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STATE OF VERMONT
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May 9, 2007

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, SW
Washington, D C 20423-0001

Re: *New Hampshire Central Railroad, Inc — Lease and Operation Exemption — Certain
Lines of the State of New Hampshire Department of Transportation*
Finance Docket No 35022

Dear Mr. Williams,

Enclosed for filing in the above matter are the "Comments and Request for Revocation of
the State of Vermont Agency of Transportation"

Please note that this filing is made on behalf of a state agency. Accordingly, under 49
C.F.R. § 1002.2 (Fees) any filing fee that otherwise might be due is waived

Sincerely,

A handwritten signature in black ink, appearing to read "John K. Dunleavy".

John K. Dunleavy
Assistant Attorney General

cc: Service List

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**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35022

**New Hampshire Central Railroad, Inc. -
Lease and Operation Exemption -
Certain Lines of the State of New Hampshire
Department of Transportation**

**COMMENTS AND REQUEST FOR REVOCATION OF THE
STATE OF VERMONT
AGENCY OF TRANSPORTATION**

Communications with respect to
this document should be addressed
to:

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Counsel for the Vermont Agency of
Transportation

Dated May 9, 2007

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35022

**New Hampshire Central Railroad, Inc. -
Lease and Operation Exemption -
Certain Lines of the State of New Hampshire
Department of Transportation**

**COMMENTS AND REQUEST FOR REVOCATION OF THE
STATE OF VERMONT
AGENCY OF TRANSPORTATION**

The State of Vermont Agency of Transportation ("VTrans"), by counsel, hereby submits these comments regarding the Notice of Exemption (the "NOE") filed by New Hampshire Central Railroad, Inc. (hereinafter "NHCR") in this proceeding on May 2, 2007, for lease from the State of New Hampshire and operation of a line of railroad (the "Line") between Whitefield, NH and Lunenburg (Gilman), VT,¹ including VTrans' request that the NOE be rejected or revoked by the Board.

As explained below, the NOE is incomplete and misleading, and does not comply with the information requirements of the Board's regulations set forth in 49 C.F.R. Part 1150 (Certificate to Construct, Acquire, or Operate Railroad Lines), Subpart E (Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers), even assuming, for sake of argument, that 49 C.F.R. Part 1150,

¹ Gilman is the name of an unincorporated hamlet and former railroad station in the Town of Lunenburg in Essex County, Vermont. The two designations are used somewhat interchangeably in the various documents cited.

Subpart E, is the proper provision. To alert the Board to its concerns before NHCR takes any action under color of authority purportedly created by filing the NOE, VTrans is today filing these comments and request for revocation of the NOE.

PERTINENT BACKGROUND

The State of Vermont ("Vermont") has a long-established interest in operation of the subject line between Whitefield, NH and Lunenburg (Gilman), VT, which is part of a larger line of railroad extending between Whitefield and St. Johnsbury, VT, as evidenced by (a) a November 1, 1983 Settlement Agreement (the "1983 Settlement Agreement"), by and among Guilford Transportation Industries, Inc. ("Guilford"), Maine Central Railroad Company ("MEC"), Lamoille Valley Railroad Company ("LVRC"), and Vermont, resulting from the decisions of the Interstate Commerce Commission ("ICC") in *Guilford Transportation Industries, Inc. - Control - Boston & Maine Corp.*, 366 I.C.C. 294 (1982), and the United States Court of Appeals for the District of Columbia Circuit in *Lamoille Valley R.R. Co. v. ICC*, 711 F 2d 295 (D.C. Cir. 1983), and (b) a March 1, 1984 Lease and Operating Agreement (the "1984 Lease"), by and among MEC, Twin State Railroad Corporation ("TSRR") (as operating designee of LVRC), and LVRC, which was approved by the ICC.

Prior to the 1984 Lease, Guilford, a non-carrier which controls MEC, sought authority from the ICC to acquire control of the Boston and Maine Corporation ("B&M"), also a common carrier by rail.² LVRC requested that the

² *Guilford Transportation Industries Inc - Control - Boston & Maine Corp*, 366 I C C 294 (1982)

ICC impose a protective condition on the transaction in the form of a requirement that B&M sell certain of its lines to LVRC.³

The ICC approved Guilford's application without protective conditions.⁴ On appeal, the United States Court of Appeals for the District of Columbia Circuit remanded to the ICC to reevaluate the implementation of protective conditions.⁵ To avoid further litigation, Guilford, MEC, Vermont and LVRC entered into the 1983 Settlement Agreement. The 1983 Settlement Agreement provided that MEC and LVRC would enter into an Operating Agreement pursuant to which LVRC would operate the entire line between Whitefield and St. Johnsbury, which at that time connected at St. Johnsbury with trackage between St. Johnsbury and Swanton, VT (the "Swanton Line"), owned by Vermont. Under the terms of a 1977 lease agreement between LVRC and Vermont, LVRC was the lessee and operator of the Swanton Line.⁶

LVRC designated TSRR, its affiliate, to operate between Whitefield and St. Johnsbury pursuant to the 1984 Lease, which was approved by the ICC on May 16, 1984.⁷ MEC retained an ownership interest in the Line along with its residual common carrier rights and obligations. Section 6.01(b) of the 1984

³ *Id.* at 304

⁴ *Id.* at 349

⁵ *Lamoille Valley R R Co v ICC*, 711 F.2d 295 (D.C. Cir. 1983)

⁶ See *Lamoille Valley R R Co - Abandonment and Discontinuance of Trackage Rights Exemption - In Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT*, STB Docket No. AB-444 (Sub-No. 1X) (served January 24, 2005), stating that "[t]he line is owned by the State of Vermont (State) by and through the State of Vermont Agency of Transportation (VTrans). See *Lamoille County Railroad Inc. and Vermont Transportation Authority, Acquisition and Operation Between St. Johnsbury and Swanton, VT* Finance Docket No. 27494, et al., (ICC served, Apr. 22, 1974). LVRC holds a leasehold interest in the line pursuant to a lease agreement by and between LVRC and the State dated December 31, 1977."

⁷ See *Maine Central R R Co - Lease*, ICC Finance Docket No. 29720 (decided Nov. 29, 1988), noting that the lease "transaction was authorized in Finance Docket No. 29720 (Sub-No. 1) Guilford Transp. Indsts., Inc. - Contr. - B&M Corp. and Finance Docket No. 29772, Guilford Transp. Indsts., Inc. - Contr. - D&H Ry. Corp. (ICC served May 22, 1984)."

Lease provides that Vermont may elect to terminate the rights of TSRR and LVRC and name a new operator of the line between Whitefield and St. Johnsbury if "LVRC is in default under its lease with Vermont concerning the operation of the line of railroad between Swanton, Vermont and St. Johnsbury, Vermont or [if] LVRC has failed to renew such lease " LVRC did fail to renew its lease between Swanton and St. Johnsbury. Thus, Vermont clearly is empowered to name the operator of the line between Whitefield and Lunenburg (Gilman) pursuant to the lease approved by the ICC

On February 19, 1998, Vermont and LVRC, in anticipation of abandonment and railbanking of the Swanton line, entered into a settlement agreement (the "1998 Settlement Agreement") (see Exhibit A, attached hereto and made a part hereof), which addressed various outstanding issues between Vermont and LVRC. In Section 4(b) of the 1998 Settlement Agreement, Vermont and LVRC agreed that Vermont would not construe LVRC's surrender of its Swanton Line leasehold as an event of default by LVRC under the 1983 Settlement Agreement or the 1984 Lease. Vermont also waived "any and all future right under the [1983 Settlement Agreement] or the [1984 Lease] to designate a carrier other than TSRR to operate the Twin State Line Segment." Vermont thus not only has the right to name the operator of the segment between Whitefield and St. Johnsbury, including Whitefield-Lunenburg (Gilman), but may not disenfranchise TSRR based on the absence of service west of St. Johnsbury.

On December 29, 2003, LVRC filed a Notice of Exemption, seeking to abandon, in part, the line from St. Johnsbury to Swanton.⁸ No objections were filed, and the exemption was scheduled to become effective on February 17, 2004.⁹ The track from Swanton east has since been removed by Vermont. LVRC has not renewed its lease of the Swanton Line.

Meanwhile, in December 2002, MEC sold the eastern portion of the Line, between Whitefield and Milepost 111.56 at Gilman (the "Eastern Segment"), to the State of New Hampshire, Department of Transportation ("New Hampshire").¹¹ The sale of the Eastern Segment was made subject to the 1984 Lease, while MEC retained ownership of the western portion of the Line from Milepost 111.56 at Gilman (Lunenburg) to St. Johnsbury (the "Western Segment"). The Board decision providing the notice of the sale states that New Hampshire "will acquire the Line [between Whitefield and Gilman] subject to LVRC and TSRR retaining their operating rights on it, but the State [of New Hampshire] will likely seek to obtain a new operator to perform common carrier service on the Line." The State of New Hampshire does recognize that TSRR had valid operating rights between Whitefield and Lunenburg (Gilman), as evidenced by the fact that New Hampshire agreed to acquire the Line subject to those rights. Vermont has always construed New Hampshire's acquisition of

⁸ *Lamoille Valley R R Co - Abandonment and Discontinuance of Trackage Rights Exemption - In Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT*, STB Docket No. AB-444 (Dec. 29, 2003)

⁹ *Lamoille Valley R R Co - Abandonment and Discontinuance of Trackage Rights Exemption - In Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT*, STB Docket No. AB-444 (Feb. 13, 2003)

¹¹ *State of New Hampshire Dep't of Transp. - Acquisition and Operation Exemption - Certain Assets of Maine Central R R Co*, STB Finance Docket No. 34307 (served Jan. 22, 2003)

the Whitefield-Gilman segment, "subject to the operating rights" of TSRR, as an acknowledgment that TSRR is the legal operator of that segment and that New Hampshire cannot name a new operator so long as TSRR's operating rights remain valid. If any other meaning was intended by NHCR, it should have made that meaning clear. The mere fact that New Hampshire disclosed a possible intent to seek a new operator does not mean, and was not taken to mean, that the operating rights of TSRR would be ignored.

New Hampshire itself acknowledges the supremacy of TSRR's operating rights. On December 10, 2002, MEC and the State of New Hampshire jointly filed an exemption and waiver request (which was updated and refiled on February 20, 2003) and further informed the Board of their intent to file an adverse discontinuance application under 49 U.S.C. § 10903 requesting the Board to permit and require LVRC and TSRR to discontinue operations on the Line. On July 1, 2003, the Board granted the waiver request in part.¹² To date, however, no further filings have been made by MEC or New Hampshire in pursuance of the adverse abandonment.

The State of New Hampshire, which is the putative lessor of the subject Whitefield-Lunenburg (Gilman) line, if not applicant NHCR itself, clearly was aware that TSRR holds operating rights between Whitefield and Lunenburg (Gilman) and that those operating rights must be addressed before another operator can institute service over the same line. In the Board's decision in Docket No AB-848 (July 1, 2003), where MEC and the State of New Hampshire

¹² *Maine Central R R Co - Lease*, STB Docket No AB-848 (served July 1, 2003)

sought exemptions and waivers to pursue an adverse discontinuance of the segment between Whitefield and St. Johnsbury, including the portions between Whitefield and Lunenburg (Gilman), former Board Chairman Nober stated as follows:

According to the Applicants, if the [adverse discontinuance] application is approved and the Board's exclusive jurisdiction terminates, the State [of New Hampshire] will seek removal of the interest of LVRC and TSRR under state law and obtain a new operator to provide service on the Whitefield to Gilman segment

It is difficult to imagine a clearer concession by New Hampshire that it or its designee cannot unilaterally assume operation of the Whitefield-Gilman line without consent of TSRR so long as TSRR continues to have valid operating rights.

On August 17, 2004, TSRR filed a verified Notice of Exemption seeking to abandon and discontinue the Western Segment of the Line. MEC filed a reply to the Notice of Exemption on September 20, 2004. In its reply, MEC did not oppose TSRR's *discontinuance* of the Western Segment of the line, but did oppose TSRR's attempt to abandon, claiming that TSRR was not the owner of that line and had no standing to abandon and recover any proceeds from sale of the Line. TSRR replied that it had acquired title to the rail, ties and other track materials when it became lessee of the Line. The Board issued a decision on October 12, 2004 approving TSRR's abandonment exemption without

resolving the track ownership issue, subject to the condition that TSRR "leave the line, track, ties and other track materials intact and undisturbed" ¹³

On November 1, 2004, TSRR filed a complaint in the U.S. District Court for the District of Massachusetts seeking a declaration by the court that TSRR had a right, pursuant to the terms of the 1984 Lease, to remove and salvage the rail assets on the Western Segment. MEC filed its motion to dismiss the complaint on December 3, 2004. ¹⁴ The court referred the matter to the Board for further proceedings.

On November 18, 2005, ¹⁵ the Board: 1) revoked the conditional abandonment authority it had previously granted to TSRR in its October 12, 2004 decision; ¹⁶ and 2) granted TSRR authority to discontinue, but not abandon, its operations over that segment. To the best of VTrans' knowledge, TSRR has not conducted any operations over the Line since approximately 1999. So far as Vermont is concerned, however, TSRR is free to resume service over that unabandoned line. Even were that not so, Vermont would exercise its rights under the 1983 Settlement Agreement and the 1984 Lease to rename TSRR the operator of that segment.

¹³ *Twin State R.R. Co. – Abandonment and Discontinuance of Service – In Caledonia and Essex Counties, VT*, STB Docket No. AB-862X (decided Oct. 12, 2004)

¹⁴ *Maine Central R.R. Co. v. STB*, Case No. 06-10292 (D. Mass., Mar. 2, 2006)

¹⁵ *Twin State R.R. Co. – Abandonment and Discontinuance of Service – In Caledonia and Essex Counties, VT*, STB Docket No. AB-862X, (Decided Nov. 17, 2005)

THE NOE LACKS NECESSARY DATA AND THEREFORE IS MISLEADING

The following listing of the information requirements of the regulations under which NHCR filed, 49 C.F.R. § 1150.43, shows that the NOE is sufficiently lacking in necessary data to constitute a misleading submission:

(a) The full name and address of the Class III rail carrier applicant;

The NOE includes this information.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

The NOE includes this information.

(c) A statement that an agreement has been reached or details about when an agreement will be reached.

Despite the fact that the existence of TSRR's rights under the 1984 Lease was plainly acknowledged in previous filings by MEC and New Hampshire, and that the 1984 Lease approved by the ICC allows Vermont to designate the Line's operator, the NOE fails to even mention TSRR, or the rights of Vermont, let alone provide any inkling that there is a trackage rights agreement between NHCR and TSRR or a suggestion that such an agreement will be reached, as it must for the Line to remain "subject to the operating rights" of TSRR

(d) The operator of the property;

The NOE includes this information

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant;

The NOE merely states that the subject property has been leased to NHCR by the New Hampshire Department of Transportation. Despite the fact (see above) that New Hampshire clearly acquired the subject line from MEC subject to the rights of TSRR as the incumbent operator under the 1984 Lease, the NOE does not address the transfer of operating rights from TSRR to NHCR or, in the alternative, articulate any legal authority to explain how TSRR's operating rights might have been extinguished or superseded.

(2) The proposed time schedule for consummation of the transaction.

The NOE merely states that its lease from the New Hampshire Department of Transportation was effective April 18, 2007. Under the Board's rules, however, the transaction cannot be consummated earlier than seven (7) days after the NOE is filed. Further, the NOE does not explain how or when NHCR will acquire the rights of TSRR or how the transaction could be consummated notwithstanding those rights

(3) The mileposts of the subject property, including any branch lines, and

The NOE provides this information.

(4) The total route miles being acquired;

The NOE provides this information

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states, and

Although a map is attached to the NOE, it does not identify counties

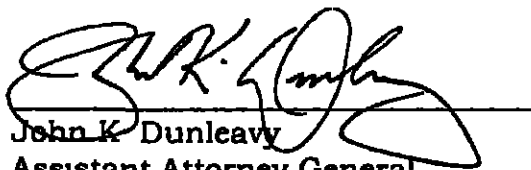
(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class III rail carrier so as to require processing under § 1150.45.

The NOE provides this information

CONCLUSION

For the reasons set forth above, VTrans respectfully urges this Board to determine that the NOE provides insufficient information for the Board to satisfy itself that the proposed transaction meets the criteria of 49 C.F.R. Part 1150, Subpart E, that it contains misleading statements in the form of omissions of material facts, and to revoke the exemption

Respectfully submitted,



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Counsel for the Vermont Agency of
Transportation

Dated: May 9, 2007

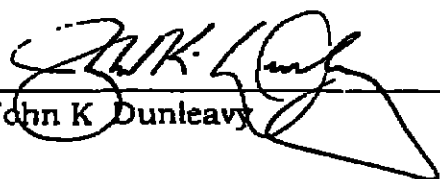
Certificate of Service

I hereby certify that I have this 9th day of May, 2007, caused to be served a copy of the foregoing Comments and Request for Revocation of the State of Vermont Agency of Transportation upon the following parties by first-class mail, with postage prepaid:

Jack E. Dodd
Director of Marketing and Sales
P.O. Box 28
St. Albans, VT 05478-0028

Christopher Morgan, Administrator
Bureau of Rail & Transit
New Hampshire Department of Transportation
John O. Morton Building
7 Hazen Drive (P O. Box 483)
Concord, NH 03302-0483

Leonard M. Singer, Esq
101 Arch Street, 9th Floor
Boston, MA 02110



John K. Dunleavy

EXHIBIT A

**SETTLEMENT AGREEMENT
BETWEEN
STATE OF VERMONT
AGENCY OF TRANSPORTATION
AND
LAMOILLE VALLEY RAILROAD COMPANY**

AGREEMENT made as of this 19th day of February, 1998 by and between the State of Vermont, acting by its Agency of Transportation, with a place of business at Montpelier, Vermont ("VAOT"), and the Lamoille Valley Railroad Company, a corporation with a place of business at Trenton, Florida ("LVRC")

WHEREAS, VAOT and LVRC are parties to that certain Lease Agreement dated as of December 31, 1977 (the "Lease"), pursuant to which LVRC has leased from VAOT and occupied (a) a certain railroad right of way located approximately between railroad milepost 0 057 in St Johnsbury, Vermont and railroad milepost 95 324 in Swanton, Vermont (the "Swanton to St Johnsbury Line Segment"), (b) a certain railroad right of way located approximately between railroad milepost 137.86 in Swanton (Fonda Junction), Vermont and railroad milepost 140.45 in Swanton, Vermont (the "Fonda Junction Line Segment") and (c) certain railroad yards, repair shops and buildings located in Morrisville, Vermont (the "Morrisville Facilities") (the Swanton to St Johnsbury Line Segment, the Fonda Junction Line Segment and the Morrisville Facilities being collectively referred to herein as the "Original Leased Premises"), all as more particularly defined and described in the Lease, and

WHEREAS, VAOT and LVRC have recently completed a "highest and best use" study of the Original Leased Premises (the "Study"), a copy of which is attached hereto as Exhibit A and the findings and conclusions of which are incorporated herein, and

WHEREAS, the Study acknowledges that, notwithstanding the marketing and business development efforts made by LVRC, freight operations on the Swanton to St Johnsbury Line Segment are likely to continue to be unviable for the foreseeable future, and

WHEREAS, the Study recommends that the Swanton to St Johnsbury Line Segment may be suitable for abandonment and rail banking and for use as a recreational trail or multi-use corridor, and

WHEREAS, so as to be able to continue to explore the possibility of abandoning, rail banking and converting to recreational trail or multi-use corridor, VAOT desires that LVRC surrender its leasehold of the Swanton to St Johnsbury Line Segment and the Morrisville Facilities,

WHEREAS, so as to be able to concentrate its efforts on its core freight operations and so as to facilitate the recommendations of the Study and the wishes of VAOT, LVRC is willing to surrender its leasehold of the Swanton to St Johnsbury Line Segment and the Morrisville Facilities,

A-1

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and conditions set forth herein, the parties hereby agree as follows:

1. Surrender of the Swanton to St. Johnsbury Line Segment. Subject to the receipt of any authority required from the U.S. Surface Transportation Board, or confirmation of exemption from such authority, LVRC hereby surrenders to VAOT its leasehold and any and all other rights under the Lease with respect to the Swanton to St. Johnsbury Line Segment. VAOT acknowledges and agrees that it has inspected the Swanton to St. Johnsbury Line Segment, is satisfied with the condition thereof in every respect, and accepts the surrender thereof in "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition. VAOT hereby releases LVRC from any and all claims by VAOT with respect to the Swanton to St. Johnsbury Line Segment as of the date hereof.

2. Surrender of the Morrisville Facilities. Subject to the receipt of any authority required from the U.S. Surface Transportation Board, or confirmation of exemption from such authority, LVRC hereby agrees to surrender to VAOT its leasehold and any and all other rights under the Lease with respect to the Morrisville Facilities, effective as of July 31, 1998 or such earlier date as LVRC notifies VAOT that LVRC has removed its railcars, equipment, furniture, tools, supplies, records and other personal property from the Morrisville Facilities (the "Morrisville Effective Date"). VAOT acknowledges and agrees that it has inspected the Morrisville Facilities, is satisfied with the condition thereof in every respect, and accepts the surrender thereof in "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition. VAOT releases LVRC from any and all claims by VAOT with respect to the Morrisville Facilities as of the Morrisville Effective Date.

3. Continued Lease of Fonda Junction Line Segment. LVRC's leasehold and other rights under the Lease with respect to the Fonda Junction Line Segment, including its rights as sublessor under that certain Sublease Agreement dated January 9, 1984 by and between LVRC and Central Vermont Railway, Inc. (now succeeded by New England Central Railroad Co., Inc.), shall remain in effect through December 31, 2002, at which time LVRC will surrender all its leasehold and other rights in the Fonda Junction Line Segment (including the sublease) to VAOT.

4. Operation of Twin State Line Segment. (a) The parties acknowledge and agree that the Twin State Railroad Company ("TSRR") is a Class III shortline rail carrier under common ownership with LVRC and the New Hampshire and Vermont Railroad Company, Inc. ("NHVT"). The parties further acknowledge and agree that VAOT and LVRC are parties to that certain Settlement Agreement dated as of November 1, 1983, a copy of which is attached hereto as Exhibit B, with respect to certain operating rights over a line of railroad located between St. Johnsbury, Vermont and Whitefield, New Hampshire which is owned by the Maine Central Railroad Company and leased by TSRR (the "Twin State Line Segment"). The parties further acknowledge and agree that LVRC and TSRR are parties to that certain Lease and Operating Agreement dated as of March 1, 1984, a copy of which is attached hereto as Exhibit C, with respect to the Twin State Line Segment.

(b) VAOT hereby acknowledges and agrees that neither this Agreement nor the surrendering of the Swanton to St Johnsbury Line Segment and the Morrisville Facilities contemplated herein is or shall be construed as an event of default by LVRC under the Lease, or as an event or circumstance permitting or triggering any right by VAOT, if any, under such Settlement Agreement or Lease and Operating Agreement to designate a carrier other than TSRR to operate the Twin State Line Segment. VAOT hereby further waives any and all future right under the Settlement Agreement or the Lease and Operating Agreement to designate a carrier other than TSRR to operate the Twin State Line Segment

5. Forgiveness of LVRC Indebtedness to State. The parties acknowledge that as of June 30, 1998, VAOT, in accordance with paragraph 2(a) of the September 30, 1993 Agreement between VAOT and LVRC's parent company, CSF Acquisition, Inc ("CSF") (approved by the General Assembly of the State of Vermont in Sec. 6(c) of Act No 211 of 1994) will have forgiven \$400,000.00 of LVRC's outstanding indebtedness to VAOT. Assuming CSF's continued operation of the Washington County Railroad without operating subsidy, LVRC's remaining indebtedness to VAOT will be discharged in full on June 30, 2000.

6. Mutual Releases. (a) VAOT does hereby, for itself and its successors and assigns fully remise, release and forever discharge LVRC, its affiliates, subsidiaries, stockholders, directors, officers, employees, agents, attorneys, representatives, successors and assigns from and against any and all actions, causes of action, suits, judgments, executions, accounts, debts, claims, demands, liabilities, costs, expenses and other damages (including attorneys' fees) of every type and nature, at law or in equity, known or unknown, arising out of, or which may arise out of, or which may in any way be related to the Lease, including, without limitation, any and all obligations with respect to

(i) The payment of any and all rental, including rental adjustments, and any other charges or obligations under the Lease with respect to the Swanton to St Johnsbury Line Segment and the Morrisville Facilities,

(ii) The performance of or payment for any and all maintenance or repair of the Swanton to St Johnsbury Line Segment and the Morrisville Facilities;

(iii) Any and all costs associated with the Study, and any reputational harm and other damage incurred by VAOT in connection therewith,

(iv) All matters addressed in that certain letter dated December 5, 1997 from Attorney David H. Anderson to Attorney John K. Dunleavy, and

(v) The performance of any and all other obligations to VAOT and all other matters between VAOT and LVRC arising under the Lease, by operation of law or otherwise with respect to the Swanton to St Johnsbury Line Segment and the Morrisville Facilities

Except as provided herein, this Agreement is not intended to and shall not release LVRC from any of its obligations to VAOT under the Lease with respect to the Fonda Junction Line Segment

(b) LVRC does hereby, for itself and its successors and assigns fully remise, release and forever discharge VAOT, its employees, agents, attorneys, representatives, successors and assigns from and against any and all actions, causes of action, suits, judgments, executions, accounts, debts, claims, demands, liabilities, costs, expenses and other damages (including attorneys' fees) of every type and nature, at law or in equity, known or unknown, arising out of, or which may arise out of, or which may in any way be related to the Lease, including, without limitation, any and all obligations with respect to.

(i) The performance of and payment for any and all maintenance or repair of the Swanton to St Johnsbury Line Segment and the Morrisville Facilities;

(ii) The performance of any and all obligations arising from negotiations between VAOT and LVRC in 1996 regarding abandonment of the Swanton to Morrisville portion of the Swanton to St Johnsbury Line segment, including the salvage and/or relay of rail and OTM and the reimbursement of costs and expenses of such abandonment;

(iii) VAOT's 1996 removal of the railroad bridge in Walden, Vermont,

(iv) The proration, allocation or payment of any proceeds from the sale, lease or other conveyance by VAOT to any third party of any right, title or interest in the Original Leased Premises, and

(v) Any and all costs associated with the Study, and any reputational harm and other damage incurred by LVRC in connection therewith,

(vi) All matters addressed in that certain letter dated December 5, 1997 from Attorney David H Anderson to Attorney John K Dunleavy

(vii) The performance of any and all other obligations to VAOT and all other matters between VAOT and LVRC arising under the Lease, by operation of law or otherwise with respect to the Swanton to St Johnsbury Line Segment and the Morrisville Facilities

Except as provide herein is not intended to and shall not release VAOT from any of its obligations to LVRC under the Lease with respect to the Fonda Junction Line Segment

(c) VAOT and LVRC acknowledge and agree that this Agreement and the consideration set forth above represent compromises of disputed claims, and that neither this Agreement nor such consideration is or shall be construed as an admission of any liability or fact by either VAOT or LVRC, and that VAOT and LVRC expressly deny any liability therefor and intend merely to

avoid further litigation in these matters.

7. Future Cooperation. The parties shall cooperate with one another in preparing and executing any further documentation that may be required in order to effect the purposes of this Agreement, including (but not limited to) documents appropriate for recording in the land records to memorialize LVRC's surrender of leasehold rights as provided in this Agreement.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont applicable to contracts made, accepted and performed wholly within the State of Vermont, without application of principles of conflict of laws

9. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, agreements, contracts and the like between the parties in such respect. Notwithstanding the foregoing, however, this Agreement shall not be construed to supersede the September 2, 1993 Agreement between VAOT and CSF, a copy of which is attached hereto as Exhibit D and incorporated herein by reference, except that personal property authorized for transfer to CSF under paragraph 2(c) of the September 2, 1993 Agreement between VAOT and CSF shall be removed from the Swanton to St. Johnsbury Line Segment and the Morrisville facilities by July 31, 1998 and from the Fonda Junction Line Segment by December 31, 2002. Any personal property belonging to CSF that is not removed by those dates shall become the property of VAOT and thereafter may be disposed of in VAOT's complete discretion.

10. Railbanking. This agreement shall be interpreted to conform to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d) ("Trails Act"). VAOT, upon LVRC's surrender of leasehold rights in areas authorized for discontinuance of service by the U.S. Surface Transportation Board, shall assume all financial, managerial and legal responsibility for use of said line segments and, to the extent required by the Trails Act and its implementing regulations, agrees to defend, indemnify and hold LVRC harmless therefor. LVRC shall cooperate in obtaining a certificate of interim trail use ("CITU") from the Surface Transportation Board for the subject line of railroad, as well as any other orders required from the Board. VAOT, for itself and its assigns, covenants that its use of the land and premises shall not impair reinstitution of rail service on all or part of the premises.

11. Vermont State Tax Certification. Pursuant to Title 32, Vermont Statutes Annotated, Section 3113, LVRC hereby certifies, under the pains and penalties of perjury (maximum penalty 15 years in prison, a \$10,000.00 fine, or both), that it is in good standing with respect to, or in full compliance with a plan approved by the Commissioner of Taxes to pay, any and all taxes due the State of Vermont as of the date of this Agreement.

12. Notice. Any notice or other communication contemplated by or in connection with this Agreement shall be deemed to have been given when made in writing and mailed by registered

or certified mail with the United States Postal Service to the address set forth below or to such other address as may hereafter be designated by notice

a As to VAOT

Secretary of Transportation
Vermont Agency of Transportation
133 State Street
Montpelier, Vermont 05633

with copy to:

John K Dunleavy
Assistant Attorney General
Vermont Agency of Transportation
133 State Street
Montpelier, VT 05633

b. As to LVRC

Mr Clyde S. Forbes, President
CSF Acquisition, Inc.
416 Main Street
Trenton, Florida 32693

with copy to

David H Anderson, Esq.
288 Littleton Road, Suite 21
Westford, MA 01886

IN WITNESS WHEREOF, VAOT and LVRC have caused this Agreement to be executed in the State of Vermont as an instrument under seal by their duly authorized representatives as of the date first set forth above

STATE OF VERMONT
AGENCY OF TRANSPORTATION

John Blaisie
Witness

By

Glenn Gershneck
Glenn Gershneck, Secretary

APPROVED AS TO FORM

DATED. 01-30-98

Edmund G. Goss
ASSISTANT ATTORNEY GENERAL

LAMOILLE VALLEY RAILROAD
COMPANY

Edmund Goss
Witness

By

Clyde S. Forbes, Jr.
Clyde S. Forbes, Jr., President

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