

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36011

**CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY
– ACQUISITION EXEMPTION –
FINGER LAKES RAILWAY CORP.**

MOTION TO DISMISS

(Expedited Action Requested)

ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: March 15, 2016

Attorneys for Cayuga County Industrial
Development Agency, Onondaga County
Industrial Development Agency, Ontario
County Industrial Development Agency,
Schuyler County Industrial Development
Agency, and Yates County Industrial
Development Agency

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SURFACE TRANSPORTATION BOARD

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Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency, each being a state agency (individually, an “Agency” and collectively, the “Agencies”), hereby request that the Board dismiss the Verified Notice of Exemption (the “Notice”) filed by the Agencies in this proceeding. As described in the Notice, the Agencies have filed for authority to lease the property comprising certain Rail Lines from Finger Lakes Railway Corp. (“FGLK”), and to simultaneously sublease the Rail Lines back to FGLK for operation. The Agencies will not provide, nor will they have the ability to provide any freight (or other) rail service on the Rail Lines. FGLK as the owner, and sublessee, of the Rail Lines, is, and will remain, as the sole entity authorized to provide rail service on the Rail Lines. Because no common carrier rights or obligations are being transferred by FGLK or assumed by the Agencies, the Board should find that the Agencies will not become carriers as a result of the proposed transactions, and should dismiss the Notice of Exemption.

The Agencies request that the Board act expeditiously on this Motion to Dismiss. The transaction documents between the various Agencies and FGLK have been executed and placed in escrow, pending the effective date of the Notice of Exemption (30 days from today), and a ruling by the Board on this motion. Prompt resolution of the Motion to Dismiss will allow the changes in the PILOT program to be implemented in a timely fashion for the current tax year.

Background

The Agencies are non-carrier (or non-operating carrier) agencies of the State of New York, established to promote industrial development in their respective Counties.¹ As set forth in the Notice of Exemption, FGLK originally was authorized to acquire and operate the Rail Lines by the issuance of an exemption issued by the Interstate Commerce Commission (“ICC”). *Finger Lakes Railway Corp. – Acquisition and Operation Exemption – Consolidated Rail Corporation*, Finance Docket No. 32574 (served October 14, 1994).² FGLK closed on the acquisition with Consolidated Rail Corporation (“Conrail”) in July, 1995, and immediately transferred title to the Rail Lines to the Agencies, and leased back the Rail Lines from the Agencies. The transactions with the Agencies were entered into and structured for financing purposes – to allow the railroad property and facilities to be exempt from local and state taxes, and to allow FGLK to pay a negotiated “payment in lieu of taxes” (“PILOT”). The PILOT was designed to enhance the ability of FGLK, as a new railroad, to successfully start-up and build its railroad business by eliminating the tax burden of local and state property taxes, and replacing

¹ One of the Agencies, Onondaga County Industrial Development Agency, is a non-operating carrier that owns other rail lines not involved in these transactions. The New York Susquehanna & Western Railway Corp. currently provides the freight service over the other rail lines. Onondaga County Industrial Development Agency believes that it should be treated as a non-carrier for the purpose of the transactions here. *See* Notice of Exemption, p. 2, fn 1.

² In addition to the Rail Lines that are the subject of this proceeding, FGLK also received authority to acquire and operate some additional rail lines located in Seneca County.

that burden with a PILOT that is tied to FGLK's revenues. FGLK retained the right to terminate the lease at any time, and to take back title to the railroad property. FGLK retained all of the common carrier obligations with respect to the Rail Lines; the Agencies, although the nominal owners of the railroad property, never held themselves out to provide railroad service over the Rail Lines. At the time, FGLK and the Agencies believed that since the Agencies were not acquiring any common carrier rights or obligations, no ICC approvals or exemptions were necessary in order to enter into the (transfer and lease back) financing arrangement.

The Agencies and FGLK have now agreed to extend the existing PILOT arrangements (with some minor adjustments), and to change the overall ownership / leasing structure so that FGLK will be the title holder to the railroad property and Rail Lines, FGLK will lease to each Agency the property comprising the Rail Lines located in the county served by the Agency, and each Agency will then sublease the property back to FGLK. A copy of the form of deed, lease from FGLK to the Agency (the "Lease"), and amended and restated lease from the Agency to FGLK (the "Agency Lease") are attached hereto as Exhibits A, B and C respectively.³ Again, the structure has been established solely to facilitate the PILOT arrangements and to provide financial support for the continued growth of FGLK. Because the Agencies are leasing the property, the property will not be subject to local or state property taxes. However, the Agencies will not hold themselves out to provide any rail service, nor will they have the ability to interfere in any way with FGLK's rail service or common carrier obligations. FGLK will be solely responsible for all railroad operations, including all common carrier service and for maintaining

³ The Exhibits are the instruments executed between FGLK and Schuyler County Industrial Development Agency. Other than the specific property description and tax parcel references which vary by county and Agency, the instruments executed by FGLK and each of the Agencies are identical.

the tracks; the Agencies will not hold themselves out to provide any rail service, and are not leasing or acquiring any of the common carrier obligations with respect to the Rail Lines.

The deed transfers the title to the property back to FGLK, with the only reservation being the lease to the Agency. *See* Deed, Exhibit A. Thus, FGLK will hold full title to the Rail Lines, without any restrictions on its ability to provide common carrier service. (As noted below, the Lease does not include any restrictions on FGLK's operations.)

The Lease from FGLK to the Agency makes it clear that the Agency is only taking a leasehold interest for the purpose of providing financial assistance to FGLK through the PILOT, that FGLK will be the sole provider of railroad services, and that the Agency will not materially interfere in FGLK's railroad operations. *See* Lease, Exhibit B, § 6. Moreover, FGLK retains the obligations to pay the taxes / PILOT (Lease, § 5), and to maintain and insure the Rail Lines (Lease, § 6).

Similarly, the Agency Lease makes it clear that the Agency has entered into the leasehold arrangement solely to provide financial assistance to FGLK, and that the Agency has not acquired any right to hold itself out to perform railroad services, or to control manage or interfere with FGLK's railroad operations over the Rail Lines. Agency Lease, § 1.1(f). FGLK continues to have the obligation to operate, repair and maintain the Rail Lines. Agency Lease, §§ 2.2, 3.1, 4.1. FGLK retains the right to seek discontinuance or abandonment authority. Agency Lease § 4.4. No sales or conveyances of any of the railroad property can be made by the Agency without the written consent of FGLK. Agency Lease § 6.1. And FGLK has the right to terminate the leasehold arrangements at any time. Agency Lease, §§ 8.1, 8.3. Upon termination, FGLK would retain its ownership interest in the Rail Lines and the common carrier obligation to operate them.

The documents for the transactions have all been executed and are being held in escrow. The parties will not release the documents from escrow until after the Board has ruled on this Motion to Dismiss.

Argument

The acquisition (or lease) of an active rail line by a non-carrier, including a state agency, generally requires Board approval under 49 U.S.C. §10901. However, in a series of cases, the Board, and its predecessor the Interstate Commerce Commission, have found that state agencies do not become a carrier where they acquire the right of way and physical assets comprising rail lines but not the accompanying common carrier obligations, and where they do not obtain the ability to unduly interfere with the provision of common carrier freight rail service by the transferring carrier. *See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 ICC 2d 835 (1991) (“*State of Maine*”) and its progeny. The operating rail carrier must retain the exclusive rights and obligations to perform common carrier freight service, and be protected from undue interference by the state agency.

The decision of the Interstate Commerce Commission in *State of Maine*, 8 ICC 2d at 836-37, generally provides that authorization is not required when only the physical assets will be conveyed, and the common carrier rights and obligations that attach to the line will not be transferred to the purchaser. The Board has explained the key question under *State of Maine*:

The Board examines in each case whether, once the transaction takes effect, the entity retaining or obtaining the freight carrier obligation will have sufficient access to conduct existing and reasonably foreseeable freight operations so that it can satisfy the common carrier obligation. A transaction will not result in a common carrier obligation being imposed on a noncarrier if the transaction does not unduly impair the carrier’s ability to provide service.

Wisconsin Department of Transportation – Petition for Declaratory Order – Rail Line in Sheboygan County, WI, STB Docket No. FD 35195 (served April 20, 2009), slip op. at 3 (footnote omitted). *See also Florida Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.*, STB Docket No. FD 35110 (served December 15, 2010); *Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.*, STB Docket No. FD 35312 (served May 3, 2010). The Board has further explained: “[A]s long as the transferor retains, or the third-party transferee obtains, the common carrier rights and obligations along with sufficient contractual rights to meet those obligations, the acquisition of the right-of-way is not a transaction requiring Board authorization.” *The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway Company*, STB Finance Docket No. 35128 (served October 27, 2008) (dismissing notice of exemption), slip op. at 3-4. The Board reaffirmed this interpretation of 49 USC 10901 in cases involving the acquisition of the physical assets and associated right of way by the Massachusetts Department of Transportation from Pan Am Southern LLC and from Housatonic Railroad Company, Inc. *See Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of Pan Am Southern LLC*, STB Docket No. FD 35863 (served December 24, 2014); *Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of Housatonic Railroad Company, Inc.*, STB Docket No. FD 35866 (served December 24, 2014).

Under the more common state of Maine scenario the transferring carrier retains an unrestricted freight rail easement. In this situation, FGLK will retain the ultimate ownership – although it is leasing the property comprising the Rail Lines to the Agencies, and then leasing the

property back for operations.⁴ The transactions have been structured solely in order that the Rail Lines continue to qualify as agency-owned property exempt from local and state property taxes and subject instead to PILOT. The Agencies will not be hold themselves out, nor do they have any authority under the Lease or Agency Lease, to perform any railroad services or operations. FGLK retains all of the common carrier obligations with respect to the Rail Lines, and through the documents its ownership and sublease rights that do not restrict its ability to satisfy those obligations. Moreover, FGLK retains full responsibility for maintenance of the Rail Lines. The Agencies have no right or ability to interfere with FGLK's operations or the satisfaction of its common carrier obligations. Moreover, the lease arrangements can be terminated at any time by FGLK, in which event FGLK would continue to be the owner of the Rail Lines able to operate and satisfy its common carrier obligations. Since the Agencies are not obtaining any common carrier obligations with respect to the Rail Lines, and do not have any ability to interfere with FGLK's operations or common carrier obligations, the Board should find that the Agencies will not as a result of consummation of the transactions become carriers with respect to the Rail Lines.

Conclusion

For the reasons outlined above, the Agencies request that the Board find that, as a result of the transactions outlined in the Notice of Exemption, the Agencies will not be acquiring any common carrier obligations with respect to the Rail Lines, and will not become carriers with respect thereto. Accordingly, the Agencies request that the Board grant the Motion to Dismiss the Agencies' Notice of Exemption.

⁴ For liability protection purposes, the Agencies prefer to lease the property rather than taking title to the property.

As noted above, the transaction documents are being held in escrow. In order that the transactions and the new PILOT arrangements can be implemented in a timely manner, the Agencies request that the Board rule on this Motion to Dismiss in an expedited manner, and as close to the effective date of the Notice of Exemption (30 days from today) as possible.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

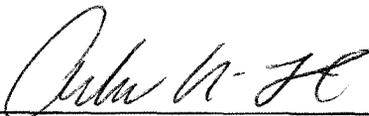
Dated: March 15, 2016

Attorneys for Cayuga County Industrial
Development Agency, Onondaga County
Industrial Development Agency, Ontario
County Industrial Development Agency,
Schuyler County Industrial Development
Agency, and Yates County Industrial
Development Agency

VERIFICATION

I, Andrew Fish, Executive Director of Cayuga County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 11, 2016

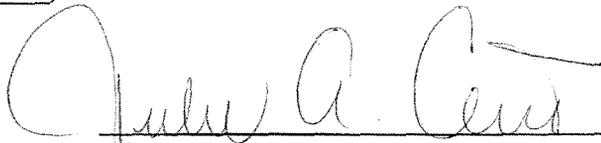


Andrew Fish

VERIFICATION

I, Julie Cerio, Executive Director of Onondaga County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 12, 2016



Julie Cerio

VERIFICATION

I, Michael Manikowski, Executive Director of Ontario County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 12, 2016



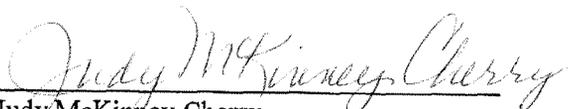
Michael Manikowski

VERIFICATION

I, Judy McKinney-Cherry, Chief Executive Officer of Schuyler County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file the foregoing document.

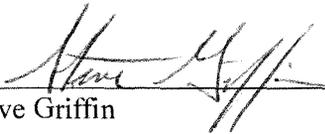
Executed on 2/11, 2016


Judy McKinney-Cherry

VERIFICATION

I, Steve Griffin, Chief Executive Officer of Yates County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 12, 2016



Steve Griffin

EXHIBIT A

DEED

QUIT CLAIM DEED

THIS INDENTURE, made the 12th day of February, Two Thousand Sixteen,

BETWEEN: **SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with an address of 910 South Decatur Street Watkins Glen, New York 14891

party of the first part, and

FINGER LAKES RAILWAY CORP., a foreign business corporation of the State of Delaware and registered to conduct business within the State of New York with an address of P.O. Box 1099, Geneva, New York 14436

party of the second part.

WITNESSETH, that the party of the first part, in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, its distributees and assigns forever,

ALL THOSE TRACTS OR PARCELS OF LAND, situate in the Towns of Dix and Reading and the Village of Watkins Glen, County of Schuyler and State of New York, identified as Tax Account Nos.: 43.00-1-44, 65.09-1-80 and 65.14-2-33 (the "Premises").

Being and intending to convey the same premises conveyed to the party of the first part by Indenture dated July 21, 1995 and recorded in the Schuyler County Clerk's Office in Liber 304 of Deeds, page 393.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said Premises.

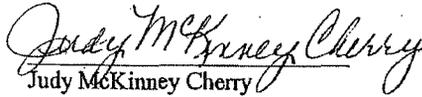
TO HAVE AND TO HOLD the Premises herein granted unto the party of the second part, its distributees and assigns forever.

SUBJECT TO the Trust Fund provisions of Section 13 of the Lien Law.

AND FURTHER SUBJECT TO a reserved leasehold interest in the Premises by the party of the first part with such reserved leasehold rights in the Premises to extend through to June 30, 2025 or earlier as memorialized within a certain Lease Agreement, dated as of the date hereof, a memorandum of which shall be recorded in the Schuyler County Clerk's Office immediately following this instrument.

IN WITNESS WHEREOF, the party of the first part has duly executed this Deed the day and year first written above.

SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY


Judy McKinney Cherry
Chief Executive Officer

STATE OF NEW YORK)

COUNTY OF SCHUYLER) ss:

On this 11th day of February, in the year 2016 before me, the undersigned, personally appeared JUDY MCKINNEY-CHERRY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public ANNE M. MACE
Notary Public - State of New York
#01MA6214740 Schuyler County
Commission Expires January 10, 2018

EXHIBIT B

LEASE AGREEMENT

FINGER LAKES RAILWAY CORP.

TO

SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

LEASE AGREEMENT

Railway Properties
Towns of Dix and Reading and the Village of Watkins Glen

Tax Map Numbers:

43.00-1-44, 65.09-1-80 and 65.14-2-33

Dated as of February 12, 2016

LEASE AGREEMENT
(Company to Agency)

THIS LEASE AGREEMENT, dated as of February 12, 2016, by and between **FINGER LAKES RAILWAY CORP.**, a foreign business corporation of the State of Delaware and registered to conduct business within the State of New York with an address of P.O. Box 1099, Geneva, New York 14456 (the "Company") and **SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 910 South Decatur Street, Watkins Glen, New York 14891 (the "Agency").

WITNESSETH:

Pursuant to a certain Quitclaim Deed, dated as of the date hereof, the Agency transferred certain real property, including any buildings, structures or improvements thereon, described in Exhibit A attached hereto (the "Leased Premises") and reserved a leasehold interest in such Leased Premises (the "Reservation of Lease") pursuant to the terms contained herein (this "Lease Agreement"), during the term of that certain Amended and Restated Lease Agreement, dated as of the date hereof, by and between the Agency and the Company (the "Agency Lease Agreement").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Granting Clause. The Company hereby acknowledges the Reservation of Lease and leases to the Agency the Leased Premises, upon the terms and conditions of this Lease Agreement.

2. Warranty of Title. The Company agrees that title to the Leased Premises shall be good and marketable as a line of railroad and will be sufficient for the purposes intended by this Lease Agreement.

3. Term. The term of this Lease Agreement shall be coterminous with the term of the Agency Lease Agreement (the "Lease Term"). This Lease Agreement shall not be bound by the parties hereto until the United States Surface Transportation Board (the "STB") determines that the Agency, as the lessee hereunder of the Leased Premises, is not a rail carrier subject to the jurisdiction of the STB.

4. Rent. The Agency agrees that it will pay to the Company, for the use of the Leased Premises, rent of One Dollar (\$1.00) per annum.

5. Taxes. The Company agrees to pay all taxes to be assessed on, or charges or expenses incurred with respect to, the Leased Premises during the Lease Term, as described in the Agency Lease Agreement, including PILOT Payments required pursuant to that certain PILOT Agreement, dated as of the date hereof, and entered into by the Agency and the Company. The Company, at its own expense and in its own name and on behalf or in the name

and on behalf of the Agency but with notice to the Agency, may in good faith contest any such taxes, assessments or other charges in accordance with the provisions set forth within the PILOT Agreement.

6. Maintenance and Insurance of Premises; Operation. The Company shall maintain and insure the Leased Premises. The Agency shall not be required to maintain the Leased Premises or incur any costs with respect to the Leased Premises. All insurance or condemnation proceeds shall be distributed and governed by the Agency Lease Agreement. The Agency's leasehold interest in the Facility shall be for the sole purpose of the Agency conferring financial assistance to the Company in its sovereign and/or municipal capacity, and such ownership or other interest undertaken by the Agency shall not include the right, authority or potential for the Agency to control railroad or other operations on or at the Facility, nor shall the Agency participate in the management or participate in the development of the Facility for railroad or other purposes. In particular, Agency shall not hold itself out to perform any railroad services on or over the Facility. The Company shall be the sole provider of railroad services on or over the Facility. Agency in exercising any of its rights under this Agency Lease Agreement shall not materially interfere with the Company's railroad operations on or over the Facility.

7. Lease Expiration. The parties agree that at the expiration of the Lease Term the Agency will surrender the Leased Premises to the Company pursuant to the terms and conditions of this Lease Agreement and the Agency Lease Agreement in the then condition of the Leased Premises.

8. Hold Harmless. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members and employees, and their respective successors or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Leased Premises or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Leased Premises or as a result of a breach by the Company of its representations or agreements contained herein or in the Leaseback Agreement, or (ii) liability arising from or expense incurred by the Agency's financing, construction, renovation, equipping, owning and leasing of the Leased Premises, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party.

9. Non-Merger. So long as any leasehold or sub-leasehold mortgage is in existence, unless all mortgagees shall otherwise expressly consent in writing, fee title to the Leased Premises and the leasehold estate of the Agency therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title

and said leasehold estate by Company or by Agency or by a third party, by purchase or otherwise.

10. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Schuyler County Industrial Development Agency
910 South Decatur Street
Watkins Glen, New York 14891
Attn: CEO

With Copy To: Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: Finger Lakes Railway Corp.
P.O. Box 1099
Geneva, New York 14456
Attn: Michael Smith, President

With Copy To: Law Offices of Lester A. Sittler, Esq.
P.O.Box 235
Fly Creek, New York 13337

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

11. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York (the "State") or of Schuyler County, New York, and neither the State of New York nor Schuyler County, New York, shall be

liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Leased Premises (except for revenues derived by the Agency with respect to the Unassigned Rights (as such term is defined in the Agency Lease Agreement)).

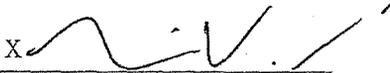
(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

(Remainder of page intentionally left blank)

(Signature Page to Lease Agreement)

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

FINGER LAKES RAILWAY CORP.

By: X 
Name: Michael V. Smith
Title: President

**SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Judy McKinney-Cherry
Title: Chief Executive Officer

(Signature Page to Lease Agreement)

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

FINGER LAKES RAILWAY CORP.

By: _____
Name: Michael V. Smith
Title: President

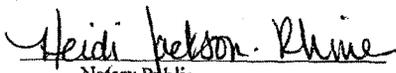
**SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Judy McKinney-Cherry
Name: Judy McKinney-Cherry
Title: Chief Executive Officer

(Acknowledgment Page to Lease Agreement)

NEW HAMPSHIRE
STATE OF ~~NEW YORK~~)
COUNTY OF BELKNAP) ss.:

On the 12th day of February in the year 2016, before me, the undersigned, personally appeared **MICHAEL V. SMITH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

HEIDI F. JACKSON-RHINE, Notary Public
My Commission Expires March 16, 2016

STATE OF NEW YORK)
COUNTY OF SCHUYLER) ss.:

On the _____ day of February in the year 2016, before me, the undersigned, personally appeared **JUDY MCKINNEY-CHERRY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

(Acknowledgment Page to Lease Agreement)

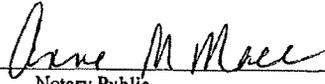
STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the ___ day of February in the year 2016, before me, the undersigned, personally appeared MICHAEL V. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF SCHUYLER)

On the 11th day of February in the year 2016, before me, the undersigned, personally appeared JUDY MCKINNEY-CHERRY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
ANNE M. MACE
Notary Public - State of New York
#01MA6214740 Schuyler County
Commission Expires January 10, 2018

EXHIBIT A

Legal Description of the Leased Premises

Being and intending to convey the same premises conveyed to the Agency by Indenture dated July 21, 1995 and recorded in the Schuyler County Clerk's Office in Liber 304 of Deeds, page 393.

SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TO

FINGER LAKES RAILWAY CORP.

AMENDED AND RESTATED LEASE AGREEMENT

Railway Properties
Towns of Dix and Reading and the Village of Watkins Glen

Tax Map Numbers:

43.00-1-44, 65.09-1-80 and 65.14-2-33

Dated as of February 12, 2016

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EXHIBIT C

**AMENDED AND RESTATED LEASE
AGREEMENT**

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (hereinafter the "Agency Lease Agreement"), dated as of February 12, 2016, is by and between the **SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 910 South Decatur Street, Watkins Glen, New York 14891 (the "Agency") and **FINGER LAKES RAILWAY CORP.**, a foreign business corporation of the State of Delaware and registered to conduct business within the State of New York with an address of P.O. Box 1099, Geneva, New York 14456 (the "Company").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into the laws of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, railroad and industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 21 of the Laws of 1971 of the State (hereinafter collectively, the "Act") created the Agency which is empowered under the Act to undertake the leasing of the facility described below; and

WHEREAS, the Agency and Company previously undertook a certain project (herein, the "Project") consisting of the acquisition, operation and maintenance of the "Geneva Cluster" of rail lines located within Yates County, Schuyler County, Seneca County, Cayuga County, Onondaga County and Ontario County, such Project having been primarily undertaken pursuant to a certain Lease Agreement, dated as of July 21, 1995 (the "1995 Lease"), and as a "Railroad Facility" authorized and approved in 1995 by the New York State Department of Transportation ("NYSDOT") pursuant to and in accordance with Section 854(11) of the Act; and

WHEREAS, in connection with the Agency's approval of an additional ten (10) year term for the 1995 Lease, which is contemplated within the Lease as a second renewal term subject to discretion of the Agency, the Agency and Company desire to enter into this Agency Lease Agreement as an amendment and restatement of the 1995 Lease whereby (i) the Company will continue to undertake the Project; (ii) the Agency will reserve a leasehold interest in the

Land and Improvements constituting the Facility (as each are defined within the 1995 Lease) pursuant to a Lease Agreement, dated as of the date hereof (the "Lease Agreement"), and (iii) the Agency will lease its reserved interest in the Facility back to the Company pursuant to the terms and conditions contained herein; and

WHEREAS, the Agency has determined that the continued providing of the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the Agency to continue operating the Project and Facility as a "project" and "railroad facility" as each are defined within the Act; and

WHEREAS, the Agency proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in this Agency Lease Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

REPRESENTATIONS AND COVENANTS

Section 1.1. Representations and Covenants of the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Agency Lease Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

(b) The Agency has duly authorized the execution and delivery of this Agency Lease Agreement.

(c) The Agency will reserve a leasehold interest in the Facility pursuant to a certain Quitclaim Deed, dated as of the date hereof (the "Deed") and as memorialized within the Lease Agreement, and lease the Facility to the Company pursuant to this Agency Lease Agreement, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Schuyler and improving their standard of living.

(d) Neither the execution and delivery of this Agency Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agency Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Agency Lease Agreement by the undertaking of the Company to operate, repair and maintain the Facility and related jobs and rail services in the County of Schuylers, New York.

(f) Pursuant to a certification received from NYSDOT, dated as of December 17, 2015, the execution and delivery of this Agency Lease Agreement and related documents does not require review or approval of the Commissioner of NYDOT pursuant to Section 854(11) of the Act. The Agency's leasehold interest in the Facility shall be for the sole purpose of the Agency conferring financial assistance to the Company in its sovereign and/or municipal capacity, and such ownership or other interest undertaken by the Agency shall not include the right, authority or potential for the Agency to control railroad or other operations on or at the Facility, nor shall the Agency participate in the management or participate in the development of the Facility for railroad or other purposes. In particular, Agency shall not hold itself out to perform any railroad services on or over the Facility. The Company shall be the sole provider of railroad services on or over the Facility. Agency in exercising any of its rights under this Agency Lease Agreement shall not materially interfere with the Company's railroad operations on or over the Facility.

Section 1.2. Representations and Covenants of the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a foreign business corporation organized, validly existing and in good standing under the laws of the State of Delaware and registered to undertake business within the State of New York, has the authority to enter into this Agency Lease Agreement and has duly authorized the execution and delivery of this Agency Lease Agreement.

(b) Neither the execution and delivery of this Agency Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agency Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Facility and the operation thereof will conform to all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having

jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d). The Company shall operate the Facility in accordance with this Agency Lease Agreement and as a qualified "project" and "railroad facility" under the Act.

(e) Pursuant to the Lease Agreement, the Company has caused to be transferred to the Agency leasehold interest in all those properties and assets contemplated by this Agency Lease Agreement and all documents related hereto.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agency Lease Agreement.

(g) The Company covenants that the Facility will comply in all respects with all applicable environmental laws and regulations, and the Company also covenants that at all times during which it is operating the Project, and whether or not this Agency Lease Agreement is in effect, it will comply with, and ensure compliance by its subtenants or sublessees with, the provisions of the Environmental Compliance and Indemnification Agreement, dated on or about the date hereof (the "Environmental Compliance Agreement").

(h) The Company has provided to the Agency a certificate or certificates of insurance containing all of the insurance provision requirements included under Sections 3.4 and 3.5 hereof. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

Section 1.3. Public Authorities Law Representations. The parties hereto hereby acknowledge that the Facility and the interest therein conveyed to the Agency under the Lease Agreement, and conveyed by the Agency back to the Company pursuant to the terms of this Agency Lease Agreement are not "property" as defined in Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the Company's obligations to the Agency under the PILOT Agreement, the Environmental Compliance Agreement and this Agency Lease Agreement, including (i) the Company's obligation to operate, repair and maintain the Facility on behalf of the Agency and (ii) the performance by the Company of the Unassigned Rights.

ARTICLE II

FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

Section 2.1. Agreement to Convey to Agency. The Company has conveyed to the Agency a leasehold interest in real property (the "Land"), including any buildings, structures or improvements thereon (the "Improvements", and collectively with the Land, the "Facility"), described in Exhibit A attached hereto and the Company has or will convey all of the interest in

the equipment described in Exhibit B (the "Equipment"). The Company agrees that the Agency's interest in the Facility resulting from said conveyances will be sufficient for the purposes intended by this Agency Lease Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Facility.

Section 2.2. Amendment and Restatement of 1995 Lease; Operation, Repair and Maintenance of the Facility. (a) The Agency and Company hereby acknowledge and agree that this Agency Lease Agreement shall and hereby amends and restates the 1995 Lease in entirety.

(b) The Company will undertake the Project in accordance with the terms set forth herein, including the continual operation, repair and maintenance of the Facility to substantially Federal Railroad Administration ("FRA") Class 1 Rail Standards, but where traffic does not warrant, track conditions shall be adequate for the traffic to be handled.

(c) The Company hereby agrees to pay the Agency administrative fee, the fees of local counsel to Agency and/or the fees of transaction counsel, and any and all fees, costs and expenses incurred in the acquisition, rehabilitation, construction and equipping of the Project, including recording fees and taxes and any other fees or expenses due hereunder.

Section 2.3. Demise of Facility. The Agency hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Agency Lease Agreement. This Agency Lease Agreement shall not be bound by the parties until the United States Surface Transportation Board (the "STB") determines that the Agency, as the lessor hereunder of the Leased Premises, is not a rail carrier subject to the jurisdiction of the STB.

Section 2.4. Remedies to be Pursued Against Contractors and Subcontractors and their Sureties. In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Company deems reasonably necessary, and in such events the Agency, at the Company's expense (including but not limited to reasonable attorneys' fees), hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding.

Section 2.5. Duration of Lease Term; Quiet Enjoyment. (a) The Company shall retain sole and exclusive possession of the Facility (subject to the provisions of Sections 5.3 and

7.1 hereof) and the leasehold estate created hereby shall continue uninterrupted subject to the terms and conditions contained herein.

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on **June 30, 2025**, or on such earlier date as may be permitted by Section 8.1 hereof.

(c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term.

(d) The Agency shall, subject to the provisions of Sections 5.3 and 7.1 hereof, neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Agency Lease Agreement, to prevent the Company, during the term of this Agency Lease Agreement, from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

(e) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivering and recording any necessary terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Agency Lease Agreement as shall be reasonably necessary to terminate the Agency's leasehold interest in the Project upon the expiration or termination hereof. Notwithstanding any such expiration or termination of this Agency Lease Agreement, the Company's obligations under Sections 3.3 and 5.2 hereof and under the Environmental Compliance Agreement shall continue notwithstanding any such termination or expiration.

Section 2.6. Rents and Other Consideration. The rental obligations during the Lease Term are hereby reserved and the Company shall pay rent for the Facility as follows:

(a) Upon execution of this Agency Lease Agreement, One Dollar (\$1.00) for the period commencing on the date hereof and ending on **December 31, 2016**, and on January 1 of each calendar year thereafter an amount equal to One Dollar (\$1.00) annually.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the term of this Agency Lease Agreement, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's ownership or leasing of the Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Agency Lease Agreement.

(c) Agency Annual Administrative Fee. The Company, as a component of rentals payable hereunder, shall pay to the Agency an annual administrative fee each year during the Lease Term, beginning May 15, 2016 and thereafter on May 15 of each year during the term hereof, in the following amounts:

2016 – 2019 - \$3,000.00

2020 – 2022 - \$3,500.00

2023 – 2025 - \$4,000.00

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Company shall fail to timely make any payment required in this Section 2.6, the Company shall pay the same together with interest from the date said payment is due at the rate of twelve percent (12%) per annum.

(e) The Agency's willingness to enter into this Agency Lease Agreement is conditioned upon the undertaking by the Company to enter into a written agreement with the Agency with respect to occupations and crossings across or transverse, but not longitudinal, through and over the Facility containing mutually agreeable terms to be arrived at in good faith by the Agency and Company (the "Facility Occupations Agreement"). The Facility Occupations Agreement shall be negotiated and executed by the Agency and Company no later than March 31, 2016. Failure by the Company to enter into such Facility Occupations Agreement shall constitute an Event of Default hereunder.

Section 2.7. Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Agency Lease Agreement or (iii) except as provided in Sections 6.1 and 8.1 hereof, terminate this Agency Lease Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to occupy, use and maintain the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part of the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease Agreement, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Agency Lease Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 5.2 hereof, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estates of the Company hereunder, except upon the written consent of the Company. None of the foregoing shall relieve the Company of its obligations under Section 5.2 hereof.

ARTICLE III
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 3.1. Maintenance and Modifications of Facility by Company. (a) The Company agrees that during the term of this Agency Lease Agreement it or its operator will (i) keep the Facility in as reasonably safe condition as its operations shall permit, and in all cases continually maintain and operate during the Lease Term to substantially FRA Class 1 rail standards, but when traffic does not warrant track conditions shall be adequate for the traffic to be handled; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; (iv) operate the Facility such that it continues to qualify as a "project" and "railroad facility" under the Act and pursuant to the terms contained herein; and (v) indemnify and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), (iii) or (iv) above.

(b) The Company, at its own expense, from time to time may make any structural addition, modifications or improvements to the Facility or any addition, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility; *provided, however*, that, the Company shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) authorized by the Agency and the Company is acting as agent for the Agency under an Agent Agreement between the Agency and the Company which contemplates said additions, modifications or improvements or (ii) as otherwise provided by law.

Section 3.2. Installation of Additional Equipment. The Company, from time to time, may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company, from time to time, may remove or permit the removal of such machinery, equipment or other personal property.

Section 3.3. Taxes, Assessments and Utility Charges. (a) The Company agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or revenues of the Agency from the Facility, (ii) all payments under a certain payment-in-lieu-of-tax agreement, dated as of the date hereof, by and between the Agency and the Company (the "PILOT Agreement"); (iii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; *provided*, that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Agency Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company, at its own expense and in its own name and on behalf or in the name and on behalf of the Agency but with notice to the Agency, may in good faith contest any such taxes, assessments and other charges in accordance with the provisions set forth within the PILOT Agreement.

Section 3.4. Insurance Required. At all times throughout the Lease Term, including, without limitation, during any period of rehabilitation and construction of the Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Federal Employer's Liability Act ("FELA") insurance, disability benefits insurance and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(b) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

Section 3.5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 3.4 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interests may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Agency Lease Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease Agreement.

(c) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

Section 3.6. Application of Net Proceeds of Insurance. The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 3.7. Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the premium for such insurance. The Company shall reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV

DAMAGE, DESTRUCTION, ABANDONMENT AND CONDEMNATION

Section 4.1. Damage or Destruction. (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Agency Lease Agreement:

(i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease Agreement; and

(iii) except as otherwise provided in subsection (b) of this Section 4.1, and subject to the Lender Mortgage, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and may use insurance proceeds for all such purposes.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to replace, repair, rebuild or restore the Facility if the Company exercises its option to terminate portions of this Agency Lease Agreement pursuant to Section 6.1 hereof.

(c) The Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

Section 4.2. Condemnation. (a) If at any time during the term of this Agency Lease Agreement the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease Agreement. The Agency shall not have any interest whatsoever in any condemnation award, and the Company shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company shall promptly:

(i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or

(ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility subject to Agency consent.

The Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to restore the Facility or acquire a substitute facility, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a) above, if the Company shall exercise its option to terminate this Agency Lease Agreement pursuant to Section 8.1 hereof.

(c) The Agency shall cooperate fully with the Company in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the Agency voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of the Company.

Section 4.3. Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

Section 4.4 Abandonment. The Company shall have the right to discontinue or abandon rail service over all or a portion of the Facility if it determines that operation is not economically feasible and if it obtains all necessary authorization from the Surface Transportation Board and any other regulatory agency. The Company shall provide the Agency with a minimum of ninety (90) days advance written notice of any application to the Surface Transportation Board or any other regulatory body with respect to the abandonment of or discontinuance of freight service through the Facility, or any portion thereof.

ARTICLE V
SPECIAL COVENANTS

Section 5.1. No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 5.2. Hold Harmless Provisions. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members, directors, agents (other than the Company) and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency's leasing of the Facility, including, without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.

Section 5.3. Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to the Facility.

Section 5.4. Agreement to Provide Information. The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Company's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency.

Section 5.5. Books of Record and Account; Financial Statements. (a) The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company relating to the Facility.

(b) Within one hundred twenty (120) days after the close of the fiscal year of the Company during the Lease Term, the Company shall furnish to the Agency (i) copies of all annual reports and incident reports filed with NYSDOT, and (ii) a profit and loss statement and balance sheet of the Company for the immediately preceding year, all in reasonable detail, and accompanied by the review opinion of an independent public accountant (collectively, the "Annual Reports"). The foregoing reports shall clearly delineate the amount of annual freight revenue ("Annual Freight Revenue") derived by the Company from services provided within and

through the Geneva Cluster (which includes all rail facilities located within the Counties of Ontario, Seneca, Yates, Schuyler, Cayuga and Onondaga). "Annual Freight Revenue" shall have the meaning as set forth in the PILOT Agreement, Schedule A.

(c) The reports delivered by the Company pursuant to subsection (b), above, shall be accompanied by a certificate executed by the Company stating that no Event of Default hereunder has occurred and is continuing or, if an Event of Default does exist, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

(d) With respect to the Annual Reports, the Company acknowledges that the Agency, as a public benefit corporation, is subject to the New York State Freedom of Information Law ("FOIL") and Open Meetings Law ("OML"), as codified pursuant to the Public Officers Law ("POL") of the State of New York (the "State"). Accordingly, unless portions of the Annual Reports are otherwise protected, the entirety of the Annual Reports shall be subject to public disclosure in accordance with applicable provisions of the POL, Article 18-A of the General Municipal Law ("GML") and the Public Authorities Accountability Act of 2005, as codified within the Public Authorities Law ("PAL") of the State. Specifically, the Annual Reports may be disclosed by the Agency to any member of the public pursuant to a properly submitted request under FOIL and the Agency is further required to affirmatively disclose certain provisions contained within the Annual Reports pursuant to the GML and PAL.

Notwithstanding the foregoing, the Company, pursuant to the certification provided pursuant to (c), above, may formally request that the Agency consider certain information contained therein proprietary information and "trade secrets", as defined within POL Section 87(2)(d). To the extent that any such information should qualify as trade secrets, the Company shall specifically identify pages and sections to be redacted in the event that formal disclosure is requested by any party pursuant to FOIL. In the event that the Agency is served with or receives any subpoena, request for production, discovery request, or information request in any forum that calls for the disclosure of the Annual Reports, in entirety, specifically including but not limited to any demand or request for production or review of Company-designated trade secrets, the Agency agrees to notify the Company as promptly as is reasonably possible, and to utilize its best efforts to: oppose or decline any such request; preserve the confidentiality and non-disclosure of such requested confidential material; and maintain such information and prevent inadvertent disclosure in responding to any such discovery or information request. The Company understands and agrees that all reasonable costs, including attorney's fees, associated with any such formal undertaking by the Agency to protect the trade secrets from disclosure shall be reimbursed by the Company to the Agency.

Section 5.6. Compliance With Orders, Ordinances, Etc. (a) The Company agrees that it will, throughout the term of this Agency Lease Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the Facility, courts, authorities, officials and officers, which

now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company will endeavor to give notice of the foregoing to the Agency but failure to do so shall not be a breach of this Agency Lease Agreement.

Section 5.7. Discharge of Liens and Encumbrances. (a) The Company shall not permit or create or suffer to be permitted or created any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof except any liens existing on the date hereof. This provision shall not prohibit the Approved Liens as they are defined in Section 6.1(a) hereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with prior written notice to the Agency, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing said lien to be removed.

Section 5.8. Depreciation Deductions and Investment Tax Credit. The parties agree that the Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Sections 38 and 42 of the Internal Revenue Code with respect to any portion of the Facility which constitutes "Section 38 Property" or "Section 42 Property."

ARTICLE VI
RELEASE OF CERTAIN LAND; ASSIGNMENTS
AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

Section 6.1. Restriction on Sale of Facility; Release of Certain Land. (a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company (the "Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, the Lender and the Company, for purposes of financing the improvement of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns (the "Approved Liens"), the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof, or any of its rights under this Agency Lease Agreement, without the prior written consent of the Company. Under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rentals described in Section 2.6 hereof or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 hereof or (i) the right of the Agency on its own behalf

to receive all opinions of counsel, reports, financial information, certificates, insurance policies or binders or certificates, or other notices or communications required to be delivered to the Agency hereunder or otherwise reasonably requested by the Agency; (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency hereunder; (iii) the right of the Agency in its own behalf to enforce the obligation of the Company to complete the Project and to confirm the qualification of the Project as a "project" under the Act; (iv) the right of the Agency to amend with the Company this Agency Lease Agreement, and the right of the Agency to exercise its rights and remedies hereunder or under the Environmental Compliance Agreement; (v) the right of the Agency on its own behalf to declare an Event of Default under Section 7.1 hereof; and (vi) the right of the Agency as to any of the foregoing, exercisable with respect to any sublessees or subtenants (collectively, the "Unassigned Rights").

(b) With the exception of the Unassigned Rights, the Agency agrees that this Agency Lease Agreement shall be subordinate to mortgage liens granted by the Company and the Agency in favor of any lender (the "Mortgagee") executed and delivered herewith and all further mortgages hereafter placed on the Leased Premises with the consent of the Agency and the Mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 of this Agency Lease Agreement, or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 hereof.

(c) The Agency upon the request of the Company from time to time may release from the provisions of this Agreement and the leasehold estate created hereby, as well as the leasehold estate created by the Lease Agreement, any part of, or interest in, the Land or Improvements which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the sole cost and expense of the Company, shall execute and deliver any and all instruments necessary or appropriate to so release such part of, or interest in, the Land and convey such title thereto or interest therein to the Company or such other Person as the Company may designate.

(d) As a condition to executing and delivering any documents in connection with any such conveyance, the Company shall provide the Agency with (i) a copy of the instrument proposed to convey such title or interest in such land; (ii) an instrument survey of the land proposed to be conveyed; (iii) a certificate of an authorized representative of the Company stating that no Event of Default under this Agreement has occurred and is continuing and that such Land or interest therein is not necessary, desirable or useful for the Facility; (iv) a certificate of an authorized representative of the Company, or if the conveyance is for a consideration in excess of \$50,000 of an independent engineer, stating that the proposed transfer will not materially impair the efficient operation of the Facility or the means of ingress thereto or egress therefrom and that such Land or interest therein is not necessary, desirable or useful for the Facility; and (v) a certificate from the Mortgagees under any mortgage consenting to such conveyance.

(e) No conveyance of any Land or interest therein constituting a portion of the Facility effected under the provisions of this Section 6.1 shall entitle the Company to any abatement or diminution of the rents payable under Section 2.6 hereof including any PILOT Payments payable pursuant to the PILOT Agreement.

Section 6.2. Removal of Equipment. (a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement of or diminution of the rents payable under Section 2.6 hereof.

Section 6.3. Assignment and Subleasing. (a) This Agreement may be assigned in part and the Facility may be subleased in part by the Company; provided that any assignment in whole or sublease to anyone for the purposes of operating a railroad, then such assignment or sublease may only be made with the prior written consent of the Agency (which consent may not be unreasonably withheld or delayed but may be subject to such reasonable conditions as the Agency may deem appropriate) and provided that:

(1) No assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;

(2) The assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(3) The Company shall, within thirty (30) days prior to execution of such assignment or sublease, furnish or cause to be furnished to the Agency a true and complete copy of each such assignment or sublease, as the case may be, and the instrument of assumption.

(4) The Facility shall continue to constitute a "Project", as such quoted term is defined in the Act; and

(5) Neither the validity nor the enforceability of this Agreement shall be adversely affected thereby.

(b) No assignment or sublease entered into pursuant to subsection (a) of Section 6.3 may be modified or amended without the prior written consent of the Agency (which consent may not be unreasonably withheld or delayed but may be subject to such reasonable conditions as the Agency may deem appropriate. Any such assignment or sublease is subject to

the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel.

ARTICLE VII

DEFAULT

Section 7.1. Events of Default Defined. (a) Each of the following shall be an "Event of Default" under this Agency Lease Agreement:

(1) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 of this Agency Lease Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company; or

(2) If there is any purposeful, willful and knowing breach by the Company of any of its other agreements or covenants set forth in this Agency Lease Agreement, including any complete abandonment of the Project or complete discontinuance of freight service on the Project for a period of one hundred twenty (120) days or more; or

(3) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Agency Lease Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or

(4) If any representation or warranty of the Company contained in this Agency Lease Agreement is incorrect in any material respect; or

(5) If an Event of Default shall occur under the PILOT Agreement.

(b) Notwithstanding the provisions of 7.1(a) above, if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Agency Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Agency Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 2.6 and 3.3 hereof, to

obtain and continue in full force and effect the insurance required by Section 3.4 hereof, to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.3, 5.6, 5.7, and 7.1(a)(1) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 7.2. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6(a) hereof and (ii) all other payments due under this Agency Lease Agreement.

(2) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

(3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Agency Lease Agreement.

(4) Terminate this Agency Lease Agreement.

Section 7.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agency Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII
EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY

Section 8.1. Early Termination of Agreement.

(a) The Company shall have the option at any time to terminate this Agency Lease Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.

(b) The Agency shall have the option at any time to terminate this Agency Lease Agreement and to demand immediate payment in full of the accrued rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence of an Event of Default hereunder.

Section 8.2. Obligation to Terminate Leasehold Estate. Upon termination of the term of this Agency Lease Agreement in accordance with Sections 2.5, 7.2 or Section 8.1 hereof, the Agency shall surrender its leasehold estate for One Dollar (\$1.00) plus all accrued rental reserved and unpaid as described in Section 2.6 hereof (the "Purchase Payment"). The Company shall exercise its obligation to purchase or option to have the Agency's leasehold interest terminated by giving written notice to the Agency and paying said amount to the Agency.

Section 8.3. Conveyance on Purchase. At the termination of the Company's leasehold interest in the Facility pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the Purchase Payment, deliver to the Company all necessary documents to reflect termination of the Agency's leasehold interest including termination of the Lease Agreement.

ARTICLE IX
MISCELLANEOUS

Section 9.1. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Schuyler County Industrial Development Agency

910 South Decatur Street
Watkins Glen, New York 14891
Attn: CEO

With Copy To: Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: Finger Lakes Railway Corp.
P.O. Box 1099
Geneva, New York 14456
Attn: Michael Smith, President

With Copy To: Law Offices of Lester A. Sittler, Esq.
P.O.Box 235
Fly Creek, New York 13337

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this section.

Section 9.2. Binding Effect. This Agency Lease Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

Section 9.3. Severability. In the event any provision of this Agency Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. Amendments, Changes and Modifications. This Agency Lease Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 9.5. Execution of Counterparts. This Agency Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 9.6. Applicable Law. This Agency Lease Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

Section 9.7. Recording and Filing. This Agency Lease Agreement (or a memorandum thereof) shall be recorded or filed, as the case may be, in the Office of the Clerk of

Schuyler County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 9.8. Survival of Obligations. This Agency Lease Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 and all indemnities shall survive any termination or expiration of this Agency Lease Agreement.

Section 9.9. Section Headings Not Controlling. The headings of the several sections in this Agency Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agency Lease Agreement.

Section 9.10. No Broker. Agency and Company represent and warrant to the other that neither the Agency nor the Company has dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Agency Lease Agreement, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

Section 9.11. No Recourse; Special Obligation. (a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his/her individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York or Schuyler County, New York and neither the State of New York nor Schuyler County, New York shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with

such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 9.12. No Joint Venture Created. The Agency and the Company mutually agree that by entering into this Agency Lease Agreement the parties hereto are not entering into a joint venture.

(Remainder of page intentionally left blank)

[Signature Page to Agency Lease Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease Agreement to be executed in their respective names, all as of the date first above written.

**SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Judy McKinney-Cherry
Name: Judy McKinney-Cherry
Title: Chief Executive Officer

FINGER LAKES RAILWAY CORP.

By: _____
Name: Michael V. Smith
Title: President

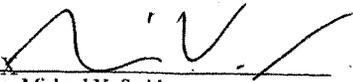
[Signature Page to Agency Lease Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease Agreement to be executed in their respective names, all as of the date first above written.

**SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Judy McKinney-Cherry
Title: Chief Executive Officer

FINGER LAKES RAILWAY CORP.

By: 
Name: Michael V. Smith
Title: President

[Acknowledgment Page to Agency Lease Agreement]

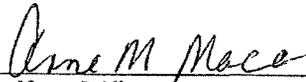
STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the ___ day of February in the year 2016, before me, the undersigned, personally appeared MICHAEL V. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF SCHUYLER)

On the 11th day of February in the year 2016, before me, the undersigned, personally appeared JUDY MCKINNEY-CHERRY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public, ANNE M. MACA

Notary Public - State of New York
#01MA6214740 Schuyler County
Commission Expires January 10, 2018

EXHIBIT A

Legal Description of Leased Premises

Being and intending to convey the same premises conveyed to the Agency by Indenture dated July 21, 1995 and recorded in the Schuyler County Clerk's Office in Liber 304 of Deeds, page 393.

EXHIBIT B

Equipment

All machinery, apparatus, appliances, equipment, fittings, fixtures and furnishings and other property of every kind and nature whatsoever now or hereafter affixed to, located upon, appurtenant thereto or usable in connection with the present or future operation and occupancy of the Facility together with any replacements therefore to the extent acquired in the name of the Agency by the Company pursuant to the Agency appointment described in Section 2.2 herein or to the extent the Company conveys title to the Agency.