



KAPLAN KIRSCH ROCKWELL

May 22, 2009

Via Electronic filing
Hon. Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**Re: Chesapeake Railroad Company – Modified Rail Certificate
Finance Docket No. 32609**

Dear Madam:

I am enclosing the Request of Maryland Transit Administration to Amend Notice of Consummation of Trail Use Agreements in the above referenced proceeding.

Sincerely,

Allison I. Fultz

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32609

CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE

**REQUEST OF MARYLAND TRANSIT ADMINISTRATION
TO AMEND NOTICE OF CONSUMMATION OF
TRAIL USE AGREEMENTS**

Communications with respect to this pleading
should be addressed to:

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Counsel for the Maryland Transit Administration

Dated: May 22, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32609

CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE

**REQUEST OF MARYLAND TRANSIT ADMINISTRATION
TO AMEND NOTICE OF CONSUMMATION OF
TRAIL USE AGREEMENTS**

Maryland Transit Administration, a modal agency of the Maryland Department of Transportation (“MTA”), hereby submits this request to amend the Notice of Consummation of Trail Use Agreements it filed in this proceeding on September 26, 2008 (“MTA Notice”). MTA seeks to substitute the License Agreement between MTA and Delaware Department of Natural Resources & Environmental Control (“DNREC”), dated as of September 25, 2008 (“License Agreement”), attached hereto as Exhibit A, in place of the Statement of Willingness to Assume Financial Responsibility (“SWAFR”) of DNREC previously submitted in this proceeding as Exhibit B to the MTA Notice. As set forth at Section 12 of the License Agreement, DNREC has agreed to assume the responsibilities required of trail sponsors pursuant to 49 C.F.R. § 1152.29(a)(3). DNREC has consented to this request.

This proceeding involves the line of railroad from milepost 0.0 in the Town of Clayton, Kent County, Delaware, to milepost 45.30 in Easton, Talbot County, Maryland, and also including the Oxford Branch connecting track from milepost 0.0 in Queen Anne, Queen Anne’s County, Maryland, to milepost 8.8 in Denton, Kent County, Maryland, a total of 54.10 miles (collectively, the “Clayton-Easton Line”). MTA owns the Clayton-Easton Line, which the State of Maryland acquired from the Penn Central Corporation and others in 1982. This line is subject

to a Certificate of Interim Trail Use ("CITU") issued by the Board on January 9, 2006, in STB Docket No. 32609, *Chesapeake R. Co. – Certificate of Interim Trail Use and Termination of Modified Certificate*, and STB Docket No. 29830, *Maryland and Delaware R. Co. – Termination of Modified Certificate*. On July 7, 2007, the Board issued a decision in this proceeding partially vacating the CITU with respect to a 1,645 foot segment of track in Easton, Talbot County, Maryland, known as the Easton Spur. MTA consummated the abandonment of the Easton Spur by notice filed at the Board on July 23, 2007.

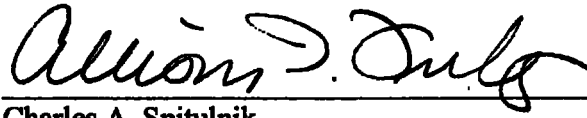
As described in detail in the MTA Notice, MTA has entered into Trail Use Agreements with the Delaware Department of Natural Resources and Environmental Control ("DNREC") for that portion of the line located in Delaware, and with the Maryland Department of Natural Resources ("DNR") for the portion of the line that is in Maryland.¹

The License Agreement addresses, among other things, the respective rights and obligations of MTA and DNREC with respect to trail use along the segment from milepost 0.0 in Clayton, Kent County, Delaware, to milepost 13.50 in Marydel, Kent County, Delaware (the "Delaware Segment").

The existing CITU is supported by a SWAFR executed by the Maryland Department of Transportation ("MDOT"). Pursuant to 49 CFR 1152.29(f), MTA, hereby renews its request that the CITU be vacated and appropriate CITUs be issued to address DNREC's assumption of responsibility for the Delaware Segment, based on the License Agreement attached hereto as **Exhibit A**, and DNR's assumption of responsibility for the Maryland Segment as detailed above, all to be effective as of September 26, 2008.

¹ MTA's Lease Agreement with DNR, which addresses, among other things, DNR's obligations as the trail sponsor, is attached to the MTA Notice as Exhibit C. MTA does not request any modification of the MTA Notice with respect to Exhibit C, which will remain in the record as evidence of DNR's assumption of responsibility for the portion of the Clayton-Easton Line located in Maryland.

Respectfully submitted,

A handwritten signature in cursive script, reading "Allison I. Fultz", positioned above a horizontal line.

Charles A. Spitulnik

Allison I. Fultz

KAPLAN KIRSCH & ROCKWELL LLP

1001 Connecticut Avenue, N.W.

Suite 800

Washington, DC 20036

(202) 955-5600

Counsel for the Maryland Transit Administration

Dated: May 22, 2009

Exhibit A

License Agreement between MTA and DNREC

LICENSE AGREEMENT
Between
MARYLAND TRANSIT ADMINISTRATION
a modal agency of the
MARYLAND DEPARTMENT OF TRANSPORTATION
acting for and on behalf of
THE STATE OF MARYLAND
and
**DELAWARE DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL**

THIS LICENSE AGREEMENT ("Agreement") is entered into this 25th day of SEPTEMBER 2008 by and between **MARYLAND TRANSIT ADMINISTRATION** a modal agency of the **MARYLAND DEPARTMENT OF TRANSPORTATION** acting for and on behalf of **THE STATE OF MARYLAND** ("Licensor" or "MTA") located at 6 Saint Paul Street, Baltimore, MD 21202, and **DELAWARE DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL** located at 89 Kings Highway, Dover, Delaware 19901 ("Licensee" or "DNREC" or "Interim Trail User").

RECITALS

1. By Deeds dated January 8, 1982 and recorded among the land records of Kent County, Delaware, on November 22, 1982 at Record Q, Volume 37, Page 1, and dated January 8, 1982 and recorded among the land records of Caroline County, Maryland in Book 214, Page 676, MTA acquired certain railroad rights-of-way from the Penn Central Corporation and others, in Kent County, Delaware and Caroline County, Maryland ("Rail Corridor").
2. The Rail Corridor is now subject to a Certificate of Interim Trail Use (CITU) issued by the Surface Transportation Board (STB) in Washington, D.C. on January 9, 2006 in STB Docket No. 32609, *Chesapeake R. Co. - Certificate of Interim Trail Use and Termination of Modified Rail Certificate* and STB Docket No. 29830, *Maryland and Delaware R. Co. - Termination of Modified Certificate*).
3. The State of Maryland recognizes that interim use of railroad rights-of-way for public recreation produces transportation benefits such as maintenance of the right-of-way, prevention of vandalism, or other deterioration. As such, MDOT filed a Statement of Willingness To Assume Financial Responsibility pursuant to 16 USC § 1247 (d) and 45 CFR §1152.29.
4. The STB has recognized the right of the State of Maryland to utilize interim use provisions under the Federal Rail to Trails Act, committing to a restoration for freight use should such a need develop.
5. Pursuant to Chapter 658, Acts of 1990, the General Assembly of Maryland provided for the interim use for public recreation of that portion of the Railroad Corridor located in the State of Maryland known as the Easton to Clayton Rail Trail through an MOU dated August 23, 1993 from the

State Railroad Administration (now part of the Maryland Transit Administration) to the Maryland Department of Natural Resources.

6. MTA and DNREC have agreed that the portion of the Rail Corridor located solely within Delaware that runs from the Town of Clayton, Kent County, Delaware proceeding in a southwesterly direction and ending in Delaware at the Maryland/Delaware State Line in the Town of Marydel, Kent County, Delaware is currently inactive and would be appropriately used on an interim basis for public recreation as a rail trail.

7. MTA and DNREC believe that it is in the best interest of their respective States that the portion of the Rail Corridor located solely within Delaware should be transferred to DNREC.

8. MTA intends to recommend to the State Board of Public Works that the transfer to DNREC be for no consideration.

9. In anticipation of a transfer of the Delaware portion of the Rail Corridor to DNREC which must first be approved by the Maryland Board of Public Works, MTA and DNREC have agreed to enter into this Agreement which is intended to be of a limited duration.

10. For the duration of this Agreement, DNREC intends and expects to make payments to MTA in lieu of providing insurance as set forth in paragraph 6(f) herein.

11. It is therefore the intent of MTA and DNREC that this Agreement and a subsequent conveyance from MTA to DNREC:

a. encompass that portion of the Railroad Corridor within the State of Delaware, that is part of the railroad line known as the Oxford Secondary Track, extending from the Town of Clayton, Kent County, Delaware beginning at Mile Post 0.0 to the Town of Marydel, Kent County, Delaware at Mile Post 13.5, as shown on the valuation maps for the Oxford Branch, which valuation maps are filed among the record of MTA, that is within the general 66 foot wide corridor and adjacent outparcels adjoining the Rail Corridor (the "Area") and is part of the property described in Recital No. 1 of this Agreement; and

b. be for an interim use only for public recreation as a rail trail, be subject to termination for restoration of the railroad right-of-way for railroad purposes by MTA, and does not constitute an abandonment of use of the right-of-way for railroad purposes.

12. MTA and DNREC mutually commit themselves to certain terms for the interim use of the Area for public recreation.

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows, intending to be legally bound:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein by reference and made a part of this Agreement.

2. **Grant and Term of License.** Subject to the terms and conditions of this Agreement, for a term of two (2) years, beginning on the date this Agreement is executed by MTA, MTA grants DNREC a license to use and maintain the Area for public recreational and park uses, in accordance with and in furtherance of the CITU issued by the STB, and for no other purpose. This Agreement shall be automatically renewed for three (3) additional one-year terms, unless notice of termination is given

by one party to the other at least thirty (30) days prior to the end of a term. This License conveys to Licensee no title or real property interest of any kind respecting the Area licensed. This Agreement shall terminate immediately at the end of the term of this Agreement or conveyance of the Area by MTA to DNREC, whichever is sooner.

3. License Fee. In consideration of the grant by Licensor of this License, Licensee agrees to pay Licensor One Dollar (\$1.00), payable in advance.

4. Licensee's Responsibilities.

- (a) Licensee shall keep the Area free and clear of debris.
- (b) Licensee shall be responsible for reasonable maintenance of the Area.
- (c) All work of whatever kind done by Licensee, its agents and contractors, while upon the Area shall be done in a workmanlike manner and in compliance with all applicable laws, rules, regulations and orders. Licensee shall comply with all requirements with respect to protection of the environment and shall not place, cause to be placed, or knowingly allow any third party to place upon or under the Licensor's property any hazardous substance or other substance, which may be the cause of environmental degradation.
- (d) Licensee shall be responsible for any inspections, renovations or repairs to any bridge structures that are located along or within the Area in connection with its use of the Area for a rail trail.
- (e) Licensee shall be solely responsible for any act, commission, or omission of any vendor, agent, contractor, or any person operating or acting by or through it.
- (f) At the termination of this License for any reason, Licensee shall vacate the Area and leave it in as good or better a condition as existed upon Licensee's original entry.

5. Indemnity and Liability.

(a) Licensee shall protect, indemnify, defend and hold harmless, and shall require in its agreements with contractors and subcontractors that they shall protect, indemnify, defend and hold harmless MTA, its officers, agents, employees, customers, successors and assigns, against and with respect to any and all liabilities arising out of or in any way connected with: (i) the exercise or performance by Licensee (or its agents, volunteers, officers, employees, successors or assigns or contractors) of any of its rights or obligations hereunder; (ii) the use or operation by Licensee (or its agents, volunteers, officers, employees, successors or assigns or contractors) of the Area, or (iii) work performed by or on behalf of Licensee upon the Area. As used herein, "Liabilities" shall include any and all losses, claims, damages, suits, liabilities or costs whatsoever, (including without limitation reasonable attorney's fees and cost of suit) which arise: (i) out of injury to any person (including without limitation loss of limb or death); (ii) out of damage to or destruction of any property of any person whomsoever; (iii) out of damage to or destruction of the environment, including without limitation land, air, water, wildlife, or vegetation (including, but not limited to, costs and expenses incident to monitoring, remedial actions, proceedings or investigations or the defense of any claim); or (v) out of or occasioned by any breach or default by Licensee (or its agents, volunteers, officers, employ-

ees, customers, successors or assigns or contractors) in performing any of its obligations hereunder or under any applicable law. The foregoing obligations shall survive termination of this Agreement with respect to Liabilities arising during its term.

(b) Notwithstanding the requirements of subsection (a) of this section, nothing contained in this Agreement shall constitute or be deemed to constitute an obligation of future appropriations by the Delaware General Assembly. MTA acknowledges that Licensee must obtain appropriations prior to payment of any damages. A lack of funds to perform any aspect of this Agreement due to insufficient appropriation by the Delaware General Assembly shall not constitute a breach of this Agreement.

(c) Licensee intends to satisfy all of its obligations under this Agreement. Licensee reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the Delaware General Assembly does not provide funds in sufficient amounts to discharge these obligations, Licensee shall use its reasonable best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose, subject to such priorities as may be determined by the Governor of the State of Delaware. In the event the Delaware General Assembly does not provide funds in sufficient amounts to discharge any of its obligations under this Agreement, and despite the reasonable best efforts of Licensee, and no other source of funds is available for this Agreement, then MTA may suspend or terminate this Agreement in its sole discretion. Such termination shall not affect any liability of Licensee for obligations incurred prior to the date of termination. Further, if Licensee is unable to satisfy its obligations under this Agreement, MTA may exercise any legal rights it has to protect its interest in any way related to this Agreement.

6. Insurance.

(a) Prior to the effective date of this Agreement, and at all times during its term, Licensee, at its sole cost and expense shall procure and maintain and require its contractors and subcontractors (of any tier) performing activities hereunder to procure and maintain, insurance which shall protect Maryland Transit Administration, Maryland Department of Transportation, and the State of Maryland, their officers, agents, employees, invitees, successors; and assigns, from claims which may arise out of or as a result of Licensee's activities under this Agreement, whether such activities be by Licensee, by any contractor or subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. In furtherance of this obligation, Licensee shall procure and maintain at least the minimum levels of insurance coverage as set forth below:

(i) **Commercial General Liability and Umbrella Insurance.** Licensee shall maintain Commercial General Liability ("CGL") insurance and, if necessary, commercial umbrella insurance with a limit of not less than \$5,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Utility. CGL insurance shall be written on ISO occurrence form CG 00 01 10 93 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract. CGL insurance shall be amended by attachment of ISO form CG 20 26 (or a substitute form providing coverage acceptable to MTA) to include the Maryland Transit Administration; Maryland Department of Transportation, and State of Maryland as Additional Insureds. There

shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices. Licensee waives all rights against Licensor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the required commercial general liability or commercial umbrella insurance.

(b) If at any time the above required insurance policy should be canceled, terminated or modified so that the insurance is not in full force and effect as required herein, MTA may terminate this Agreement for default or, at its sole option, obtain insurance coverage equal to that required herein, the full cost of which shall be charged to and paid by Licensee.

(c) The insurance policy referenced hereinabove, by endorsement, shall include the following required clauses:

(i) This insurance coverage shall not be canceled by this Insurance Company, nor shall any changes be made which alter, restrict or reduce the insurance coverage so provided or change the name of the Insured(s), without first having given written notice, at least 30 days prior to (1) Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19901, and (2) Maryland Transit Administration, 6 St. Paul Street, Baltimore, Maryland 21202, Attention: Office of Real Estate, as evidenced by receipt of registered letter.

(ii) Such insurance as afforded by this policy for the benefit of Maryland Transit Administration, Maryland Department of Transportation, and the State of Maryland (collectively, "State") shall be primary and any insurance carried by State shall be excess and noncontributing with insurance afforded by this policy.

(iii) In the event of any occurrence, accident or claim made under this policy, this Insurance Company shall not contend that Maryland Transit Administration, Maryland Department of Transportation, and/or the State of Maryland is (are) not liable in tort by virtue of being a governmental instrumentality or public or quasi-public body.

(iv) This Insurance Company releases Maryland Transit Administration, Maryland Department of Transportation, and the State of Maryland from any liability arising from or through the operation of any subrogation clause in this policy of insurance, and in the event of any occurrence, accident or claim made under this policy, this Insurance Company shall not claim or contend that any of those entities is liable as the result of subrogation.

(d) As evidence of the above insurance, Licensee shall, prior to the effective date of this Agreement, file with MTA, and require any contractors and subcontractors performing activities under this Agreement to so file, duly executed Certificates of Insurance issued by the insurer(s) of all insurance required herein, including special endorsements. Each such Certificate shall be in a form satisfactory to Licensor; shall list the various coverage types and limits; shall name Maryland Department of Transportation, the State of Maryland and Maryland Transit Administration, as additional insureds; and shall indicate that the policy has been endorsed as described above. All insurance shall be placed and maintained with insurers licensed and authorized to do business in the States of Maryland and Delaware and who have an A.M. Best rating of "A" or better, unless otherwise approved by Licensor. Licensor's approval or failure to disapprove insurance furnished by Licensee shall not di-

minish or release Licensee from full responsibility for liability as set forth herein. Upon MTA's request, Licensee shall furnish MTA with a certified copy of each insurance policy.

(e) Whenever either party becomes aware of any claim, injury, death, damage, or loss of any kind to persons or property arising out of or connected with this License Agreement, that party shall have the right to fully investigate the claim. Each party shall cooperate with the other in any such investigation. All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement, including pro rated salaries or wages of full-time agents or employees of either party, including full-time attorneys, engaged directly or indirectly in such work, shall be included as costs and expenses in applying the Liability provisions set forth in this Agreement.

(f) Notwithstanding any other requirement of this Section 6 that requires Licensee to provide insurance for the benefit of MTA, in lieu of providing such insurance, at Licensee's request, MTA will acquire such insurance and Licensee shall, within no more than thirty (30) days after MTA sends Licensee notice of the cost of such insurance, reimburse MTA for the cost of such insurance. Licensee further agrees that none of its employees, agents, servants, or any other person or party acting with either its express or implied permission shall enter onto the Area without the express permission of MTA until full reimbursement is made in accordance with this subparagraph (f). At such time as the Area is conveyed to Licensee or this Agreement is terminated, MTA shall immediately cancel the insurance and rebate to DNREC any insurance proceeds that are refunded by the insurance carrier to MTA.

7. Notices. Unless otherwise agreed, all notices or other communications to either party is given when made in writing and either personally delivered or deposited in the United States mail, postage prepaid, return receipt requested, to the following addresses:

For Licensor: Maryland Transit Administration
Office of Real Estate
6 St. Paul Street, 3rd Floor
Baltimore, Maryland 21202
Attention: Manager

With a copy to: Office of the Attorney-General
6 St. Paul Street, 12th Floor
Baltimore, Maryland 21202

For Licensee: Delaware Department of Natural Resources &
Environmental Control
89 Kings Highway
Dover, Delaware 19901

A party may change the address to which notices to it are directed by such notice.

8. Termination.

(a) This Agreement may be terminated at any time by either Party hereto upon thirty (30) days prior notice in writing to the other Party. Upon such termination, Licensee shall remove any

signage from the Area. The Area shall then be restored to a condition reasonably satisfactory to MTA, either by MTA or Licensee in the sole discretion of MTA, all at Licensee's sole cost.

(b) Notwithstanding the foregoing, this Agreement may be terminated by MTA in accordance with this clause in whole, or from time to time in part, wherever MTA shall determine that such termination is in the best interest of the State of Maryland.

9. Assignment, Sublicense, and Non-Waiver.

(a) Licensee shall not assign any of its rights or delegate any of its duties hereunder nor sublicense all or part of the Area without the express prior written consent of MTA. Any attempted assignment, delegation, or sublicense without MTA's consent is void ab initio.

(b) The failure of MTA at any time to insist upon strict performance of any provision of this Agreement, or to exercise any right of remedy under this Agreement, shall not impair any such right or remedy or be deemed a waiver or relinquishment thereof.

10. Rails. Notwithstanding any rights Licensee receives under this Agreement, all rails and ties shall remain the property of MTA. At such time as Licensee may remove the rails and ties, Licensee shall deliver the rails and ties to a facility designated by MTA. All costs and expense related to the removal and relocation of the rails and ties shall be borne solely by Licensee.

11. Crossing Agreements and Conveyances.

For the term of this Agreement, MTA shall reserve the following rights:

a. MTA reserves and shall have the right to grant crossing agreements by license, lease, or deed of easement that will allow for utility service to cross under or over the surface of the Area. Any crossing agreement entered into by MTA shall insure that any activities undertaken to cross under the Area do not unnecessarily impact or cause any damage to Licensee's use of the Area for a rail trail.

b. MTA shall, in its reasonable discretion, have the right to convey or transfer by deed any of the land that is referenced in Recital 11a. as "adjacent outparcels" to a third party. However, before it transfers any such land, MTA shall first consult with DNREC to determine if DNREC has existing plans for use of the subject outparcel. If DNREC has existing plans at the time MTA makes its request, MTA will not transfer or convey the subject outparcel.

12. Licensee's Responsibilities.

a. In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, subject to the requirements of Delaware law, DNREC is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify MTA against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by MTA. The Area is part of a railroad line previously acquired by the State of Maryland known as the Oxford Secondary Tract and which extends from railroad milepost 0.0 near the Town of Clayton, Kent County Delaware, to railroad milepost 13.5, near the Town of Marydel, Kent County, Delaware. The right-of-way is part of a railroad line subject to a Certificate

of Interim Trail Use issued by the Surface Transportation Board in Washington, D.C. on January 9, 2006 in STB Docket No. 32609, *Chesapeake R. Co.-Certificate of Interim Trail Use and Termination of Modified Rail Certificate* and STB Docket No. 29830, *Maryland and Delaware R. Co. - Termination of Modified Certificate*).

b. Interim Trail User acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

c. DNREC shall provide a separate statement signed by DNREC that makes the statements recited in paragraphs a. and b. of this Section 12, for submission by MTA to the Surface Transportation Board.

13. Headings, Etc. The within headings are for convenience and shall not affect any construction or interpretation of this Agreement. The singular shall be read to include the plural, and vice versa, unless the context clearly requires otherwise.

14. Severability. If any provision is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provisions of this Agreement, which shall remain in full force and effect.

15. Miscellaneous. This License Agreement:

(a) shall inure to the benefit of and bind the Parties and their respective successors or assigns;

(b) constitutes the entire agreement between the Parties;

(c) may be amended or supplemented only by a writing signed by the Parties;

(d) may be executed in several counterparts, each of which shall constitute an original;

(e) is not for the benefit of or enforceable by any third party, and shall not be deemed to create any rights or benefits in any third party, and

(f) is a contract under seal, notwithstanding anything to the contrary contained herein.

16. Relationship Between the Parties. The relationship between the Parties is that of Licensor and Licensee. Nothing in this License shall be construed as creating any other relationship between the Parties.

17. Signee. The individual who is signing on behalf of each of the parties warrants and declares that he/she is authorized and empowered to enter to this Agreement on behalf of that party and to bind it to its terms and conditions.

[SIGNATURES ON THE NEXT PAGE]

IN WITNESS WHEREOF the Parties have executed this License Agreement.

ATTEST:

MARYLAND TRANSIT ADMINISTRATION

Madonna J. Copper

Paul Wiedefeld (Seal)
Paul Wiedefeld
Administrator

Approved as to Form and Legal Sufficiency for MTA

Robert M. Pollock
Robert M. Pollock
Assistant Attorney General

ATTEST:

DELAWARE DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL CONTROL

Charles A. Salkin
Charles A. Salkin
Director

By John A. Hughes (Seal)
John A. Hughes
Secretary

Approved as to Form and Legal Sufficiency for DNREC

David L. Ormond, Jr.
David L. Ormond, Jr.
Deputy Attorney General

Page 9 of a 9 page License Agreement between the Delaware Department of Natural Resources and Environmental Control and the Maryland Transit Administration

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing REQUEST OF MARYLAND TRANSIT ADMINISTRATION TO AMEND NOTICE OF CONSUMMATION OF TRAIL USE AGREEMENTS, upon the following parties of record in this proceeding by first class mail with postage prepaid and properly addressed:

General Counsel
American Short Line and Regional Railroad Association
50 F Street, N.W., Suite 7020
Washington, DC 20001

Edward G. Banks, Jr.
Maryland Delaware Railroad
106 Railroad Avenue
Feddersburg, MD 21632-1499

Linda C. Janey, J.D.,
Maryland Department of Planning
301 West Preston Street, Suite 1101
Baltimore, MD 21201-2365

And upon the following by first class mail with postage prepaid and properly addressed:

Delaware Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901


Allison I. Fultz

Dated this 22nd day of May, 2009