

May 17, 2012

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BY E-FILING

Ms. Cynthia A. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

**RE: FD 35624, Cleveland Harbor Belt Railroad-Operation Exemption-
Cleveland-Cuyahoga County Port Authority**

Dear Ms. Brown:

I am writing to follow up my telephone conversation today with Mark Lerner, Esq., of the Board's staff. On behalf of the Cleveland Harbor Belt Railroad, I am e-filing a copy of the executed operating agreement between the Cleveland-Cuyahoga County Port Authority and Cleveland Harbor Belt Railroad granting that carrier the right to operate over the Port's facilities.

Please contact me if you have any other question

Sincerely yours,



John D. Heffner

Enclosure

AGREEMENT

This AGREEMENT ("Agreement") is entered into as of, by and between the Cleveland-Cuyahoga County Port Authority, a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "Port Authority") with offices located at One Cleveland Center, Suite 2300, 1375 East Ninth Street, Cleveland, Ohio 44104-1786 and Cleveland Commercial Railroad Company, LLC, an Ohio limited liability company ("CCR"), or its assignee wholly owned by the principals of CCR, with offices located at 29930 Pettibone Road, Glenwillow, Ohio 44139.

WHEREAS, the Port Authority owns certain docks on the Cleveland, Ohio Lakefront known as Docks 20 and 22 ("Docks 20 & 22"), and along with Docks 24-30, which it owns or leases from the City of Cleveland, Ohio, it operates a maritime intermodal dock facility (the "Lakefront Docks") through contracts with various stevedore companies and lessees; and

WHEREAS, the Lakefront Docks are serviced by both Norfolk Southern Railroad ("NS") and CSX Railroad ("CSX"); and

WHEREAS, the Port Authority is currently preparing to construct a rail improvement project on Docks 20 and 22, and elsewhere, to improve its rail service capabilities at its Lakefront Docks (the "Rail Improvements"); and

WHEREAS, CCR is a short line commercial railroad that offers services in the greater Cleveland area to local businesses and desires to provide certain of its services to the Port Authority in the operation of its Lakefront Docks, including Rail Switching Services ("Rail Switching Services") which will add value to the Rail Improvements and Lakefront Docks, and in consideration therefore CCR will offer its services and expertise in rail marketing of the Lakefront Docks and project construction consultation for the Rail Improvements (collectively the "Services"); and

WHEREAS, the Port Authority believes that such Services could assist the Port Authority in expanding its market area, reducing rates and improving service at the Lakefront Docks; and

WHEREAS, pursuant to Ohio Revised Code Section 4582.17, the Port Authority is authorized to enter into cooperative agreements with other corporations in furtherance of its authorized purposes; and

WHEREAS, the Port Authority's authorized purposes include enhancing, fostering, aiding, providing and promoting maritime transportation, economic development and commerce; and

WHEREAS, the parties wish to enter into this agreement to further marketing efforts by developing a rail marketing plan, to consult in the construction of the Rail Improvements and to increase rail movements through a switching arrangement on the Lakefront Docks.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the Port Authority and CCR hereby agree as follows:

1. Purpose of Agreement. This Agreement sets forth the understanding of the Port Authority and CCR to enter into arrangements for rail services at the Lakefront Docks consisting of marketing services, construction consulting services and rail switching services, as further described herein.

2. Marketing Services. The parties agree that CCR will develop a rail focused marketing plan in conjunction with Port Authority personnel (the "Marketing Services"). The Marketing Services will include at a minimum the following:

- (a) Identification of potential local customers who are connected or contiguous to the NS, CSX, WLE and CCR tracks, who transport significant quantities of material by rail or truck.
- (b) Contact short lines and regional railroads in the area to identify the opportunities to connect their customers to the Port Authority.
- (c) Contact Class 1 railroads to determine additional potential business for the Port Authority.
- (d) Interface with Port Authority marketing personnel to enhance the Port Authority's marketing efforts.

All of the foregoing Marketing Services will be coordinated with Port Authority staff and no written marketing materials will be permitted to be used without the consent of William D. Friedman, President and CEO ("Friedman") or David Gutheil, Vice President/Maritime and Logistics ("Gutheil") of the Port Authority. In addition, Friedman and Gutheil will be notified of all marketing contacts and will have the right to determine that any such contact not be made if it would be detrimental to the interests of the Port Authority, as determined in their sole discretion.

The parties understand that the Port Authority has made no representation with respect to specific business which would be developed as a result of the Marketing Services and CCR has represented that it will be responsible for developing the rail marketing plan in concert with Port Authority personnel. All costs of these activities will be borne by CCR, provided that the Port Authority will be responsible for paying for its own staff time and any of the marketing materials that it supplies to CCR for purposes of marketing rail services of the Port Authority.

3. Construction Consulting Services. The Port Authority is currently planning the Rail Improvements for Docks 20 and 22, as outlined and described in Exhibit A attached hereto. The Port Authority is utilizing its normal public bidding process for design services and

construction services and will further seek financial assistance from the State of Ohio Logistics Loan Program for the Rail Improvements. The Rail Improvements consist of laying new track as described in Exhibit B attached hereto.

CCR has indicated that it has certain expertise which it may lend to facilitate the Rail Improvements and in anticipation of switching services to be delivered to the Port Authority as provided herein. Accordingly, the parties have agreed that CCR will be available for consulting services during the design phase of the Rail Improvements, expected to be from April 1, 2011 through July 31, 2011, and the construction phase of the Rail Improvements from approximately July 1, 2011 through October 31, 2011 ("Construction Consulting Services"). Such Construction Consulting Services will include the following:

- (a) Review and suggest modifications to existing track layout in view of the need to handle multiple products to provide rail car storage capacity and turning radius and to insure conformance with common carrier switching obligations
- (b) To review bids with Port Authority personnel to ensure Rail Switching Services may be accommodated
- (c) To consult with the project construction contractor

CCR agrees that all design and construction of the Rail Improvements will be performed by the engineer and construction contractor for the project selected and approved by the Port Authority through the public bidding process and that all final decisions with respect to construction of the Rail Improvements will be made by the Port Authority.

4. Rail Switching Services. In consideration of CCR providing the Marketing Services and Construction Consulting Services outlined above, the Port Authority has agreed to grant CCR the exclusive right to perform rail switching services on all port rail trackage, within the Port Authority's Docks 20 and 22, and Docks 24-30, as identified in Exhibit B. (the "Rail Switching Services"). Such Rail Switching Services shall include the following:

- (a) To provide switching capabilities as needed for variable levels of activity at the Port Authority
- (b) To maintain switch engines and to maintain the track in the rail configuration on the Port Authority constructed as part of the Rail Improvements
- (c) Negotiate switching protocol and schedules with NS and CSX to insure equal access and competitive rates from both
- (d) Negotiate switching locations with NS and CSX, and
- (e) Lease any additional track required by NS and CSX in item (d).
- (f) Coordinate service with FMT, Essroc, and any other port users.

In performing the Rail Switching Services, CCR will not interfere with the Port Authority's operations, or those of its lessee's or operators, or Port Authority personnel's access at the Lakefront Docks. CCR will notify Port Authority personnel of all rail movements of cargo and other Rail Switching Services and make its record of cargo movement available for review by Port Authority personnel.

5. Term of Agreement. The term of this Agreement shall commence on April 1, 2011 with the Marketing Services commencing on April 1, 2011, and the Construction Consulting Services commencing on July 1, 2011. Such Construction Consulting Services will conclude through the design and construction phases anticipated to be complete by March 31, 2012. The Switching Rights Services shall commence June 1, 2012, or upon completion of the construction process, whichever date comes first. The term of the Agreement will be for three (3) years from the commencement of Switching Rights Services, provided, however, that on or before March 31, 2013, the parties will meet to review the status of the Agreement and determine if either wishes to terminate the Agreement. If either party wishes to terminate the Agreement, after meeting on or before March 31, 2013, it will notify the other party no later than April 1, 2013 of its decision to terminate this Agreement, in which case the Agreement will be terminated as of August 31, 2013 and the parties will have no further obligations to each other as of August 31, 2013. If the parties do not agree to terminate this Agreement, such Agreement will extend through December 1, 2014, provided that the parties may mutually agree to extend this Agreement for an additional term on the same or different terms and conditions as those provided herein.

6. Tonnage Overage Payments. The parties agree that in addition to the consideration previously stated in this Agreement, should CCR handle a volume of cargo tonnage through its Switching Services above 500,000 short tons during any calendar year, it shall pay the following overage tonnages payments: (1) \$.09 per short ton for volumes between 500,000 and 599,000; (2) \$.07 per short ton for volumes between 600,000 and 699,000 short tons; and (3) \$.04 per short ton for any tonnage in excess of 700,000. Such payments shall be made within thirty (30) days after any overage tonnage is achieved.

7. Other Tenants. CCR understands that there are other tenants and operators of the Port Authority at the Lakefront Docks (the "Tenants") and that CCR's services hereunder will not interfere with those Tenants, including the ESSROC lease as described on Exhibit C hereto, the annual stevedoring leases currently to Federal Marine in the areas as shown on Exhibit D hereto, the Independence Excavating Lease for the year 2011, in the areas as shown on Exhibit E, and the Kenmore Operating Lease through March 31, 2011, in the areas as shown on Exhibit F. The Port Authority acknowledges that CCR will have contractual relationships dependent upon uninterrupted and continued Rail Switching Services created by this Agreement. The Port Authority agrees to use commercially reasonable efforts not to delay or interrupt, or permit other Tenants to delay or interrupt the Rail Switching Services CCR is obligated to provide under its service contracts. Further, Port Authority agrees to require that such Tenants shall not interfere with CCR's operations hereunder and shall include such provisions in its agreements with such Tenants, to the extent possible. Furthermore, the Port Authority agrees to intervene and protect the interests of CCR to the extent permitted under its leases and agreements in the event a

Tenant of the Port Authority interferes with the delivery of Rail Switching Services CCR provides under this Agreement, provided Port Authority shall only intervene to protect the interests of CCR under the Warehouse A Lease at CCR's sole cost and expense.

8. Access & Facilities. CCR will have access to the Port for its personnel through Erieside Road Extended, provided that all CCR personnel working on site must obtain a transportation workers identification card ("TWIC Card") at its own cost and expense. The Port Authority will provide adequate lease space for CCR, as follows, at a cost not to exceed \$1500 per month, including utilities, to commence once the Locomotive Engine is ready for storage and CCR's personnel begin to use the office space:

A) Indoor storage with tracks for one Locomotive Engine within Warehouse A for approximately 6000 square feet of space but not more than 18,000 square feet of space in the southwest portion of Warehouse A, provided that CCR agrees to abide by the terms and conditions of Section 1.1 the Lease Agreement-Warehouse A between the Port Authority and Federal Marine Terminals, Inc dated as of April 1, 2011, a copy of which has been provided to CCR.

B) Office space and facilities sufficient for the storage of their equipment on a first floor office in the offices adjacent to Warehouse A.

9. Warranties and Representations. CCR represents and warrants as follows:

(a) It is duly organized as limited liability company and in full force and effect under the laws of the State of Ohio and is duly qualified to do business in the state and will remain so qualified so long as this Agreement is effective; and

(b) It has full power and authority to execute this Agreement and to carry out the transactions provided for herein; and

(c) This Agreement has been duly authorized, executed and delivered by proper action by CCR and all steps necessary have been taken to make this Agreement when executed and delivered by the parties a valid and binding obligation of CCR; and

(d) The execution and performance by CCR of this Agreement and the consummation of the transactions contemplated will not violate any provision of law or regulation applicable to CCR or of any order or decree of any court or governmental instrumentality or the articles of organization or operating agreement of CCR or any mortgage, indenture, contract, agreement or other undertaking by which CCR is a party or which is binding upon CCR or upon any of its assets; and

(e) CCR will provide the Rail Switching Services only for the permitted uses set forth herein; and

(f) CCR represents that it is duly licensed and qualified as a common carrier to perform the services designated herein; and

(g) CCR shall yield and peacefully deliver to the Port Authority possession of the Rail Switching Services not otherwise removed by the CCR upon the termination of the Agreement on the date of succession of this Agreement, which such succession be by termination, expiration or otherwise promptly and in good condition.

10. Waiver of Subrogation and Right of Recovery. The Port Authority and CCR do hereby waive, for themselves and their respective insurers any and all right of recovery, claim, action or cause of action against the other, their respective agents, employees and contractors for any loss or damage that may occur to the property of the other to the extent covered or coverable by "Special Form" or "All Risk" property insurance, building contents insurance and business interruption insurance or any other insurance by which the Port Authority or CCR are reimbursed as a result of any loss suffered by either party hereto, regardless of causes or origin, including the negligence of the Port Authority or CCR, or their respective agents, employees and contractors. All insurance policies carried by either party covering the Lakefront Docks shall expressly waive any right on the part of the insurer against the other party for damage to or destruction of the Rail Improvements or the property of the Port Authority or CCR resulting from the act or omission of the other party. The foregoing waiver is not intended to and shall not release CCR from any obligation to repair any damage to the Facility which CCR is required to insure pursuant to the provisions of Section 15 hereof.

11. Liens.

- (a) CCR shall keep and/or cause the Rail Improvements and every part thereof and all other improvements located thereon free and clear of (or properly bonded against within sixty (60) days of notice to CCR of the filing of same) any and all mechanic's, materialmen's and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for, in connection with CCR's Rail Switching Services or on behalf of CCR and/or any operations of CCR, or other obligations of any kind incurred by CCR. CCR shall at all times promptly pay and discharge and/or cause the discharge of all claims on which any such liens may or could be based and shall indemnify the Port Authority against all such liens and claims of liens and suits or other proceedings pertaining thereto. The foregoing shall not preclude CCR from contesting any such lien in good faith.
- (b) Nothing contained in this Agreement shall be construed as constituting the consent of the Port Authority, express or implied, to or for the performance of any labor or services or the furnishing of any materials for the construction, alteration, addition, repair of or to any Rail Improvements or any part thereof by any contractor, subcontractor, laborer, materialman or vendor. Notice is hereby given that the Port Authority will not be liable for any labor, services or materials furnished or to be furnished to CCR, or respecting the Rail Improvements or any part thereof through or under CCR, and that no mechanic's, materialmen's or other such liens for any such labor, service or materials shall attach to or affect the interest of the Port Authority in and to the Rail Improvements.

- (c) In the event CCR elects to contest in good faith and by appropriate proceedings any such mechanic's, materialmen's or other such liens, such contest shall be timely instituted in appropriate proceedings and the Port Authority will cooperate fully with CCR, but at CCR's reasonable expense, in any such contest (except as to any such lien asserted by the Port Authority, in which event CCR shall have the right to contest such lien as if it were the owner of the Rail Improvements). If CCR shall fail to cause such liens to be discharged or bonded, or to contest the validity or amount thereof within the period aforesaid, then, in addition to any other right or remedy of the Port Authority, the Port Authority may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount paid by the Port Authority shall be reimbursed by CCR to the Port Authority on demand, and if not so reimbursed on demand may be treated as an Event of a Default pursuant to Section 12 herein.

12. Events of Default and Remedies.

(a) Events of Default. The following shall be Events of Default ("Events of Default") under this Agreement:

1. Failure of CCR to make any payment of the Tonnage Overage Payments or any additional payments or other monies required to be paid hereunder within thirty (30) days of when due and payable; provided the monies are not an account receivable due and owing to CCR, or
2. Failure by CCR to observe and perform any covenant, condition or provision herein required to be kept, observed or performed by CCR if such failure continues for thirty (30) days after written notice of such failure or if such failure is of a nature that it cannot be cured within such thirty (30) day period, such longer period so long as CCR commences to cure such failure within such thirty (30) day period and diligently proceeds therewith; or
3. Abandonment by CCR of the Rail Switching Services at the Rail Improvements or any substantial part thereof; or
4. Failure by CCR to satisfy or discharge within ninety (90) days of written notice of any execution, garnishment or attachment of such consequence as will materially impair its ability to carry out its obligations under this Agreement; an assignment by CCR for the benefit of its creditors; the appointment of a receiver or trustee for CCR or any substantial portion of its property; entry by CCR into any agreement of extension or composition with its creditors; the filing by CCR of any petition for dissolution or liquidation of CCR; the filing by CCR of any petition for reorganization or for an arrangement with its creditors under any federal or state law relating to bankruptcy, insolvency or relief of debtors; the filing against CCR of an

involuntary petition in bankruptcy which (i) results in an adjudication of bankruptcy or (ii) notwithstanding that an adjudication of bankruptcy has not occurred, is not dismissed within six (6) months of the date of filing of the petition.

The provisions of this Section 12 are subject to the following limitation: If by reason of acts of God, fires, landslides, floods, strikes, lockouts or other intentional acts of public enemies, insurrections, riots, or explosions, CCR is unable in whole or in part to carry out its agreements on its part herein contained, other than the obligations on the part of CCR to pay any sums payable by CCR hereunder and to carry insurance required by the provisions of Section 15 hereof, no Event of Default shall be deemed to have occurred, during the continuance of such inability. CCR shall, however, use commercially reasonable efforts to promptly remedy the cause or causes preventing CCR from carrying out its obligations under this Agreement; provided, however, that CCR shall not be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the reasonable judgment of CCR, unfavorable to CCR.

b. Remedies. Whenever any Event of Default under this Agreement shall have occurred and for as long as such Event of Default continues, the Port Authority may, at its option, exercise concurrently one or more of the following rights and remedies:

1. The Port Authority or its designee may reenter and take possession of the Rail Switching Services at the Rail Improvements, with or without the institution of summary or any other legal proceedings, and hold CCR liable for all costs and expenses, including reasonable attorney's fees, if any, not reimbursed to the Port Authority and for any damages suffered by the Port Authority as a result of any action by the CCR; and/or
2. The Port Authority may take whatever other action at law or in equity as may appear necessary to enforce performance and observance of any obligation, agreement or covenant of CCR under this Agreement.

c. Cumulative Remedies. No remedy conferred upon or reserved above is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given above or now hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or shall be construed to be a waiver thereof, but any such right or power shall be exercised from time to time and as often as may be deemed expedient. In addition, no waiver shall be valid or binding unless reduced to writing and signed by an officer of the Port Authority duly empowered to execute the same. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Agreement or as may be required by law.

d. Default Expenses. If CCR should default under any of the provisions of this Agreement, and it shall become necessary for the Port Authority to employ attorneys or incur other costs and expenses for the collection of monies or the enforcement of performance or observance of

any obligation or agreement as set forth in this Agreement or to defend against the claims of CCR upon which CCR does not prevail, CCR, being a sophisticated corporation and fully understanding its agreement to reimburse, shall, as permitted by law, reimburse the reasonable expenses, including attorney fees, incurred by the Port Authority.

13. Assignment and Transfer. Except as provided below, CCR shall not assign, transfer, convey, sell, pledge or encumber this Agreement or any of the rights created hereunder without the prior written consent of the Port Authority which it may withhold in its sole and absolute discretion. Any assignment, transfer, conveyance, sale, pledge or encumbrance contrary to this provision shall be void. No assignment of this Agreement or any of the rights created hereunder shall release the CCR from primary liability under this Agreement. The provisions of this Section 13 shall not apply to or prohibit CCR from assigning, transferring, or otherwise conveying any of its rights hereunder to any entity owned or controlled by CCR's principals William Brown, Michael Kole, and Douglas Fink.

14. Surrender of Rail Switching Services. CCR shall yield and deliver peaceably to the Port Authority possession of the Rail Switching Services not otherwise removed by CCR in accord with the terms of this Agreement, on the date of cessation of this Agreement, whether such cessation be by termination, expiration or otherwise, promptly and in the condition and manner as required herein.

If CCR fails to promptly yield possession of the Rail Switching Services, the Port Authority may remove from the Switching Services immediately, without notice to and at the sole reasonable expense of CCR, any unauthorized improvements, CCR's property, and all goods, wares, merchandise and property of any kind of CCR and its officers, employees or agents which are then occupying the Rail Improvements. The Port Authority shall have no responsibility to conserve or otherwise safeguard anything removed pursuant to this Section. CCR expressly releases the Port Authority from and indemnifies the Port Authority against any and all claims for damage of any kind for such removal and failure to safeguard or conserve.

15. Insurance. CCR shall, at its own expense, take out and maintain during the term of this Agreement (i) a comprehensive general liability insurance policy in the amount set forth below, wherein the Port Authority is named as an additional insured, as shall protect itself and the Port Authority from claims for damage for loss by any person and personal injury, and bodily injury, including accidental death, as well as from claims for property damage which may arise from the exercise of any right or the performance of any obligation under this Agreement, whether such exercise or performance is by CCR, its agents, contractors or subcontractors, or anyone directly or indirectly employed by any of them; and (ii) property damage insurance on the Facility and Improvements, as set forth below.

CCR shall also cause any contractors who make repairs or maintain the Rail Improvements to take such comprehensive general liability insurance provided for hereunder, wherein the Port Authority is named an additional insured, as shall protect themselves, and the Port Authority from claims for damage for loss by persons, personal injury and bodily injury, including accidental death, as well as from claims for property damage which may arise from the exercise of any right or the performance of any obligation under this Agreement, whether such exercise or performance is by

general contractors, subcontractors, their subcontractors, or anyone directly or indirectly employed by any of them.

The policy or policies required hereunder shall have limits as required by the Port Authority from time to time, such limits shall not be less than the following limits:

(a) General Liability Insurance:

1. Not less than Five Million Dollars (\$5,000,000) single limit coverage for loss by persons and personal injuries or bodily injury, including accidental death in any one occurrence, and damages to property, and not less than Five Million Dollars (\$5,000,000) in the aggregate.

(b) Property Insurance:

1. Special form or "All Risk" coverage in an amount equal to full replacement cost on the Rail Improvements.

The policy or policies required hereunder shall provide as follows: **"The insurer agrees to send written notice by certified mail to the Cleveland-Cuyahoga County Port Authority, One Cleveland Center, 1375 East Ninth Street, Suite 2300, Cleveland, Ohio 44114, at least thirty (30) days prior to cancellation or reduction of, or any change in, the coverage specified by this policy."**

Upon execution of this Agreement, CCR shall provide to the Port Authority a certificate or certificates of insurance, such other portions of the policy or policies as the Port Authority deems reasonably necessary, and the endorsements naming, the Port Authority, as an additional insured. The certificate or certificates of insurance shall, as to form, coverage and carrier, be as is commercially customary for such overages. CCR shall not be permitted to perform the Rail Switching Services until such certificate or certificates of insurance, the policy or policies required hereunder and such endorsements have been submitted to the Port Authority. CCR acknowledges that neither CCR nor CCR's employees are allowed in or around the Rail Improvements until the Port Authority has received and accepted said certificate or certificates.

Nothing in this Agreement shall be construed to prevent the Port Authority from taking out and maintaining additional insurance at its sole discretion.

16. Indemnification. Except as otherwise provided herein, CCR shall defend, indemnify and hold harmless the Port Authority, its officers, agents, employees, successors, and assigns from any and all claims, loss, cost, damage, expense and liability for or from loss by any person, loss of life or damage or injury to any person or property of an person, arising out of, connected with or incidental to, either directly or indirectly, the CCR's performance of Rail Switching Services or use, operation, maintenance, occupancy or condition of the Rail Improvements, or the CCR's exercise of CCR's rights or obligations hereunder; provided, however, that the foregoing indemnification shall

be limited to the extent caused by the Port Authority's willful misconduct. The provisions of this Section 16 and all other indemnity provisions contained in this Agreement shall survive the expiration or termination of this Agreement.

17. Damage and Destruction. In the event of any damage or destruction to the Rail Improvements by reason of any of the risks insured or required to be insured by CCR pursuant to the provisions of Section 15 hereof, CCR shall restore, repair, replace or rebuild any Rail Improvement so damaged or destroyed to at least as good a condition as any such Rail Improvement was in prior to the damage or destruction (a "Restoration").

Restoration hereunder shall commence promptly upon CCR's receipt of proceeds of insurance and, thereafter, CCR shall diligently proceed therewith. In lieu of undertaking a Restoration, CCR shall have the right to turn over the insurance proceeds resulting from any such damage or destruction to the Port Authority, which shall use such proceeds for Restoration, and CCR shall be relieved of any Restoration obligation, except with respect to demolition and clean up of any Rail Improvement which has been partially damaged and will not be restored. CCR shall remain responsible for such demolition and clean up. Notwithstanding the foregoing, CCR shall clean up and restore the Rail Improvements to its condition as of the Commencement Date, normal wear and tear excepted.

CCR acknowledges and agrees that the Port Authority may choose not to carry any insurance on the Rail Improvements and the Port Authority will not be liable for any loss, damage or expense to any of the same. Nor shall the Port Authority be liable for any inconvenience or annoyance to CCR or injury to the business of CCR resulting in any way from such damage to the Rail Improvements or the repairing or rebuilding done upon such damage, except injury or damage caused by the willful misconduct of the Port Authority.

Nothing in this Section 17 nor any action taken by the Port Authority pursuant hereto shall relieve or release CCR from any liability that CCR may have either to the Port Authority or its insurers on account of any casualty to the Rail Improvements. Notwithstanding the foregoing, the Port Authority shall use commercially reasonable efforts to promptly remedy the cause or causes preventing CCR from carrying out its obligations under this Agreement in the event a tenant of the Port Authority impedes, in any way, the tracks within the Port Authority's premises;

18. Compliance with Laws, Rules and Regulations. CCR, its officers, agents, employees and any other persons over whom CCR has control shall comply with all present and future laws and ordinances of the City of Cleveland and Federal, State and other applicable local governmental bodies, all regulations promulgated thereunder, including all applicable regulations and directives of the United States Coast Guard, the Army Corps of Engineers, and the Federal Aviation Administration and such other regulations as may be imposed by such governmental bodies and agencies applicable to or affecting directly or indirectly CCR or its operations and activities on or in connection with the Switching Activities including, without limitation, obtaining all permits required for the installation of temporary or permanent improvements.

19. Other federal and workers laws. Independent Contractor. CCR shall at all times during the term of this Agreement subscribe to and comply with the Federal Longshoremen's and

Harbor Workers Laws and the Federal Employee Liability Act and any other applicable worker liability laws and pay such premiums as may be required thereunder and save the Port Authority harmless from any and all liability arising from or under said laws with respect to the Services provided by CCR hereunder.

CCR shall be and remain an independent contractor with respect to all installations and services performed hereunder and shall accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, , old age retirement benefits, pensions, or annuities now or hereafter imposed under any State or Federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by CCR on work performed under the terms of this Agreement. CCR shall obey all applicable rules and regulations which are now or hereafter may be issued or promulgated under said respective laws by duly authorized State or Federal officials. CCR shall indemnify and save harmless the Port Authority from any such contributions or taxes or liability therefore with respect to the installation and services performed by the CCR hereunder.

20. Equal Opportunity, MBE/FBE And Other Employment Requirements. CCR acknowledges that it is an equal opportunity employer and shall conduct its business in a nondiscriminatory manner in accordance with all applicable laws and regulations. All decisions with respect to hiring, recall, employment, assignment, transfer, promotion, duration, lay off, discipline or termination shall be made without regard to race, color, religion, creed, sex, natural origin, age or handicap.

21. Miscellaneous.

a. Relationship of Parties. Nothing contained herein shall be deemed to constitute the Port Authority and CCR as partners in a partnership or joint venture for any purpose whatsoever.

b. Section Headings. The headings of sections and paragraphs, to the extent used herein, are used for reference only and in no way define, limit or describe the scope or intent of any provision hereof.

c. Severability. In the event that any term or provision of this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, the invalidity, illegality or unenforceability shall not affect any other term or provision hereof. This Agreement shall be interpreted and construed as if such term or provision, to the extent it has been held invalid, illegal or unenforceable, had never been contained herein.

d. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Ohio without giving effect to the conflict of law provisions thereof.

e. Notices. Any notices, consents, approvals or other writing required or permitted hereunder shall be in writing and personally delivered or sent by certified mail, return receipt requested or by telecopy followed by next day delivery by a recognized overnight carrier of "hard copy" and shall be deemed to have been served or given when personally delivered or three business days after any notice, consent or approval has been deposited, postage prepaid, in a post

office, branch post office, or post office box regularly maintained by the United States Government or one (1) day after any such notice has been sent by telecopy in accordance with the foregoing.

Notice to the Port Authority shall be delivered or addressed to it at:

Cleveland-Cuyahoga County Port Authority
One Cleveland Center
1375 East Ninth Street, Suite 2300
Cleveland, Ohio 44114
Attention: President
Fax No. (216) 241-8016

With a copy to:

Climaco, Wilcox, Peca, Tarantino & Garofoli Co., L.P.A.
55 Public Square, Suite 1950
Cleveland, Ohio 44113
Attention: Dennis R. Wilcox, Esq.
Fax No. (216) 771-1632

Notice to CCR shall be delivered or addressed to it at:

Cleveland Commercial Railroad
29930 Pettibone Road
Glenwillow, Ohio 44139
Attention: William Brown
Fax No. 440-746-0803

With a copy to:

Sergio DiGeronimo
Attorney at Law
8748 Brecksville Road, Suite 216
Brecksville, Ohio 44141
Fax No. 440-546-9201

f. Amendments. This Agreement, together with the Exhibits hereto, shall not be amended, changed, modified, discharged or extended except by written instrument executed by both parties.

g. No Waiver. If any agreement contained in this should be breached by either party and thereafter waived by the other party in accordance herewith, which waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

h. Self-Help. Subject to the terms and provisions of this Agreement, the Port Authority and CCR do hereby mutually covenant and agree that if CCR shall fail to do or perform any act or thing required to be done or performed by it within the time period required under the terms of this Agreement, subject to all applicable notice and cure periods, the Port Authority, at its sole option, may by itself or by its employees perform the same on CCR's behalf and at CCR's reasonable cost and expense; CCR shall forthwith upon receipt of notice of the amount of such cost and expense, pay the same to the Port Authority together with interest thereon at the rate equal to the average rate of return on Port Authority investments during the preceding year, from the date of each payment by the Port Authority to the date of repayment by CCR.

i. CCR's Liability for Costs and Expenses. Subject to the terms and conditions of this Agreement, CCR shall be responsible for all costs and expenses, including but not limited to utilities, real and personal property taxes and other operating costs incurred by or charged to CCR or assess against the Rail Improvements, CCR's property or CCR's business operations, during the term of this Agreement, free of any deductions, and without abatement, deduction or offset for any cause including damage, destruction or force majeure, other than those herein expressly provided.

j. Entire Agreement; Agreement is Conclusive. This Agreement, together with the Exhibits hereto, constitute the entire agreement of the parties with respect to the subject matter hereof. CCR agrees that there are no oral agreements between the Port Authority, its officers, agents and employees and CCR affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, letters, agreements and understandings respecting the within subject matter.

k. Execution and Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

22. Contingencies. This Agreement is contingent upon the written approval by CCR of all Exhibits identified in this Agreement, which were not provided with this Agreement at the time of execution and the Port Authority's obtaining a lease modification from ESSROC to accommodate this agreement. Notwithstanding the foregoing, it is understood that CCR will provide consulting services consistent with those outlined in Paragraphs Two and Three of this Agreement while the Exhibit A and Exhibit B are finalized. Furthermore, it is agreed that CCR's unencumbered exclusive use of the trackage within the Port Authority's Docks 20 and 22, along with Docks 24 through 30, shall remain as one of the objectives during revisions, if any, of Exhibit A and Exhibit B.

IN WITNESS WHEREOF, the Port Authority and CCR have caused this to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

CLEVELAND-CUYAHOGA COUNTY
PORT AUTHORITY

By: William D. Fikem
Its: President & CEO

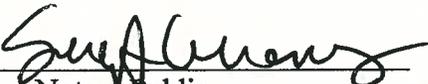
CLEVELAND COMMERCIAL RAILROAD

By: Michael J. Kole
MICHAEL J. KOLE
Its: PRESIDENT

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 4 day of April, 2011, before me a Notary Public in and for said County and State, personally appeared Michael Kala, President of Cleveland Commercial Railroad which executed the foregoing instrument, who acknowledged that he did sign said instrument as such officer, for and on behalf of said limited liability company and by authority granted in its Operating Agreement; that the same is the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.



Notary Public

SERGIO I. DIGERONIMO, ATTORNEY AT LAW
Notary Public, State of Ohio
My commission has no expiration date
Section 147.03 R.C.

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 11 day of April, 2011, before me a Notary Public in and for said County and State, personally appeared William D. Friedman, President & CEO of the Cleveland-Cuyahoga County Port Authority which executed the foregoing instrument, who acknowledged that he did sign said instrument as such President & CEO, for and on behalf of said Cleveland-Cuyahoga County Port Authority and by authority granted in its regulations and by its Board of Directors; that the same is the free act and deed of said port authority.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.



Notary Public

Elizabeth Bohinc
Notary Commission
State of Ohio, Cuyahoga County
My Commission Expires Dec. 19, 2012