraph 8.1(a) that it would convey good title, free and clear of any

encumbrances, restrictions, and any other matters affecting title, presumably including any necessary regulatory approvals.⁵

Also on April 22, 1997, ARP delivered to P&LE Properties a Cognovit Judgment Note in the amount of \$1,200,000 payable in 24 monthly installments of \$5,000 commencing on June 10, 1997, with the remaining principal and accrued interest to be paid in full on June 10, 1999 (the "balloon payment"). A true and correct copy of the Cognovit Judgment Note is attached hereto as Exhibit 5 and incorporated by reference as if set forth in full. ARP concurrently delivered a Mortgage securing the note in the principal sum of \$1,200,000, a true and correct copy of which is attached hereto as Exhibit 6 and incorporated by reference as if set forth in full. The mortgage extended to the real estate in the McKees Rocks Yard, "the buildings and improvements erected thereon, the appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof." In the event of default, the mortgage authorized P&LE Properties to confess a judgment or series of judgments in an amicable action of ejectment for possession of the mortgage premises.

ProLine believes, and therefore avers, that the closing for the sale of the McKees Rocks yard occurred on April 22, 1997, and that P&LE Properties transferred a special warranty deed to ARP at that time. The consideration consisted of the note, secured by the mortgage.

On May 1, 1997, ARP executed a Bill of Sale from to Kovalchick Corporation for "the track material, rail, switches and ties as described on the map attached as Exhibit "A" and signed by both parties located at McKees Rocks, formerly Pittsburgh & Lake Erie Railroad Yards, said

⁵ In the Notice of Exemption, MVC brazenly attempts to suggest that the transfer to ARP was void and illegal because neither P&LE Properties nor ARP obtained abandonment authorization. If MVC is to be believed, P&LE Properties and MVC are now attempting to gain a benefit from P&LE Properties having apparently delivered encumbered title to ARP in violation of the Agreement of Purchase and Sale. The obvious explanation why P&LE Properties did not seek abandonment authority for the Yard, which could have been simply requested in the bankruptcy court order approving the sale pursuant to 29 U.S.C. § 1170, is that P&LE

Trackage **includes all Trackage purchased by Allegheny Railroad Properties, Inc. from Pittsburgh & Lake Erie Railroad Properties, Inc. at McKees Rocks, PA.**" (emphasis added).

A true and correct copy of the Bill of Sale is attached hereto as Exhibit 7 and incorporated by reference as if set forth in full.

On April 21, 1998, Kovalchick Corporation and ProLine Services, Inc. entered into an Asset Purchase Agreement for the Trackage situated in the McKees Rocks yard that Kovalchick purchased from ARP on May 1, 1997. A true and correct copy of the Asset Purchase Agreement is attached hereto as Exhibit 8 and incorporated by reference as if set forth in full. ProLine Services, Inc., which later assigned its right to the track to ProLine, agreed to pay \$325,000 for the trackage. At a closing on May 8, 1998, Kovalchick Corporation delivered a Bill of Sale for the track purchased from ARP on May 1, 1997, a true and correct copy of which is attached hereto as Exhibit 9 and incorporated by reference as if set forth in full.

ProLine is reliably informed, and therefore avers, that ARP did not make the balloon payment due to P&LE Properties on June 10, 1999. Rather than foreclose on the mortgage, P&LE Properties agreed to assign the mortgage to Mariah for the sum of \$950,000. P&LE Properties submitted a motion to the bankruptcy court seeking approval to assign the mortgage and note, a true and correct copy of which is attached hereto as Exhibit 10 and incorporated by reference as if set forth in full.

The motion stated at paragraph 8, "[O]n April 22, 1997, **the Debtor sold the property to Allegheny Railroad Properties, Inc.** and received a \$1.2 million [note] secured by a first Mortgage." (emphasis added). In paragraph 12, the motion stated, as a rationale for the assignment, that "the Debtor **does not wish to go through the expense of a foreclosure**

Properties—which itself is not a common carrier—recognized that the Yard and the Track are exempt from regulatory oversight.

proceeding if it doesn't have to. The Buyer is willing to assume all of these risks and to have those rights in exchange for a cash payment of \$950,000.00." Accordingly, it is clear from the motion that the rights of P&LE Properties in the McKees Rocks Yard as of 1999 consisted of the note and mortgage, with a right to foreclose in the event of a default. If P&LE Properties still owned the McKees Rocks Yard in 1999, there certainly would be no need for P&LE to foreclose on the property and no risk involved in doing so.

Although the bankruptcy court approved the assignment to Mariah by order dated June 18, 1999, Mariah postponed the closing on the assignment several times in the summer and fall of 1999 because it did not have the necessary funds. During this time, Mariah negotiated with ARP, and various landowners who had purchased parcels from ARP, with regard to settling ARP's payment default and avoiding execution and foreclosure. Mariah and the landowners agreed to satisfy the mortgage for the collective sum of \$950,000, which was paid at a multi-party closing held on November 24, 1999. Mariah finally completed the assignment at the closing and immediately paid the funds over to P&LE Properties. True and correct copies of the assignment and the order approving the assignment are attached hereto as Exhibit 11 and incorporated by reference as if set forth in full.

Also on November 24, 1999, James Frank executed, on behalf of Mariah, a **Satisfaction Piece** certifying "that the debt secured by the above-mentioned Mortgage has been fully paid or otherwise discharged and that upon the recording hereof said Mortgage shall be and is hereby fully and forever satisfied and discharged." (emphasis added). *See* Exhibit 1. The mortgage referenced in the Satisfaction Piece was the entire \$1.2 million mortgage given by ARP on April 22, 1997. The Satisfaction Piece was recorded with the Allegheny County Recorder of Deeds on November 30, 1999.

In light of the foregoing, MVC's assertion in the Notice of Exemption and Declaratory Petition that P&LE Properties holds all right, title and interest in the Track cannot be credited. Instead, the facts clearly demonstrate that the entire McKees Rocks Yard, including the Track, was conveyed from P&LE Properties to ARP in 1997. A closing occurred and title to the assets passed at that time. P&LE Properties retained only a mortgage interest, not ownership. The mortgage, by its own terms, extended only to the real property conveyed to ARP. The mortgage did not include the track, which was expressly characterized as personal property. However, even assuming that the mortgage did include the track, Mariah compromised its mortgage interest and accepted a collective payment of \$950,000 in lieu of its right to foreclose on and possess the mortgaged property. **This is vividly illustrated by the signed and publicly recorded Satisfaction Piece certifying that the mortgage and note are fully and forever satisfied and discharged. Mariah, therefore, had nothing to assign to MVC.**

MVC's position, on the other hand, is riddled with logical inconsistencies. For instance, in both the Notice of Exemption and the Declaratory Petition, MVC contends that the transaction between P&LE Properties and ARP either did not close or somehow failed such that P&LE Properties remained the owner of the McKees Rocks Yard. Nonetheless, MVC apparently contends that P&LE Properties obtained a valid mortgage interest in its own property, and that ARP remained liable on the note even though it did not receive title to the property. When ARP purportedly defaulted on the note, P&LE Properties allegedly became entitled to foreclose on its own property, but instead chose to assign that right to Mariah for \$950,000. MVC would have the STB believe that Mariah then idly sat upon its rights to foreclose or possess the property from 1999 to 2004. Meanwhile, P&LE Properties apparently was permitted to wind up its affairs and receive a discharge in bankruptcy while holding onto the McKees Rocks Yard as a corporate

asset. Of course, MVC's creative account does not acknowledge the closing in November 1999 and publicly-recorded Satisfaction Piece.

For the foregoing reasons, it is manifestly clear that any claim that P&LE Properties owns the McKees Rocks Yard and trackage located therein is false and misleading. Moreover, the alleged mortgage interest possessed by Mariah has been discharged and satisfied such that Mariah had nothing to transfer to MVC. Since MVC had no mortgage interest, there could not have been consideration for P&LE Properties' alleged transfer of the Yard to MVC. In short, the entire transaction is a sham built upon a foundation of intentional falsehoods solely for the purpose of investing this Board with jurisdiction. Such a sham transaction cannot create jurisdiction in this Board and, consequently, MVC should not consider the Declaratory Petition.

C. The track is not common carrier track and is contained in a Yard exempt from regulation under 49 U.S.C. § 10906.

Mariah, by failing to answer or object to ProLine's Requests for Admissions served in the Allegheny County Action, a true and correct copy of which is attached hereto as Exhibit 12 and incorporated by reference as if set forth in full, has admitted the matters set forth therein. Pa.R.Civ.P. 4014(b) ("The matter [of a request for an admission] is admitted unless, within thirty days after service of the request . . . the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the party's attorney[.]"). Those matters admitted are "conclusively established" for purposes of the litigation. Pa.R.Civ.P. 4014(d).

Under Pennsylvania law, MVC, the alleged assignee, succeeds to no greater rights than those possessed by the assignor, Mariah. *Pines v. Farrell*, 848 A.2d 94, 100 (Pa. 2004); *Himes v. Cameron County Constr. Corp.*, 444 A.2d 98, 100 (Pa. 1982). Accordingly, MVC is bound by Mariah's admissions in the Allegheny County Action regarding the following facts:

1. That the Pittsburgh & Lake Erie Railroad Company ceased operating as a railroad under Interstate Commerce Commission (now Surface Transportation Board) regulations and the Interstate Commerce Act (now the Interstate Commerce Commission Termination Act) on or before July 1993.
2. That, on July 2, 1993, the Pittsburgh & Lake Erie Railroad Company changed its name to Pittsburgh & Lake Erie Properties, Inc. to reflect its total cessation of business as a railroad.
3. That Pittsburgh & Lake Erie Railroad Company obtained all necessary regulatory approvals for its cessation of operations as a common carrier railroad.
4. That Pittsburgh & Lake Erie Railroad Company was not required to obtain authorization from the Interstate Commerce Commission (now the Surface Transportation Board) to abandon the Track⁶ when it ceased operations as a common carrier railroad because the Track was exempt from regulation under 49 U.S.C. § 10906.
5. That Pittsburgh & Lake Erie Properties, Inc. owned the Track from July 2, 1993 through March 1997.
6. That during the period from July 2, 1993 through March 1997, Pittsburgh & Lake Erie Properties, Inc. did not operate as a common carrier railroad.
7. That the Track is located in the Yard.⁷
8. That the Yard historically was operated by Pittsburgh & Lake Erie Railroad Company as a switching yard and had refueling, warehousing and maintenance facilities, including a roundhouse, a machine and erecting shop, a boiler and tank shop, a diesel shop, a lacquer shop, a freight car shop, an upholstering shop, a paint shop, car cleaning facilities, a woodworking shop, lumber storage facilities, and facilities for storing paints and other solvents.
9. That the Yard was used historically by Pittsburgh & Lake Erie Railroad Company exclusively for switching, maintenance, warehousing and refueling activities.
10. That no Person, including without limitation the Pittsburgh & Lake Erie Railroad Company, ever provided common carriage of freight or passengers over the Track.

⁶ The "Track" was defined in the Requests for Admissions as those 10.5 +/- miles of Track and trackage including railroad ties, switches, frogs, tie plates and related material located in the Yard, the rights to which are at issue in the Complaint filed by ProLine in the Allegheny County Action. The Track is a portion of the Track for which MVC filed the Notice of Exemption.

⁷ The "Yard" was defined in the Requests for Admissions as those two parcels consisting of approximately 105 acres in McKees Rocks Borough and Stowe Township, Allegheny County, Pennsylvania, SS 330 to SS 415 (River Crossing to Neville Island Bridge), containing various improvements and track, upon which the Pittsburgh & Lake Erie Railroad Company formerly maintained switching yards and maintenance, refueling and other facilities. The Yard is the "McKees Rocks Yard."

11. That the Track has never been used for through rail service.
12. That Pittsburgh & Lake Erie Properties, Inc. sold the Track to Allegheny Railroad Properties, Inc. in 1997.
13. That Allegheny Railroad Properties, Inc. is not, and never has been, a common carrier railroad.
14. That ProLine has never been engaged in providing common carrier railroad transportation to the public for compensation.
15. That ProLine is not presently, and has never been, a "rail carrier" as defined in 49 U.S.C. § 10102(5).

Many of the admission are based on statements of P&LE Properties found in a publicly-filed bankruptcy pleading seeking approval to sell the McKees Rocks Yard to ARP. ProLine asks the Board to take judicial notice of the pleading, a true and correct copy of which is attached hereto as Exhibit 13 and incorporated by reference as if set forth in full.⁸

Section 10501(a)(1) of title 49, United States Code, proscribes the jurisdiction of the Surface Transportation Board over transportation by a "rail carrier." A "rail carrier" is defined in 49 U.S.C. § 10102(5) as "a person providing common carrier railroad transportation for compensation." Accordingly, the STB's jurisdiction is limited to common carriers. *Bar Technologies*, 73 F.Supp.2d at 514-15; *Willis v. Surface Transp. Bd.* 51 Fed. Appx. 321 (D.C. Cir. 2002) (STB "has no jurisdiction over private track").

"Both judicial and administrative adjudications have...defined a 'common carrier' as an entity that offers its services for compensation to all members of the public that are in a position to use them." *Bar Technologies*, 73 F.Supp.2d at 515 (citations omitted); *Kelly v. Gen'l Elec. Co.*, 110 F. Supp. 4, 6 (E.D. Pa. 1953) ("common carrier" is defined as "one who holds himself

⁸ Admission No. 1 is stated in paragraph 5 of the Motion included in Exhibit 13; Admission No. 2 is stated in paragraph 5 of the Motion; Admission No. 5 is stated generally in the Motion; Admission No. 6 is stated in paragraphs 5 and 6 of the Motion; Admission No. 8 is stated in paragraph 8 of the Motion; Admission No. 9 is stated in paragraph 8 of the Motion; and Admission No. 12 followed the entry of the Order approving the sale.

[STB] jurisdiction.” *Hughes* at 612, citing *Nicholson v. I.C.C.*, 711 F.2d 364, 368 (D.C. Cir. 1983) (upholding ICC’s application of rule that switching yards are “consistently held exempt” from jurisdiction).¹⁰

MVC is bound by Mariah’s admission that the Track “was exempt from regulation under 49 U.S.C. § 10906” when the former operator of the McKees Rocks Yard, the P&LE Railroad, ceased operating as a common carrier railroad, such that no abandonment authority was required from the ICC (now STB). *See* Admission No. 4. Additionally, MVC cannot escape Mariah’s further admission that the Yard, which contains the Track, was used historically by the P&LE Railroad exclusively for switching, maintenance, warehousing and refueling activities, all of which are incidental to point-to-point transportation. *See* Admissions Nos. 7, 8, and 9. It also was admitted by Mariah that the Track was not used for through rail service, and that no person has ever provided common carriage of freight or passengers over the Track. *See* Admissions No. 10 and 11. In light of these admissions, it is indisputable that the Track is within the Section 10906 exemption, and it is impossible for MVC to meet its burden of demonstrating that this Board has exclusive jurisdiction over the Track.

Despite the foregoing, MVC maintains without evidentiary support that the Track is subject to STB regulation. As has been shown above, MVC’s argument regarding common carrier use by the P&LE Railroad and/or P&LE Properties is plainly debunked by the facts. The admissions of Mariah demonstrate that the Track was and is switching and/or industrial spur

¹⁰ While “there is no single test of what constitutes exempt track under 49 U.S.C. 10906,” the STB’s “analysis must focus on the disputed track’s use, history and physical characteristics, and we rely on a variety of indicia, including: the length of the track; whether it serves more than one shipper; whether it is stub-ended; whether it was built to invade the territory of another railroad; whether the shipper is located at the end of the track; whether there is regularly scheduled service; the volume of traffic moving over the track; who owns and maintains the track; whether the track was constructed with light weight rail; the condition of the track; what the track is used for (e.g. loading, unloading, switching); and whether there are stations on the track. *Chicago Southshore & South Bend R.R. – Petition for Declaratory Order – Status of Track at Hammond, IN*, 1998 WL 877617, STB Finance Docket No. 33522 (December 17, 1998) at *2.

track that was never used by the P&LE Railroad for common carrier service. MVC, moreover, presents no facts to even suggest a contrary conclusion.

The assertion that service by CSXT to individual shippers who have located in the McKees Rocks Yard somehow transformed the Track into common carrier track is similarly unavailing for MVC. Mere service to individual shippers is not sufficient to turn private track into common carrier track, and MVC cites no authority that so holds. In fact, it seems that MVC purposefully confuses service from a common carrier, such as CSXT, with common carrier track. Common carriers can and do operate on track that is not common carrier track. For example, the United State Code recognizes and delineates exemptions for “spur, industrial, team, switching, or side tracks” at 49 U.S.C. section 10906. Moreover, as precedent from this Board demonstrates, the question of whether a piece of track has common carrier or exempt status depends upon a host of factors, not simply whether the service is provided by a common carrier. MVC provided this Board with no evidence that such additional factors are met in this case, only unfounded assertions. *See, e.g., Chicago Southshore & South Bend R.R., supra.* MVC’s arguments regarding the common carrier status of the Track whither upon close examination. In neither the Notice of Exemption nor the Petition for Declaratory Order does MVC even attempt to quantify or qualify its claims regarding the total number of shippers in the Yard, where those shippers are located, the number of daily, weekly or monthly shipments, the frequency of service or the quality of the rails in the Yard.

In fact, applying the *Southshore* factors reveals that this Track is certainly not common carrier track. It is a short amount of Track, a small part of which is used infrequently for loading and unloading freight destined to or from a single shipper. ProLine estimates that such shipments occur once every quarter. The track was not built to invade another carrier’s territory,

instead having served historically as a Yard. The Track is constructed with lightweight rail, has no regularly scheduled service and the volume moving over it is extremely small. ProLine owns the Track and, to the extent necessary, maintains the Track, though it is not maintained for everyday use.¹¹ There are no stations along the Track. Given that the Track meets practically none of the *Southshore* factors, there is no possible way that MVC can honestly maintain that it is regulated track.

D. Federal abstention doctrine requires this Board to dismiss MVC's petition for declaratory relief.

MVC relies upon section 554(e) of the Administrative Procedures Act (5 U.S.C. § 501 et seq.) as authority for its request upon this Board for a declaratory order. Section 554(e) provides:

The agency, with like effect as in the case of other orders, and in its sound discretion, **may issue a declaratory order** to terminate a controversy or remove uncertainty. (emphasis added).

As the act plainly provides, while this Board has the discretionary power to issue declaratory orders, the issuance of such orders is never required. *See, e.g., Central Freight Lines v. Interstate Commerce Comm'n*, 899 F.2d 413, 419 (5th Cir. 1990); *Intercity Transp. Co. v. United States*, 737 F.2d 103, 109-110 (D.C.Cir. 1984).

This discretionary aspect of section 554(e) is analogous to the federal Declaratory Judgments Act. Federal declaratory judgment actions are discretionary, and federal courts are permitted to abstain from hearing them when a prior action is pending regarding the same matter in a state court. *See Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995); *The Sherwin-Williams Co. v. Holmes County*, 343 F.3d 383 (5th Cir. 2003). This type of federal abstention has been considered by administrative agencies. *See, e.g., TAK Consulting Eng'rs v. Sam Bustani*, 1998

¹¹ Photographs depicting the condition of the Track are attached hereto collectively as Exhibit ____.

WL 940845, Fed. Mar. Comm'n Docket No. 98-13 (1998) (Federal Maritime Commission may abstain from issuing declaratory relief in favor of a pending state court proceeding).

The Supreme Court has noted, "On its face, the [Declaratory Judgments Act] provides that a court 'may declare the rights and other legal relations of any interested party seeking such declaration[.]'" *Wilton*, 515 U.S. at 286 (citing 28 U.S.C. § 2201(a)) (emphasis in original); see also *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942).¹² The Court further explained that the Declaratory Judgments Act is a an enabling Act that confers discretion upon the courts rather than an absolute right upon a litigant. *Id.* at 287. Regarding the breadth of that discretion, the Court stated, "In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Id.* at 288.

The United States Court of Appeals for the Fifth Circuit recently identified seven nonexclusive factors to be considered when a federal court is deciding whether to adjudicate or dismiss a declaratory action. *Sherwin-Williams*, 343 F.3d at 388 (citing *St. Paul Ins. Co. v. Trejo*, 39 F.3d 585 (5th Cir. 1994)).¹³ Those factors are:

- (1) whether there is a pending state action in which all of the matters in controversy may be fully litigated;
- (2) whether the federal plaintiff filed suit in anticipation of a lawsuit filed by the defendant;
- (3) whether the federal plaintiff engaged in forum shopping in bringing the declaratory action;

¹² *Wilton*, in fact, specifically dealt with the question of whether the more stringent "exceptional circumstances" test for abstention established by *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 491 (1976), and *Moses H. Cone Mem. Hosp. v. Mercury Constr. Co.*, 460 U.S. 1 (1983) or the discretionary standard for abstention found in *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942) applied to federal declaratory judgment actions.

¹³ As the Fifth Circuit Court of Appeal's opinion in *Sherwin-Williams* notes, practically every Circuit Court has developed a similar set of factors which address the following three areas of inquiry: (1) the proper allocation of decision-making authority between the state and federal courts; (2) fairness, and (3) efficiency. 343 F.3d at 390 n.2, 391.

(4) whether possible inequities exist in allowing the declaratory plaintiff to gain precedence in time or to change forums;

(5) whether the federal court is a convenient forum for the parties and witnesses;

(6) whether retaining the lawsuit would serve the purposes of judicial economy; and

(7) whether the federal court is being called on to construe a state judicial decree involving the same parties and entered by the court before whom the parallel state suit between the same parties is pending.

Sherwin-Williams, 343 F.3d at 388. Given the similarity of the discretionary nature of the Declaratory Judgments Act and Section 554(e) of the Administrative Procedures Act, and the fact that federal agencies have considered federal abstention doctrine in the context of an administrative proceeding, this Board should apply the *Sherwin-Williams* factors to MVC's request for declaratory relief.

An application of those factors quickly reveals that this Board should abstain from issuing any declaratory orders in this matter. As previously noted, the Allegheny County Action is pending in the state courts of Pennsylvania. That litigation was filed by ProLine in December 2003 in order to have the court decide state law claims regarding ownership of the Track. The Allegheny County Action, therefore, was filed prior to when MVC filed either the Notice of Exemption or the Declaratory Petition—both of which were contrived by MVC/Mariah in a bad faith attempt to manufacture jurisdiction in this Board so that MVC could add cost and complexity to this litigation.

Second, MVC did not file its request for declaratory order in anticipation of the filing of a lawsuit but instead, as demonstrated above, in an attempt to circumvent the jurisdiction of the Court of Common Pleas of Allegheny County. Third, given Mariah's bad faith conduct and lack

of a defense on the merits in the Allegheny County Action, it is plain that MVC is engaged in blatant forum shopping with the Declaratory Petition.

Fourth, significant inequities between ProLine and MVC will result if MVC is allowed to proceed before the Board. As detailed above, the dilatory conduct of Mariah and its privy MVC in the Allegheny County Action, and the concomitant time and expense that such conduct has caused ProLine to bear in litigating the jurisdictional issues to a conclusion in the state court, including discovery, briefing and oral argument, amounts to bad faith. MVC's invocation of the alleged jurisdiction of this Board via the Notice of Exemption and Declaratory Petition is part and parcel of that bad faith conduct. The Board should not countenance MVC's bad faith conduct and instead should permit ProLine its right to proceed in the state court forum of its choice.

Fifth, this Board is not a convenient forum for the parties to adjudicate ownership of the Track. All parties and counsel are located in Pittsburgh, Pennsylvania. Moreover, as noted above, a determination of the ownership of the Track involves the careful examination of several complex transactions and legal records. The persons and records pertinent to that investigation are readily available in Southwestern Pennsylvania. The issues involved in such a determination, moreover, are the types of issues—property rights in particular—that state courts of general jurisdiction routinely address. Allegheny County, therefore, is a more convenient forum in which to adjudicate this matter.

Sixth, retention of this lawsuit by the Board would not serve the interests of judicial economy. The Allegheny County Court of Common Pleas already has adjudicated the issue of jurisdiction against MVC's assignor Mariah after discovery, briefing and oral argument. Mariah has now filed an answer and counterclaim that raises issues on behalf of MVC. *See Answer,*

New Matter and Counterclaim, a true and correct copy of which is attached hereto as Exhibit 15 and incorporated by reference as if set forth in full, at ¶¶ 31, 33-35, 39-40. Given the extensive and continuing activity in the Allegheny County Action, judicial economy is served only if this Board abstains.

Finally, by filing the Declaratory Petition only after the Allegheny County Court of Common Pleas issued its Order concluding that it has proper jurisdiction over the dispute between ProLine and MVC's privy, Mariah, MVC is effectively asking this Board to reverse that Order. As discussed herein below, the Order estops Mariah and those in privity with it, such as MVC, from collaterally challenging the Order. More than anything else, this factor clearly demonstrates MVC's bad faith in coming before this Board for declaratory relief as it makes plain MVC's decision to forum shop in an attempt to obtain a more advantageous ruling regarding jurisdiction.

As application of the *Sherwin-Williams* factors demonstrates, all of the facts of this matter support abstention by this Board. This Board, therefore, should reject MVC's blatant attempt at forum shopping and instead abstain from ruling on the Declaratory Petition.

E. This Board's consideration of MVC's request for declaratory relief is barred by the doctrine of collateral estoppel.

After extensive briefing, discovery and oral argument, on May 17, 2004, the Allegheny County Court of Common Pleas ruled that it has proper subject matter jurisdiction over ProLine's state law claims regarding ownership of the Track. MVC, as the privy of Mariah, is barred from relitigating the jurisdictional issue by the doctrine of collateral estoppel. Since the

ruling of the Court of Common Pleas of Allegheny County is entitled to preclusive effect, the STB should decline to entertain the Declaratory Petition.¹⁴

There are four elements to collateral estoppel under Pennsylvania law: (1) an identical issue was decided in a prior adjudication; (2) there was a final judgment on the merits; (3) the party against whom the bar is asserted was a party or in privity with a party to the prior litigation; and (4) the party or privy against whom the bar is asserted had a full and fair opportunity to litigate the issue in question. *Sicalides v. Hartford Cas. Ins. Co.*, 94 Fed.Appx. 882, 883-884 (3d. Cir. 2004) (applying Pennsylvania law). Importantly, for purposes of collateral estoppel, an order is final under Pennsylvania law unless and until it is reversed on appeal. *Yonkers v. Donora Boro.*, 702 A.2d 618, 620 (Pa.Cmwlth. 1997). The purpose of such a rule is to prevent duplication of litigation. *Id.* at 621.

The facts of the instant case plainly fulfill the elements of collateral estoppel under Pennsylvania law. First, the issues are identical. The Court of Common Pleas of Allegheny County decided that it has proper subject matter jurisdiction over the Track and can adjudicate the parties' rights to ownership of the Track. MVC's Declaratory Petition requests this Board to declare that the state court does not have jurisdiction over the very same Track. Plainly, these are two sides of the same, identical issue.

Second, the state court decided this issue on the merits. The court permitted both sides to conduct discovery,¹⁵ reviewed extensive briefs filed by the parties and heard oral argument

¹⁴ ProLine named Mariah as defendant in the Allegheny County Action because Mariah had identified itself to ProLine and others as an alleged owner of the Track in late 2003. According to the Notice of Exemption that MVC filed with this Board on April 8, 2004, Mariah intended to assign its alleged rights (in the form of a mortgage and note) in the McKees Rocks Yard, including the Track, to MVC in April 2004. Under Pennsylvania law, MVC has no greater rights in the property assigned than the assignor, Mariah. *Pines*, 848 at 100; *Himes*, 444 at 100. MVC's Declaratory Petition, therefore, is a clear attempt by MVC to collaterally attack the finding of the Allegheny County Court of Common Pleas that it has proper jurisdiction over the Track.

before it issued its order. Mariah, moreover, did not seek to appeal the order on an interlocutory basis. Therefore, the order of the Allegheny County court is final. *See Yonkers, supra*.

Third, as the assignee of Mariah, MVC, the entity against whom ProLine asserts the bar of collateral estoppel, is in privity with Mariah, the entity bound by the order of the Allegheny County court. Finally, Mariah is the party that initially raised the jurisdictional objection in the state court. As noted both herein and in the Petition to Revoke, the Allegheny County court afforded Mariah, which is in privity with MVC, a full and fair opportunity to litigate the issue of jurisdiction. MVC can hardly claim that it was unaware of the proceeding or unable to participate through Mariah.

Given that all four elements of collateral estoppel are met by the facts of this case and that the order of the Allegheny County Court of Common Pleas is final under Pennsylvania law, the Board should decline to consider MVC's Declaratory Petition.

¹⁵ While it is true that only ProLine exercised its right to take discovery, despite Mariah's obligation to prove the allegations of its Preliminary Objections raising questions of fact, nothing prevented Mariah from conducting discovery. In fact, Mariah specifically instructed its then-counsel **not** to take discovery.

III. CONCLUSION

In light of the foregoing, ProLine respectfully requests that this Board refuse to consider or open proceedings regarding MVC's Petition for Expedited Declaratory Order.

Respectfully submitted,

FOX ROTHSCHILD, LLP



Jay D. Marinstein

Patrick L. Abramowich

John R. Gotaskie, Jr.

625 Liberty Avenue, 29th Floor
Pittsburgh, PA 15222

Telephone: (412) 391-1334

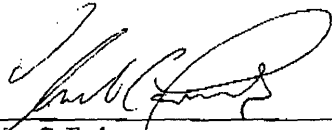
Facsimile: (412) 391-6984

Counsel for ProLine Railroad Track Co.

Dated: June 24, 2004

VERIFICATION

I, Christian C. Farls, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on June 23, 2004.



Christian C. Farls
ProLine Railroad Track Co.

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34462

MVC TRANSPORTATION, LLC — ACQUISITION EXEMPTION —
P&LE PROPERTIES, INC.

ORDER

AND NOW, this ____ day of _____, 2004, it is hereby ORDERED and
DECREED that the Surface Transportation Board DECLINES to consider MVC Transportation,
LLC's Petition for Expedited Declaratory Order.

SATISFACTION PIECE

Made this 24th day of November, 1999.

Name of Mortgagor: Allegheny Railroad Properties, Inc., a Pennsylvania corporation

Name of Mortgagee: Pittsburgh & Lake Erie Properties, Inc., a Delaware corporation

Name of Last Assignee: Mariah Venture Capital & Consulting Co.

Date of Mortgage: April 22, 1997

Original Mortgage Debt: \$1,200,000.00

Mortgage Recorded on April 28, 1997, in the Office of the Recorder of Deeds of
Allegheny County, Pennsylvania, in Mortgage Book Volume 16566,

Page 473, (Unless the word "none" is inserted after the "Name of Last Assignee" above,

include the following): Last Assignment recorded on _____, 19____, in the Office

of the Recorder of Deeds of _____ County, Pennsylvania, in Mortgage Book

Volume _____, page _____.

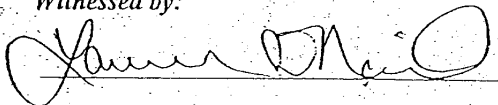
Brief Description or Statement of Location of Mortgaged Premises:

SEE ATTACHED EXHIBIT "A"

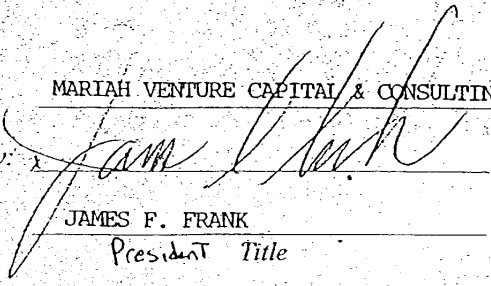
The undersigned hereby certifies that the debt secured by the above-mentioned Mortgage has been fully paid or otherwise discharged and that upon the recording hereof said Mortgage shall be and is hereby fully and forever satisfied and discharged.

Witness the due execution hereof:

Witnessed by:



MARIAH VENTURE CAPITAL & CONSULTING CO.

By: 

JAMES F. FRANK

President Title

ACKNOWLEDGMENT

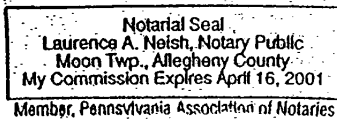
COMMONWEALTH OF PENNSYLVANIA)

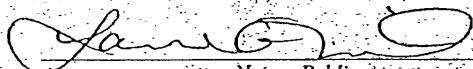
) ss:

COUNTY OF ALLEGHENY)

On this 24th of Nov., 1999, before me, a notary public, the undersigned officer personally appeared who acknowledged herself/himself to be the President of Mariah Venture Capital, organized and existing under the laws of the United States of America, and that she/he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself/himself as such officer.

In witness whereof, I hereunto set my hand and official seal.




Notary Public SEAL

CERTIFICATE OF RESIDENCE

I, Laurence A. Neish, do hereby certify that Mortgagee's precise residence is

1/6 98 Glenbury Street, Pittsburgh, PA 15234

Witness my hand this 24th day of November, 1999


MORTGAGEE or AGENT for MORTGAGEE

SATISFACTION OF MORTGAGE

From MARIAH VENTURE CAPITAL & CONSULTING CO.

To ALLEGHENY RAILROAD PROPERTIES, INC., a Pennsylvania corporation

Dated:

Return when recorded to:

STREAMLINE SETTLEMENT
300 Mt. Lebanon Blvd.



JAN-24-1997 16:04 FROM Pgh & Lake Erie Prop

TO

8434343* P.01

JAN-24-1997 14:53 FROM PITTSBURGH PA.

TO

2633913 P.02

ALLEGHENY RAILROAD PROPERTIES, INC.

139 St. Thomas Drive
Beaver Falls, PA 15010
(412) 843-4343

January 24, 1997

Mr. J. D. Hartman
Pittsburgh & Lake Erie Properties, Inc.
Suite 548, Commerce Court
Four Station Square
Pittsburgh, PA 15210

Dear Mr. Hartman:

As we discussed during our meeting on January 23, 1997, following you will find an offer to purchase the McKees Rocks property located in Allegheny County, Pennsylvania which I have prepared in light of our discussion. This offer includes all of the real estate, buildings, rail facilities, rights of ways, easements, leases, and other personal property owned by P&LE Properties, Inc. located on or about the properties. The buyer will be Allegheny Railroad Properties, Inc., or its assignees.

The purchase price is One Million Two Hundred Thousand Dollars (\$1,200,000.00)..

The purchase price will be paid to the seller as follows:

- a) One Hundred Twenty Thousand Dollars (\$120,000.00) of the purchase price will be paid in twenty-four (24) monthly installment payments of \$5,000.00 each. Payments start on the 30th day after closing with each subsequent payment to be made on the same day of the following 23 months.
- b) Interest at the rate of seven (7%) percent will accrue on the outstanding principal balance.
- c) The principal balance of \$1,080,000.00 together with all accrued interest, if not sooner paid, will be paid to the seller on the 10th day of the 25th month after closing of this transaction.
- d) The Buyer may make a full or partial prepayment at any time without paying any prepayment charge. If Buyer makes a partial prepayment then the due date/amount of subsequent monthly payments will be changed to reflect the application and credit of the prepayment against the monthly payments and then the remaining principal and accrued interest.

JAN-24-1997 16:04 FROM gh & Lake Erie Prop
JAN-24-1997 14:53 FROM PITTSBURGH PA.

TO
TO
8434343* P.02
2633913 P.03

Mr. J. D. Hartman
January 24, 1997
Page 2

- e) The debt shall be secured by a valid first mortgage on the property, and shall be evidenced by a cognovit note containing the above terms.
- f) In addition to the prepayment right, the documentation shall contain a provision allowing for the buyer to secure partial releases, as property may be sold upon payment by the buyer of one-half of the net proceeds to seller.

As you are aware, I fashion this offer only after a long study of this property. In reviewing this property, and in fashioning this offer, I would ask you to note what I believe are serious impediments to the property's salability. These include but are not limited to the following:

- a) There are low rental long term leases with options to purchase to various tenants. These severely restrict marketability.
- b) Those leases also apparently contain provisions allowing offsets for tenant made improvements against the purchase price, i.e. the tenant makes a \$50,000 improvement, and the purchase price goes down \$50,000.
- c) The properties are currently a negative cash flow to your corporation due to taxes and insurance.
- d) There appears to be substantial environmental problems associated with the properties requiring ongoing cash outlays and perhaps eventual remedial work necessary.

While I am sure the lease/purchase option terms were viewed by Mr. Gordon Neuenschwander as being necessary elements to get the properties leased, they now provide substantial impediment to a perspective purchaser.

Further, by accepting my proposal, no brokerage or real estate commissions would be due. An added advantage is that offsetting the ongoing outlay being made by P&L Properties, my proposal would provide for a positive cash flow with a full cash payout within two (2) years.

The other general terms which I would like to address is that I would expect a Deed to be of special warranty. Please note that this offer is contingent upon buyer obtaining and receiving a title report evidencing free and clear title insurable at standard title insurance rates except for the leases (as described above) and beneficial easements. Buyer will obtain this report within twenty (20) days after this offer is accepted by the Bankruptcy Court and will immediately provide you with a copy together with a list of any title exceptions which would render the property uninsurable at standard title insurance rate. These exceptions must be resolved by mutual agreement of buyer and seller or waived by buyer in writing within thirty (30) days after buyer notifies seller. Failure to resolve title exceptions as provided above shall cause this offer to terminate.

I understand from our discussions that there are some minor environmental problems at the property. Currently, you will be having monitoring wells drilled and a Phase Two Environmental Study done on the property within the next sixty (60) days. You have agreed to make available to buyer or its designated agents any and all environmental information, including the results of the

JAN-24-1997 16:05 FROM Pgh & Lake Erie Prop
JAN-24-1997 14:54 FROM PITTSBURGH PA.

TO 8434343* P.03
TO 2633913 P.04

Mr. J. D. Hartman
January 24, 1997
Page 3

above. By the later of the thirty (30) days after delivery of the Phase Two and well monitoring results, buyer will evaluate this data and advise seller in writing if it is acceptable, in which case the transaction will proceed, or if unacceptable, in which event the offer will terminate. Further, if buyer closes on this transaction, it will agree to indemnify and hold seller harmless from environmental liability.

Finally, you have told me that there will be no real estate transfer tax stamps due and payable due to Bankruptcy Court jurisdiction in this matter.

Lastly, I understand that Bankruptcy Court approval will be necessary. We briefly reviewed the process, and it looks like it would take approximately two months to secure this approval. That time table is acceptable subject to my receiving the appropriate corporate approval that this transaction will be recommended to the Bankruptcy Court. I understand that this deal cannot be consummated without Bankruptcy Court approval, and by signing below, I am only asking that there be a corporate acknowledgment that the deal is acceptable. Since I have been personally involved in four (4) prior transaction, you know that I am able to make a transaction like this happen. I feel that this track record should be brought to the attention of the decision makers in this approval process since it is certainly relevant to their deliberations.

If you have any questions, please contact me. If it is acceptable to you, kindly sign and fax me a return copy today so that we can proceed.

Very truly yours,

ALLEGHENY RAILROAD
PROPERTIES, INC.

Ronald G. Hall
Ronald G. Hall, President

RGH/cf

AGREED & ACCEPTED:
(Conditioned upon securing all
necessary approvals of the U.S.
Bankruptcy Court)

PITTSBURGH & LAKE ERIE
PROPERTIES, INC.

Dated: 1/24/97

BY:

John D. Hartman
VP - Treasurer
Position



Know all Men by these Presents,

That PITTSBURGH & LAKE ERIE PROPERTIES, INC.

Suite 780, Commerce Court, Four Station Square
of Pittsburgh, PA 15219

for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable
consideration to it in hand paid by ALLEGHENY RAILROAD PROPERTIES, INC.

of 139 St. Thomas Drive, Beaver Falls,
Pennsylvania 15010

at or before the sealing and
delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained,
sold, released and confirmed and by these presents does grant, bargain, sell, release and confirm
unto the said ALLEGHENY RAILROAD PROPERTIES, INC.

all and singular the furniture, fixtures, all equipment, track and track materials and
other contents and miscellaneous personal property on or about the switching yards,
maintenance, refueling and other facilities of the Pittsburgh & Lake Erie Railroad
located on approximately 105 acres in McKees Rocks Borough and Stowe Township,
Allegheny County, Pennsylvania (hereinafter "Personal Property")
mentioned in the Schedule herunto annexed (endorsed,) and marked with a letter A:

To Have and to Hold the said Personal Property

unto the said ALLEGHENY RAILROAD PROPERTIES, INC.

~~their, executors, administrators,~~ successors and assigns, to and for its
own proper use, benefit and behoof, forever.

And NOW the said PITTSBURGH & LAKE ERIE PROPERTIES, INC. for itself
and its
~~executors, administrators,~~ successors and assigns, hereby covenant that it is the lawful
owner of said goods, chattels and property above referred to, and that the same, and every part
thereof unto the said ALLEGHENY RAILROAD PROPERTIES, INC.

~~their, executors, administrators,~~ successors and assigns, from and against all persons whomsoever, shall and
will warrant and forever defend by these presents.

Witness the Our Execution Hereof, the 9th day of April, 1997

Sealed and Delivered in the Presence of

J. D. Hartman
SIGNATURE OF INDIVIDUAL

SIGNATURE OF INDIVIDUAL

Attest:

M. F. J. J. J. J.
SECRETARY

(Corporate

PITTSBURGH & LAKE ERIE PROPERTIES, INC.

NAME OF CORPORATE SELLER

by J. D. Hartman
VICE PRESIDENT



AGREEMENT OF PURCHASE AND SALE

THIS CONTRACT is entered into as of the 22nd day of April, 1997, by and between PITTSBURGH & LAKE ERIE PROPERTIES, INC. (formerly known as Pittsburgh & Lake Erie Railroad Company), a Delaware corporation, OWNER OF RECORD or its successors or assigns, whose address is Suite 780 Commerce Court, Four Station Square, Pittsburgh, Pennsylvania, 15219, (hereinafter referred to as "Seller"), and ALLEGHENY RAILROAD PROPERTIES, INC., a Pennsylvania corporation, whose address 139 St. Thomas Drive, Beaver Falls, Pennsylvania, 15010, (hereinafter referred to as "Purchaser"), upon the terms and conditions set forth herein.

ARTICLE I

Purchase and Sale of the Property

- 1.1 For and in consideration of the premises, undertakings and mutual covenants of the parties set forth herein, Seller hereby agrees to sell and convey unto Purchaser, and Purchaser hereby agrees to buy and pay for a certain tract of land situate in McKees Rocks Borough and Stowe Rocks Township in Allegheny County, Pennsylvania; together with all and singular the rights and appurtenances pertaining to such real Property, including, but not limited to a right of ingress and egress and to and from the adjacent streets, alleys and rights-of-way, which property is described in Exhibit A and formerly and commonly known as Pittsburgh & Lake Erie Rail Yards, consisting of approximately 105 acres (hereinafter referred to as the "Property").

ARTICLE II

Purchase Price

- 2.1 The purchase price for the Property shall be One Million Two Hundred Thousand (\$1,200,000.00) Dollars.
- 2.2 The purchase price for the Property shall be payable as provided in the Note attached hereto as Exhibit "B".

ARTICLE III

Title

- 3.1 At the Closing, Seller shall convey the Property to Purchaser by special warranty deed, free and clear of any and all liens, encumbrances, reservations, restrictions, encroachments and other conditions, except for the following:
 - a) The lien for property taxes which are not delinquent on the Closing date;

- b) Such restrictions, easements, rights-of-way, storm water management, future maintenance and repair obligation and access easements as may be beneficial and reasonably required; (Note: CSX easement is acceptable)
- c) All of its right, title and interest in and to the leases described in Exhibit "F" attached which are assigned to Purchaser and assumed by it.

ARTICLE IV **Title Commitment**

- 4.1 Within one hundred twenty (120) days after closing on the Property under this Agreement by both parties, Purchaser, at its expense, shall cause to be furnished to Seller a current title insurance commitment for an ALTA Owner's Title Insurance Policy ("Owner's Policy") to be issued by a title insurance corporation ("Title Company") licensed to issue policy of title insurance in the State of Pennsylvania, showing the status of title of the Property and all exceptions, including liens, encumbrances, easements, restrictions, rights-of-way, covenants, reservations and other conditions, if any, of record affecting the Property which would appear in an Owner's Policy, if issued on the date of commitment. In the event the title search and/or commitment reveals to Purchaser any exception(s) or document(s) interfering with or precluding the conveyance of good and marketable title to Purchaser as above provided or preventing or making more costly the utilization of the Property for its intended purposes with the express exception of environmental contamination or remediation matters, then Purchaser shall notify Seller in writing of its objections to title within the one hundred twenty (120) day period and Seller shall have up to one hundred eighty (180) days from the date of closing within which to attempt to cure same. If Seller cannot cure such defects within said period, Seller shall so notify Purchaser in writing, and Purchaser may, at his option, upon delivery of written notice to Seller, proceed to take such corrective actions as may be required and to offset such sums and expenses incurred from the sums due under the Note, and to seek such other legal or equitable remedies against Seller as it may elect.

ARTICLE V **Title Policy**

- 5.1 Purchaser must be able to purchase at its cost and expense (after credit for the title commitment) an Owner's Policy issued by the Title Company, in Purchaser's favor in the full amount of the purchase price for the Property insuring Purchaser's marketable fee simple title to the Property, with survey exception, and subject only to those exceptions which do not interfere with or preclude the conveyance of good and marketable title to Purchaser as above provided or prevent or make more costly

the utilization of the Property for its intended purposes

ARTICLE VI
Closing

- 6.1 The consummation of the purchase and sale contemplated hereby (herein called the "Closing") shall be deemed held at 10:00 a.m., local time, on April 22, 1997, unless extended as herein provided. Closing shall be held at offices to be designated by Purchaser, or at such other time, date and place as Seller and Purchaser may agree upon in writing. The date and hour of the Closing are herein called the "Closing Date."
- 6.2 At the Closing:
- a) Seller shall deliver to Purchaser a Special Warranty Deed, duly executed and acknowledged by Seller, conveying the Property to Purchaser.
 - b) Purchaser shall deliver to Seller the Note evidencing the purchase price for the Property (see Exhibit "B" attached), the Mortgage (see Exhibit "C" attached), and the Pennsylvania DEP letter (attached as Exhibit "E").
 - c) Jointly the parties shall prepare and execute and deliver each to the other a Settlement Statement. Property taxes shall be prorated between Seller and Purchaser as of April 1, 1997. Such taxes shall be prorated and payable to the appropriate party at the Closing on the basis of such taxes for the year in which the closing occurs if said amount is known at the time of closing; if said amount is not known, then such taxes shall be prorated on the basis of the latest known valuation or assessment and millage rate. Should the actual taxes for the year of closing be more or less than the amounts prorated, then, upon demand by either party hereto, such taxes shall be re-prorated to reflect the actual amount of taxes due for such year; and Purchaser or Seller, as the case may be, agrees to pay the amount of such adjustment within ten (10) days after demand by the party entitled to such adjustment.
 - d) Transfer taxes shall not be due pursuant to the Order of the U.S. Bankruptcy Court attached hereto as Exhibit "D".
 - e) All other closing costs, including without limitation recording fees, shall be paid by Purchaser.
 - f) Possession of the Property shall be delivered to Purchaser.

ARTICLE VIII**Seller's Representations, Warranties And Covenants**

8.1 Seller represents, warrants and covenants to and with Purchaser that:

- a) Seller has, and will convey to Purchaser at Closing, good, marketable and insurable title to the Property, free and clear of all liens, encumbrances, covenants, reservations, restrictions, rights-of-way, easements and any other matters affecting title, recorded and unrecorded, except for matters which have been expressly disclosed in this Agreement.
- b) No person, corporation, firm, or entity other than Purchaser has acquired or will acquire any right, or option to acquire the Property or is or will be entitled to possession of all or any part thereof except for the Leases listed as Exhibit "F".
- c) Except as disclosed herein, Seller has received no notice and has no knowledge of any governmental or judicial orders or decrees in existence, or proceedings pending or threatened which either do or could affect the Property other than Pennsylvania Department of Environmental Resources action at EHB Docket No. 92-454-MR (PA DEP action)
- d) Seller has received no notice and has no knowledge of any actual or threatened full or partial condemnation of the Property.
- e) To the best of Seller's knowledge, no improvements or other structures located on any adjoining real property encroach upon any portion of the Property.
- f) Except as disclosed herein, there is no tax or tax assessment of any kind or nature whatsoever under current law that is presently due, or that will or may become due under current law within the current or next succeeding calendar year with respect to the Property, except for property taxes for the year of Closing.
- g) To the best of Seller's knowledge, except as known to exist in connection with and disclosed in the PA DEP Action, the Property is free of any flammable explosives, underground storage tanks, radioactive materials, hazardous wastes, friable asbestos, other materials containing asbestos, toxic substances or related materials, including, without limitation, substances defined as "hazardous substances", "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the

Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et. seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, *et. seq.*), any so-called "Superfund" or "Superlien" law or any other applicable federal, state or local law, common law, code, rule, regulation, or ordinance, presently in effect or hereafter enacted (herein "Hazardous Materials")

ARTICLE XI

Miscellaneous

- 11.1 Except as expressly set forth herein, any covenants, agreements, representations and warranties of Seller and Purchaser contained in this Contract, as well as any rights and benefits of the other party with respect thereto, shall survive the Closing and shall not be merged into the Closing.
- 11.2 Notices hereunder shall be sent by certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier service, addressed to Seller or Purchaser.

If to Seller, to: Pittsburgh & Lake Erie Properties, Inc.
Suite 780 Commerce Court
Four Station Square
Pittsburgh, PA 15219
Phone: (412) 263-3813
Fax: (412) 263-3913

With a copy to: James S. Vergotz, Esquire
106 Arcadia Court
9380 McKnight Road
Pittsburgh, PA 15237
Phone: (412) 366-4438
Fax: (412) 366-0510

If to Buyer, to: Allegheny Railroad Properties, Inc.
139 St. Thomas Drive
Beaver Falls, PA 15010
Phone: (412) 843-4343
Fax: (412) 843-1655

With a copy to: ~~Steven K. Kortanek, Esquire
Phillips, Goldman & Spence, P.A.
Pennsylvania & Broom Street
1200 W. Broom Street
Wilmington, DE 19806~~

Phone: (302) 655-4200

Fax: (302) 655-4210

- 11.3 Words of any gender used in this Contract shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the contest requires otherwise.
- 11.4 The captions used in connection with the Articles of this Contract are for convenience only and shall not be deemed to construe or to limit the meaning of the language of this Contract.
- 11.5 Nothing in this Contract, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights, obligations or remedies under or by reason of this Contract. This Contract shall be binding upon the executors, successors or assigns of each party.
- 11.6 This Contract may be amended only by a written instrument executed by Seller and Purchaser.
- 11.7 This Contract, the Note, the Mortgage and all other documents attached as Exhibits to this Agreement embody the entire Agreement between the parties with relation to the transactions contemplated hereby. There have been and are no covenants, agreements, representations, warranties or restrictions between the parties with regard thereto other than those set forth herein or herein provided for, and the provisions of this Contract cannot be waived except by the written agreement of the party against whom a waiver shall be asserted.
- 11.8 This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
- 11.9 This Contract may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall constitute one and the same instrument.
- 11.10 Time is important to both Seller and Purchaser in the performance of this Contract and they have agreed that strict compliance is required as to any date set out herein. If the final date of any period which is set out in any provisions of this Contract falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the State of Pennsylvania, then, and in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

ATTEST:

PURCHASER:

ALLEGHENY RAILROAD PROPERTIES, INC.

BY: Ronald B Hall BY: Ronald B Hall
Position: Secretary Position: President

SELLER:

PITTSBURGH & LAKE ERIE
PROPERTIES, INC.

Nancy J. Zmeskal BY: John D. Hartman
Position: SECRETARY Position: VP - Treasurer



Cognovit Judgment Note

\$1,200,000.00

22 April, 1997

For value received, ALLEGHENY RAILROAD PROPERTIES, INC., a Pennsylvania Corporation, (hereinafter the UNDERSIGNED), promises to pay to the order of:

PITTSBURGH & LAKE ERIE PROPERTIES, INC.
Suite 780, Commerce Court
Four Station Square
Pittsburgh, PA 15219

(hereinafter the "LENDER"), the principal sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00) to be paid in twenty four (24) monthly installment payments of principal of Five Thousand Dollars (\$5,000.00) each, beginning on the tenth day of *June*, 1997, and continuing on the same day of each month thereafter to and including *June*, 10, 1999 when the then outstanding principal balance together with the accrued interest (calculated at the rate of seven (7%) percent per annum on the outstanding principal balance) shall be paid in full.

Prepayment: UNDERSIGNED has the right to make payments of principal at any time before they are due (hereinafter called "PREPAYMENT"), provided that UNDERSIGNED gives the LENDER ten (10) days written notice of such PREPAYMENT.

Further, the UNDERSIGNED shall have the right to transfer, sell and convey from time to time any of the property subject to the mortgages of even date given by the UNDERSIGNED portion subject to the obligation of the UNDERSIGNED to pay (as a PREPAYMENT) a sum equal to fifty percent (50%) of the Net Sale Proceeds (defined as the total consideration to be paid by the buyer, less Mortgagor's share of transfer taxes, realty tax proration, title and legal fees, and brokerage commissions, if any). Within ten (10) days of the UNDERSIGNED providing the LENDER with a written notice, LENDER shall deliver into escrow with the designated closing officer its Partial Release of Mortgage duly executed, together with authorizing said closing officer to deliver and record said Partial Release upon payment of fifty percent (50%) of the net proceeds.

UNDERSIGNED may make full or partial PREPAYMENTS without paying any PREPAYMENT charge. If UNDERSIGNED makes a partial PREPAYMENT, then the due date and/or the amount of subsequent monthly payments shall be changed to reflect the

application and credit of such prepaid amount against the monthly payments and then against the remaining principal.

Late Charge: In the event any installment payment shall not be made within ten (10) days of the date at which it is due and payable, the UNDERSIGNED shall pay a late charge equal to three percent (3%) of the installment payment then due. The payment of the late charge shall not waive alter, or impair any other rights or remedies LENDER may have under this Note.

Event of Default: The following is an "Event of Default" under this Note: Failure to make payments within thirty (30) days of when due under this Note.

Failure to make any payment on this Note shall, at the option of the LENDER, accelerate this Note and the full outstanding balance of principal shall be immediately due and payable.

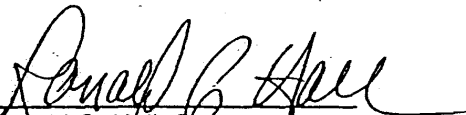
Confession of Judgment: Upon the occurrence of an Event of Default, the UNDERSIGNED hereby authorizes and empowers any attorney of any court of record within the United States of America, or elsewhere, to appear for the UNDERSIGNED and, with or without declaration filed, confess judgment or judgments against the UNDERSIGNED in favor of the LENDER or other holder hereof, as of any term, for the above principal sum remaining unpaid, and any other sums due by the UNDERSIGNED plus cost of suit and an attorney's commission of five percent (5%) or \$10,000.00 whichever is the larger amount, with release of all errors and the right to issue execution forthwith upon default as aforesaid. The authority and power to appear and enter judgment is not exhausted by the initial exercise of this power and it may be exercised as often as LENDER or other holder deems necessary and desirable.

This Note shall be governed by the laws of the Commonwealth of Pennsylvania. This Note shall inure to the benefit of the LENDER, its successors and assigns and shall be binding upon the UNDERSIGNED, and its successors and assigns.

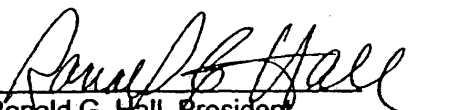
The UNDERSIGNED has duly executed this Note the day and year first written above.

ATTEST:

ALLEGHENY RAILROAD
PROPERTIES, INC.


Ronald G. Hall, Secretary

BY:


Ronald G. Hall, President

MORTGAGE

This mortgage is made on 22 APRIL 1997, between ALLEGHENY RAILROAD PROPERTIES, INC., a Pennsylvania corporation, of 139 St. Thomas Drive, Beaver Falls, 15010, Beaver County, Pennsylvania, called Mortgagor, and PITTSBURGH & LAKE ERIE PROPERTIES, INC., a Delaware corporation, maintaining its office and place of business at Suite 780 Commerce Court, Four Station Square, Pittsburgh, 15219, Allegheny County, Pennsylvania, called Mortgagee.

WHEREAS, Mortgagor has executed and delivered to Mortgagee a certain Mortgage Note of even date herewith, payable to the order of Mortgagee in the principal sum of One Million Two Hundred Thousand (\$1,200,000.00) Dollars and has provided therein for payment of any additional moneys loaned or advanced thereunder by Mortgagee, together with interest thereon at the rate provided in the note, in the manner and at the times therein set forth, and containing certain other terms and conditions all of which are specifically incorporated by reference;

NOW, THEREFORE, Mortgagor, in consideration of the debt or principal sum and as security for the payment of the same and interest as aforesaid, together with all other sums payable under this mortgage or under the terms of the note, grants and conveys to Mortgagee, and its successors and assigns, all the lot(s) or piece(s) of ground situated in McKees Rocks Borough and Stowe Township, Allegheny County, Pennsylvania, more specifically described in Exhibit "A" attached hereto and made a part hereof.

Together with the buildings and improvements erected thereon, the appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof.

To have and to hold the same unto Mortgagee, and its successors and assigns forever.

Provided, however, that if Mortgagor pays to Mortgagee the debt or principal sum, including additional loans or advances, and all other sums payable by Mortgagor to Mortgagee under this mortgage and under the terms of the note, together with interest thereon, and keeps and performs each of the other covenants, conditions, and agreements set forth in this mortgage, then this mortgage and the estate hereby granted and conveyed shall become void.

Mortgagor may at any time prepay, without having to pay any premium on account thereof, the whole or any part of the principal indebtedness secured by this mortgage, with accrued interest, on ten (10) days' prior written notice to Mortgagee of Mortgagor's intention so to do, and may at any time anticipate or prepay any amortization requirements set forth in this mortgage. In consideration of the terms and conditions of the Agreement of Sale and as set forth in the note, Mortgagor shall have the right during the term of this mortgage to i) subdivide or otherwise partition the real estate and other security subject to this mortgage (in which activity and process Mortgagee agrees to cooperate by providing relevant information in its possession and in executing and delivering necessary documentation); and ii) to sell and convey upon such terms and conditions as Mortgagor may negotiate with buyers such parcels or portions of property from time to time, and

shall be entitled to receive partial release(s) of this mortgage upon payment to Mortgagee of one-half (1/2) of the Net Sale Proceeds, (defined as the total consideration to be paid by the buyer, less Mortgagor's share of transfer taxes, realty tax prorations, title and legal fees, and brokerage commissions, if any). Mortgagor shall notify Mortgagee of its intent to sell such portion(s) of the security, in writing, not less than thirty (30) days in advance. Mortgagee shall execute and deliver to the closing officer/escrow agent appropriate partial releases under this mortgage with authority to such party to deliver such releases upon receipt of cleared funds to be paid by Mortgagee of one-half (1/2) of the Net Sale Proceeds.

This mortgage is executed and delivered subject to the following covenants, conditions, and agreements:

SECTION ONE FUTURE ADVANCES

The note secured hereby shall evidence, and this mortgage shall cover and be security for, any future loans or advances that may be made by Mortgagee to Mortgagor at any time or times hereafter and intended by Mortgagor and Mortgagee to be so evidenced and secured, and such loans and advances shall be added to the principal debt.

SECTION TWO TAXES AND ASSESSMENTS

From time to time until the debt and interest are fully paid, Mortgagor shall: (A) pay and discharge, when and as the same become due and payable, all taxes, assessments, sewer and water rents, and all other charges, claims, and liens assessed, levied, imposed, or created from time to time on the mortgaged premises or any part of them that shall or might have priority in lien, payment, or distribution to the debt secured by this mortgage; (B) pay all ground rents reserved from the mortgaged premises and pay and discharge all mechanics' liens that may be filed against the premises and that shall or might have priority in lien or payment to the debt secured by this mortgage; (C) pay and discharge any documentary stamp or other tax, including interest and penalties hereon, if any, now or becoming payable on the note evidencing the debt secured by this mortgage; (D) provide, renew, and keep alive by paying the necessary premiums and charges thereon such policies of hazard and liability insurance as Mortgagee may from time to time require on the buildings and improvements now or to be erected on the mortgaged premises, with loss payable clauses in favor of Mortgagor and Mortgagee as their respective interests may appear; and (E) promptly submit to Mortgagee evidence of the due and punctual payment of all the foregoing charges. Mortgagee may at its option require that a sum sufficient to discharge the foregoing charges be paid in installments to Mortgagee.

SECTION THREE MAINTENANCE OF PROPERTY

Mortgagor shall maintain all buildings and improvements subject to this mortgage in as good

condition and repair as they are currently. Mortgagee shall have the right to enter on the mortgaged premises at any reasonable hour to inspect the order condition, and repair of the buildings and improvements erected thereon.

SECTION FOUR RIGHT OF MORTGAGEE TO PAY CHARGES

In the event Mortgagor neglects or refuses to pay the charges mentioned above, or fails to maintain the buildings and improvements as stated above, Mortgagee may do so, add the cost thereof of the principal debt secured hereby, and collect the same as a part of the principal debt.

SECTION FIVE PRIOR LIENS

Mortgagor covenants and agrees not to create, nor permit to accrue, on all or any part of the mortgaged premises, any debt, lien, or charge that would be prior to, or on a parity with, the lien of this mortgage.

SECTION SIX ACCELERATION

In case a default in the payment of any installment of principal or interest pursuant to the terms of the note continues for thirty (30) days after Mortgagee gives written notice to Mortgagor, the entire unpaid balance of the principal sum, additional loans or advances, and all other sums paid by Mortgagee pursuant to the terms of the note or this mortgage, together with unpaid interest thereon, shall at the option of Mortgagee and without notice become immediately due and payable. Foreclosure proceedings may be brought promptly on this mortgage and prosecuted to judgment, execution, and sale for the collection of the same, together with costs of suit and attorney fees for collection of five (5%) percent of the total indebtedness or Ten Thousand Dollars (\$10,000.00), whichever is the larger amount. Mortgagor hereby forever waives and releases all errors in the proceedings, waives stay of execution, the right of inquisition and extension of time of payment, agrees to condemnation of any property levied on by virtue of any such execution, and waives all exemptions from levy and sale of any property that now is, or may be, exempted by law.

SECTION SEVEN DEFAULT

In the event of any default under this mortgage or under the note, Mortgagor hereby empowers any attorney of any court of record to appear for Mortgagor and for any and all parties claiming under or through Mortgagor and to confess a judgment or series of judgments against Mortgagor and any such party or parties, in favor of Mortgagee, in an amicable action of ejectment for possession of the mortgage premises and authorizes the entry of such action, confession of judgment therein for possession, and for attorney fees not to exceed Ten Thousand Dollars

(\$10,000.00) Mortgagee may bring such action before or after the institution of foreclosure proceedings on this mortgage or after judgment thereon or on the note, or after a sale of the mortgaged premises by the sheriff. The covenants, conditions, and agreements contained in this mortgage shall bind, and the benefits shall enure to, the parties and their respective heirs, executors, administrators, successors, and assigns. If this mortgage is executed by more than one person, the undertakings and liability of each shall be joint and several.

Witness the due execution hereof the day and year first above written.

ALLEGHENY RAILROAD
PROPERTIES, INC.

ATTEST: *Ronald G. Hall*
Secretary

By:

Ronald G. Hall
President

(Corporate Seal)

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF) SS:
)

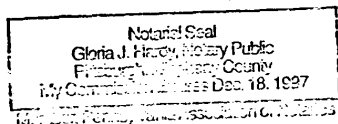
On this, the 22 day of April, 1997, before me, a notary,
the undersigned officer, personally appeared Ronald G. Hall,
who acknowledged himself to be the President of Allegheny Railroad Properties, Inc., a corporation, and that he as such President, being authorized to do so, executed the foregoing Mortgage for the purposes therein contained by signing the name of the Corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

Gloria J. Hardy

4/18/97



CERTIFICATE OF RESIDENCE

I, RONALD G. HALL do hereby certify that MY
precise residence is 139 St. THOMAS DRIVE BOWEN FALLS, PA. 15011
Witness my hand this 22 day of April, 1997.

~~RECEIVED BY THE UNITED STATES DEPARTMENT OF JUSTICE~~

That ALLEGHENY RAILROAD PROPERTIES, INC.

of 139 St. Thomas Drive, Beaver Falls, PA 150

for and in consideration of the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars

to it in hand paid by KOVALCHICK CORPORATION

of 1060 Wayne Avenue, Indiana, PA 15701

at or before the making and
delivery of these presents, the receipt whereof is hereby acknowledged, he granted, bargained,
sold, released and confirmed and by these presents do grant, bargain, sell, release and confirm
unto the said KOVALCHICK CORPORATION

all and singular the track material, rail, switches and ties as described
on the map attached as Exhibit "A" and signed by both parties located
at McKees Rocks, formerly Pittsburgh & Lake Erie Railroad Yards.

Said railroad trackage includes all railroad trackage purchased by
Allegheny Railroad Properties, Inc. from Pittsburgh & Lake Erie Railroad
XX
Properties, Inc. at McKees Rocks, PA
to have and to hold the said Property along with rights to remove same.
unto the said KOVALCHICK CORPORATION, its

successors and assigns, to and for its
own proper use, benefit and behoof, forever.

And NOW the said ALLEGHENY RAILROAD PROPERTIES, INC., for itself and it

successors and assigns, hereby covenant that he is the lawful
owner of said goods, chattels and property above referred to, and that the same, and every part
thereof unto the said KOVALCHICK CORPORATION and its

successors and assigns, from and against all persons whomsoever, shall and
will warrant and forever defend by these presents.

Witness the Hand Execution Hereof, the 1 day of May 1997.

Witness and Subscribed in the Presence of

[Signature]

SIGNATURE OF INDIVIDUAL

SIGNATURE OF INDIVIDUAL

[Signature]
SECRETARY
(Corporate Seal)

Allegheny Railroad Properties Inc
by *[Signature]*
PRESIDENT

SEAL
ROK

EXHIBIT C

ASSET PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of April 21, 1998 between KOVALCHICK CORPORATION, a Pennsylvania corporation, having offices at 1060 Wayne Avenue, Indiana, PA 15701 ("Seller") and PROLINE SERVICES, INC., a Pennsylvania corporation, having offices at 100 Bradley Street, McKees Rocks, PA 15136 ("Buyer"), with reference to the following recitals:

A. On May 1, 1997, Seller purchased from Allegheny Railroad Properties, Inc. ("ARP") certain railroad trackage situated in McKees Rocks Borough and Stowe Rocks Township in Allegheny County, Pennsylvania and more particularly described in Exhibit A attached hereto (the "Property"), pursuant to a Bill of Sale, a copy of which is attached as Exhibit C.

B. Seller desires to sell and Buyer desires to purchase the Property for the consideration herein provided.

NOW, THEREFORE, in consideration of the covenants, promises and representations and warranties herein set forth, the parties agree as follows:

1. PURCHASE AND SALE OF PROPERTY. Subject to the terms and conditions set forth herein, on the Closing Date (as that term is hereinafter defined), Buyer shall purchase from Seller and Seller shall sell, assign, transfer and deliver to Buyer all of Seller's right, title and interest in the Property.

1.1 Purchase Price. The aggregate purchase price (the "Purchase Price") to be paid by Buyer for the Property shall be \$325,000, payable as follows:

(a) A deposit of \$10,000 on the date of this Agreement (non-refundable unless Seller shall have breached the warranties and representations set forth in Section 2), receipt whereof is hereby acknowledged by Seller;

(b) \$290,000 payable by wire transfer at Closing; and

(c) \$25,000 in eleven (11) equal monthly installments of \$2,000 each, the first installment to be paid on June 30, 1998 with a final installment of \$3,000 to be paid on May 31, 1999 with interest at the rate of six (6%) percent a year on unpaid balances, the interest to be paid simultaneously with the installments of principal. This obligation shall be evidenced by a Promissory Judgment Note (the "Note") issued by Buyer and made payable to the order of Seller which shall be delivered to Seller on the Closing Date. The Note shall include those terms and conditions normally contained in such notes, including a provision that if Buyer defaults in making any of the installment payments, the entire balance shall immediately become due and payable. The Note shall be secured by a first security interest on the Property in the form of a mortgage or similar

instrument which shall be executed by Buyer and delivered to Seller on the Closing Date. It is understood and agreed that Buyer shall have the right at any time, without limitation, to sell certain of the Property as described in Exhibit B attached hereto.

1.2 THE CLOSING

(a) **Closing Date.** The closing ("Closing") of the purchase and sale of the Property shall take place at the offices of Vuono & Gray LLC, 2310 Grant Building, Pittsburgh, PA 15219 at 10:00 AM, Daylight Savings Time, or at such time and place as the parties may agree, but no later than May 8, 1998, time being of the essence (the "Closing Date");

(b) **Seller's Deliveries at Closing.** At the Closing, Seller shall deliver or cause to be delivered to Buyer:

(i) a Bill of Sale in form reasonably satisfactory to Buyer as shall be necessary and effective to transfer and assign to and vest in Buyer all of Seller's right, title and interest in and to the Property; and

(ii) certified resolutions of Seller's Board of Directors authorizing consummation of the transactions contemplated by this Agreement.

(c) **Buyer's Deliveries at Closing.** At the Closing, Buyer shall deliver to Seller the following instruments and documents against delivery of the items specified in Section 1.2(b):

(i) payment of the amount referred to in Section 1.1(b);

(ii) the Note;

(iii) security documents referred to in Section 1.1(c); and

(iv) certified resolutions of Buyer's Board of Directors authorizing consummation of the transactions contemplated by this Agreement.

2. REPRESENTATIONS AND WARRANTIES OF SELLER. As a material inducement to Buyer to enter into and perform its obligations under this Agreement, Seller hereby represents and warrants to Buyer that:

2.1 Authorizations; Enforceability of Agreement. Seller has full right, power and capacity to enter into this Agreement and to carry out the transactions contemplated hereby; the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action of the Board of Directors of Seller; and this Agreement has been duly

executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller.

2.2 **Title to the Property.** On May 1, 1997, Seller purchased the Property from ARP, pursuant to a Bill of Sale, a copy of which is attached to this Agreement as Exhibit C. On the Closing Date, Seller will transfer to Buyer all of its right, title and interest in the Property.

2.3 **No other Agreements to Sell the Property.** Other than pursuant to and contemplated by this Agreement, Seller has no legal obligation, absolute or contingent, to any person or firm, other than Buyer, to transfer, sell or encumber in any manner the Property or any interest therein or to enter into any agreement with respect thereto; since May 1, 1997 Seller has not taken any action which would create any liens, loans, licenses, covenants, conditions, defects, restrictions, encroachments, limitations, security interests, encumbrances or any claims whatsoever.

2.4 **Consents.** Seller is not required to obtain any consent, approval or authorization of or to make any declaration of filing with, any governmental authority as a condition precedent to the valid execution, delivery and performance of this Agreement.

3. **REPRESENTATIONS AND WARRANTIES OF BUYER.** Buyer represents and warrants as follows:

3.1 **Authorization, Enforceability of Agreement.** Buyer has the full right, power and capacity to enter into this Agreement and to carry out the transactions contemplated hereby; the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action of the Board of Directors of Buyer; and this Agreement has been duly executed and delivered by Buyer. This Agreement is the legal, valid and binding obligation of Buyer.

3.2 **Consent.** Buyer is not required to obtain any consent, approval or authorization of, or to make any declaration or filing with, any governmental authority as a condition preceding to the valid execution, delivery and performance of this Agreement.

4. **COVENANTS OF SELLER PRIOR TO CLOSING.** Seller agrees that from the date hereof to the Closing Date. Seller shall use its best efforts, without making any commitments on behalf of Buyer, to preserve and protect the Property and shall not negotiate, agree to or sell, transfer, assign or otherwise encumber the Property.

5. **CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER.** The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject, at Buyer's option, to the satisfaction, unless otherwise specified, at or prior to the Closing, of each of the following conditions:

5.1 **Representations and Warranties.** All representations and warranties of Seller contained in this Agreement shall be true and correct in all respects, at and as of the Closing as though made at and as of such time and Seller shall have performed, satisfied and complied in all respects with all covenants, agreements and all conditions required by this Agreement to be performed, complied with, or satisfied by Seller on or before the Closing.

5.2 **Absence of Litigation.** To the best of Seller's knowledge, on the Closing Date, no action, suit or other proceeding, or injunction or final judgment relating thereto, shall be threatened or be pending before any court or any governmental body or authority, in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby and no investigation that might result in any such suit, action or proceeding shall be pending or threatened.

5.3 **Condition of Property.** To the best of Seller's knowledge, since the date of this Agreement, the Property shall not have been affected in a way which has or would diminish the value of the Property.

5.4 **Deliveries at Closing.** Buyer shall have received at Closing the other documents, agreements and certificates in form and substance satisfactory to Buyer referred to in Section 1.2(b).

6. **CONDITION PRECEDENT TO OBLIGATIONS OF SELLER.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject, at Seller's option, to the satisfaction at or prior to the Closing, of each of the following conditions:

6.1 **Representations and Warranties.** All representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects, at and as of the Closing as though made at and as of such time and Buyer shall have performed, satisfied and complied in all respects with all covenants, agreements and all conditions required by this Agreement to be performed, complied with, or satisfied by Buyer on or before the Closing.

6.2 **Absence of Litigation.** On the Closing Date, no action, suit or other proceeding, or injunction or final judgment relating thereto, shall be threatened or be pending before any court or any governmental body or authority, in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby and no investigation that might result in any such suit, action or proceeding shall be pending or threatened.

6.3 Deliveries at Closing. Seller shall have received at Closing the amount referred to in Section 1.1(b), the Note and appropriate security documents referred to in Section 1.2(c) hereof.

7. INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, protect and hold harmless Seller and its officers, directors, employees, stockholders, assigns, successors and affiliates (individually, the "Indemnified Party" and collectively, the "Indemnified Parties") from, against and in respect of all liabilities, losses, claims, damages, punitive damages, causes of actions, lawsuits, administrative proceedings (including informal proceedings), investigations, audits, demands, assessments, adjustments, judgments, settlement payments, deficiencies, penalties, fines, interest (including interest from the date of such damages) and costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements of every kind, nature and description) [collectively, "Damages"] suffered, sustained, incurred or paid by the Indemnified Parties, in any action or proceeding between the Seller and the Indemnified Parties or between the Indemnified Parties and a third party, in connection with, resulting from or arising out of, directly or indirectly: (a) any breach of any representation or warranty of the Seller set forth in this Agreement or any certificate, document or instrument delivered by or on behalf of the Seller in connection herewith; (b) any nonfulfillment of any covenant or agreement on the part of the Seller in this Agreement; and (c) any and all Damages incident to any of the foregoing or to the enforcement of this Section 7.

8. MISCELLANEOUS

8.1 Termination. This Agreement may be terminated at or prior to the Closing: (a) by mutual consent of Seller and Buyer; (b) by either Seller or Buyer if there has been a breach of a representation, warranty or covenant set forth in this Agreement on the part of the other party, which breach has not been cured; or (c) by either Buyer or Seller if the Closing shall not have occurred by May 8, 1998; provided that no party shall be entitled to terminate this Agreement pursuant to this Subsection (c) if such party's conduct or failure to act has prevented the Closing from having occurred.

8.2 Sales, Use and Transfer Taxes. All applicable State and local sales, use and transfer taxes, filing and recording fees and all other similar expenses payable in connection with the transaction contemplated by this Agreement shall be paid by Buyer, except that Seller shall be responsible for the costs of recording the mortgage and any other security instruments.

8.3 Survival of Representations. The representations and warranties of the parties contained in this Agreement shall survive the Closing Date and shall expire May 31, 1999.

8.4 **Further Assurances.** At any time after the Closing, Seller shall execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer, reasonably requested by Buyer and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by Buyer for the purpose of assigning, transferring, granting, conveying and confirming to Buyer or reducing to possession the Property to be conveyed and transferred by this Agreement, provided that any such documents shall be limited to the conveyance of all of Seller's right, title and interest in the Property.

8.5 **Notices.** All notices, consents or other communications shall be in writing and shall be deemed to have been duly given when delivered personally or by messenger or when mailed by registered or certified mail, return receipt requested, postage prepaid, or when received via telecopy, telex or other electronic transmission, in all cases addressed to the party for whom intended at its address set forth in the preamble to this Agreement.

8.6 **Successors and Assigns; Assignments.** All covenants, promises and agreements by the parties contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties; Buyer may assign this Agreement and its rights and obligations hereunder, upon prior notice to Seller, but such assignment shall not relieve Buyer of its obligations hereunder and in the event of such assignment, Buyer shall guarantee payment of the Note.

8.7 **Entire Agreement.** This Agreement and the instruments to be delivered by the parties pursuant to the provisions hereof constitute the entire agreement between the parties.

8.8 **Applicable Law.** This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Pennsylvania applicable to contracts made in that State.

8.9 **Binding Effect; Benefit.** This Agreement shall insure to the benefit of and be binding upon the parties hereto, and their successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto, and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.10 **Amendments.** This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

8.11 **Headings.** The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

8.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original; and all such counterparts shall constitute one instrument.

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

PROLINE SERVICES, INC.

By: _____

Christian C. Farris, President

KOVALCHIK CORPORATION

By: _____

Joe Kovalchik, President

Allegheny Railroads Properties, Inc. ("ARP") the owner of the real property upon which the Property is situated and Clifton Steel, Inc., which has entered into a Lease Agreement with ARP leasing certain property from ARP upon which a portion of the Property is situated, do hereby consent to the execution of the foregoing Asset Purchase Agreement and consummation of the transactions contemplated thereunder and do hereby waive and relinquish any and all rights either may have in and to the Property, except that it is understood and agreed that ProLine Services, Inc. may not sell that portion of the Property subject to the lease of Clifton Steel, Inc. until the expiration of such lease.

**ALLEGHENY RAILROAD
PROPERTIES, INC.**

By: _____

Name: _____

Title: President

CLIFTON STEEL, INC.

By: _____

Bill Naldes

APR-18-1998 10:02 FROM ELLIOT S FISHER

TO

14123318640 P.09

EXHIBIT A

DESCRIPTION OF ALL RAILROAD TRACK

10.5 +/- miles of railroad track and trackage including railroad ties, switches, frogs, tie plates, and related material located in McKees Rocks and Stowe Township on the former Pittsburgh & Lake Erie rail yard site. Said railroad trackage includes all railroad trackage purchased by Seller from Allegheny Railroad Properties, Inc. at McKees Rocks and Stowe Township.

EXHIBIT B

**DESCRIPTION OF RAILROAD TRACK TO BE SOLD TO
A&K RAILROAD MATERIALS, INC.**

5 +/- miles of railroad track and trackage including railroad ties, switches, frogs, tie plates, and related material located predominately in Stowe Township and partially in McKees Rocks on the former Pittsburgh & Lake Erie rail yard site.

KASIAH WAS BORN IN NEW YORK STATE

TO: ALLEGHENY RAILROAD PROPERTIES, INC.

of 139 St. Thomas Drive, Beaver Falls, PA 150

for and in consideration of the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars

to it in hand paid by KOVALCHICK CORPORATION

of 1060 Wayne Avenue, Indiana, PA 15701

at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he granted, bargained, sold, released and confirmed and by these presents do grant, bargain, sell, release and confirm unto the said KOVALCHICK CORPORATION

all and singular the track material, rail, switches and ties as described on the map attached as Exhibit "A" and signed by both parties located at McKees Rocks, formerly Pittsburgh & Lake Erie Railroad Yards.

Said railroad trackage includes all railroad trackage purchased by Allegheny Railroad Properties, Inc. from Pittsburgh & Lake Erie Railroad Properties, Inc. at McKees Rocks, PA and is sold to the said Property along with rights to remove same. unto the said KOVALCHICK CORPORATION, its

successors and assigns, to and for its own proper use, benefit and behoof, forever.

And NOW the said ALLEGHENY RAILROAD PROPERTIES, INC., for itself and its

successors and assigns, hereby covenant that they are the lawful owner of said goods, chattels and property above referred to, and that the same, and every part thereof unto the said KOVALCHICK CORPORATION and its

successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

Witness the Hand Execution Hereof, the 1 day of May, 1997.

By the undersigned in the presence of

[Signature]

SIGNATURE OF INDIVIDUAL

SIGNATURE OF INDIVIDUAL

[Signature]
SECRETARY
(Corporate Seal)

[Signature]
AllegHENY Railroad Properties Inc
Vice President
PRESIDENT

EXHIBIT C



BILL OF SALE

KOVALCHICK CORPORATION ("Seller"), a Pennsylvania corporation having offices at 1060 Wayne Avenue, Indiana, PA 15701, does hereby transfer, assign and sell to PROLINE RAILROAD TRACK CO. ("Buyer"), a Pennsylvania corporation having offices at 100 Bradley Street, McKees Rocks, PA 15136, all of its right, title and interest in certain railroad trackage situated in McKees Rocks Borough and Stowe Rocks Township in Allegheny County, PA and more particularly described in Exhibit A and the map Exhibit A-1 attached hereto, being the same property purchased by Seller from Allegheny Railroad Properties, Inc. ("ARP") on May 1, 1997 and described on the map dated May 1, 1997 and attached to a Bill of Sale dated on the same date between Seller and ARP (the "Property") which is the same map as is attached hereto as Exhibit A-1.

This Bill of Sale is executed and delivered pursuant to the Asset Purchase Agreement between Seller and ProLine Services, Inc. ("ProLine"), a Pennsylvania corporation, April 21, 1998 (the "Agreement"), and the assignment of all of ProLine's right, title and interest in the Agreement to Buyer pursuant to an Assignment dated May 8, 1998 and is subject to all of the terms and conditions of those documents.

In consideration of the aforesaid and pursuant to the terms of the documents, Buyer hereby satisfies the total consideration of Three Hundred Twenty Five (\$325,000) Dollars as follows:

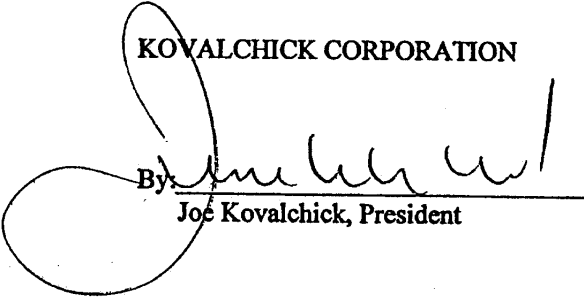
(a) The sum of Ten Thousand (\$10,000) Dollars previously paid by ProLine to Seller, receipt of which is hereby acknowledged by Seller;

(b) The sum of Two Hundred Ninety Thousand (\$290,000) Dollars by wire transfer of funds on the date hereof, receipt of which is hereby acknowledged by Seller; and

(c) Secured Promissory Judgment Note in the amount of Twenty-Five (\$25,000) Dollars made payable by Buyer and ProLine to Seller and duly executed by Buyer and ProLine.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale this 8th day of May, 1998.

KOVALCHICK CORPORATION

By: 

Joe Kovalchick, President

EXHIBIT A

10.5+/- miles of railroad track and trackage including railroad ties, switches, frogs, tie plates, and related material located in McKees Rocks and Stowe Township on the former Pittsburgh & Lake Erie rail yard site. Said railroad trackage includes all railroad trackage purchased by Seller from Allegheny Railroad Properties, Inc. at McKees Rocks and Stowe Township.

EXHIBIT A-1

(Map to be Attached)



ORIGINAL

Hearing Date: Only if objections received
Objections and/or Bids Due: June 10, 1999 at 4:00 p.m.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: :
: :
PITTSBURGH & LAKE ERIE : Case No. 96-406 (MFW)
PROPERTIES, INC., :
: Chapter 11
Debtor. :

**NOTICE OF MOTION FOR AN ORDER AUTHORIZING DEBTOR
TO (i) SELL A NOTE AND MORTGAGE ON CERTAIN REAL PROPERTY FREE AND
CLEAR OF LIENS; (ii) TRANSFER THE NOTE AND MORTGAGE FREE OF ANY
TRANSFER OR STAMP TAX PURSUANT TO 11 U.S.C. § 1146(c);
AND (iii) MAKE DIRECT PAYMENT OF NET SALE PROCEEDS**

PLEASE TAKE NOTICE that on May 20, 1999, Pittsburgh & Lake Erie Properties, Inc., Debtor-in-Possession ("Debtor") filed a Motion for an Order Authorizing Debtor To (i) Assign its Note and Mortgage on Certain Real Property Free and Clear of Liens; (ii) Transfer The Note and Mortgage Free of Any Transfer or Stamp Tax Pursuant to 11 U.S.C. § 1146(c); And (iii) Make Direct Payment of Net Sale Proceeds (the "Motion"), a copy of which may be obtained from the undersigned if not enclosed herewith.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to approve the sale sought in the Motion and the other relief sought therein, or if you want the Court to consider your views on the Motion, then on or before **June 10, 1999 at 4:00 p.m. Eastern Time**, you or your attorney must:

- (i) File with the Court a written objection, explaining your position and the legal and factual basis therefor, at:



Bankruptcy Court Clerk's Office
824 Market Street, 5th Floor
Wilmington, DE 19801

(If you mail your objection to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above);

(ii) deliver a copy of the objection by the same time to:

Stephen W. Spence, Esquire
Phillips, Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, DE 19806; and

(iii) A hearing on this matter will only be scheduled if objections are timely filed and received.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

PLEASE TAKE FURTHER NOTICE that the property subject to the Motion and the proposed terms of sale are set forth below:

PROPERTY TO BE ASSIGNED AND SOLD:

\$1.2 Million Note and Mortgage of Allegheny Railroad Properties, Inc., held by the Debtor on the "McKees Rocks Parcel" formerly owned by the Debtor (hereinafter the "Note and Mortgage"), copies of which are attached as Exhibit "A" to the Motion.

TERMS: Price of \$950,000.00 payable in cash, subject to the terms and conditions of the Agreement of Purchase and Sale (the "Agreement"), a copy of which is attached as Exhibit "B" to the Motion.

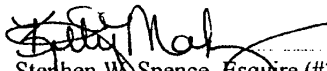
BUYERS: MARIAH VENTURE CAPITAL & CONSULTING, CO., the ("Buyers")

CLOSING: On or before June 14, 1999 at 5:00 p.m.

PLEASE TAKE FURTHER NOTICE that parties interested in submitting a competing bid for the mortgage and note must comply with the following procedures (the "Bid Procedures"):

- a. Written bids a minimum amount of 5% greater than the Purchase Price, on terms reasonably similar to the Agreement (including an all-cash purchase price), will be accepted by the Debtor's undersigned counsel until expiration of the deadline to object to the proposed sale;
- b. All bids must be accompanied by a deposit of no less than 5% of the proposed purchase price (certified check or wire transfer of immediately available funds). Such funds will be returned to the unsuccessful bidders and held as a deposit from the successful bidder, if any;
- c. Reasonable access will be granted to enable interested bidders to perform reasonable due diligence with respect to the Note and Mortgage;
- d. All bidders will be deemed to have consented to their bids being admitted into evidence and to review by the Court;
- e. If a qualifying competing bid is received the Debtor's counsel will notify the Buyer and both the original Buyer and any competing bidders will be given one additional opportunity to increase their bids by submitting a revised sealed bid within 48 hours of telephone notification by Debtor's counsel; and

- f. Prior to the date fixed for the Court's consideration of the proposed sale order, the Debtor will file an affidavit with the Court with copies to the Purchaser, the bidders, if any, and the Office of the United States Trustee setting forth the highest or best offer for the Property and the party to whom the Debtor intends to seek approval of the Court to sell the Note and Mortgage.



Stephen W. Spence, Esquire (#2033)
Kathleen P. Makowski, Esquire (#3648)
PHILLIPS, GOLDMAN & SPENCE, P.A.
1200 North Broom Street
Wilmington, DE 19806
(302) 655-4200
Attorneys for the Debtor

Dated: May 20, 1999

Hearing Date: Only if objections received
Objections/Bids Due: June 10, 1999 at 4:00 p.m.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

PITTSBURGH & LAKE ERIE
PROPERTIES, INC.,

Debtor.

:
:
:
:
:
:

Case No. 96-406 (MFW)
Chapter 11

**MOTION FOR AN ORDER AUTHORIZING DEBTOR TO
(i) ASSIGN A MORTGAGE AND NOTE ON CERTAIN REAL PROPERTY
FREE AND CLEAR OF LIENS; (ii) TRANSFER THE MORTGAGE AND NOTE FREE
OF ANY TRANSFER OR STAMP TAX PURSUANT TO 11 U.S.C. §1146(c);
AND (iii) MAKE DIRECT PAYMENT OF NET SALE PROCEEDS**

Pittsburgh & Lake Erie Properties, Inc., debtor and debtor-in-possession ("Debtor"), by and through its undersigned counsel, moves this Honorable Court for an order pursuant to 11 U.S.C. §§ 363(f), 365, and 1146(c) authorizing the Debtor to (i) Assign its Note and Mortgage encumbering real property referred to as the former "McKees Rocks" property (defined at length herein), free and clear of all liens, encumbrances, claims and interests to Mariah Venture Capital and Consulting, Inc., or its permitted assigns (the "Buyer"); (ii) transfer the Note and Mortgage it holds on the McKees Rocks property free of any transfer or stamp tax pursuant to 11 U.S.C. § 1146(c); and (iii) make direct payment of net sale proceeds to pre-petition secured creditor (the "Motion"). In support of this Motion, the Debtor respectfully represents as follows:

Background

1. On March 22, 1996, (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Code. Since the Petition Date, the Debtor has remained in possession of its assets and has continued to operate and manage its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Code.

2. No official committee, trustee or examiner has been appointed in this case.

3. This Court has jurisdiction over the subject matter of this motion pursuant to 28 U.S.C. §§ 157 and 1334. The statutory predicates for relief are 11 U.S.C. §§ 105(a), 363 and 1146(c). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The subject matter of this motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. The Debtor is a Delaware corporation headquartered in Pittsburgh, Pennsylvania. The Debtor's predecessor was the Pittsburgh and Lake Erie Railroad Company (the "Railroad"). The Railroad was founded over 100 years ago, and for much of its existence operated without a losing year. In the 1970's and 1980's, however, the Railroad invested heavily in new rolling stock, not long before the collapse of Pittsburgh's steel industry which decimated the market for the type of rail hauling the Railroad depended upon. The effects of rail deregulation under the Staggers Act compounded the Railroad's decline.

5. The persistent downturn in rail usage and labor problems ultimately forced the Railroad to exit the railroad business. This was accomplished through a series of transactions in 1991 and 1992 in which the Railroad sold its track and rail operations to CSX Corporation. To reflect its total cessation of business as a railroad under Interstate Commerce Commission (the "ICC", succeeded by the Surface Transportation Board) regulations and the Interstate Commerce Act, the Railroad changed its name to Pittsburgh & Lake Erie Properties, Inc. on July 2, 1993.

6. The Debtor's business operations are currently limited to managing and arranging for the orderly disposition of its real and personal property holdings. Its real estate consists of numerous parcels of heavy industrial and commercial property in western Pennsylvania and Ohio.

7. On April 2, 1997, this Court entered an Order under 11 U.S.C. §§363(b) and (f) and 365 Authorizing Debtor to (i) Sell McKees Rocks Property Free and Clear of Liens; (ii) Transfer

Said Property Free of Any Transfer of Stamp Tax Pursuant to 11 U.S.C. §1146(c); (iii) Make Direct Payment of Net Sale Proceeds to Pre-Petition Secured Creditor; and (iv) Assume and Assign Related Leases (the "Order").

8. Pursuant to the Order, on April 22, 1997, the Debtor sold the property to Allegheny Railroad Properties, Inc. (Allegheny") and received \$1.2 million secured by a first Mortgage (hereinafter the "Note and/or the Mortgage") copies of which attached hereto as Exhibit "A". The Note has a maturity date of June 10, 1999. Allegheny has defaulted on the Note and Mortgage. The Debtor does not believe that the borrower will be able to pay the Note in full by the maturity date. The Debtor wishes to assign and sell the Note and Mortgage to the Buyer.

Description of McKees Rocks and The Agreement

9. The McKees Rocks Property comprises approximately 105 acres and is made up of two parcels in McKees Rocks Borough and Stowe Township in Allegheny County, Pennsylvania. The property is located six miles west of Pittsburgh. The property is zoned for commercial usage, but abuts residential areas that are economically distressed, with a housing project on one side and an older neighborhood on the other.

10. Historically, the Debtor operated a large switching yard and had substantial refueling, maintenance and warehousing facilities in operation at the McKees Rocks Property. Specifically, the Debtor had operated a fueling facility for diesel locomotives and stored diesel fuel in above-ground tanks on the property. The Debtor also operated a roundhouse, a machine and erecting shop, a boiler and tank shop, a diesel shop, a lacquer shop, a freight car shop, an upholstering shop, a paint shop, car cleaning facilities, a woodworking shop and lumber storage facilities, and facilities for storing paints and other solvents. CSX declined to purchase the McKees Rocks Property when it purchased the Debtor's rail operations in 1991 and 1992. Today there remain nine brick structures

of various sizes. Two above-ground fuel storage tanks have been removed from the site but four below-ground fuel storage tanks may still be located on the site.

11. As a result of the lengthy history of heavy industrial use, the McKees Rocks Property had suffered environmental contamination that has required remediation. Certain relevant remediation requirements have been set forth in the Consent Order and Adjudication entered into between the Debtor and the Commonwealth of Pennsylvania, Department of Environmental Resources ("PADER"), dated June 7, 1995 (the "Consent Order"). The Consent Order required soil and groundwater remediation. Depending upon the intended end use of the McKees Rocks Property, the costs to comply with the Consent Order and other remediation that would be required may run into the hundreds of thousands of dollars. Since 1992, the Debtor has spent approximately \$100,000 on design and site remediation.

12. Prior to the Petition Date, in an effort to generate cash flow and to obtain purchasers for the McKees Rocks Property, the Debtor had entered into several leases (the "Leases") that were unexpired on the Petition Date and contain purchase options. Despite the cash flow from the Leases prior to the sale to Allegheny, the Debtor was still burdened with over \$40,000 per year in property taxes for the McKees Rocks Property. The total of the rent payments being made to the Debtor prior to the sale to Allegheny at the McKees Rocks Property was about \$9,800 per month. Since the sale, the Debtor's information concerning Allegheny's activities is sketchy, but Allegheny has not been able to pay the real estate taxes on time and this failure is a default under the terms of the Mortgage. Further, the Debtor's management is not confident that Allegheny will be able to pay the Note when due. Finally, the Debtor does not wish to go through the expense of a foreclosure proceeding if it doesn't have to. The Buyer is willing to assume all of these risks and have those rights in exchange for a cash payment of \$950,000.00.

13. In light of Allegheny's default, the Debtor wants to dispose of the McKees Rocks Property Note and Mortgage. The offer of Mariah Venture Capital & Consulting Company is the first serious bidder for the property since Allegheny's default. MVC has agreed to purchase the Note and Mortgage understanding the condition of the McKees Rocks Property. The proposed sale transaction has been reduced to writing in the Agreement of Purchase and Sale (the "Agreement") attached hereto as Exhibit "B". The principal conditions to the Buyers' purchase obligation under the Agreement include (i) approval of the United States Bankruptcy Court of this sale; and (ii) that the mortgage remains unsatisfied by Allegheny Railroad Properties, Inc., at the time of closing. The foregoing is only a summary of the Agreement, and the Agreement itself should be consulted for an understanding of all of its terms.

**The Proposed Sale Was Negotiated in Good Faith,
and Represents a Fair Price**

14. By this Motion, the Debtor seeks authority to sell the Note and Mortgage to the listed Buyers. In the Debtor's view, the proposed sale of the Note and Mortgage represents the best transaction obtainable.

15. Four tests must be satisfied for this Court to approve the sales requested herein under Section 363 of the Code: (i) the "sound business purpose" test, (ii) the requirement of a fair and reasonable price, (iii) the "good faith" test, and (iv) adequate notice. In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983) (setting forth the "sound business purpose" test); Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986) (adopting the Lionel standard and adding the "good faith" requirement); and In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (adopting Lionel in this District).

**A Sound Business Purpose Exists
for the Sale of the Property**

16. The Debtor's proposed sale of the Note and Mortgage reflects sound business purpose. The Debtor's current operations are focused solely on managing its properties and its leases to various firms, and working to obtain sale transactions of such properties. The Debtor's goal is to file a chapter 11 liquidating plan. The cash sale of the Note and Mortgage will substantially improve its cash position and should allow it to file its plan and disclosure statement after completing the sale.

17. The general oversight of a defaulted Note and Mortgage represents a significant burden upon the estate. Therefore, an expedient sale of the Note and Mortgage is in the best interest of this estate. In the exercise of the Debtor's reasoned business judgment, the proposed transaction is the best available alternative.

18. The Debtor firmly believes that the consideration to be paid by the Buyer reflects the highest and best offer obtainable. The Debtor submits that this price is at or above the fair market value of the Note and Mortgage.

19. Prior to the purchase of the McKees Rocks Property by Allegheny, the availability of the McKees Rocks Property for prospective buyers had been widely promoted for years to the general public and to industries or other prospects likely to be interested. The Debtor firmly believes that it would be difficult and highly unlikely to obtain a higher sales price or more favorable terms for the purchase of the Note and Mortgage than that being offered. However, the Debtor will give interested parties an opportunity to submit "higher and better" offers in its form of notice, of which it has sought court approval. The notice of this Motion to be mailed to all parties in interest provides

that the Debtor will accept "higher and better offers" up to and including the objection deadline to this Motion, subject to certain bid procedures (the "Bid Procedures").

**The Transaction Has Been
Negotiated In Good Faith**

20. The parties' negotiations in this transaction involved significant give and take on the material transactional terms. Price and other terms have been negotiated at arms length. Accordingly, the Debtor submits that the Agreement between the Buyer and the Debtor reflects a transaction negotiated at arms' length.

21. The Buyer is neither an "affiliate" nor "insider" of the Debtor under Section 101 of the Code. The Buyer has disclosed that one of its principals is a 15% stockholder in Allegheny. The Buyer is purchasing the Note and Mortgage in good faith, pursuant to which they are entitled to the protections of Section 363(m) of the Code. Accordingly, the Debtor requests that any order granted upon this Motion provide that the non-finality of the order shall not be a basis for delaying closing of the sale of the Note and Mortgage.

Notice is Sufficient for the Requested Sales

22. The Debtor has given twenty (20) days' notice of this Sale Motion to all creditors; the United States Trustee; Allegheny Railroad Property, Inc., and; all persons claiming an interest in the property; all persons requesting notice pursuant to Fed. R. Bankr. P. 2002. All interested parties have therefore been given proper notice of the proposed sale and of the objection deadline.

**Sale Free and Clear Of All Liens,
Encumbrances, Claims And Interests Is Justified**

23. Under the proposed agreement, the Debtor is obligated to provide the Buyer with clear title to the Note and Mortgage free and clear of liens, encumbrances, claims and interests. Accordingly, the Debtor further requests an order authorizing it to consummate the sale to the Buyer

free and clear of all liens, encumbrances, claims and interests, with all liens, encumbrances, claims and interests attaching to the proceeds after selling expenses in the order of their priority under non-bankruptcy law. The Debtor further seeks authority to pay a portion of the proceeds after settlement costs to its pre-petition secured lender.

24. For this Court to enter an order authorizing the sale of the Note and Mortgage on the McKees Rocks property free and clear of liens, encumbrances, interests or claims asserted by any particular person, one of the following conditions must be satisfied:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and a price at which such property is to be sold is greater than the aggregate value of all liens on such property; or
- (4) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). In the event that lienholders on the property or alleged lienholders do not consent under section 363(f)(2), they could be compelled, in a legal or equitable proceeding such as a plan cramdown, to accept money satisfactions of their interests, thereby satisfying section 363(f)(4). At a public sale of the property, under applicable non-bankruptcy law, the sale would take place free and clear of such interests. Accordingly, section 363(f)(1) is also satisfied.

**The Debtor's Pre-Petition Creditors
Asserting Interests In the Property**

25. The Debtor is party to a Master Agreement Regarding the Restructuring of the Obligations of the Pittsburgh and Lake Erie Railroad Company (the "Restructuring Agreement"),

dated as of May 1, 1985. The Restructuring Agreement, as amended from time to time, has been in effect through the Petition Date.

26. As is more fully set forth in the Final Order Providing for Use of Cash Collateral and Providing Adequate Protection (the "Cash Collateral Order"), entered by this Court on May 3, 1996 (Docket No. 27), and as amended from time to time, the Restructuring Agreement of May 1, 1985 was entered into by the Debtor, Shawmut Bank, N.A. (whose successor is State Street Bank and Trust Company, which succeeded Fleet Bank, the "Security Trustee") and certain secured lenders and certain other parties. The secured lenders, as specified more particularly in the Restructuring Agreement, are referred to as the "Secured Lenders". The Restructuring Agreement, and all related documents establishing the rights and interests of the Security Trustee and the Secured Lenders (collectively, the "Loan Documents"), evidence the Debtor's pre-petition obligations to the Secured Lenders. The Debtor's obligations set forth in the Loan Documents represent all of the Debtor's consensual secured debt on the Petition Date.

27. As of the Petition Date, the aggregate principal amount of the Pre-Petition Obligations was approximately \$21,076,606.77, plus accrued and unpaid interest as of the Petition Date, plus the reasonable costs and fees of the Security Trustee and the Secured Lenders due pursuant to the Loan Documents. The total claim of the Security Trustee on the Petition Date was \$67,157,356.

28. The Security Trustee and the Secured Lenders have valid, duly perfected, unavoidable liens upon and security interests in substantially all of the Debtor's real and personal property and in all proceeds and products thereof (collectively, the "Collateral").

**Direct Payments To The Security Trustee
From Sale Proceeds Are Appropriate**

29. The Debtor requests authority to pay sales proceeds net of settlement costs, directly to the Security Trustee in accordance with the terms of the Cash Collateral Order (and any extension thereof) and the Master Agreement. The Cash Collateral Order confirms the liens of the Security Trustee. It further provides a mechanism requiring that 75% of net sale proceeds from the Collateral be paid directly to the Security Trustee as adequate protection. The Debtor is permitted to use the remaining 25% of cash collateral to the extent needed to fund operations.

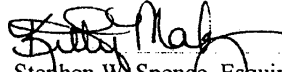
**The Transfer Tax/Stamp Exemption of
11 U.S.C. § 1146(c) is Warranted**

30. The Debtor is preparing a Chapter 11 plan (together with a disclosure statement) which will provide for prompt payment of allowed administrative and allowed secured claims and perhaps some portion of allowed unsecured claims against the estate.

31. This Court is authorized to grant a request for the transfer tax exemption of Section 1146(c) of the Code. Exemption from the transfer tax ordinarily payable on sales of this type benefits the creditors of this estate when the transfer is clearly in contemplation of confirmation of a plan. The savings provided for in Section 1146(c) may be a significant source of payment for the unsecured creditors and for payment of other allowed claims.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (i) authorizing the sale of the Note and Mortgage on the McKees Rocks property free and clear of all liens, encumbrances, claims and interests, with all liens, encumbrances, claims and interests attaching to the proceeds in order of their priority under applicable nonbankruptcy law; (ii) authorizing transfer of the Note and Mortgage on the McKees Rocks property free of any transfer or stamp tax in accordance with 11 U.S.C. § 1146(c); (iii) authorizing direct payment of net sale

proceeds to the Security Trustee in accordance with the Cash Collateral Order; and (iv) granting such other and further relief as is just and proper.



Stephen W. Spence, Esquire (#2033)
Kathleen P. Makowski, Esquire (#3648)
PHILLIPS, GOLDMAN & SPENCE, P.A.
1200 North Broom Street
Wilmington, DE 19806
(302) 655-4200
Attorneys for the Debtor

Dated: May 20, 1999

Exhibit "A"

Cognovit Judgment Note

\$1,200,000.00

22 April 1997

For value received, ALLEGHENY RAILROAD PROPERTIES, INC., a Pennsylvania Corporation, (hereinafter the UNDERSIGNED), promises to pay to the order of:

PITTSBURGH & LAKE ERIE PROPERTIES, INC.
Suite 780, Commerce Court
Four Station Square
Pittsburgh, PA 15219

(hereinafter the "LENDER"), the principal sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00) to be paid in twenty four (24) monthly installment payments of principal of Five Thousand Dollars (\$5,000.00) each, beginning on the tenth day of *June*, 1997, and continuing on the same day of each month thereafter to and including *June* 10, 1999 when the then outstanding principal balance together with the accrued interest (calculated at the rate of seven (7%) percent per annum on the outstanding principal balance) shall be paid in full.

Prepayment: UNDERSIGNED has the right to make payments of principal at any time before they are due (hereinafter called "PREPAYMENT"), provided that UNDERSIGNED gives the LENDER ten (10) days written notice of such PREPAYMENT.

Further, the UNDERSIGNED shall have the right to transfer, sell and convey from time to time any of the property subject to the mortgages of even date given by the UNDERSIGNED portion subject to the obligation of the UNDERSIGNED to pay (as a PREPAYMENT) a sum equal to fifty percent (50%) of the Net Sale Proceeds (defined as the total consideration to be paid by the buyer, less Mortgagor's share of transfer taxes, realty tax prorations, title and legal fees, and brokerage commissions, if any). Within ten (10) days of the UNDERSIGNED providing the LENDER with a written notice, LENDER shall deliver into escrow with the designated closing officer its Partial Release of Mortgage duly executed, together with authorizing said closing officer to deliver and record said Partial Release upon payment of fifty percent (50%) of the net proceeds.

UNDERSIGNED may make full or partial PREPAYMENTS without paying any PREPAYMENT charge. If UNDERSIGNED makes a partial PREPAYMENT, then the due date and/or the amount of subsequent monthly payments shall be changed to reflect the

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application and credit of such prepaid amount against the monthly payments and then against the remaining principal.

Late Charge: In the event any installment payment shall not be made within ten (10) days of the date at which it is due and payable, the UNDERSIGNED shall pay a late charge equal to three percent (3%) of the installment payment then due. The payment of the late charge shall not waive, alter, or impair any other rights or remedies LENDER may have under this Note.

Event of Default: The following is an "Event of Default" under this Note: Failure to make payments within thirty (30) days of when due under this Note.

Failure to make any payment on this Note shall, at the option of the LENDER, accelerate this Note and the full outstanding balance of principal shall be immediately due and payable.

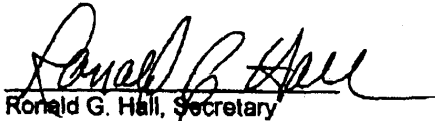
Confession of Judgment: Upon the occurrence of an Event of Default, the UNDERSIGNED hereby authorizes and empowers any attorney of any court of record within the United States of America, or elsewhere, to appear for the UNDERSIGNED and, with or without declaration filed, confess judgment or judgments against the UNDERSIGNED in favor of the LENDER or other holder hereof, as of any term, for the above principal sum remaining unpaid, and any other sums due by the UNDERSIGNED plus cost of suit and an attorney's commission of five percent (5%) or \$10,000.00 whichever is the larger amount, with release of all errors and the right to issue execution forthwith upon default as aforesaid. The authority and power to appear and enter judgment is not exhausted by the initial exercise of this power and it may be exercised as often as LENDER or other holder deems necessary and desirable.

This Note shall be governed by the laws of the Commonwealth of Pennsylvania. This Note shall inure to the benefit of the LENDER, its successors and assigns and shall be binding upon the UNDERSIGNED, and its successors and assigns.

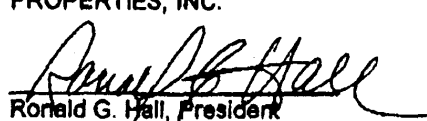
The UNDERSIGNED has duly executed this Note the day and year first written above.

ATTEST:

ALLEGHENY RAILROAD
PROPERTIES, INC.


Ronald G. Hall, Secretary

BY:


Ronald G. Hall, President

4/18/97

MORTGAGE

This mortgage is made on 22 APRIL 1997, between ALLEGHENY RAILROAD PROPERTIES, INC., a Pennsylvania corporation, of 139 St. Thomas Drive, Beaver Falls, 15010, Beaver County, Pennsylvania, called Mortgagor, and PITTSBURGH & LAKE ERIE PROPERTIES, INC., a Delaware corporation, maintaining its office and place of business at Suite 780 Commerce Court, Four Station Square, Pittsburgh, 15219, Allegheny County, Pennsylvania, called Mortgagee.

WHEREAS, Mortgagor has executed and delivered to Mortgagee a certain Mortgage Note of even date herewith, payable to the order of Mortgagee in the principal sum of One Million Two Hundred Thousand (\$1,200,000.00) Dollars and has provided therein for payment of any additional moneys loaned or advanced thereunder by Mortgagee, together with interest thereon at the rate provided in the note, in the manner and at the times therein set forth, and containing certain other terms and conditions all of which are specifically incorporated by reference;

NOW, THEREFORE, Mortgagor, in consideration of the debt or principal sum and as security for the payment of the same and interest as aforesaid, together with all other sums payable under this mortgage or under the terms of the note, grants and conveys to Mortgagee, and its successors and assigns, all the lot(s) or piece(s) of ground situated in McKees Rocks Borough and Stowe Township, Allegheny County, Pennsylvania, more specifically described in Exhibit "A" attached hereto and made a part hereof.

Together with the buildings and improvements erected thereon, the appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof.

To have and to hold the same unto Mortgagee, and its successors and assigns forever.

Provided, however, that if Mortgagor pays to Mortgagee the debt or principal sum, including additional loans or advances, and all other sums payable by Mortgagor to Mortgagee under this mortgage and under the terms of the note, together with interest thereon, and keeps and performs each of the other covenants, conditions, and agreements set forth in this mortgage, then this mortgage and the estate hereby granted and conveyed shall become void.

Mortgagor may at any time prepay, without having to pay any premium on account thereof, the whole or any part of the principal indebtedness secured by this mortgage, with accrued interest, on ten (10) days' prior written notice to Mortgagee of Mortgagor's intention so to do, and may at any time anticipate or prepay any amortization requirements set forth in this mortgage. In consideration of the terms and conditions of the Agreement of Sale and as set forth in the note, Mortgagor shall have the right during the term of this mortgage to i) subdivide or otherwise partition the real estate and other security subject to this mortgage (in which activity and process Mortgagee agrees to cooperate by providing relevant information in its possession and in executing and delivering necessary documentation); and ii) to sell and convey upon such terms and conditions as Mortgagor may negotiate with buyers such parcels or portions of property from time to time, and

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shall be entitled to receive partial release(s) of this mortgage upon payment to Mortgagee of one-half (1/2) of the Net Sale Proceeds, (defined as the total consideration to be paid by the buyer, less Mortgagor's share of transfer taxes, realty tax prorrations, title and legal fees, and brokerage commissions, if any). Mortgagor shall notify Mortgagee of its intent to sell such portion(s) of the security, in writing, not less than thirty (30) days in advance. Mortgagee shall execute and deliver to the closing officer/escrow agent appropriate partial releases under this mortgage with authority to such party to deliver such releases upon receipt of cleared funds to be paid by Mortgagee of one-half (1/2) of the Net Sale Proceeds.

This mortgage is executed and delivered subject to the following covenants, conditions, and agreements:

SECTION ONE FUTURE ADVANCES

The note secured hereby shall evidence, and this mortgage shall cover and be security for, any future loans or advances that may be made by Mortgagee to Mortgagor at any time or times hereafter and intended by Mortgagor and Mortgagee to be so evidenced and secured, and such loans and advances shall be added to the principal debt.

SECTION TWO TAXES AND ASSESSMENTS

From time to time until the debt and interest are fully paid, Mortgagor shall: (A) pay and discharge, when and as the same become due and payable, all taxes, assessments, sewer and water rents, and all other charges, claims, and liens assessed, levied, imposed, or created from time to time on the mortgaged premises or any part of them that shall or might have priority in lien, payment, or distribution to the debt secured by this mortgage; (B) pay all ground rents reserved from the mortgaged premises and pay and discharge all mechanics' liens that may be filed against the premises and that shall or might have priority in lien or payment to the debt secured by this mortgage; (C) pay and discharge any documentary stamp or other tax, including interest and penalties hereon, if any, now or becoming payable on the note evidencing the debt secured by this mortgage; (D) provide, renew, and keep alive by paying the necessary premiums and charges thereon such policies of hazard and liability insurance as Mortgagee may from time to time require on the buildings and improvements now or to be erected on the mortgaged premises, with loss payable clauses in favor of Mortgagor and Mortgagee as their respective interests may appear; and (E) promptly submit to Mortgagee evidence of the due and punctual payment of all the foregoing charges. Mortgagee may at its option require that a sum sufficient to discharge the foregoing charges be paid in installments to Mortgagee.

SECTION THREE MAINTENANCE OF PROPERTY

Mortgagor shall maintain all buildings and improvements subject to this mortgage in as good

condition and repair as they are currently. Mortgagee shall have the right to enter on the mortgaged premises at any reasonable hour to inspect the order condition, and repair of the buildings and improvements erected thereon.

SECTION FOUR RIGHT OF MORTGAGEE TO PAY CHARGES

In the event Mortgagor neglects or refuses to pay the charges mentioned above, or fails to maintain the buildings and improvements as stated above, Mortgagee may do so, add the cost thereof of the principal debt secured hereby, and collect the same as a part of the principal debt.

SECTION FIVE PRIOR LIENS

Mortgagor covenants and agrees not to create, nor permit to accrue, on all or any part of the mortgaged premises, any debt, lien, or charge that would be prior to, or on a parity with, the lien of this mortgage.

SECTION SIX ACCELERATION

In case a default in the payment of any installment of principal or interest pursuant to the terms of the note continues for thirty (30) days after Mortgagee gives written notice to Mortgagor, the entire unpaid balance of the principal sum, additional loans or advances, and all other sums paid by Mortgagee pursuant to the terms of the note or this mortgage, together with unpaid interest thereon, shall at the option of Mortgagee and without notice become immediately due and payable. Foreclosure proceedings may be brought promptly on this mortgage and prosecuted to judgment, execution, and sale for the collection of the same, together with costs of suit and attorney fees for collection of five (5%) percent of the total indebtedness or Ten Thousand Dollars (\$10,000.00), whichever is the larger amount. Mortgagor hereby forever waives and releases all errors in the proceedings, waives stay of execution, the right of inquisition and extension of time of payment, agrees to condemnation of any property levied on by virtue of any such execution, and waives all exemptions from levy and sale of any property that now is, or may be, exempted by law.

SECTION SEVEN DEFAULT

In the event of any default under this mortgage or under the note, Mortgagor hereby empowers any attorney of any court of record to appear for Mortgagor and for any and all parties claiming under or through Mortgagor and to confess a judgment or series of judgments against Mortgagor and any such party or parties, in favor of Mortgagee, in an amicable action of ejectment for possession of the mortgage premises and authorizes the entry of such action, confession of judgment therein for possession, and for attorney fees not to exceed Ten Thousand Dollars

(\$10,000.00) Mortgagee may bring such action before or after the institution of foreclosure proceedings on this mortgage or after judgment thereon or on the note, or after a sale of the mortgaged premises by the sheriff. The covenants, conditions, and agreements contained in this mortgage shall bind, and the benefits shall enure to, the parties and their respective heirs, executors, administrators, successors, and assigns. If this mortgage is executed by more than one person, the undertakings and liability of each shall be joint and several.

Witness the due execution hereof the day and year first above written.

ALLEGHENY RAILROAD
PROPERTIES, INC.

ATTEST: *Ronald G. Hall*
Secretary

By:

Ronald G. Hall
President

(Corporate Seal)

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS:

On this, the 22 day of April, 1997, before me, a Notary

_____, the undersigned officer, personally appeared Ronald G. Hall

_____, who acknowledged himself to be the President of Allegheny Railroad

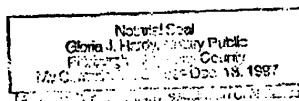
Properties, Inc., a corporation, and that he as such President, being authorized to do so, executed the foregoing Mortgage for the purposes therein contained by signing the name of the Corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

Gloria J. Hardy

4/18/97



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CERTIFICATE OF RESIDENCE

I, RONALD G. HALL do hereby certify that MY
precise residence is 139 ST THOMAS DRIVE BOONET FALLS, PA. 15011

Witness my hand this 22 day of April, 1997.

Ronald G. Hall
President

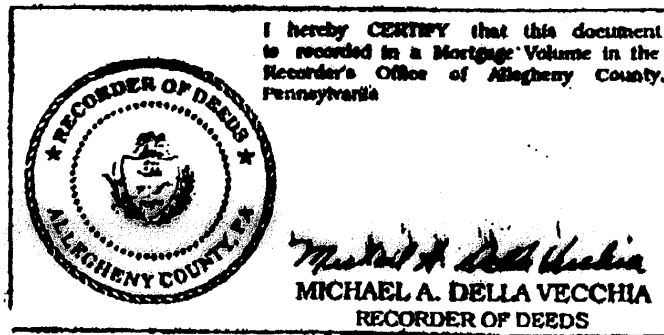


Exhibit "B"

AGREEMENT OF PURCHASE AND SALE

THIS CONTRACT is entered into as of the 20th day of April, 1999 by and between PITTSBURGH & LAKE ERIE PROPERTIES, INC. (formerly known as Pittsburgh & Lake Erie Railroad Company), a delaware corporation, OWNER OF RECORD or its successors or assigns, whose address is Suite 780 Commerce Court, Four Station Square, Pittsburgh, Pennsylvania, 15219 (hereinafter referred to as "Seller"), and Mariah Venture Capital & Consulting, Co., a Pennsylvania corporation, whose address 98 Glenbury Street, Pittsburgh, Pennsylvania 15234 (hereinafter referred to as "Purchaser"), upon the terms and conditions set forth herein.

ARTICLE I

Purchase and Sale of the Property

1.1 Mariah Venture Capital & Consulting, on behalf of an undisclosed buyer, and not on behalf of Allegheny Railroad Properties, Inc., will purchase the note and mortgage currently between Pittsburgh & Lake Erie properties, Inc. and Allegheny Railroad Properties, Inc. covering the property referred to as the McKees Rocks site and further identified in attached "Exhibit A". Such sale is contingent upon Seller obtaining approval of the U.S. Bankruptcy Court. Such sale is also contingent upon the mortgage remaining unsatisfied by Allegheny Railroad Properties, Inc., at the time of closing.

ARTICLE II

Purchase Price

2.1 The purchase price for the Mortgage shall be Nine Hundred Fifty Thousand Dollars and 00 cents. At the time of execution of this agreement, \$5,000.00 (five thousand dollars) will be deposited with Seller's attorney in escrow as "good faith" money. This money will be applied to the purchase price at time of closing.

ARTICLE III

Title

3.1 At the closing, Seller shall convey the Note and Mortgage to Purchaser. Purchaser has been furnished with copies of existing leases between Pittsburgh & Lake Erie Properties, Inc. and those parties renting at the site and time of mortgage's inception. Purchaser has been made aware of the purchase options contained within such leases

ARTICLE IV
Closing

4.1 The consummation of the purchase and sale contemplated hereby (herein called the "Closing") shall be held on or before 5:00 pm , on June 10, 1999, unless extended as herein provided. Closing shall be held at offices to be designated by Purchaser, or at such other time, date and place as Seller and Purchaser may agree upon in writing. The date and hour of the Closing are herein called the "Closing Date".

ARTICLE V
Seller's Representations, Warranties and Covenants

5.1 Seller represents, warrants and covenants to and with Purchaser that:

- a) Seller has, and will convey to Purchaser at Closing, good, marketable and insurable title to the Note & Mortgage, free and clear of all liens, encumbrances, covenants, reservations, restrictions, and any other matters affecting title, recorded and unrecorded, except for matters which have been expressly disclosed in this Agreement.
- b) No person, corporation, firm, or entity other than Purchaser has acquired or will acquire any right, or option to acquire the Note and Mortgage, or is or will be entitled to possession of all or any part thereof.
- c) Except as disclosed herein, Seller has received no notice and has no knowledge of any governmental or judicial orders or decrees in existence, or proceedings pending or threatened which either do or could effect the McKees Rocks Property other than Pennsylvania Department of Environmental Resources action at EHB Docket No. 92-454-MR (PA DEP action).
- d) Seller has received no notice and has no knowledge of any actual or threatened full or partial condemnation of the McKees Rocks Property.
- e) To the best of Seller's knowledge, no improvement or other structures located on any adjoining real property encroach upon any portion of the McKees Rocks Property.

f) Except as disclosed,

To the best of Seller's knowledge, except as known to exist in connection with and disclosed in the PA DEP action, the McKees Rocks Property is free of any flammable explosives, underground storage tanks, radioactive materials, hazardous wastes, friable asbestos, other materials containing asbestos, toxic substances or related materials, including, without limitation, substances defined as "hazardous substances", "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the hazardous materials Transportation Act (49 U.S.C. Section 1801 et. seq.), any so-called "Superfund" or "Superlien" law or any other applicable federal, state or local law, common law, code, rule, regulation, or ordinance, presently in effect or hereinafter enacted (herein "Hazardous Materials").

ARTICLE VI Miscellaneous

6.1 Except as expressly set forth herein, any covenants, representations and warranties of Seller and Purchaser contained in this Contract, as well as any rights and benefits of the other party with respect thereto, shall survive the Closing and shall not be merged into the Closing.

6.2 Notices hereunder shall be sent by certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier service, addressed to Seller or Purchaser.

6.3 Words of any gender used in this Contract shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

6.4 The captions used in connection with the Articles of this Contract are for convenience only and shall not be deemed to construe or to limit the meaning of the language of this Contract.

6.5 Nothing in this Contract, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights, obligations or remedies under or by reason of this contract. This Contract shall be binding upon the executors, successors or assigns of each party.

6.6 This Contract may be amended only by a written instrument executed by Seller and Purchaser.

6.7 This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

6.8 This Contract may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall construe one and the same instrument.

ARTICLE VII Default

In the event of default by Buyer, Seller may, at Seller's sole option, elect to:

a) Retain the hand money and all monies paid on account of the purchase price as liquidated damages, in which event the Agreement shall become null and void and both parties shall thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Seller's damages will be difficult of ascertainment and that the hand money and all monies paid on account of the purchase price constitute a reasonable liquidation thereof and not a penalty.

In lieu thereof, however, Seller may elect either or both of the following remedies:

(b) Apply the hand money and all monies paid on account of the purchase price towards the purchase price and proceed with an action for specific performance;

(c) Apply said monies toward Seller's loss on the resale of said note and mortgage and proceed with action at law for all damages sustained by Seller;

Provided, however, that no such election of (b) or (c) shall be final or exclusive until full satisfaction shall have been received.

In the event of default by the Seller, Buyer may, at Buyer's sole option, elect to:

(a) Waive any claim for loss of bargain, in which event Seller hereby agrees to repay the Buyer the hand money and all monies paid on account and, in addition, reimburse Buyer for all direct, out of pocket costs and expenses (i.e., title examination, survey and professional fees).

In lieu thereof, however, Buyer may elect the following remedy:

(b) An action for specific performance.

Provided, however that no such election of (b) shall be final or exclusive until full satisfaction shall have been received.

ARTICLE VIII
Integration clause

This agreement constitutes the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

Wherever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

David L. Schoppe-Frank Date 4/26/99
Purchaser FOR MARINE VENTURE CAPITAL & CONSULTING.

John D. Hartman Date 4/26/99
Seller P.H.E. Properties, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	:	
	:	
PITTSBURGH & LAKE ERIE	:	Case No. 96-406 (MFW)
PROPERTIES, INC.,	:	
	:	Chapter 11
Debtor.	:	

**ORDER UNDER 11 U.S.C. §§ 363(b) and (f) AUTHORIZING DEBTOR TO
(i) ASSIGN A NOTE AND MORTGAGE FREE AND CLEAR OF LIENS;
(ii) TRANSFER NOTE AND MORTGAGE FREE OF ANY TRANSFER OR
STAMP TAX PURSUANT TO 11 U.S.C. § 1146(c); AND
(iii) MAKE DIRECT PAYMENT OF NET SALE PROCEEDS**

Upon consideration of Debtor's Motion for an Order Authorizing Debtor To (i) Assign A Note and Mortgage Free and Clear of Liens; (ii) Transfer A Note and Mortgage Free of Any Transfer or Stamp Tax Pursuant to 11 U.S.C. § 1146(c); And (iii) Make Direct Payment of Net Sale Proceeds, filed on May 20, 1999 (the "Motion"); and it appearing that notice of the Motion was given to the United States Trustee, all creditors, Allegheny Railroad Properties, Inc., and all parties requesting notice under Rule 2002, and that no other notice need be given; and it appearing that: (1) the proposed sale reflects a valid exercise of Debtor's sound business judgment; and (2) the purchaser of the note and mortgage on the McKees Rocks property, Mariah Venture Capital & Consulting, Co., or its permitted assigns, has agreed to pay a fair and reasonable price and is purchasing the property in good faith; (3) and it appearing therefore that sufficient cause exists for granting the relief requested; and upon the record herein, it is hereby

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the Debtor is authorized to sell the Note and Mortgage to Mariah Venture Capital & Consulting, Co., or its lawful assignees in accordance with the terms of the Agreement of Purchase and Sale, attached to the Motion (the "Agreement"); and it is further

ORDERED, that the Buyer is entitled to the protection of 11 U.S.C. § 363(m), such that the non-finality of this Order is not sufficient cause to delay closing on the sale of the Note and Mortgage; and it is further

ORDERED, that the sale of the Note and Mortgage on the McKees Rocks property shall be free and clear of all liens, encumbrances, interests and claims, with all liens, encumbrances, interests and claims attaching to the proceeds of such sale in the order of their priority after deduction of sales costs ordinarily payable upon closing of a sale of property of this type (the "Selling Expenses"); and it is further

ORDERED, that the sale of the Note and Mortgage on the McKees Rocks property shall be exempt from the payment of any applicable realty transfer taxes pursuant to 11 U.S.C. § 1146(c); and it is further

ORDERED, that the Buyer may record a certified copy of this Order in the land records for the county wherein the real estate to be sold may be located; and it is further

ORDERED, that the Debtor is authorized to make direct payment of 75% of the sale proceeds after Selling Expenses directly to State Street Bank and Trust Company (successor to Fleet

Bank) as Security Trustee in accordance with the terms of this Court's Final Order Providing for Use of Cash Collateral and Providing Adequate Protection, entered May 3, 1996, as may be extended by further order of this Court, toward and in partial satisfaction of its pre-petition secured claim against the Debtor.


THE HONORABLE MARY F. WALRATH
United States Bankruptcy Judge

Dated: 6/18/99

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Movant to send copies to all parties and file certificate of service with the court.

cc Kathleen Makowski, Esq. 6/18/99

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: :
P&LE PROPERTIES, INC., : Chapter 11
Debtor. : No. 96-406

AFFIDAVIT OF SERVICE

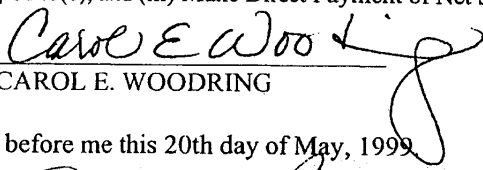
STATE OF DELAWARE
} SS.
NEW CASTLE COUNTY

COMES NOW, before me, the Subscriber, a Notarial Officer in and for the State and County aforesaid, CAROL E. WOODRING, who being duly sworn does depose and say:

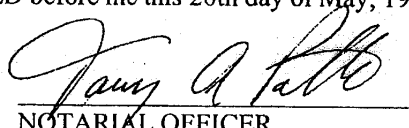
1. She is employed as a legal secretary in the offices of Phillips, Goldman & Spence, P.A.

2. On Thursday, May 20, 1999, she prepared and supervised the service, by United States mail, postage prepaid, and/or hand delivery, of the following document upon those on the attached 2002 service list:

(A) Motion for an Order Authorizing Debtor to (i) Assign a Mortgage and Note on Certain Real Property Free and Clear of Liens; (ii) Transfer the Mortgage and Note Free of any Transfer or Stamp Tax Pursuant to 11 U.S.C. § 1146(c); and (iii) Make Direct Payment of Net Sale Proceeds


CAROL E. WOODRING

SWORN TO AND SUBSCRIBED before me this 20th day of May, 1999


NOTARIAL OFFICER

JANICE A. PATTERSON
NOTARY PUBLIC-DELAWARE
My Commission Expires June 22, 1999

**IN RE PITTSBURGH & LAKE ERIE PROPERTIES, INC.
NUMBER 96-406 (HSB)
CHAPTER 11**

2002 SERVICE LIST

Ellen W. Slights, Esquire
Assistant U. S. Attorney
1201 North Market St., Suite 1100
P.O. Box 2046
Wilmington, DE 19899

John D McLaughlin, Jr., Esq
Office of the U.S. Trustee
601 Walnut Street, Curtis Center
Suite 950 West
Philadelphia, PA 19106

Thomas L. Ambro, Esquire
Hillary C. Steinberg, Esquire
Richards, Layton & Finger
One Rodney Square, Tenth Floor
Wilmington, DE 19899

Michael Reilly, Esquire
Brian N. Watkins, Esquire
Hebb & Gitlin
One State Street
Hartford, CT 06100-0170

Robert W. Kleinman, Esquire
Susan G. Lichtenfeld, Esq.
Susan F. Lifvendahl, Esq.
Ross & Hardies
150 North Michigan Avenue
Chicago, IL 60601-7567

Pittsburgh & Lake Erie Properties, Inc.
49 Pius Street
Pittsburgh, PA 15203-1616

Director
Internal Revenue Service
409 Silverside Road, Stop 168
Wilmington, DE 19809

William H. Johnson, Esquire
Associate General Counsel
16-A Two Commerce Square
2001 Market Street
Philadelphia, PA 19101-1416

William C. Kaczynski, Esq.
1208 Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Miriam A. Howe, Esquire
Internal Revenue Service
District Counsel
4620 Wisconsin Ave., NW, 4th Floor
Washington, DC 20016

John T. Tierney, III, Esquire
Goldberg, Persky, Jennings
& White, PC
1030 Fifth Avenue
Pittsburgh, PA 15219

David W. Ross, Esquire
Michael G. McCabe, Esquire
Goehring, Rutter & Boehm
Firm #102
1424 Frick Building
Pittsburgh, PA 15219

Kip A. Harbison, Esquire VSB #38648
Glasser and Glasser, P.L.C.
Dominion Tower
999 Waterside Drive, Suite 600
Norfolk, VA 23510

Allegheny Railroad Properties, Inc.
139 St. Thomas Drive
Beaver Falls, PA 15010

EXHIBIT "1"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

PITTSBURGH & LAKE ERIE
PROPERTIES, INC.,

Debtor.

Case No. 96-406 (MFW)

Chapter 11

STEFEN D. TAYLOR, CLERK
U. S. BANKRUPTCY COURT
DELAWARE
CLERK

A TRUE COPY
ATTEST:

7/9/99

**ORDER UNDER 11 U.S.C. §§ 363(b) and (f) AUTHORIZING DEBTOR TO
(i) ASSIGN A NOTE AND MORTGAGE FREE AND CLEAR OF LIENS;
(ii) TRANSFER NOTE AND MORTGAGE FREE OF ANY TRANSFER OR
STAMP TAX PURSUANT TO 11 U.S.C. § 1146(c); AND
(iii) MAKE DIRECT PAYMENT OF NET SALE PROCEEDS**

Upon consideration of Debtor's Motion for an Order Authorizing Debtor To (i) Assign A Note and Mortgage Free and Clear of Liens; (ii) Transfer A Note and Mortgage Free of Any Transfer or Stamp Tax Pursuant to 11 U.S.C. § 1146(c); And (iii) Make Direct Payment of Net Sale Proceeds, filed on May 20, 1999 (the "Motion"); and it appearing that notice of the Motion was given to the United States Trustee, all creditors, Allegheny Railroad Properties, Inc., and all parties requesting notice under Rule 2002, and that no other notice need be given; and it appearing that: (1) the proposed sale reflects a valid exercise of Debtor's sound business judgment; and (2) the purchaser of the note and mortgage on the McKees Rocks property, Mariah Venture Capital & Consulting, Co., or its permitted assigns, has agreed to pay a fair and reasonable price and is purchasing the property in good faith; (3) and it appearing therefore that sufficient cause exists for granting the relief requested; and upon the record herein, it is hereby

ORDERED, that the Motion is GRANTED; and it is further

LEWIS & CLARK

HBV19300PG562

ORDERED, that the Debtor is authorized to sell the Note and Mortgage to Mariah Venture Capital & Consulting, Co., or its lawful assignees in accordance with the terms of the Agreement of Purchase and Sale, attached to the Motion (the "Agreement"); and it is further

ORDERED, that the Buyer is entitled to the protection of 11 U.S.C. § 363(m), such that the non-finality of this Order is not sufficient cause to delay closing on the sale of the Note and Mortgage; and it is further

ORDERED, that the sale of the Note and Mortgage on the McKees Rocks property shall be free and clear of all liens, encumbrances, interests and claims, with all liens, encumbrances, interests and claims attaching to the proceeds of such sale in the order of their priority after deduction of sales costs ordinarily payable upon closing of a sale of property of this type (the "Selling Expenses"); and it is further

ORDERED, that the sale of the Note and Mortgage on the McKees Rocks property shall be exempt from the payment of any applicable realty transfer taxes pursuant to 11 U.S.C. § 1146(c); and it is further

ORDERED, that the Buyer may record a certified copy of this Order in the land records for the county wherein the real estate to be sold may be located; and it is further

ORDERED, that the Debtor is authorized to make direct payment of 75% of the sale proceeds after Selling Expenses directly to State Street Bank and Trust Company (successor to Fleet

Bank) as Security Trustee in accordance with the terms of this Court's Final Order Providing for Use of Cash Collateral and Providing Adequate Protection, entered May 3, 1996, as may be extended by further order of this Court, toward and in partial satisfaction of its pre-petition secured claim against the Debtor.


THE HONORABLE MARY F. WALRATH
United States Bankruptcy Judge

Dated: 6/18/99

U:\www\FLEX\AM\EST\AMT

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Movant to send copies to all parties and file certificate of service with the court.

cc: Kathleen Makowski, Esq. 6/18/99

MBV19300PG564

Nov 29 09 207190

ASSIGNMENT OF MORTGAGE
AND COGNOVIT JUDGMENT NOTE

99 NOV 29 PM 12:58

From: PITTSBURGH & LAKE ERIE
PROPERTIES, INC., Debtor-In-Possession

To: MARIAH VENTURE CAPITAL &
CONSULTING CO.

RETURN WHEN
RECORDED TO:

STREAMLINE SETTLEMENT
300 Mt. Lebanon Blvd.
Suite 310
Pittsburgh, PA 15234

MBV19300PG565

ASSIGNMENT OF MORTGAGE AND
COGNOVIT JUDGMENT NOTE

KNOW ALL MEN BY THESE PRESENTS THAT,

WHEREAS, Allegheny Railroad Properties, Inc. executed, acknowledged and delivered unto Pittsburgh and Lake Erie Properties, Inc., Debtor-in-Possession (hereinafter "Assignor") a certain mortgage dated April 27, 1997, in the original principal amount of \$1,200,000.00, which was recorded in the Office of the Recorder of Deeds in and for Allegheny County, Pennsylvania, on April 28, 1997, in Mortgage Book 16566, page 473, (the "Mortgage");

NOW, THEREFORE, in consideration of the sum of \$950,000.00 paid to Assignor by Mariah Venture Capital & Consulting Co. (hereinafter "Assignee") the receipt of which is hereby acknowledged, and pursuant to approval of the United States Bankruptcy Court in the District of Delaware, by Order dated June 18, 1999, a true and correct copy of which is attached as Exhibit "1", Assignor hereby grants, bargains, sells, assigns, transfers, and sets over unto Assignee and its successors, and assigns, all of Assignor's right, title and interest in, to and under the Mortgage and the Cognovit Judgment Note and obligation referred to in the Mortgage. This Assignment includes the benefit of any and all warrants of attorney contained in the Mortgage or the note, bond, or obligation referred to in the Mortgage.

HBY19300PG559

IN WITNESS WHEREOF, this Assignment has been duly executed on 11/24/99

PITTSBURGH & LAKE ERIE PROPERTIES, INC.
Debtor-in-Possession

By: John D. Heston
Vice President
(CORPORATE SEAL)

HBV19300PG560

ATTESTATION.

Signed, Sealed and Delivered in
the presence of

Samuel D. Neil date: 11/24/99
Witness
Samuel D. Neil date: 11/24/99
Witness

~~ACKNOWLEDGMENT~~

DATE
STATE OF
COUNTY OF

On 11/24/99, before me, Lawrence A. Neish, Notary
Public, personally appeared John D. Hartman, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf
of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

Samuel D. Neil
Notary Seal
Lawrence A. Neish, Notary Public
Bloom Twp., Allegheny County
My Commission Expires April 18, 2001
Member Pennsylvania Association of Notaries

I certify that the address of the above named Assignee is:

94 Glenbury Street, Pittsburgh, Pa. 15214

Samuel D. Neil

HBV19300PG561

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

PROLINE RAILROAD
TRACK CO.,

Plaintiff,

v.

MARIAH VENTURE CAPITAL
& CONSULTING, INC.,

Defendant.

CIVIL DIVISION

No. GD 03-025297

**FIRST REQUEST FOR
ADMISSIONS DIRECTED TO
DEFENDANT**

Served on behalf of:
ProLine Railroad Track Co.,
Plaintiff

Counsel of Record for
This Party:

Jay D. Marinstein
Pa. I.D. #53163

Patrick L. Abramowich
Pa. I.D.# 74494

FOX ROTHSCHILD LLP
Dominion Tower, 29th Floor
625 Liberty Avenue
Pittsburgh, PA 15222

(412) 391-1334

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

PROLINE RAILROAD	)	CIVIL DIVISION
TRACK CO.,	)	No. GD 03 -025297
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MARIAH VENTURE CAPITAL &	)	
CONSULTING, INC.,	)	
	)	
Defendant.	)	

FIRST REQUEST FOR ADMISSIONS DIRECTED TO DEFENDANT

Plaintiff ProLine Railroad Track Company ("ProLine"), by its attorneys, Fox Rothschild, LLP, hereby serves these requests for admissions upon defendant Mariah Venture Capital & Consulting, Inc. ("Mariah"), pursuant to Rule 4014 of the Pennsylvania Rules of Civil Procedure. Pursuant to the applicable discovery rules, the matters stated herein will be deemed admitted unless you provide a written response within thirty (30) days after service of the requests.

I. INSTRUCTIONS AND DEFINITIONS

Plaintiff hereby asserts the following instructions and definitions for these requests for admissions:

1. "Mariah" shall mean Defendant Mariah Venture Capital & Consulting, Inc., its predecessors, successors, assigns, parents, divisions, partners and affiliates; and their respective officers, directors, shareholders, employees, agents and representatives, including with limitation James and Karen Frank. "You" or "your" shall likewise refer to Mariah.

2. "ProLine" shall mean Plaintiff ProLine Railroad Track Company, its predecessors, successors, assigns, parents, divisions, partners and affiliates; and their respective officers, directors, shareholders, employees, agents and representatives.

3. As used herein, "Track" shall mean those 10.5 +/- miles of railroad track and trackage including railroad ties, switches, frogs, tie plates and related material located in the Yard, the rights to which are at issue in the Complaint filed by ProLine in the above-captioned docket.

4. "Yard" shall mean those two parcels consisting of approximately 105 acres in McKees Rocks Borough and Stowe Township, Allegheny County, Pennsylvania, SS 330 to SS 415 (River Crossing to Neville Island Bridge), containing various improvements and track, upon which the Pittsburgh & Lake Erie Railroad Company formerly maintained switching yards and maintenance, refueling and other facilities.

5. The term "Person" shall mean any individual, corporation, partnership, proprietorship, or association, or any other business organization or governmental agency.

6. These requests for admissions encompass all information, documents and records that are in the possession, control, or custody of Mariah, or any of its employees, agents, servants, attorneys or assigns.

7. If you object to any request for admission, you shall state the reasons for such objection.

8. If you claim any privilege relating to any request for admission, you shall set forth fully the basis for the claim of privilege, including the facts upon which you rely to support the claim of privilege in sufficient detail to permit the court to rule on the propriety of the privilege.

9. If your response to any request is not an unqualified admission, your answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

10. A denial shall fairly meet the substance of the requested admission. When good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, you should specify so much of it as true and qualify or deny the remainder.

11. You may not give lack of information or knowledge as a reason for failure to admit or deny, unless you state that you have made reasonable inquiry and that the information known to you or readily obtainable by you is insufficient to enable you to admit or deny.

12. These requests for admission are continuing in nature and must be supplemented promptly if you obtain or learn further or different information subsequent to the response date by which you know that a previous response was incorrect when made, or though correct when made, is then no longer true.

II. REQUESTS FOR ADMISSIONS

1. Pittsburgh & Lake Erie Railroad Company ceased operating as a railroad under Interstate Commerce Commission (now Surface Transportation Board) regulations and the Interstate Commerce Act (now the Interstate Commerce Commission Termination Act) on or before July 1993.

ANSWER:

2. On July 2, 1993, Pittsburgh & Lake Erie Railroad Company changed its name to Pittsburgh & Lake Erie Properties, Inc. to reflect its total cessation of business as a railroad.

ANSWER:

3. Pittsburgh & Lake Erie Railroad Company obtained all necessary regulatory approvals for its cessation of operations as a common carrier railroad.

ANSWER:

4. Pittsburgh & Lake Erie Railroad Company was not required to obtain authorization from the Interstate Commerce Commission (now the Surface Transportation Board) to abandon the Track when it ceased operations as a common carrier railroad because the Track was exempt from regulation under 49 U.S.C. § 10906.

ANSWER:

5. Pittsburgh & Lake Erie Properties, Inc. owned the Track from July 2, 1993 through March 1997.

ANSWER:

6. During the period from July 2, 1993 through March 1997, Pittsburgh & Lake Erie Properties, Inc. did not operate as a common carrier railroad.

ANSWER:

7. The Track is located in the Yard.

ANSWER:

8. The Yard historically was operated by Pittsburgh & Lake Erie Railroad Company as a switching yard and had refueling, warehousing and maintenance facilities, including a roundhouse, a machine and erecting shop, a boiler and tank shop, a diesel shop, a lacquer shop, a freight car shop, an upholstering shop, a paint shop, car cleaning facilities, a woodworking shop, lumber storage facilities, and facilities for storing paints and other solvents.

ANSWER:

9. The Yard was used historically by Pittsburgh & Lake Erie Railroad Company exclusively for switching, maintenance, warehousing and refueling activities.

ANSWER:

10. No Person, including without limitation the Pittsburgh & Lake Erie Railroad Company, ever provided common carriage of freight or passengers over the Track.

ANSWER:

11. The Track has never been used for through rail service.

ANSWER:

12. Pittsburgh & Lake Erie Properties, Inc. sold the Track to Allegheny Railroad Properties, Inc. in 1997.

ANSWER:

13. Allegheny Railroad Properties, Inc. is not, and never has been, a common carrier railroad.

ANSWER:

14. ProLine has never been engaged in providing common carrier railroad transportation to the public for compensation.

ANSWER:

15. ProLine is not presently, and has never been, a "rail carrier" as defined in 49 U.S.C. § 10102(5).

ANSWER:

Respectfully submitted,

FOX ROTHSCHILD, LLP

DATE: March 22, 2004

By:



Jay D. Marinstein

Pa. I.D. No. 53163

Patrick L. Abramowich

Pa. I.D. No. 74494

625 Liberty Avenue, 29th Floor

Pittsburgh, Pennsylvania 15222

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Request for Admissions
Directed to Defendant was served upon the counsel listed below by hand delivery, on this
22nd day of March, 2004:

Nicholas D. Krawec, Esq.
Bernstein Law Firm, P.C.
Suite 2200
Gulf Tower
Pittsburgh, PA 15219-1900

A handwritten signature in black ink, appearing to read "Nicholas D. Krawec", written over a horizontal line.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

P&LE PROPERTIES, INC.,

Debtor.

:
:
: Chapter 11
:
: No. 96-406 (HSB)

**NOTICE OF MOTION FOR AN ORDER AUTHORIZING DEBTOR
TO (i) SELL CERTAIN REAL PROPERTY (MCKEES ROCKS
PROPERTY) FREE AND CLEAR OF LIENS; (ii) TRANSFER
REAL PROPERTY FREE OF ANY TRANSFER OR
STAMP TAX PURSUANT TO 11 U.S.C. § 1146(c);
(iii) MAKE DIRECT PAYMENT OF NET SALE
PROCEEDS TO PRE-PETITION SECURED CREDITOR;
AND (iv) ASSUME AND ASSIGN RELATED LEASES**

PLEASE TAKE NOTICE that on March 18, 1997, Pittsburgh & Lake Erie Properties, Inc., Debtor-in-Possession ("Debtor") filed a Motion for an Order Authorizing Debtor To (i) Sell Certain Real Property (Allegheny Rocks Property) Free and Clear of Liens; (ii) Transfer Real Property Free of Any Transfer or Stamp Tax Pursuant to 11 U.S.C. § 1146(c); (iii) Make Direct Payment of Net Sale Proceeds to Pre-Petition Secured Creditor; and (iv) Assume and Assign Related Leases (the "Motion"), a copy of which may be obtained from the undersigned if not enclosed herewith;

PLEASE TAKE FURTHER NOTICE that the property subject to the Motion and the proposed terms of sale are set forth below:

L:\KIP\PLEDINGS\NOT

PROPERTY: Approximately 105 acres (two parcels) in McKees Rocks Borough and Stowe Township, Allegheny County, Pennsylvania, SS 330 to SS 415 (River Crossing to Neville Island Bridge), containing various improvements and track, formerly switching yards, maintenance, refueling and other facilities of the Pittsburgh and Lake Erie Railroad.

TERMS: Price of \$1.2 million payable over two years at 24 equal monthly payments of \$5,000 each; unpaid balance of price bearing interest at 7% per year, with balloon payment of remaining price, with interest, on or before the 10th day of the 25th month after closing.

PURCHASER: Allegheny Railroad Properties, Inc.

CLOSING DATE: Expected promptly after Court approval.

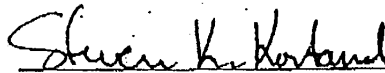
PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be made in writing, filed with the Bankruptcy Court and served upon the following on or before 4:00 p.m., EST March 31, 1997: (i) Phillips, Goldman & Spence, P.A., 1200 North Broom Street, Wilmington, Delaware 19806, attention: Stephen W. Spence, Esquire and Steven K. Kortanek, Esquire and (ii) the Office of the United States Trustee for the District of Delaware, 601 Walnut Street, Curtis Center, Suite 950 West, Philadelphia, Pennsylvania 19106, attention: John D. McLaughlin, Jr., Esquire;

PLEASE TAKE FURTHER NOTICE that any party interested in making a higher and better offer may request a copy of the Motion at the Debtor's expense, and that offers must be (1) in writing and (2) received by the undersigned on or before March 31, 1997, provided, however, that the Debtor and/or the Court shall determine what constitutes a "higher and better offer".

NOT RECORDED

PLEASE TAKE FURTHER NOTICE that the Court will conduct a hearing on the Motion beginning at 2:30 p.m. EST, April 2, 1997 in the courtroom of The Honorable Helen S. Balick, Chief United States Bankruptcy Judge, Marine Midland Plaza, 824 Market Street, 6th Floor, Wilmington, Delaware 19801. Only those objections timely filed and served as provided above will be considered at said hearing.

PHILLIPS, GOLDMAN & SPENCE, P.A.



Stephen W. Spence (No. 2033)
Steven K. Kortanek (No. 3106)
1200 North Broom Street
Wilmington, Delaware 19899
(302) 655-4200
Attorneys for Debtor

Dated: March 18, 1997
Wilmington, Delaware

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

PITTSBURGH & LAKE ERIE
PROPERTIES, INC.,

Debtor.

:
:
:
:
:
:

Case No. 96-406 (HSB)

Chapter 11

**MOTION FOR AN ORDER AUTHORIZING DEBTOR
TO (i) SELL CERTAIN REAL PROPERTY (MCKEES ROCKS
PROPERTY) FREE AND CLEAR OF LIENS; (ii) TRANSFER
REAL PROPERTY FREE OF ANY TRANSFER OR
STAMP TAX PURSUANT TO 11 U.S.C. § 1146(c);
(iii) MAKE DIRECT PAYMENT OF NET SALE
PROCEEDS TO PRE-PETITION SECURED CREDITOR;
AND (iv) ASSUME AND ASSIGN RELATED LEASES**

Pittsburgh & Lake Erie Properties, Inc., debtor and debtor-in-possession ("Debtor"), by and through its undersigned counsel, moves this Honorable Court for an order pursuant to 11 U.S.C. §§ 363(f), 365, and 1146(c) authorizing the Debtor to (1) sell and transfer its real property referred to as the "McKees Rocks Property" (defined at length herein), consisting of two parcels comprising approximately 105 acres, free and clear of all liens, encumbrances, claims and interests; (2) transfer the McKees Rocks Property free of any transfer or stamp tax pursuant to 11 U.S.C. § 1146(c); (3) make direct payment of net sale proceeds to pre-petition secured creditor; and (4) assume and assign related leases at the the McKees Rocks Property (the "Motion"). In support of this Motion, the Debtor respectfully represents as follows:

LAKEVIEW/EDWARDS/NOT

BACKGROUND

1. On March 22, 1996, (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Code. Since the Petition Date, the Debtor has remained in possession of its assets and has continued to operate and manage its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Code.

2. No official committee, trustee or examiner has been appointed in this case.

3. This Court has jurisdiction over the subject matter of this motion pursuant to 28 U.S.C. §§ 157 and 1334. The statutory predicates for relief are 11 U.S.C. §§ 105(a), 363 and 1146(c). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The subject matter of this motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

History of the Debtor

4. The Debtor is a Delaware corporation headquartered in Pittsburgh, Pennsylvania. The Debtor's predecessor was the Pittsburgh and Lake Erie Railroad Company (the "Railroad"). The Railroad was founded over 100 years ago, and for much of its storied existence operated without a losing year. In the 1970's and 1980's, however, the Railroad invested heavily in new rolling stock, not long before the collapse of Pittsburgh's steel industry decimated the market for the type of rail hauling the Railroad depended upon. The effects of rail deregulation under the Staggers Act compounded the Railroad's decline.

5. The persistent downturn in rail usage and labor problems ultimately forced the Railroad to exit the railroad business. This was accomplished through a series of transactions closed in 1991 and 1992 in which the Railroad sold its track and rail operations to CSX Corporation. To reflect its total cessation of business as a railroad under Interstate Commerce Commission (the "ICC", succeeded by the Surface Transportation Board) regulations and the Interstate Commerce Act, the Railroad changed its name to Pittsburgh & Lake Erie Properties, Inc. on July 2, 1993.

6. The Debtor's business operations are currently limited to managing and arranging for the orderly disposition of its real and personal property holdings. Its real estate consists of numerous parcels of heavy industrial and commercial property in western Pennsylvania and Ohio. The Debtor's personal property consists of 195 railroad hopper cars (subject to a court-approved sale yet to close), 13 inoperable rail cars (subject to the same sale), two rail flat cars, various office equipment, scrap metals, miscellaneous machinery and railroad-related equipment.

Description of the McKees Rocks Property

7. The McKees Rocks Property comprises approximately 105 acres and is made up of two parcels in McKees Rocks Borough and Stowe Township in Allegheny County, Pennsylvania. The property is located six miles west of Pittsburgh. The property is zoned for commercial usage, but abuts residential areas that are economically distressed, with a housing project on one side and an older neighborhood on the other.

8. Historically, the Debtor operated a large switching yard and had substantial refueling, maintenance and warehousing facilities in operation at the McKees Rocks Property. Specifically, the Debtor had operated a fueling facility for diesel locomotives and stored diesel fuel in above-ground tanks on the property. The Debtor also operated a roundhouse, a machine and erecting shop, a boiler and tank shop, a diesel shop, a lacquer shop, a freight car shop, an upholstering shop, a paint shop, car cleaning facilities, a woodworking shop and lumber storage facilities, and facilities for storing paints and other solvents. CSX declined to purchase the McKees Rocks Property when it purchased the Debtor's rail operations in 1991 and 1992. Today there remain nine brick structures of various sizes. Two above-ground and four below-ground fuel storage tanks are also located on the site.

9. As a result of the lengthy history of heavy industrial use, the McKees Rocks Property has suffered environmental contamination that will require remediation. Certain relevant remediation requirements have been set forth in the Consent Order and Adjudication entered into between the Debtor and the Commonwealth of Pennsylvania, Department of Environmental Resources ("PADER"), dated June 7, 1995 (the "Consent Order"). The Consent Order requires soil and groundwater remediation that will ultimately be costly to perform. Depending upon the intended end use of the McKees Rocks Property, the costs to comply with the Consent Order and other remediation that would be required may run into the hundreds of thousands of dollars. Since 1992, the Debtor has spent approximately \$100,000 to begin site remediation.

10. Since the sale of the Debtor's operations, the McKees Rocks Property has deteriorated significantly. The structure housing the transformers and active electrical distribution equipment for the entire McKees Rocks Property is on the verge of crumbling apart. Large buildings on the site either have no roofs or have enormous roof damage. Brick structures throughout the site are in various stages of decay. As the site is too large for the Debtor to provide security service within its budget, incidents of vandalism, trespassing, and illegal dumping are rampant.

11. Prior to the Petition Date, in an effort to generate cash flow and to obtain purchasers for the McKees Rocks Property, the Debtor had entered into several leases (the "Leases") that were unexpired on the Petition Date and contain purchase options. These leases are discussed further below. Despite the cash flow from the Leases, the Debtor is still burdened with over \$40,000 per year in property taxes for the McKees Rocks Property. The total of the rent payments being made to the Debtor at the McKees Rocks Property is about \$9,800 per month.

12. In terms of securing a sale transaction or transactions for the McKees Rocks Property, the Leases were thought to provide a good means of inducing the lessees to buy their leased premises. However, the Leases are under highly favorable rent terms and have lengthy terms up to 30 years. In addition, the already favorable option prices in the Leases for the most part permit credits of 1/2 of the rent paid to date, eroding the net proceeds the Debtor would obtain. Moreover, if a particular lessee wished to exercise its purchase option and the Debtor wished to go forward with the sale, an expensive subdivision process

would be required. The process would require extensive surveys and the submission of detailed subdivision plans to local townships and the two boroughs over which the McKees Rocks Property extends. Permission to subdivide would require new sewage lines, the construction of roads, and other costly improvements. The Debtor further believes, at any rate, that most of these lessees do not have the financial wherewithal to finance their purchase options.

13. Disposing of the McKees Rocks Property has been the Debtor's single most difficult task. The Debtor has, however, received what it considers to be an advantageous offer for the McKees Rocks Property from Allegheny Railroad Properties, Inc. ("Allegheny"), a copy of which is attached hereto as Exhibit "A". Allegheny has offered to pay \$1.2 million for the McKees Rocks Property over time, secured by a new mortgage in favor of the Debtor. Pursuant to its offer, Allegheny would pay \$120,000 toward the purchase price over 24 equal monthly payments of \$5,000 each. The balance of the purchase price would accrue interest at 7% per year and be paid in a single balloon payment on or before the 10th day of the 25th month after closing. In exchange for the risk undertaken by Allegheny, it would be entitled under the terms of its offer to sell parcels from within the McKees Rocks Property from time to time, and to receive a partial release of mortgage for payment of half the sale proceeds. This proceeds split would enable Allegheny to accomplish the significant tasks of subdividing such parcels and obtaining appropriate environmental approvals.

14. Allegheny has agreed to accept an assignment of the Leases. Allegheny has also agreed that, subject to review of relevant environmental data, it will indemnify and hold the Debtor harmless for any and all environmental liability at the McKees Rocks Property.

The Unexpired Leases at the McKees Rocks Property

15. The Leases are comprised of seven unexpired leases by which the Debtor leased portions of the McKees Rocks Property to six firms. Copies of the Leases are attached hereto as Exhibits "B" through "G", Exhibit "G" containing two lease agreements respecting a common lessee.

**The Proposed Sale Was Negotiated in Good Faith,
and Represents a Fair Price**

16. By this Motion, the Debtor seeks authority to sell the McKees Rocks Property to Allegheny. The proposed sale of the McKees Rocks Property represents the best transaction obtainable for this troubled property, in the Debtor's view.

17. Four tests must be satisfied for this Court to approve the sale requested herein under Section 363 of the Code: (i) the "sound business purpose" test, (ii) the requirement of a fair and reasonable price, (iii) the "good faith" test, and (iv) adequate notice. In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983) (setting forth the "sound business purpose" test); Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986) (adopting the Lionel

standard and adding the "good faith" requirement); and In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (adopting Lionel in this District).

**A Sound Business Purpose Exists
for the Sale of the McKees Rocks Property**

18. The Debtor's proposed sale of the McKees Rocks Property reflects a sound business purpose. The Debtor's current operations are focused solely on managing its properties and its leases to various firms, and working to obtain sale transactions of such properties. The Debtor's goal is to file a chapter 11 liquidating plan. While the Debtor is in the process of doing so, the particularly expensive holding expenses of the McKees Rocks Property and the presently strong interest of Allegheny in the property preclude awaiting the confirmation of a chapter 11 plan for this sale.

19. The general maintenance, taxes and insurance for the McKees Rocks Property represent a significant financial burden upon the estate. In addition to ongoing liabilities, the Debtor is very concerned about the specter of large one-time event liabilities, such as a personal injury claim by a trespasser or other risks. An expedient sale of this property is in the best interest of this estate. In the exercise of the Debtor's reasoned business judgment, the proposed transaction is the best available alternative.

20. The Debtor firmly believes that the consideration to be paid by Allegheny reflects the highest and best offer obtainable. The Debtor submits that this price

is at or above the fair market value of the McKees Rocks Property, particularly in light of the environmental and subdivision and other development costs that will be required at the site.

21. The sale price has also been established as reasonable based on the Debtor's extensive marketing efforts. The availability of the McKees Rocks Property for prospective buyers was promoted to industries the Debtor believed would be interested in the such a property, including the lessees under the Leases. The Debtor firmly believes that it would be difficult and highly unlikely to obtain a higher sales price or more favorable terms for the purchase of the McKees Rocks Property than that being offered. However, the Debtor has given interested parties an opportunity to submit "higher and better" offers in its form of notice. The notice of this Motion being issued to all parties in interest provides that the Debtor will accept "higher and better offers" up to and including the objection deadline to this Motion.

**The Transaction Has Been
Negotiated In Good Faith**

22. The parties' negotiations in this transaction involved significant give and take on the material transactional terms. This is particularly true because of the unusual nature of the subject property and the risks Allegheny has agreed to undertake. Price and other terms have been negotiated at some length. Accordingly, the Debtor submits that Allegheny's offer respecting the McKees Rocks Property and the Debtor's acceptance thereof reflects a transaction negotiated at arms' length.

23. Allegheny is neither an "affiliate" nor an "insider" of the Debtor under Section 101 of the Code. Allegheny is purchasing the McKees Rocks Property in good faith, pursuant to which it is entitled to the protection of Section 363(m) of the Code. Accordingly, The Debtor requests that any order granted upon this Motion provide that the non-finality of the order shall not be a basis for delaying closing upon the McKees Rocks Property.

Notice is Sufficient for the Requested Sale

24. The Debtor has given notice of this Sale Motion to all creditors; the United States Trustee; each of the affected real property taxing bodies insofar as the Debtor can determine; all persons claiming an interest in the McKees Rocks Property; and all persons requesting notice pursuant to Fed. R. Bankr. P. 2002. All interested parties have therefore been given proper notice of the proposed sale and of the objection deadline.

**Sale Free and Clear Of All Liens,
Encumbrances, Claims And Interests Is Justified**

25. Under the proposed agreement, the Debtor is obligated to provide its Allegheny with clear title to the McKees Rocks Property free and clear of liens, encumbrances, claims and interests. Accordingly, The Debtor further requests an order authorizing it to consummate the sale to Allegheny free and clear of all liens, encumbrances, claims and interests, with all liens, encumbrances, claims and interests attaching to the proceeds after selling expenses in the order of their priority under non-bankruptcy law. The

Debtor further seeks authority to pay proceeds after settlement costs to its pre-petition secured lender.

26. For this Court to enter an order authorizing sale of the McKees Rocks Property free and clear of liens, encumbrances, interests or claims asserted by any particular person, one of the following conditions must be satisfied:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and a price at which such property is to be sold is greater than the aggregate value of all liens on such property; or
- (4) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). In the event that lienholders on the McKees Rocks Property or alleged lienholders did not consent under section 363(f)(2), they could be compelled, in a legal or equitable proceeding such as a plan cramdown, to accept money satisfactions of their interests, thereby satisfying section 363(f)(4). At a public sale of the McKees Rocks Property, under applicable non-bankruptcy law, the sale would take place free and clear of such interests. Accordingly, section 363(f)(1) is also satisfied.

**The Debtor's Pre-Petition Creditors
Asserting Interests In The McKees Rocks Property**

27. The Debtor is party to a Master Agreement Regarding the Restructuring of the Obligations of the Pittsburgh and Lake Erie Railroad Company (the "Restructuring

Agreement"), dated as of May 1, 1985. The Restructuring Agreement, as amended from time to time, has been in effect through the Petition Date.

28. As is more fully set forth in the Final Order Providing for Use of Cash Collateral and Providing Adequate Protection (the "Cash Collateral Order"), entered by this Court on May 3, 1996 (Docket No. 27), the Restructuring Agreement of May 1, 1985 was entered into by the Debtor, Shawmut Bank, N.A. (whose successor is Fleet Bank, the "Security Trustee") and certain secured lenders and certain other parties. The secured lenders, as specified more particularly in the Restructuring Agreement, are referred to as the "Secured Lenders". The Restructuring Agreement, and all related documents establishing the rights and interests of the Security Trustee and the Secured Lenders (collectively, the "Loan Documents"), evidence the Debtor's pre-petition obligations to the Secured Lenders. The Debtor's obligations set forth in the Loan Documents represent all of the Debtor's consensual secured debt on the Petition Date.

29. As of the Petition Date, the aggregate principal amount of the Pre-Petition Obligations was approximately \$21,076,606.77, plus accrued and unpaid interest as of the Petition Date, plus the reasonable costs and fees of the Security Trustee and the Secured Lenders due pursuant to the Loan Documents. The total claim of the Security Trustee on the Petition Date was \$67,157,356.

30. The Security Trustee and the Secured Lenders have valid, duly perfected, unavoidable liens upon and security interests in substantially all of the Debtor's

real and personal property and in all proceeds and products thereof (collectively, the "Collateral").

31. Other parties claiming liens in real McKees Rocks Property of the Debtor comprise parties who on the Petition Date held jury verdicts or judgments entered against the Debtor prior to the Petition Date. The two largest such claimed liens were held by Thomas J. Hileman, Sr., and Leonard Pasinski. Mr. Hileman's judgment lien was vacated as a matter of law, however, by order of the Pennsylvania Supreme Court entered in late 1996. These judgment liens are at any rate junior to the liens of the Security Trustee. In light of the dramatically undersecured nature of the Security Trustee's claim, the judgment lien claims of these creditors are unsecured claims.

**Direct Payments To The Security Trustee
From Sale Proceeds Are Appropriate**

32. The Debtor requests authority to pay sales proceeds net of settlement costs and prorated real estate taxes, if any, directly to the Security Trustee in accordance with the terms of Cash Collateral Order (and any extension thereof) and the Master Agreement. The Cash Collateral Order confirms the liens of the Security Trustee. It further provides a mechanism requiring that 75% of net sale proceeds from the Collateral be paid directly to the Security Trustee as adequate protection. The Debtor is permitted to use the remaining 25% of cash collateral to the extent needed to fund operations.

**The Transfer Tax/Stamp Exemption of
11 U.S.C. § 1146(c) is Warranted**

33. The Debtor expects to prepare a Chapter 11 plan which will provide for prompt payment in full of all allowed administrative and allowed secured claims and perhaps some portion of allowed unsecured claims against the estate. However, the relief requested herein cannot await a plan, as more prompt relief is necessary.

34. This Court is authorized to grant a request for the transfer tax exemption of Section 1146(c) of the Code. Exemption from the transfer tax ordinarily payable on sales of this type benefits the creditors of this estate when the transfer is clearly in contemplation of confirmation of a plan. The savings provided for in Section 1146(c) is likely be a significant source of payment for the unsecured creditors and for payment of other allowed claims.

Assumption and Assignment of the Leases is Merited

35. By this Motion, the Debtor requests authority to assume and assign the Leases to Allegheny. Such assumption and assignment is an integral part of the proposed sale.

36. Section 365(a) of the Code provides, in relevant part:

- (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the Debtor.

11 U.S.C. § 365(a). As stated above, the standard applied by the Third Circuit in determining whether an executory contract or unexpired lease should be assumed is the debtor's "business judgment" that assumption is in its economic best interests. In re Sharon Steel Corp., 872 F.2d at 40; In re III Enterprises, Inc., V, 163 B.R. at 469 ("Generally, a court will give great deference to a Debtor's decision to assume or reject the contract. A Debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment—a standard which we have concluded many times is not difficult to meet.")(citations omitted).

37. The Debtor's decision to assume and assign the Leases reflects a proper exercise of its business judgment. The Debtor is the lessor under the Leases, and the lessees' options under 11 U.S.C. § 365(h)(1) preclude an effective rejection of any of the Leases, except through means otherwise permitted by state law.

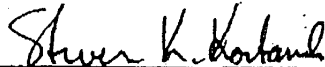
38. Allegheny has represented and the Debtor submits that Allegheny clearly has the financial capability to satisfy any and all obligations it will incur in connection with the Leases. Allegheny's obligations as the lessor under the Leases would indeed not be overly burdensome or financially large.

39. Based on the foregoing, the Debtor respectfully requests the Court to approve the assumption and assignment to Allegheny (or such alternative successful bidder shown to have the requisite financial capability) of the Leases, identified in Exhibits "B" through "G" hercof.

40. No previous request for the relief requested herein has been made to the Court. As no novel issues of law are presented herein, the Debtor waives the brief requirement of D.Del. LR 7.1.1.

WHEREFORE, the Debtor respectfully requests this Court to enter an order (i) authorizing the transfer of the McKees Rocks Property free and clear of all liens, encumbrances, claims and interests, with all liens, encumbrances, claims and interests attaching to the proceeds in order of their priority under applicable nonbankruptcy law; (ii) authorizing transfer of the McKees Rocks Property free of any transfer or stamp tax in accordance with 11 U.S.C. § 1146(c); (iii) authorizing direct payment of net sale proceeds to the Security Trustee in accordance with the Cash Collateral Order; and (v) granting such other and further relief as is just and proper.

PHILLIPS, GOLDMAN & SPENCE, P.A.



Stephen W. Spence (No. 2033)
Steven K. Kortanek (No. 3106)
1200 North Broom Street
Wilmington, Delaware 19806
(302) 655-4200
Attorneys for Debtor

DATED: March 18, 1997
Wilmington, Delaware

L:\BOOK\PLEX\SALES.MOT

Exhibit "A"

FEB-28-1997 15:35 FROM Pgh & Lake Erie Prop. TO 2633913 P.03
JAN-24-1997 14:53 FROM PITTSBURGH PA. TO 2633913 P.03

Mr. J. D. Hartman
January 24, 1997
Page 2

- a) The debt shall be secured by a valid first mortgage on the property, and shall be evidenced by a promissory note containing the above terms.
- b) In addition to the prepayment right, the documentation shall contain a provision allowing for the buyer to secure partial releases, as property may be sold upon payment by the buyer of one-half of the net proceeds to seller.

As you are aware, I fashion this offer only after a long study of this property. In reviewing this property, and in fashioning this offer, I would ask you to note what I believe are serious impediments to the property's stability. These include but are not limited to the following:

- a) There are low rental long term leases with options to purchase to various tenants. These severely restrict marketability.
- b) These leases also apparently contain provisions allowing offsets for tenant made improvements against the purchase price, i.e. the tenant makes a \$50,000 improvement, and the purchase price goes down \$50,000.
- c) The properties are currently a negative cash flow to your corporation due to taxes and insurance.
- d) There appears to be substantial environmental problems associated with the properties requiring ongoing cash outlays and perhaps eventual remedial work necessary.

FEB-28-1997 15:35 FROM Pgh & Lake Erie Prop. TO 1-382-655-4218 P.08
JAN-24-1997 14:53 FROM PITTSBURGH PA. TO 2633913 P.02

ALLEGHENY RAILROAD PROPERTIES, INC.
139 St. Thomas Drive
Beaver Falls, PA 15010
(412) 843-4343

January 24, 1997

Mr. J. D. Hartman
Pittsburgh & Lake Erie Properties, Inc.
Suite 548, Commerce Court
Four Station Square
Pittsburgh, PA 15219

Dear Mr. Hartman:

As we discussed during our meeting on January 23, 1997, following you will find an offer to purchase the McKees Rocks property located in Allegheny County, Pennsylvania which I have prepared in light of our discussion. This offer includes all of the real estate, buildings, rail facilities, rights of ways, easements, leases, and other personal property owned by P&LE Properties, Inc. located on or about the properties. The Buyer will be Allegheny Railroad Properties, Inc., or its assignee.

The purchase price is One Million Two Hundred Thousand Dollars (\$1,200,000.00).

The purchase price will be paid to the seller as follows:

- a) One Hundred Twenty Thousand Dollars (\$120,000.00) of the purchase price will be paid in twenty-four (24) monthly installment payments of \$5,000.00 each. Payments start on the 30th day after closing with each subsequent payment to be made on the same day of the following 23 months.
- b) Interest at the rate of seven (7%) percent will accrue on the outstanding principal balance.
- c) The principal balance of \$1,080,000.00 together with all accrued interest, if not sooner paid, will be paid to the seller on the 10th day of the 25th month after closing of this transaction.
- d) The Buyer may make a full or partial prepayment at any time without paying any prepayment charge. If Buyer makes a partial prepayment then the due date/amount of subsequent monthly payments will be changed to reflect the application and credit of the prepayment against the monthly payments and then the remaining principal and accrued interest.

PC 11
P1 72

DUPLICATE ORIGINAL
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: :
P&LE PROPERTIES, INC., : Chapter 11
Debtor. : No. 96-406 (HSB)

**ORDER UNDER 11 U.S.C. §§ 363(b) and (f) and 365 AUTHORIZING
DEBTOR TO (i) SELL MCKEES ROCKS
PROPERTY FREE AND CLEAR OF LIENS; (ii) TRANSFER
SAID PROPERTY FREE OF ANY TRANSFER OR
STAMP TAX PURSUANT TO 11 U.S.C. § 1146(c);
(iii) MAKE DIRECT PAYMENT OF NET SALE
PROCEEDS TO PRE-PETITION SECURED CREDITOR;
AND (iv) ASSUME AND ASSIGN RELATED LEASES**

Upon consideration of Debtor's Motion for an Order Authorizing Debtor
To (i) Sell Certain Real Property (McKees Rocks Property) Free and Clear of Liens; (ii)
Transfer Real Property Free of Any Transfer or Stamp Tax Pursuant to 11 U.S.C. §
1146(c); (iii) Make Direct Payment of Net Sale Proceeds to Pre-Petition Secured
Creditor; and (iv) Assume and Assign Related Leases, filed on March 18, 1997 (the
"Motion"); and it appearing that notice of the Motion was given to the United States
Trustee, all creditors, relevant taxing authorities, all parties requesting notice under Rule
2002, and all parties to the subject leases to be assumed and assigned (the "Unexpired
Leases"), and that no other notice need be given; and it appearing that: (1) the proposed
sale reflects a valid exercise of Debtor's sound business judgment; and (2) the purchaser,

Allegheny Railroad Properties, Inc. ("Allegheny") has agreed to pay a fair and reasonable price and is purchasing the McKees Rocks Property in good faith; and it appearing therefore that sufficient cause exists for granting the relief requested; and upon the record herein, it is hereby

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the Debtor is authorized to sell the McKees Rocks Property, identified as follows:

Approximately 105 acres (two parcels) in McKees Rocks Borough and Stowe Township, Allegheny County, Pennsylvania, SS 330 to SS 415 (River Crossing to Neville Island Bridge), containing various improvements and track, formerly switching yards, maintenance, refueling and other facilities of the Pittsburgh and Lake Erie Railroad,

and it is further

ORDERED, that Allegheny is entitled to the protection of 11 U.S.C. § 363(m); such that the non-finality of this Order is not sufficient cause to delay closing on the sale of the McKees Rocks Property; and it is further

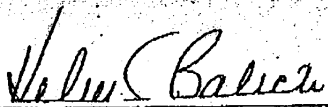
ORDERED, that the sale of the McKees Rocks Property shall be free and clear of all liens, encumbrances, interests and claims, with all liens, encumbrances, interests and claims attaching to the proceeds of such sale in the order of their priority after deduction of sales costs ordinarily payable upon closing of title upon a property of this type (the "Selling Expenses"); and it is further

ORDERED, that all sale of the McKees Rocks Property shall be exempt from the payment of any applicable realty transfer taxes pursuant to 11 U.S.C. § 1146(c); and it is further

ORDERED, that Allegheny may record a certified copy of this Order and exhibits in the land records for the county wherein any of the real estate or personal property to be sold may be located; and it is further

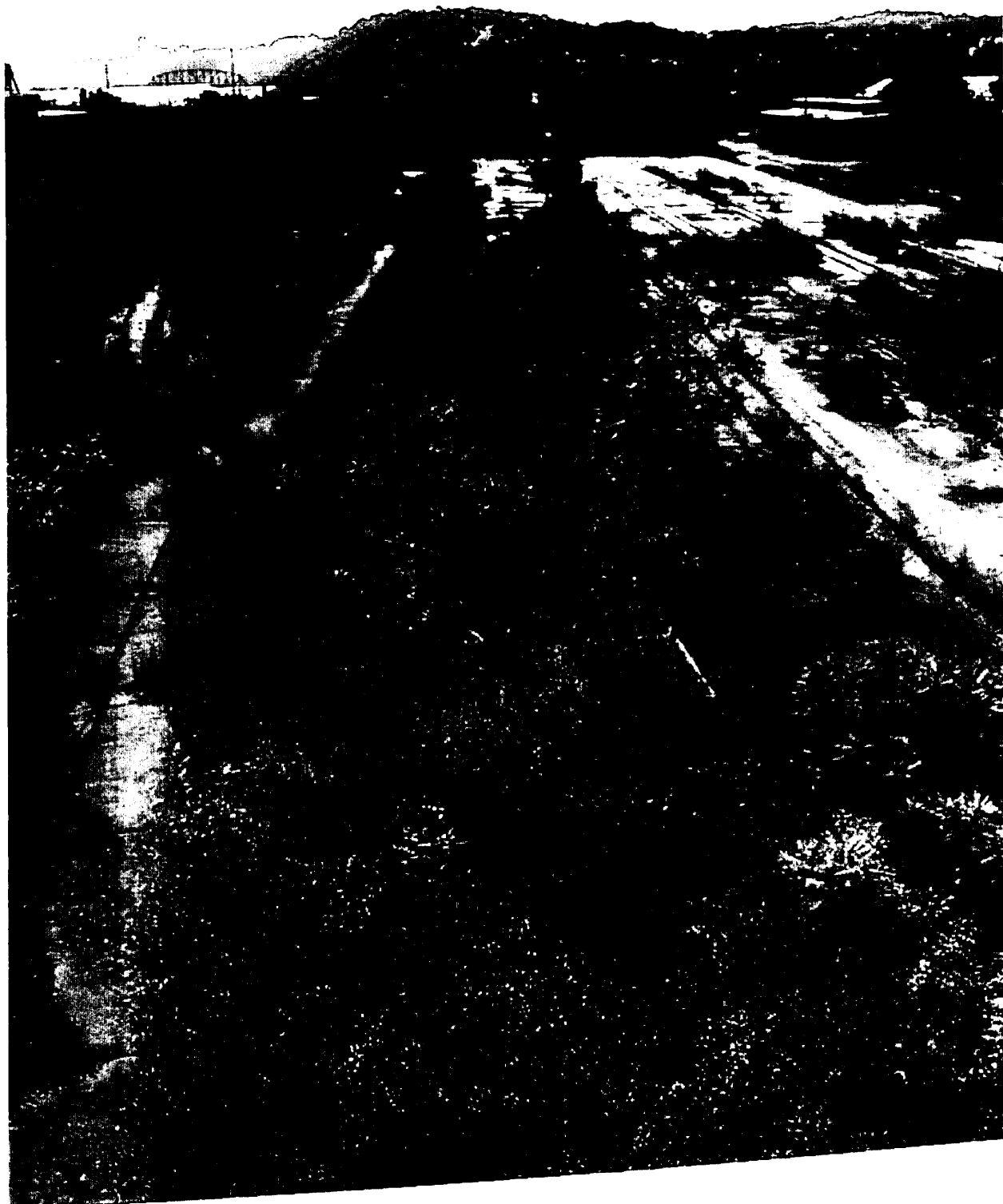
ORDERED, that the Debtor is authorized to make direct payment of sale proceeds after Selling Expenses directly to Fleet Bank as Security Trustee in accordance with the terms of this Court's Final Order Providing for Use of Cash Collateral and Providing Adequate Protection, entered May 3, 1996, as may be extended by further order of this Court, toward and in partial satisfaction of its pre-petition secured claim against the Debtor; and it is further

ORDERED, that the Debtor is authorized to assume and assign the Leases attached to the Motion as Exhibits "A" through "G", which are identified in the attachment hereto, to Allegheny, under which Leases no cure obligation or default exists respecting any duties of the Debtor thereunder as of the date hereof.


THE HONORABLE HELEN S. BALICK
Chief United States Bankruptcy Judge

DATED: April 2, 1997









COPY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

PROLINE RAILROAD TRACK CO.,

CIVIL DIVISION

Plaintiff,

GD-03-025297

vs.

ANSWER TO COMPLAINT NEW
MATTER AND COUNTERCLAIM

MARIAH VENTURE CAPITAL &
CONSULTING, INC,

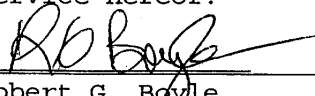
Defendant.

Filed on Behalf of:
MARIAH VENTURE CAPITAL &
CONSULTING, INC., Defendant

Counsel of Record for this
Party:

Robert G. Boyle, Esq.
PA I.D. #49482
GBU Building - Suite 348
4232 Brownsville Road
Pittsburgh, PA 15227-3330
(412) 884-0770

To the within named PLAINTIFF
you are required to plead to the
NEW MATTER AND COUNTERCLAIM
within twenty (20) days from
service hereof.



Robert G. Boyle
Counsel for Defendant

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

ALLEGHENY COUNTY LAWYER REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
920 City- County Building
414 Grant Street
Pittsburgh, Pennsylvania 15219

Telephone: (412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

PROLINE RAILROAD TRACK CO.

CIVIL DIVISION

Plaintiff,

GD-03-025297

vs.

MARIAH VENTURE CAPITAL &
CONSULTING, INC.,

Defendants.

ANSWER TO COMPLAINT, NEW MATTER AND COUNTERCLAIM

AND NOW, comes MARIAH VENTURE CAPITAL & CONSULTING, INC., the Defendant, by and through its attorney, Robert G. Boyle, Esquire and files this ANSWER TO COMPLAINT, NEW MATTER AND COUNTERCLAIM and in support thereof avers the following:

1. Paragraph 1 and 2 of the COMPLAINT are admitted as stated.

2. Paragraph 3 of the COMPLAINT is denied in part and admitted in part. It is admitted that Mariah may be subject to personal jurisdiction in Pennsylvania but it is specifically denied that the matters involved in this lawsuit are subject to Subject Matter Jurisdiction in the Court of Common Pleas. On the contrary, any issue that involves common carrier railroad lines is subject only to the jurisdiction of the Surface Transportation Board (hereinafter referred to as the "STB"). Strict proof is demanded at trial.

3. Paragraph 4 of the COMPLAINT is denied as stated. On the contrary, the venue and jurisdiction of this case is not subject to the jurisdiction of the Court of Common Pleas. The STB has exclusive jurisdiction of all matters involving railroads. Strict proof is demanded at trial.

4. The Defendant is without the information or belief to form a response to the allegations set forth in Paragraph 5 of Plaintiff's COMPLAINT, and the same are denied as specifically stated. Strict proof is demanded at trial.

5. Paragraph 6 of the COMPLAINT is denied as stated. On the contrary, Ron Hall, who was 100% owner of Allegheny Railroad Properties (hereinafter referred to as "ARP") at the time ARP agreed to purchase the McKees Rocks Rail Yard and entered into a mortgage and note with P&LE. Said sale from P&LE to Ron Hall was approved by the Delaware Bankruptcy Court and the Bankruptcy Court was to receive 50% of proceeds from that sale. Ron Hall then illegally sold the McKees Rocks Yard to ARP. This alleged sale never was given approval by the Delaware Bankruptcy Court. Ron Hall through ARP then attempted to illegally sell the track to Kovalchick. Ron Hall also sold controlling shares of the stock of ARP to Eric Close and Chris Farls (the principals of Proline). While ARP was under the control of Eric Close and Chris Farls they also continued to default on the obligations of the mortgage and

note to P&LE. The Delaware Bankruptcy Court who was to receive 50% of the proceeds from the sale to ARP from P&LE, sold the defaulted mortgage and note to Mariah for \$950,000.00. Ron Hall never had authority from the Delaware Bankruptcy Court to sell his alleged interest in the McKees Rocks Yard to anyone. Strict proof is demanded at trial.

6. Paragraph 7 of the COMPLAINT is denied as stated. On the contrary, the Defendant did not purchase any rights to the railroad tracks or property from Kovalchick, Ron Hall or ARP because of the reasons as set forth in paragraph 5 above. Strict proof is demanded at trial.

7. The Defendant is without the information or belief to form a response to the allegations set forth in Paragraph 7 of Plaintiff's COMPLAINT, and the same are denied as specifically stated. Strict proof is demanded at trial.

8. The Defendant is without the information or belief to form a response to the allegations set forth in Paragraphs 8, 9 and 10 of Plaintiff's COMPLAINT, and the same are denied as specifically stated. Strict proof is demanded at trial.

9. Paragraph 11 of the COMPLAINT is denied as stated. On the contrary, the Defendant did not falsely claim ownership of the track and in point of fact Mariah had acquired ownership rights to all the track, easements, PUC rights-of-way, and one parcel of land

in McKees Rocks, through the Delaware Bankruptcy Court that was handling the P&LE Chapter 11 bankruptcy filing. Strict proof is demanded at trial.

10. Paragraph 12 of the COMPLAINT is denied as stated. On the contrary, the Defendant did not misrepresent its ownership and in point of fact Mariah had acquired ownership rights to all the track, easements, PUC rights-of-way, and one parcel of land in McKees Rocks, through the Delaware Bankruptcy Court that was handling the P&LE Chapter 11 bankruptcy filing. Strict proof is demanded at trial.

11. Paragraph 13 of the COMPLAINT is denied as stated. On the contrary, the Defendant did not falsely claim ownership or misrepresent its position and in point of fact Mariah had acquired ownership rights to all the track, easements, PUC rights-of-way, and one parcel of land in McKees Rocks, through the Delaware Bankruptcy Court that was handling the P&LE Chapter 11 bankruptcy filing. Strict proof is demanded at trial.

12. Paragraph 14 of the COMPLAINT is denied as stated. On the contrary, the Defendant did not falsely claim ownership and in point of fact Mariah had acquired ownership rights to all the track, easements, PUC rights-of-way, and one parcel of land in McKees Rocks, through the Delaware Bankruptcy Court that was

handling the P&LE Chapter 11 bankruptcy filing. Strict proof is demanded at trial.

13. Paragraph 15 of the COMPLAINT is admitted as stated. The Defendant did not repudiate its claim to ownership of the McKees Rocks Yard because Mariah had acquired ownership rights to all the track, easements, PUC rights-of-way, and one parcel of land in McKees Rocks, through the Delaware Bankruptcy Court that was handling the P&LE Chapter 11 bankruptcy filing. Strict proof is demanded at trial.

COUNT I - CONVERSION

14. Mariah hereby incorporates by reference Paragraphs 1 through 13 of the Answer and New matter set forth in full.

15. Paragraph 17 of the COMPLAINT is denied as stated. On the contrary, the Plaintiff never had possession or rights to use, sell or possess the track. Strict proof is demanded at trial.

16. Paragraph 18 of the COMPLAINT is denied as stated. On the contrary, the Defendant did not falsely interfere with the Plaintiff's alleged ownership rights because Proline never acquired ownership rights to any track or property in the McKees Rocks Yard. Strict proof is demanded at trial.

17. Paragraph 19 of the COMPLAINT is denied as stated. On the contrary, the Defendant did not falsely claim ownership and in point of fact Mariah had acquired ownership rights to all the

track, easements, PUC rights-of-way, and one parcel of land in McKees Rocks, through the Delaware Bankruptcy Court that was handling the P&LE Chapter 11 bankruptcy filing. Strict proof is demanded at trial.

18. The Defendant is without the information or belief to form a response to the allegations set forth in Paragraph 20 of Plaintiff's COMPLAINT, and the same are denied as specifically stated. Strict proof is demanded at trial.

WHEREFORE, Defendant, Mariah Venture Capital & Consulting, Inc., demands the dismissal of Proline's Complaint and judgment against Proline Railroad Track Co.

COUNT II - TORTUOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

19. Mariah hereby incorporates by reference Paragraphs 1 through 18 of the Answer and New matter set forth in full.

20. The Defendant is without the information or belief to form a response to the allegations set forth in Paragraph 22 of Plaintiff's COMPLAINT, and the same are denied as specifically stated. Strict proof is demanded at trial.

21. Paragraph 23 of the COMPLAINT and all the sub-sections are denied as stated. On the contrary, the Defendant did not falsely interfere with the Plaintiff's alleged ownership rights because Proline never acquired ownership rights to any track or

property in the McKees Rocks Yard. Strict proof is demanded at trial.

22. Paragraph 24 of the COMPLAINT is denied as stated. On the contrary, the Defendant never maliciously, willfully or recklessly took any actions without legal justification or privilege, because Mariah had acquired ownership rights to all the track, easements, PUC rights-of-way, and one parcel of land in McKees Rocks, through the Delaware Bankruptcy Court that was handling the P&LE Chapter 11 bankruptcy filing. Strict proof is demanded at trial.

23. The Defendant is without the information or belief to form a response to the allegations set forth in Paragraph 25 of Plaintiff's COMPLAINT, and the same are denied as specifically stated. Strict proof is demanded at trial.

WHEREFORE, Defendant, Mariah Venture Capital & Consulting, Inc., demands the dismissal of Proline's Complaint and judgment against Proline Railroad Track Co.

COUNT III - DECLARATORY JUDGMENT

24. Mariah hereby incorporates by reference Paragraphs 1 through 23 of the Answer and New matter set forth in full.

25. Paragraph 27 of the COMPLAINT is denied as stated. On the contrary, the Court of Common Pleas does not have the jurisdiction to decide any controversy involving railroad assets or tracks. The

STB has sole and exclusive jurisdiction of all matters involving the regulation of railroads as established in the 49 U.S.C.S. §10501(b) and 49 U.S.C.S. §10901(a). Strict proof is demanded at trial.

26. Paragraph 28 of the COMPLAINT is denied as stated. On the contrary, the Court of Common Pleas does not have the jurisdiction to decide any controversy involving railroad assets or tracks. The STB has sole and exclusive jurisdiction of all matters involving the regulation of railroads as established in the 49 U.S.C.S. §10501(b) and 49 U.S.C.S. §10901(a). Strict proof is demanded at trial.

27. Paragraph 29 of the COMPLAINT is denied as stated. On the contrary, the Court of Common Pleas does not have the jurisdiction to decide any controversy involving railroad assets or tracks and therefore the Court should not make a declaration concerning the ownership of railroad assets. The STB has sole and exclusive jurisdiction of all matters involving the regulation of railroads as established in the 49 U.S.C.S. §10501(b) and 49 U.S.C.S. §10901(a). Strict proof is demanded at trial.

WHEREFORE, Defendant, Mariah Venture Capital & Consulting, Inc., requests this Court to dismiss Proline's Complaint and deny the Plaintiff's demands for a Declaratory Judgment.

NEW MATTER

28. Paragraphs 1 through 27 are hereby incorporated as though more fully set forth herein.

29. Plaintiff fails to state a cause of action upon which relief can be granted.

30. The Defendant asserts the defense of lack of subject matter jurisdiction. The Surface Transportation Board has sole and exclusive jurisdiction of all matters involving acquisition, transfer or abandonment of common carrier railroad assets as established in the 49 U.S.C.S. §10501(b).

31. The Plaintiff has failed to exhaust its administrative remedies before the federal Surface Transportation Board to resolve a controversy involving the acquisition, transfer or abandonment of common carrier railroad assets, by the filing of a Petition to Revoke the Exemption for the sale of McKees Rocks Yard rail facilities by P&LE Properties, Inc., to MVC Transportation, LLC., under 49 U.S.C.S. §10502(d). Mariah gave notice to Proline of its right to file a Petition to Revoke the Exemption with the STB, this notice was done pursuant to STB guidelines. Proline has done nothing to defend their alleged rights by filing a Petition to Revoke the Exemption with the STB.

WHEREFORE, the Defendant requests that Plaintiff's Complaint be dismissed and judgment be found in favor of the Defendant. The

Defendant requests this Court to find judgment against the Plaintiff.

COUNTERCLAIM

COUNT I - TORTUOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

32. Paragraphs 1 through 31 are hereby incorporated as though more fully set forth herein.

33. Mariah and MVC Transportation, LLC had entered into contractual negotiations with CSXT, a common rail carrier. CSXT was interested in purchasing the track and rail easements in the McKees Rocks Yard.

34. Proline purposefully and intentionally interfered with the contractual relationship between CSXT and MVC, by *inter alia*:

- a.) falsely stating that Proline owned rights to track
- b.) falsely stating that MVC and Mariah did not own the track
- c.) disparaging MVC and Mariah's character and reputation in the business and railroad communities
- d.) contacting CSXT and falsely stating that Proline has a legal interest in the track
- e.) Proline purposefully brought this action in the Court of Common Pleas while knowing that they do not have a valid ownership claim for the track
- f.) Eric Close, one of the principals of Allegheny Railroad Properties Inc., and Specialty Lining (successor to Proline) in a letter to Ron Hall dated 1/29/98 admitted that they did not have undisputed ownership of the track

35. Proline's conduct as set forth in Paragraph 34 was malicious, willful, reckless, and without legal justification or privilege.

36. Mariah has suffered damages as a result of Proline's tortious interference with the CSXT prospective contractual relationship for the sale of the track including, but not limited to, the loss of the proceeds from the sale of the track to CSXT and harm to the reputation of Mariah and MCV.

WHEREFORE, the Defendant, Mariah Venture Capital & Consulting, Inc., requests that judgment be found in favor of the Defendant for damages caused by Proline Railroad Track Co., in an amount in excess of \$25,000, plus interest, punitive and exemplary damages, attorney's fees, costs, and such other relief as justice requires.

COUNT II - SLANDER OF TITLE (INJURIOUS FALSEHOOD)

37. Paragraphs 1 through 36 are hereby incorporated as though more fully set forth herein.

38. Proline has made false statements to members of the public, namely AllenRailroad.com (ARC), CSXT, and other business parties by their attempt to sell property (tracks) that they knew was not their's to sell.

39. Proline purposefully and intentionally published falsehoods in order to harm Mariah and MVC, by *inter alia*:

- a.) Proline attempted to sell track and assets they knew were not their's to sell and were indeed the property of Mariah or MVC
- b.) Proline told AllenRailroad.com that they owned track and attempted to sell those assets on the internet
- c.) Eric Close, one of the principals of Allegheny Railroad Properties Inc., and Specialty Lining (successor to Proline) in a letter to Ron Hall dated 1/29/98 admitted that they did not have undisputed ownership of the track
- d.) contacting CSXT and falsely stating that Proline had a legal interest in the track and attempting to sell those assets that they knew were not their's to sell to CSXT
- e.) Proline knew or should have known that their attempts to sell assets not owned by them would cause harm and injury to the rightful owner of said assets, namely Mariah and MVC
- f.) disparaging MVC and Mariah's character and reputation in the business and railroad communities

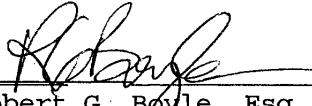
40. Mariah and its successor MVC have been injured by the intentional falsehoods published by Proline, by *inter alia*:

- a.) prior to the filing of this lawsuit, Mariah and MVC were in negotiations with CSXT in order to sell their track and easements to this common carrier
- b.) Said negotiations have not been consummated because of the actions taken by Proline in their attempts to sell track and assets they did not own and by the filing of this lawsuit
- c.) The price of track and other assets owned by Mariah and MVC have decreased in their value since the filing of this lawsuit which has stalled negotiations between CSXT and Mariah (MVC)

- c.) The price of track and other assets owned by Mariah and MVC have decreased in their value since the filing of this lawsuit which has stalled negotiations between CSXT and Mariah (MVC)
- d.) Proline has sold assets that belong to Mariah and MVC and which they knew or should have known did not belong to Proline

WHEREFORE, the Defendant, Mariah Venture Capital & Consulting, Inc., requests that judgment be found in favor of the Defendant for damages caused by Proline Railroad Track Co., in an amount in excess of \$25,000, plus interest, punitive and exemplary damages, attorney's fees, costs, and such other relief as justice requires.

Respectfully submitted,

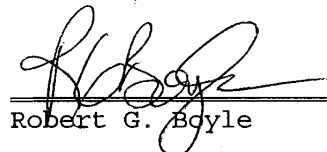


Robert G. Boyle, Esq.
Attorney for Defendant,
Mariah Venture Capital &
Consulting, Inc.

CERTIFICATE OF SERVICE

I, Robert G. Boyle, Esquire, hereby certify that a true and correct copy of the ANSWER TO COMPLAINT, NEW MATTER AND COUNTERCLAIM, was mailed by U.S. Mail, first class, postage prepaid to the below listed parties and/or their counsel on the 10th day of June, 2004:

JAY D. MARINSTEIN, ESQUIRE
FOX ROTHSCHILD, LLP
625 LIBERTY AVENUE, 29TH FLOOR
PITTSBURGH, PA 15222


Robert G. Boyle

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to MVC Transportation, LLC's
Petition for Expedited Declaratory Order was served upon the following by first class United
State mail, postage prepaid, on the 24th day of June, 2004

MVC Transportation, LLC
98 Glenbury Street
Pittsburgh, PA 15234

Robert G. Boyle, Esq.
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