

Strasburger

ATTORNEYS AT LAW

JUN 15 2012

June 15, 2012

FILED

JUN 15 2012

**SURFACE
TRANSPORTATION BOARD**

JOHN D HEFFNER

Direct Fax 202-742-8697

Direct Phone 202-742-8607

Email: john.heffner@strasburger.com

VIA COURIER

Ms. Cynthia A. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20323-0001

232456

FEE RECEIVED

JUN 15 2012

TRANSPORTATION BOARD

**RE: FD 35634, Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western
Railway-Lease and Operation Exemption-Norfolk Southern Railway
Company**

Dear Ms. Brown:

On behalf of Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway, applicant, I am filing an original and ten copies of a verified notice of exemption covering its lease and operation of a line of railroad owned by Norfolk Southern Railway. Please note regarding "statement of agreement," that both parties have now executed this lease. A redacted copy of this lease is attached to the Public Version of the filing. In addition, I am enclosing in a separate envelop marked "highly confidential" an original and ten copies of a motion for a protective order and an unredacted version of the executed lease agreement.

Finally, I am enclosing a check payable to the STB for \$1800 to cover the filing fee as well as a CD containing a word version of the notice of exemption, the caption summary, and the motion for a protective order. Please date stamp and return in the enclosed envelop copies of both the public and highly confidential documents.

**ENTERED
Office of Proceedings**

JUN 15 2012

**Part of
Public Record**

Strasburger & Price, LLP

Ms. Cynthia A. Brown
June 15, 2012
Page 2

Sincerely yours,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a stylized flourish at the end.

John D. Heffner

Enclosures

cc: Mr. Matthew Shawver

232456

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35634

**ENTERED
Office of Proceedings
JUN 15 2012
Part of
Public Record**

**MIDWEST RAIL, LLC d/b/a
TOLEDO, LAKE ERIE AND WESTERN RAILWAY
—LEASE AND OPERATION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

FILED

JUN 15 2012

**FEE RECEIVED
JUN 15 2012
SURFACE
TRANSPORTATION BOARD**

**SURFACE
TRANSPORTATION BOARD**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: June 15, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35634

**MIDWEST RAIL, LLC d/b/a
TOLEDO, LAKE ERIE AND WESTERN RAILWAY
—LEASE AND OPERATION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway (“Toledo”) files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”) to lease and operate a line of railroad. The trackage that is the subject of this notice extends about 1.8 miles between milepost TS 13.2 near Maumee, OH, and milepost TS 15.0 at Waterville, OH, near Toledo (“the Line”) and is currently owned and operated by Norfolk Southern Railway Company (“NSR”). Once this notice becomes effective, Toledo will provide common carrier railroad service over the subject line connecting with and interchanging traffic with NSR at milepost TS 13.2.

Museum.¹ That line was originally constructed many years ago by a predecessor to NSR and was sold to the Museum after its abandonment. The Line connects the Museum-owned line with NSR's rail system. Exempting Toledo's lease and operation of the Line will give it access to NSR's network and will permit it to handle freight in interstate commerce originating or terminating on the Museum-owned trackage.

Other information required

(1) The name and address of the party transferring the subject property:

No physical property will be transferred as a result of this filing; only a leasehold interest and operating rights will be granted to Toledo.

Norfolk Southern Railway
Three Commercial Place
Norfolk, VA 23510

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

Toledo intends to consummate this transaction at least 30 days from the date of this notice, probably around July 15, 2012.

¹ Toledo will also provide excursion passenger service over the Museum's line pursuant to an agreement.

The mileposts of the subject property, including any branch lines:

The Line extends between Toledo's existing connection with NSR at milepost TS 15.0, in Waterville, OH, and the proposed future interchange with NSR at milepost TS 13.2.

The total route miles to be operated:

About 1.8 miles of railroad.

Map

49 CFR §1150.43(f)

A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification **49 CFR §1150.43(g)**

Toledo certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments **49 CFR §1150.43(h)**

The lease agreement between NSR and Toledo contains a provision that will enable Toledo to reduce its lease payments by receiving a credit for each car interchanged with NSR. NSR initially proposed a fixed rental payment with no

option to reduce the rent. Toledo, however, insisted on a lease credit option to provide an opportunity for Toledo to make a lower rental payment so that Toledo will be able to invest in improvements on the leased line to increase traffic levels. The affected interchange point is at milepost TS 13.2. A copy of the final lease agreement is being filed with the Board under seal pursuant to 49 CFR §1104.14(a) and §1150.43(h)(ii).

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. §10902.

Caption Summary **49 CFR §1150.44**

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data **49 CFR §1105**

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: June 15, 2012

EXHIBIT A

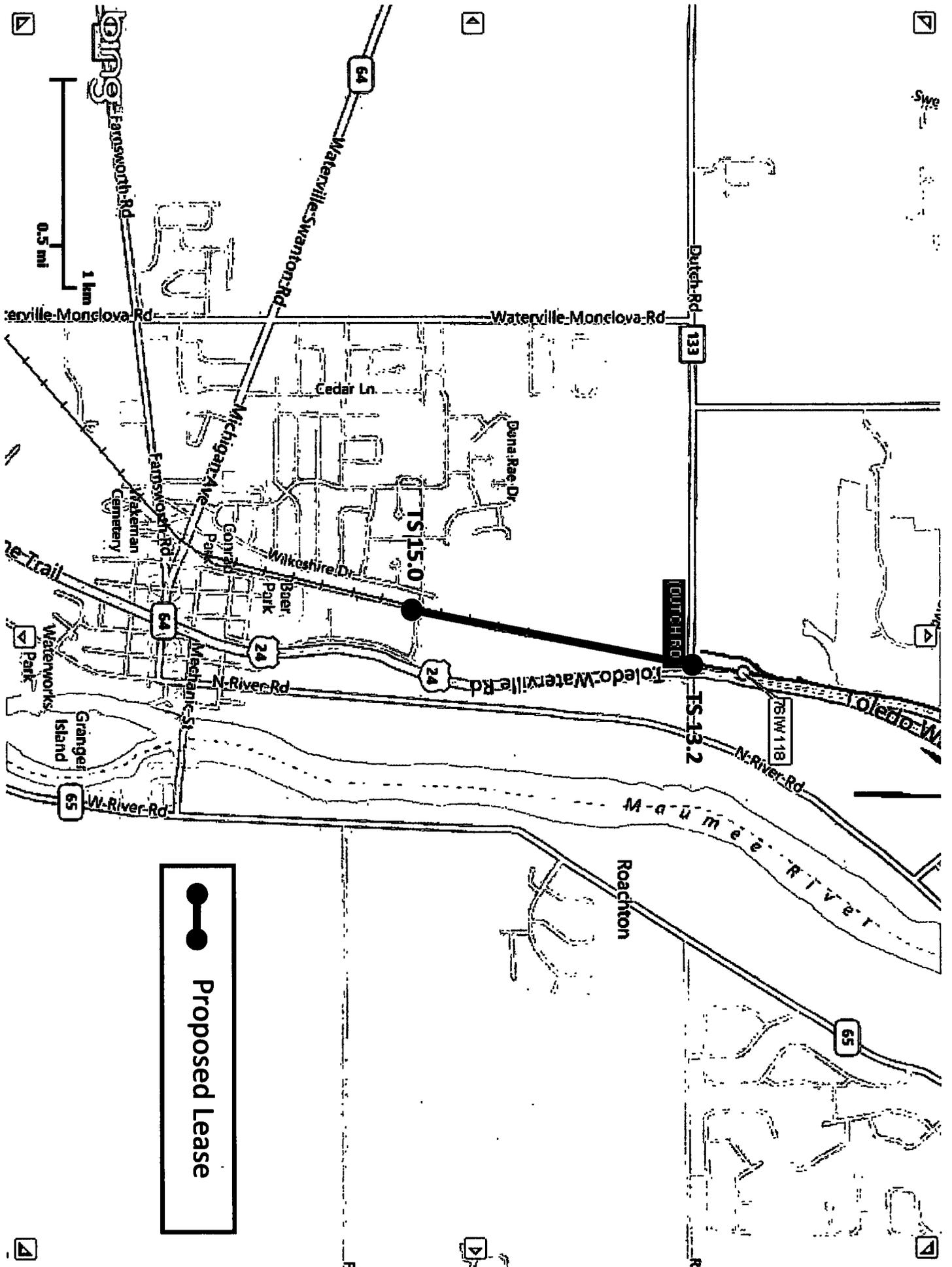


Exhibit B

Certification

I, Matthew Shawver, certify that I am Owner of Midwest Rail DBA Toledo, Lake Erie and Western Railway and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

Dated: June 13, 2012

Signature

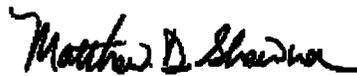
A handwritten signature in black ink that reads "Matthew D. Shawver". The signature is written in a cursive style with a prominent initial 'M'.

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35634

**MIDWEST RAIL, LLC d/b/a
TOLEDO, LAKE ERIE AND WESTERN RAILWAY
—LEASE AND OPERATION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway (“Toledo”) files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”) to lease and operate a line of railroad. The trackage that is the subject of this notice extends about 1.8 miles between milepost TS 13.2 near Maumee, OH, and milepost TS 15.0 at Waterville, OH, near Toledo (“the Line”) and is currently owned and operated by Norfolk Southern Railway Company (“NSR”). Once this notice becomes effective, Toledo will provide common carrier railroad service over the subject line connecting with and interchanging traffic with NSR at milepost TS 13.2.

Toledo certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than __, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35634, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., Strasburger & Price, 1700 K Street, N.W. – Suite 640, Washington, D.C. 20006, Telephone: (202) 742-8607, counsel for Toledo.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

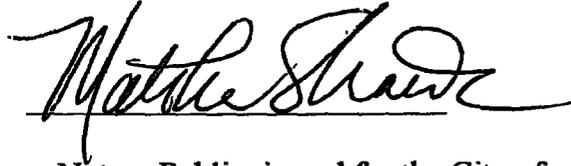
Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

VERIFICATION

STATE OF OHIO)
)
CITY OF FINDLAY)

Matthew Shawver, being duly sworn according to law, hereby
deposes and states that (s)he is holds the position of Owner with
applicant/petitioner (respondent), is authorized to make this Verification, has
read the foregoing document, and knows the facts asserted therein are true
an accurate as stated, to the best of (her) his knowledge, information, and
belief.



Subscribed to and sworn to before me, a Notary Public, in and for the City of
Findlay in the State of OHIO, this 13th day of June.

Rebecca S. Hickman
Notary Public

My commission expires:

NOTARY PUBLIC, STATE OF OHIO
Rebecca S. Hickman
My Commission Expires Oct. 3, 2012

**REDACTED VERSION
LEASE AGREEMENT**

This LEASE AGREEMENT (this "Lease") is made and entered into as of this _____ day of _____, 2012, by and between Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway ("TLE&W") and Norfolk Southern Railway Company, a Virginia company, along with its subsidiaries and affiliates (collectively "NSR"). TLE&W and NSR are sometimes referred to herein as the "Parties".

WHEREAS, NSR is the owner of the line of railroad and related real property, as described in Attachment A (the "Line");

WHEREAS, NSR desires to lease the Line to TLE&W, and TLE&W desires to lease the Line from NSR, all in accordance with the terms stated herein; and

WHEREAS, TLE&W acknowledges that the Line is being leased to it only because TLE&W is willing to make such capital and maintenance expenditures on the Line as are necessary to provide rail service for customers that may locate on the Line and TLE&W can make such expenditures and construct any necessary interchange with NSR without assistance or subsidy from NSR;

WHEREAS, in connection herewith, NSR and TLE&W will be entering into a separate Interchange Agreement (providing for the interchange of traffic between the Parties) and a separate Thoroughbred Through Freight Agreement (providing for Lessee to serve as handling line for NSR);

WHEREAS, NSR and TLE&W discussed a fixed rental payment with no option to reduce the rent through lease credits, but TLE&W specifically requested the opportunity to reduce its rental payments through lease credits; and

WHEREAS, NSR and TLE&W desire to establish the base lease rental amount at an interest rental in the Line and to provide lease credits so that TLE&W can reduce its rental payments to, among other things, support infrastructure improvement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and other good and valuable consideration, and intending to be legally bound, TLE&W and NSR hereby agree as follows:

1. PROPERTY COVERED. Effective on the latest of (i) the effective date of any decision or notice of exemption served by the Surface Transportation Board ("STB") authorizing the consummation hereof, (ii) the expiration of any time periods required by the issuance of labor notices by the Parties, should such labor notices be required, or (iii) the receipt of any consent, order or approval which may be required by all present and future laws, regulations, and orders of all governmental authorities ("Governmental Requirements") applicable to the transactions contemplated hereby (subject to extension by mutual agreement of the Parties, the "Commencement

Date”), NSR hereby leases the Line to TLE&W, on an exclusive basis, subject to the rights retained by NSR herein. Except to the extent provided otherwise in this Agreement, NSR’s lease of the Line to TLE&W shall be in **“as is, where is” condition and without any express or implied warranties, including but not limited to any warranties of merchantability, habitability, or fitness for a particular purpose** and subject to all existing easements and other impediments to the title of NSR, whether or not this Lease provides actual notice thereof. TLE&W acknowledges that it has inspected the Line and accepts it in its current condition as appropriate for all purposes, including TLE&W’s intended use.

2. RIGHT TO POSSESSION. On the Commencement Date, NSR will deliver possession of the Line to TLE&W for TLE&W’s lease and operation; provided, however, that NSR shall have three (3) months after said Commencement Date in which to remove, at its sole expense and without interference with TLE&W’s operations, all track material, equipment, locomotives, and other rolling stock of NSR located on but not affixed to the Line as of the Commencement Date.

3. TERM AND TERMINATION.

(a) Unless otherwise terminated pursuant to Section 3(b), 3(c) or 3(d) below, this Lease shall be for a term of ten (10) years from the Commencement Date (the “Term”). Unless otherwise agreed by the parties, there shall be no right to renewal once the Term has expired.

(b) This Lease may be terminated by the non-breaching party if either TLE&W or NSR breaches any one or more of the material provision under this Lease and if such breach continues for a period of thirty (30) days from the date of receipt of written notice of such breach. A breach of a material provision includes, but is not limited to, the following: (i) failure of TLE&W to make the lease payments called for herein and (ii) beginning immediately prior to the first movement of loaded or empty traffic over the Line by TLE&W, failure of TLE&W to maintain the Line in accordance with the requirements set forth in Section 13.

(c) NSR shall have the right to terminate the Agreement for any reason, or for no reason, and in its sole discretion, at any time, (i) during the first three years of the term of this agreement upon one (1) year’s notice; (ii) during the fourth and fifth year of the term of this Agreement upon 180 days’ notice; (iii) during the remainder of the term of this Agreement term upon 90 days’ notice. Should NSR terminate this Agreement pursuant to this provision, NSR shall reimburse TLE&W for the undepreciated book basis in compliance with GAAP of its investment in the Line, excluding (A) the portion of the investment removed or surrendered pursuant to Section 4(c) and (B) the portion of the investment not removed or surrendered pursuant to Section 4(c) that has been financed with government grants.

(d) NSR may terminate this Lease immediately upon written notice in the event of a change in control of or merger involving TLE&W or any parent of TLE&W (other than an

intercorporate merger not involving a change in control) which was not approved in advance and in writing by NSR. In such event, NSR shall reimburse TLE&W for the undepreciated value of any investment by TLE&W in the Line (excluding investments removed under Section 4(c) below or financed by government grants) as determined for financial reporting purposes following generally accepted accounting principles. NSR shall pay the reasonable costs of any STB filings required to implement this Section 3(d).

(e) TLE&W hereby grants to NSR an irrevocable power of attorney for purposes of consenting to and making any STB filing with respect to any termination of this Lease pursuant to this Section 3. This grant of TLE&W's power of attorney shall survive termination or expiration of the Lease.

4. EFFECT OF TERMINATION OR EXPIRATION.

(a) At least sixty (60) days before the expiration or termination of this Lease, TLE&W shall submit all necessary applications and petitions to the STB to effectuate a termination of this Lease. Upon the effective date of any necessary regulatory authority or exemption, TLE&W will forthwith vacate and surrender the Line and any improvements made thereon (other than as provided in Section 4(c)) to NSR and NSR shall have the right to enter onto and operate the Line.

(b) In the event of termination or expiration of this Lease, TLE&W shall surrender the property to NSR in as good or better condition as it was as of the Commencement Date, normal wear and tear excepted subject to TLE&W's maintenance obligation under Section 13, both in terms of operating condition of the railroad and the environmental condition of the property. This requirement shall be deemed to have been fulfilled if the surrendered property is in compliance with the maintenance standards set forth in Section 13 and includes a continuous line of railroad between the end points of the Line as of the Commencement Date, as shown on **Attachment A** and adjusted for any abandonment previously implemented pursuant to Section 34.

(c) Provided that all sums due NSR under this Lease have been paid and TLE&W is then in compliance with all obligations and covenants under this Lease, upon the expiration or termination of this Lease, TLE&W may remove from the Line any and all structures or other property belonging to TLE&W or which TLE&W caused or permitted to be placed or erected on the Line and which are the property of TLE&W, provided such removal can be effected without damage to the property of NSR. If TLE&W fails to make such removal within sixty (60) days from the date of expiration or termination of this Lease, NSR may take title thereto without consideration of any kind therefor or claim by TLE&W or anyone claiming an interest by or through TLE&W, or, at NSR's sole option, NSR may remove all or any part of such structures and/or property and restore the Line to its former condition at the sole expense of TLE&W, and TLE&W shall reimburse NSR for such expense within thirty (30) days of receipt of a bill or bills therefore; provided that TLE&W shall have no obligation to reimburse NSR if the bill(s) are not

received by TLE&W within six months after the date of TLE&W's surrender of the property. The provisions of this Section 4(c) shall survive termination or expiration of this Lease.

(d) If, subject to the right of NSR to seek removal of TLE&W from the Line by all available legal means, TLE&W holds over or remains in possession of the Line after the expiration of this Lease, such holding over or continued possession will create a tenancy from month to month only, and monthly rental for such period will be payable as set forth in Section 12.

5. ACCOUNTING STANDARDS.

(a) As between NSR and TLE&W, the Association of American Railroads ("AAR") Accounting Rules shall govern.

(b) NSR shall have the right to inspect the accounting records of TLE&W as they pertain to this Lease and to the Line (the "Accounting Records") at any time during business hours, upon reasonable notice to TLE&W. TLE&W agrees to keep the Accounting Records for a period of three (3) years from the time a particular Accounting Record is generated.

6. INDUSTRY AGREEMENTS. TLE&W is and, during the Term, will remain a signatory to the industry's Interchange Rules, and Car Service and Car Hire Rules, and those rules and agreements will govern TLE&W's operation of the Line.

7. DEMURRAGE AND CYCLE TIME. TLE&W shall have the right to determine what demurrage charges, if any, to impose when cars are on the Line and shall be responsible for the billing and collection of all such charges. TLE&W shall impose such demurrage charges as are reasonably necessary to cover car hire costs or to encourage its customers to contribute to the efficient movement of cars between TLE&W and NSR. TLE&W agrees to work with NSR to maximize the efficient flow of equipment. The effectiveness of TLE&W's demurrage charges and other efforts to minimize cycle time shall be reviewed annually and payments may be owed by one party to the other as further set forth in this Lease.

8. CAR HIRE, SUPPLY, SERVICE, AND MARKS.

(a) TLE&W shall pay all car hire charges assessed for rail equipment (both private equipment and equipment with railroad reporting marks), including equipment of NSR, when such rail equipment is on the Line. TLE&W shall not be entitled to any free time or any relief or reduction in car hire charges from NSR for equipment interchanged between NSR and TLE&W. TLE&W can request to have NSR act as its agent for purposes of car hire negotiation related to the Line; upon receipt of such request, NSR and TLE&W shall enter into an agreement to permit NSR to negotiate confidential car hire rates on behalf of TLE&W with other carriers.

(b) TLE&W shall not load cars supplied empty by NSR and deliver those cars to a rail carrier other than NSR. If TLE&W loads a car supplied empty by NSR and delivers it loaded to a rail carrier other than NSR, TLE&W shall pay NSR a misloading charge of \$ ___ per car, in

addition to car hire otherwise due to NSR from Lessee.

(c) If requested by NSR, TLE&W shall use its best efforts to have cars serving one or more of TLE&W's customers placed in assigned service.

(d) NSR has no special duties or obligations to TLE&W with respect to car supply and car service.

(e) TLE&W is solely responsible for car ordering for NSR traffic on the Line.

(f) NSR shall retain the right of first refusal to be the car supplier of choice for any or all freight car requirements for all existing or new customers located on the Line that make shipments via NSR. Subsequent to an equipment request by TLE&W, NSR will provide timely feedback for equipment NSR can or cannot supply to meet immediate needs. TLE&W agrees to maintain all obligations for car hire payments due NSR or other car owner for cars supplied to TLE&W. NSR will work with TLE&W to find short term supply alternatives and NSR will advise if it can meet this need in the future or if TLE&W should seek other long term supply solutions. TLE&W shall promptly notify NSR whenever TLE&W reasonably foresees a potential increase or decrease in car supply needs. If, with NSR's written agreement, TLE&W obtains equipment in order to meet customer needs for cars that NSR cannot or chooses not to meet, NSR will apply transportation charges when such leased cars are moving to TLE&W unless otherwise agreed to in writing.

(g) TLE&W's car marks may be used only on such number of cars as are necessary to ensure that its customers have an adequate number of empty cars to load. Accordingly, TLE&W shall not enter into any arrangement with any third party which would allow the use of TLE&W's car marks on more than the number of empties required by its customers less the number of empties, if any, ordinarily provided by NSR. Should TLE&W desire to enter into any arrangement allowing the use of its mark by a third party, NSR's prior written consent shall be necessary, which consent shall not unreasonably be withheld. If such consent is not obtained and TLE&W nevertheless enters into such arrangement, TLE&W shall be liable for all car hire owed on such cars by NSR. If TLE&W fails to stencil its mark on a car or fails to unStencil such mark and as a result of such failure, NSR incurs any penalty, TLE&W shall fully reimburse NSR.

9. SETBACK AND OTHER CHARGES. TLE&W shall not impose on NSR, either directly or indirectly, any charges for rejected cars, misrouting, misdelivery or setback or any other charges of any type, whether by tariff or otherwise.

10. AEI TAGS. All cars owned, leased or otherwise controlled by TLE&W shall be equipped with automatic equipment identification ("AEI") tags which meet the requirements of the AAR Interchange Rules

11. DATA EXCHANGE AND OTHER IT REQUIREMENTS. TLE&W will supply its own hardware, software and related services which shall be within two versions of the then current AAR standard. TLE&W will use its best efforts to work with NSR to maximize the electronic flow of information. To the extent TLE&W acts as a switching carrier, TLE&W shall

participate in NSR's EDI program that requires TLE&W to transmit electronically to NSR all switching settlement data. TLE&W may, at its own cost, elect to use the services of a third party provider. If requested by NSR, TLE&W shall electronically transmit within 24 hours records of cars which have been rejected for loading, or which may incur any charge under this Lease.

12. LEASE PAYMENTS.

(a) The annual lease payment (the "Lease Payment") shall be as shown below:

Calendar Year 2012	\$ deleted
Calendar Year 2013	\$ deleted
Calendar Year 2014 and beyond	\$ deleted

i. The Lease Payment and the Lease Credits described below shall be revised upward or downward each year beginning with the bill rendered for calendar year 2015 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Chargeout Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such a determination, the final "material prices, wage rates and supplements combined (excluding fuel)" Table A indexes for the East district shall be used. The Lease Payment shall be revised by calculating the percent of increase or decrease in the index for the latest available calendar year as related to the index for the previous calendar year and applying that percentage to the Lease Payment as may have been previously adjusted. In the event the AAR or any successor organization discontinues publication of the Annual Indexes of Chargeout Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under the terms of Section 18 of this Agreement.

ii. To provide an opportunity for TLE&W to earn a lower rental payment and to afford Lessee the opportunity to invest in improvements on the Line to increase traffic levels, TLE&W shall receive a lease credit for every revenue carload interchanged to or from NSR. TLE&W shall receive a lease credit for every revenue carload interchanged with NSR equal to ~~\$~~ per car. Lease Credits will only apply to the Lease Payment for the year in which the loaded revenue car is tendered for interchange to or from NSR; excess Lease Credits may not be

carried over and applied to subsequent years' Lease Payment. Lease credits shall be adjusted annually pursuant to the terms of Section 12(a)(i) herein.

iii. Within 30 days of the end of each calendar year, TLE&W shall provide NSR with a statement showing by commodity the number of carloads of overhead and local traffic that moved over the Line during the year, and by commodity the number of carloads interchanged with NSR. Following any necessary readjustment of Lease Credits as stipulated in Subsection 12(a)(ii) above, TLE&W shall make payment to NSR of the Lease Payment for the preceding year minus the Lease Credit applicable to the preceding year, provided that such amount shall not be less than ~~\$~~per year (the "Net Lease Payment"). The unpaid balance of the Net Lease Payment shall accrue interest from the due date at the rate of 1% per month.

iv. For calendar year 2012, the Lease Payment shall be prorated from the Commencement Date. If the Lease is terminated before the completion of any other full calendar year, the Lease Payment shall be pro-rated for that year.

v. The statement accompanying the payment will include an itemization listing the Lease Payment amount together with the adjustment amount based upon the AAR Cost Index as stipulated in Section 12(a)(i) and the Lease Credit amounts for both overhead traffic and for local traffic as stipulated in Section 12(a)(ii).

(b) All improvements to the Line constructed by TLE&W (whether with its own funds or with funds described in Section 17 below) shall be owned by TLE&W, shall not be additional rent from TLE&W to NSR, and shall be treated by TLE&W and NSR as "tenant improvements" as contemplated in Section 109 of the Internal Revenue Code of 1986 and the Treasury Regulations promulgated pursuant thereto.

13. LINE MAINTENANCE.

(a) TLE&W acknowledges that it has been given the opportunity to make as detailed an inspection of the Line as it desired. TLE&W will be given two years from the commencement date of the lease to bring the Line up to Federal Railroad Administration Class I standards. At a minimum, TLE&W shall maintain the track and other portions of the Line to Federal Railroad Administration Class I standards. Should TLE&W fail to maintain the Line in accordance with the requirements of this Section, NSR shall have the right, but not the obligation, to make the repairs necessary to bring the Line into conformance with the requirements of this Section and TLE&W shall reimburse NSR the cost of making such repairs.

(b) TLE&W shall operate and maintain any and all vehicular grade crossing signals located on the Line. TLE&W shall be solely responsible for all grade crossings within the leased

premises, including compliance with Ohio PUC and FRA regulations associated therewith.

14. INSPECTION OF LINE. NSR (or its agent) shall have the right to inspect the Line annually and at such other times as it reasonably deems necessary to monitor compliance with this Lease. NSR and its agent shall have the right to enter the Line to conduct such inspections, however NSR will comply with any instructions of TLE&W reasonably designed to ensure the safety of the personnel and property of TLE&W and NSR. NSR will provide TLE&W twenty-four (24) hours advance notice before entering the Line to conduct an inspection.

15. SURCHARGES AND OTHER CHARGES. Except as otherwise provided for herein, TLE&W shall not impose any surcharge or line haul transportation charge on NSR traffic without the prior written approval of NSR. TLE&W may impose charges on its customers for non-line haul transportation services.

16. IMPROVEMENTS AND INTERCHANGE.

(a) TLE&W acknowledges that, as of the date hereof, the Line is in need of significant improvements before it can be placed in service and that the obligation to make necessary improvements shall be the sole responsibility, and at the sole cost, of TLE&W. TLE&W shall not begin construction of the improvements until TLE&W submits a detailed plan for such construction to NSR and such plan has been approved in writing by NSR. Concurrently with the execution of this Lease, NSR and TLE&W shall enter into an Interchange Agreement substantially in the form of **Attachment B**. The Interchange Agreement shall govern the obligations of the parties with regard to the interchange of cars and the maintenance, repair and operation of tracks and equipment related to that interchange.

(b) TLE&W shall not make improvements upon or connected to the Line without the prior written consent of NSR, such consent to be at the sole discretion of NSR. Any such improvement made must be constructed to NSR standards in effect at the time of the proposed construction.

17. PUBLIC FUNDS.

(a) TLE&W shall use reasonable efforts to obtain public funds that will benefit the Line or otherwise improve rail service. If requested by NSR, TLE&W shall also work with NSR to obtain public funds. Prior approval of NSR must be obtained before any public funding related to or affecting the line may be accepted by TLE&W.

(b) Before NSR will grant approval, NSR must determine that TLE&W's receipt and use of public funds to benefit the Line will be revenue neutral, on an after tax basis, to NSR; NSR's determination with respect to whether TLE&W's use of public funds will be revenue neutral to NSR shall be made by NSR in its sole and absolute discretion. If, however, TLE&W receives public funds and NSR subsequently is required by the Internal Revenue Service on audit to include the public funds in its taxable income, TLE&W shall indemnify NSR.

(c) In conjunction with TLE&W's receipt of public funds, TLE&W shall indemnify NSR if NSR is required to reimburse any governmental authority for the public funds received by TLE&W.

(d) To the extent TLE&W is required to indemnify NSR under Section 17(b) or Section 17(c) and NSR determines, in its sole and absolute discretion, such indemnification constitutes taxable income to NSR, TLE&W, in addition to the amount it is obligated pay NSR under Section 17(b) or Section 17(c), shall pay NSR an additional amount equal to the product of the Taxable Amount, as defined below, times a fraction the numerator of which is one (1.00) and the denominator of which is sixty-one one hundredths (0.61), less the Taxable Amount. The term "Taxable Amount" shall mean any amount TLE&W is required to indemnify NSR under Section 17(b) or Section (17(c) either (A) that NSR concludes, in its sole and absolute discretion, is taxable income to NSR and reports to the appropriate tax authorities as taxable income of NSR on its applicable tax returns, or (B) that the IRS subsequently determines on audit (and for which NSR may accept without challenge in its sole and absolute discretion) that NSR should have reported as taxable income of NSR on its applicable tax returns.

For the avoidance of doubt, if NSR determines that the Taxable Amount is **deleted** reimbursement payable under this Section 17(d) shall be calculated as follows:

deleted

18. ARBITRATION. Any dispute arising between the parties hereto with respect to any of the provisions hereof shall be subject to mandatory arbitration under the Commercial Arbitration Rules of the American Arbitration Association and the parties hereby waive any right to seek redress of any such dispute in a court of law. The decision of the arbitrator shall be final and conclusive upon the parties hereto, and shall be enforceable in a court of competent jurisdiction. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws.

19. ENVIRONMENTAL.

(a) TLE&W shall not create or permit to be created or to exist upon the Line any nuisance, use, storage (except for a reasonable period of time as incident to an industrial switching movement for a patron on the Line) or disposal of hazardous substances, hazardous waste, toxic materials or waste materials, public or private, during the Term, and TLE&W shall indemnify and hold harmless NSR, and its parent, subsidiary and affiliated companies, and all of its and their directors, officers, agents and employees, from and against any suit or claim growing out of any such nuisance, use, storage or disposal thereon, including without limitation laws, ordinances and governmental regulations controlling air, water, noise, solid wastes and other pollution. TLE&W shall install and bear the expense of any and all pollution control structures, devices or equipment that are required during the Term under any applicable laws,

ordinances or governmental regulations as a result of TLE&W's operations.

(b) TLE&W shall be responsible to NSR and shall defend, indemnify and hold harmless NSR, and its parent, subsidiary and affiliated companies, and all of its and their directors, officers, agents and employees, from and against any liability, including costs of defense and reasonable attorneys' fees and reasonable consultants' fees, under any environmental protection or pollution law, or any liability in tort (strict or otherwise), including costs of defense and reasonable attorneys' fees and reasonable consultants' fees arising (i) out of contamination of the Line occurring after the Commencement Date or (ii) out of and to the extent that TLE&W has exacerbated after the Commencement Date contamination existing prior to the Commencement Date. NSR shall defend, indemnify and hold harmless TLE&W, and its parent, subsidiary and affiliated companies, and all of its and their directors, officers, agents or employees, from and against any liability, including costs of defense and reasonable attorneys' fees and reasonable consultants' fees, for contamination of the Line, but only to the extent such contamination resulted from such acts of NSR or events under its control which occurred prior to the Commencement Date, and further which has not been exacerbated by TLE&W. This indemnification shall survive the Term.

(c) As to the provisions of this Section 19 only, TLE&W and NSR waive any statute of limitations defense, provided, however, that if one party gives the other party written notice of contamination of the Line, the waiver of the statute of limitations shall cease, but only as to the contamination which is the subject of the written notice, and as to such contamination, the parties shall then be subject from the date of receipt of such written notice to the times then provided in the then applicable statute of limitations. The waiver of statute of limitations for any matter not covered in said written notice shall continue.

20. ASSIGNMENT. Other than as specified in this Section 20, this Lease may not be assigned, or in any manner transferred, nor shall the Line be sublet, used or occupied by any party other than TLE&W (whether via trackage rights, haulage rights, or other means), nor used for any purpose other than as specified herein, without the advance written consent of NSR, in its sole discretion, signed by an authorized officer. TLE&W may assign this Lease to its parent company or any wholly-owned subsidiaries of its parent company without advance written consent of NSR, but shall provide written notice to NSR within thirty (30) days of effecting such assignment.

21. SOLE BENEFIT. This Lease is intended for the sole benefit of the parties hereto. Nothing in this Lease is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, agents, employees, parent company, subsidiaries, affiliates, successors, and permitted assigns, any right pursuant to any provision of this Lease, and all provisions and terms of this Lease are and will be for the sole and exclusive benefit of the parties to this Lease.

22. WAIVER. Any waiver at any time of a breach of any provision, condition, obligation, or requirement of this Lease will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Lease or the right of either party thereafter to avail itself of any breach, subject to such

waiver. No provision of this Lease shall be waived by any act or knowledge of the parties, but only by a written instrument signed by the party waiving a right hereunder.

23. AMENDMENT. No provision of this Lease shall be modified except in a written agreement, signed by both parties, that explicitly effects and amendment hereto.

24. ENTIRE AGREEMENT. This Lease represents the entire understanding of the parties on the subject hereof, and to that extent supersedes any prior understandings, written or oral.

25. NOTICES. All notices required to be given under this Lease shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown on **Attachment C** or such successor addresses as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, or by telegram or fax, with confirmed receipt. All notices shall be effective on day following confirmed receipt.

26. HEADINGS. The headings of the sections of this Lease are inserted for convenience only and are not intended to govern, limit or aid in the construction of any provision of this Lease.

27. TAXES RELATED TO THE LINE.

TLE&W shall be responsible for and pay any and all licenses, taxes, levies, assessments and fees related to the Line, imposed on the Line, or otherwise applicable to the transactions contemplated in this Lease, including, without limitation, state property taxes and public utility taxes assessed on and against real or personal property, regardless of whether such property constitutes operating property, any sales or use taxes, any other type of tax or fee that may become a lien against the Line, and any penalties or interest with respect to any of the foregoing (collectively, the foregoing licenses, taxes, levies, assessments, fees, and any interest or penalties with respect to any of the foregoing, related to the Line, imposed on the Line, or otherwise applicable to the transactions contemplated in this Lease shall be referred to as "Taxes"), prorated for the first year of the term of this Lease as of the Commencement Date, and in total thereafter. In conjunction with the foregoing obligation regarding the payment of Taxes, TLE&W shall file any and all applications, forms, reports and returns to properly report its obligations for such Taxes (such reports shall be referred to as "Tax Reports") on or before the date such Tax Reports are due and shall include with all such filed Tax Reports the full amount of Taxes then due that TLE&W has not previously paid. In all events, TLE&W will pay all Taxes prior to the imposition of any penalty or the imposition of any lien against the Line for Taxes that remain unpaid.

TLE&W will indemnify NSR against any liability for such Taxes; provided, however, that nothing in this paragraph will be construed to diminish any right of TLE&W to contest any such Taxes in appropriate judicial or administrative proceedings. Upon NSR' request, TLE&W shall present to NSR for inspection the official Tax Reports filed by TLE&W and any and all receipts (or photocopies thereof) or other documentation reasonably satisfactory to NSR showing

the payment of all such Taxes on or before the date such Tax Reports for such Taxes are due. In all events, if NSR receives any notice that any Taxes for which TLE&W is responsible have not been paid in full, NSR may pay such Taxes and seek reimbursement therefor from TLE&W if such Taxes have not been previously paid. Promptly upon receipt of a request for reimbursement therefor, TLE&W will reimburse NSR for any such Taxes paid by NSR, and upon request by TLE&W, NSR will present to TLE&W for inspection the official receipts (or photocopies thereof) showing the payment of any of such Taxes and the filing of any Tax Reports associated with such Taxes.

28. ALLOCATION OF INCOME AND EXPENSES. Any income accrued on or subsequent to the Commencement Date during the Term and any claims, expenses, and liabilities which arise or are accrued on or subsequent to the Commencement Date during the Term in respect of the Line will belong to, be paid to, and be the responsibility of TLE&W, and it will be the obligation of TLE&W to collect such income and to pay or otherwise to resolve such claims, expenses, and liabilities.

29. UTILITIES. Beginning on the Commencement Date and for the duration of the Term, TLE&W will pay all bills for water, sewer, gas, and electric service to the Line.

30. LIENS. TLE&W will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by TLE&W during the Term in the construction, repair, maintenance, or removal of the Line and any improvements located thereon, whether said improvements are the property of NSR or of TLE&W. TLE&W will indemnify and save harmless NSR from all such claims, liens, or demands whatsoever. To the extent Lessee is required to indemnify NSR pursuant to this Section, if NSR determines, in its sole and absolute discretion, such indemnification would constitute taxable income to NSR, the Lessee, in addition to all other amounts it is required to pay to NSR hereunder, shall pay NSR an amount equal to the amount NSR would be required to receive to permit it to pay any and all federal and state income taxes arising from its receipt of all amounts under this Section 30 from the Lessee such that NSR will be revenue neutral, on an after-tax basis, after the payment of any federal or state income taxes that are due on or with respect to its receipt of all amounts under this Section 30. For purposes of the preceding sentence, in determining any increased amount necessary to make payments on an after-tax basis, there shall be taken into account any additional taxable income resulting from the payment of such additional amounts and any tax savings realized by NSR resulting from additional deductions available as a result of the payment of such additional amounts, all of which NSR shall determine in its sole and absolute discretion.

31. MISCELLANEOUS REAL PROPERTY RIGHTS.

(a) With respect to the Line and any associated real property and improvements, NSR reserves unto itself and any of its affiliates, and their respective successors and assigns, the rights to own, occupy, possess, place, construct, remove, maintain, repair, improve, replace, use, operate, license, lease, sublease, access, grant easements for, receive utility service for or at, and receive income or royalties from:

- (i) any existing or future fiber optic cable facilities, whether underground, aboveground, or over the ground;
- (ii) any existing or future advertising signboards;
- (iii) any existing or future telecommunications towers or related equipment, excepting any signal towers erected by TLE&W for TLE&W operating purposes;
- (iv) any minerals or mineral rights, whether gaseous, liquid, or solid, including but not limited to oil, natural gas, and coal; and
- (v) all third party agreements, other than transportation related agreements.
- (vi) any existing or future natural gas transmission facilities, whether underground, aboveground, or over the ground.

Notwithstanding the foregoing, the exercise of such rights shall not unreasonably interfere with TLE&W's operations, and NSR, its licensees and invitees shall be required to provide notice to TLE&W before entering the Line for the purposes described in this Section. NSR will reimburse TLE&W for direct, documented expenses that TLE&W incurs in conjunction with the facilitation of NSR's rights described in this Section 31.

(b) NSR may sell or grant permanent interests in any real property that is part of the Line, which sales or grants shall not be subject to the terms of this Lease or any interest in real property granted to TLE&W hereunder, and NSR shall receive any corresponding sale proceeds, provided that such sales or grants shall not unreasonably interfere with TLE&W's operations.

32. COMPLIANCE WITH LAWS. TLE&W shall use the Line for freight rail transportation purposes only, and shall comply with all applicable Federal, State and local laws, ordinances and regulations in its use of the Line. TLE&W hereby agrees to indemnify and hold harmless NSR from and against any and all liability, claims, costs (including attorney's fees), damages and expenses arising in any manner out of its failure to comply with such laws, ordinances or regulations.

33. NO PASSENGER RAIL USE. TLE&W shall use the Line for freight rail transportation purposes only, and shall comply with all applicable Federal, State and local laws, ordinances and regulations in its use of the Line. TLE&W shall indemnify and hold harmless NSR from and against any and all liability, claims, costs (including attorney's fees), damages and expenses arising in any manner out of its failure to comply with such laws, ordinances or regulations. To the extent TLE&W is required to indemnify NSR pursuant to this Section and NSR determines, in its sole and absolute discretion, such indemnification constitutes taxable income to NSR [for which NSR does not have a tax deduction of an equal amount], TLE&W, in addition to the amount it is required to pay to NSR under this Section, shall pay NSR an additional amount calculated under the same formula described in Section 17(d) except that all references to "Section 17(b)" and "Section 17(c)" shall be substituted with "Section 33 and all references to Section 17(d)" shall be substituted with "Section 33."

34. AUTHORIZATION, ABANDONMENT, DISCONTINUANCE OR OTHER REGULATORY ACTIVITIES.

(a) Should this Lease require the prior approval or authorization of the STB or any other regulatory agency for its implementation or termination, TLE&W, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application or petition to obtain that regulatory approval or authorization. TLE&W shall provide NSR, for its review and comment, a copy of the application prior to its filing. NSR will assist and support efforts by TLE&W to secure any necessary regulatory approvals. Lessee will reimburse NSR for the cost (including attorney's fees) of obtaining any approval for which Lessee does not timely apply or pursue but for which NSR then applies. Lessee hereby appoints NSR its attorney in fact to apply for any regulatory authority required pursuant to this Agreement. NSR may, but need not, exercise said authority at Lessee's risk, cost and expense, should Lessee fail to promptly do so.

(b) TLE&W will not suspend or discontinue its operations over any part of the Line without first applying for and obtaining from the STB, and any other regulatory agency with jurisdiction, any necessary certificate or exemption from regulation for such discontinuance of operations over the Line. TLE&W will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue TLE&W's operations without the prior approval of NSR, which NSR shall not unreasonably withhold. Upon such approval, NSR will cooperate with and assist TLE&W in its efforts to obtain regulatory approval. If TLE&W obtains regulatory approval allowing it to discontinue or abandon any segment of the Line, this Lease shall terminate as to such segment. TLE&W shall not have the right to take up and re-use rail and other track materials on the discontinued or abandoned segment to construct extensions or yard trackage or for other purposes, unless authorized by NSR.

(c) Upon the request of NSR, TLE&W will fully cooperate with NSR in any regulatory action it takes with the STB which is related in any way to the Line. TLE&W will further cooperate with NSR in resolving with individual shippers any issues related to the Line.

(d) TLE&W will reimburse NSR for the cost (including attorney's fees) of obtaining any required approvals for which TLE&W does not timely apply or pursue but for which NSR then applies.

(e) This Section shall remain effective after the termination or expiration of this Lease.

35. EMINENT DOMAIN. If during the Term, the Line or any part thereof is appropriated or otherwise acquired by a governmental body or agency thereof or by a quasi-public body, all awards or compensation for damages to or appropriation of real property arising out of such appropriation or acquisition will be paid solely to NSR and the Lease will terminate as to such property; provided, however, that TLE&W shall have the right to salvage any improvements made. NSR and Lessee shall be free to make any claim against the appropriating or acquiring entity for the amount of any damage done to them, respectively, including but not limited to engineering costs, relocation expenses, and like items as a result of the appropriation or acquisition. In the case of a partial taking that materially interferes with TLE&W's operations over the property, the Lease will continue with an appropriate proportional abatement of rental. NSR shall direct the defense of any such eminent domain proceeding,

whether or not NSR is named as a party thereto. Lessee shall inform NSR of any such eminent proceedings immediately, and mail copies by overnight service within three (3) business days of receipt (whether by formal service of process or otherwise) of any summons, complaint, petition, or other paper.

36. GOVERNING LAW. This Lease will be construed in accordance with the laws of the Commonwealth of Virginia.

37. CORPORATE APPROVALS. On or prior to the Commencement Date, TLE&W and NSR will obtain appropriate corporate approvals, if any, to enter into this Lease and for TLE&W's lease of the Line.

38. INSURANCE.

(a) TLE&W shall procure and maintain in effect during the Term of this Lease a policy or policies of insurance covering the liability to which it is or may be subject pursuant to this Lease and the transactions contemplated hereby. Such insurance shall provide minimum limits of **deleted** per occurrence but may be subject to an annual aggregate limit of **deleted** and a per occurrence deductible not in excess of **deleted**. The insurer must be rated A-or better by A.M. Best Company, Inc. and said policy or policies shall name NSR as an additional insured.

(b) If the insurance provided under this Section takes the form of a Claims Made Policy, TLE&W shall purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Lease, with annual occurrence and annual aggregate limits no less than those required by (a), for a period of time at least five (5) years following the termination or expiration of this Lease. TLE&W shall immediately give written notice to the Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

(c) On or before any anniversary date of this Lease which occurs more than one year after the Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Section, or changes in the terms and conditions of the policy, provided the cumulative amount of the increase does not exceed an average of **deleted** for each year that this Lease has been in effect. To the extent possible, NSR shall give TLE&W at least thirty (30) days notice, in writing, of any increase in the amount of insurance required.

(d) Every policy of insurance obtained by TLE&W pursuant to the requirements of this Section shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by TLE&W to satisfy the requirements of this Section 38 will be subject to the approval of NSR.

(e) Prior to the Commencement Date, TLE&W will furnish to the Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510,

an accurate copy of each policy of insurance obtained pursuant to the requirements of this Lease. Compliance with this requirement will not relieve TLE&W of any other obligation under this Lease and will in no way limit or modify TLE&W's obligation to provide the specific insurance coverage required by this Lease.

39. COUNTERPARTS. This Lease may be executed in any number of counterparts, each of which may be deemed an original for any purpose and all of which together shall be considered one and the same agreement.

40. LIABILITY.

(a) Except to the extent that liability therefor is allocated in the Interchange Agreement or in Section 19 (Environmental) hereof, TLE&W shall indemnify, defend and hold harmless NSR, its parent, subsidiaries and affiliates and its and their directors, employees and agents, from and against any and all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, cost, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorneys' fees and costs) to whatsoever or whomsoever, including but not limited to TLE&W's agents, workmen, servants or employees, occurring on the Line or arising out of or relating to TLE&W's use or occupancy of the Line and related facilities. To the extent Lessee is required to indemnify NSR pursuant to this Section, if NSR determines, in its sole and absolute discretion, such indemnification would constitute taxable income to NSR, the Lessee, in addition to all other amounts it is required to pay to NSR hereunder, shall pay NSR an amount equal to the amount NSR would be required to receive to permit it to pay any and all federal and state income taxes arising from its receipt of all amounts under this Section 40(a) from the Lessee such that NSR will be revenue neutral, on an after-tax basis, after the payment of any federal or state income taxes that are due on or with respect to its receipt of all amounts under this Section 40(a). For purposes of the preceding sentence, in determining any increased amount necessary to make payments on an after-tax basis, there shall be taken into account any additional taxable income resulting from the payment of such additional amounts and any tax savings realized by NSR resulting from additional deductions available as a result of the payment of such additional amounts, all of which NSR shall determine in its sole and absolute discretion.

(b) Except to the extent that liability therefor is allocated in the Interchange Agreement or in Section 19 (Environmental) hereof, NSR shall indemnify, defend and hold harmless Lessee, its parent, subsidiaries and affiliates and its and their directors, employees and agents, from and against any and all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, cost, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorneys' fees and costs) to whatsoever or whomsoever, including but not limited to NSR's agents, workmen, servants or employees, occurring on the Leased Property or arising out of or relating to NSR's ownership, use or occupancy of the Leased Property and related facilities in each event to the extent occurring or related to events occurring prior to the Commencement Date.

(c) Each party shall indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party shall indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

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

Witness: NORFOLK SOUTHERN RAILWAY COMPANY

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

Witness: MIDWEST RAIL, LLC d/b/a TOLEDO, LAKE ERIE AND WESTERN RAILWAY

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

Attachment A

Description of Line

Attachment B

Interchange Agreement

Attachment C

Notice Addresses

ATTACHMENT A

Description of Property to Be Leased

1.) End Points of Line to be Leased

Approximately milepost TS 13.2 near Maumee, OH to TS 15.0 near Waterville, OH for a total of 1.8 route miles

ATTACHMENT B

[Attach – INTERCHANGE AGREEMENT]

ATTACHMENT C

Notice Addresses

If to NSR:

Vice President Strategic Planning
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

If to TLE&W:

Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway
PO Box 168
49 N Sixth Street
Waterville, OH 43566