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**VIA EMAIL**

Ms. Cynthia T. Brown  
Chief Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423

**RE: FD-35383, Eastern Berks Gateway Railroad Company – Modified Rail  
Certificate in Berks County, PA**

Dear Ms. Brown:

I am writing on behalf of the Redevelopment Authority of the County of Berks, PA ("BERKS"), in connection with the above – captioned proceeding.

On March 27, 2014, BERKS acquired a line of railroad formerly owned by Berks County, PA, and leased to Eastern Berks Gateway Railroad Company.

BERKS has entered into a new lease and operating agreement with Eastern Berks Gateway Railroad Company. I am submitting an executed copy of the redacted copy of that agreement to be placed in the public docket.

Sincerely yours,

John D. Heffner

cc: Pam Cala

Enclosure

Strasburger & Price, LLP

## LEASE & OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT (hereinafter known as "Lease Agreement"), made this 27<sup>th</sup> day of March, 2014, between the REDEVELOPMENT AUTHORITY OF THE COUNTY OF BERKS, a public body and a body corporate and politic created and organized under the laws of the Commonwealth of Pennsylvania (hereinafter known as the "Authority"), having its principal offices at the Berks County Services Center, 633 Court Street, 14th Floor, Reading, PA 19601-4310 and the EASTERN BERKS GATEWAY RAILROAD COMPANY, a Pennsylvania corporation (hereinafter known as "EBGR") having a mailing address of Post Office Box 492, Boyertown, PA 19512; each sometimes hereinafter individually referred to as a "Party" and sometimes collectively referred to as the "Parties."

WHEREAS, the Authority is the owner of that certain rail line located in Berks and Montgomery Counties, Pennsylvania and consisting of all of the track and right-of-way known as the Colebrookdale Line between the connection with Norfolk Southern Railway Company ("NSR") at milepost 0.0 at Pottstown, Pennsylvania to the end of the Colebrookdale Line at milepost 8.6 at Boyertown, Pennsylvania, a distance of approximately 8.6 miles (hereinafter the "Line" or "Rail Line");

WHEREAS, the Authority acquired the Line as an "abandoned line of railroad" as that term is interpreted under applicable law from the County of Berks, the County itself having purchased the Line, as provided in 49 C.F.R. 1150.21 et seq., for the purpose of preserving the Line and restoring rail freight service thereon;

WHEREAS, the Authority desires to lease the Line to a rail common carrier duly licensed by the federal Surface Transportation Board ("STB") that will assume the obligation to provide reliable common carrier rail freight service, perform routine maintenance and repairs, and use its best efforts to increase the volume of rail freight traffic on the Line;

WHEREAS, EBGR had been operating the Line pursuant to a lease with Berks County and desires to lease the Line from the Authority and is willing to assume the obligations and responsibilities to market, operate and maintain the Line as provided herein;

WHEREAS, the Line is shown on the print marked as Exhibit A attached hereto and hereby made a part hereof, and together with the property described in SECTION 1.02 is hereinafter referred to as the "Leased Premises";

WHEREAS, the Parties desire to enter into this Lease Agreement, setting forth the terms and conditions for the use, management and operation of the Leased Premises described above.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties agree as follows:

1. LEASE OF THE PREMISES

1.01 The Authority does hereby lease to EBGR, and EBGR does hereby lease from the Authority, the Leased Premises described in the Recitals above. Any

extension of the Line or expansion of the rail facilities owned by the Authority on or adjacent to the Line, except those facilities described in SECTION 1.04 herein, shall be included in the Leased Premises herein by written amendment hereto. EBGR's lease of the Leased Premises including any expansion or extension thereof shall be for EBGR's sole and exclusive use and possession for the purpose of providing rail transportation operations and services thereon and thereover as hereinafter described in this Lease Agreement.

1.02 The Leased Premises shall include, without limitation, land, right-of-way, tracks, rails, ties, ballast, all other track materials including loose materials on the Leased Premises, signals, switches, crossties, buildings, bridges, culverts, crossing devices, signs, inventories, materials and supplies, as more specifically described in Exhibit B attached hereto and incorporated herein, but excluding any and all (a) communications equipment and (b) items of personal property not owned by the Authority or not affixed to the land, including, without limitation, railroad rolling stock, locomotives, equipment, machinery or tools. Within thirty (30) days after the Commencement Date (which is defined in SECTION 1.04), the Authority shall remove all its personal property from the Leased Premises. Items not so removed shall be deemed included in the Leased Premises. EBGR expressly acknowledges that the Authority or its predecessors-in-title to the Leased Premises previously leased and/or licensed portions of the Leased Premises or granted easements thereover pursuant to written agreements with such lessees, licensees or grantees or conveyances to such lessees, licensees or grantees. This Lease Agreement is made subject to those leases, licenses and easements. To the extent that there exists, on the Leased Premises,

property owned by such prior lessees, licensees or grantees, that property may remain on the Leased Premises to the extent permitted by the terms of the lease, license or conveyance under which it was placed on the Leased Premises.

1.03 Prior to the Commencement Date, the Authority shall have been provided copies of all leases, licenses and other agreements relating to the Leased Premises in effect on the date of this Lease Agreement (the "Lessee Agreements") and shall have an opportunity to review and approve such Lessee Agreements. Simultaneously with the execution of this Lease Agreement, EBGR, by assignment agreement substantially in the form of Exhibit C hereto, shall assign to the Authority all Lessee Agreements; provided, however, EBGR shall assume the Authority's duties and obligations thereunder for the Term of this Lease Agreement.

1.04 The commencement date of this Lease Agreement shall be March 27, 2014 (the "Commencement Date").

1.05 EBGR may use the Line for any purposes normally associated with rail service including provision of common carrier freight service, common carrier or tourist passenger service, storing of nonrevenue rail cars, storage and repair of railroad equipment, operation of an intermodal transfer facility, and operation of a railroad museum.

1.06 The relationship of the Parties shall be that of independent contractors. EBGR shall have no ability to bind the Authority and the Authority shall have no ability to bind EBGR.

## 2. CONDITION OF LEASED PREMISES

2.01 The Authority makes no representations or warranties as to the condition of the Leased Premises as of the date of this Lease Agreement and, except as provided herein, EBGR assumes full responsibility for the Leased Premises on the date hereof "AS IS, WHERE IS".

2.02 EBGR acknowledges and accepts the condition of Leased Premises on the date of this Lease Agreement and further agrees to assume all responsibilities and obligations to rehabilitate all main tracks of the Rail Line on the Leased Premises to Federal Railroad Administration ("FRA") Class 2 and all industrial spur, team, yard, switching and side tracks to not less than FRA Class 1 condition within twelve (12) months following the Commencement Date of this Lease Agreement. The Parties, by mutual agreement, may designate specific tracks that are not subject to the minimum track standards set forth herein. Among those tracks that the Parties agree shall not be subject to the minimum tracks standards are the sidings to Campbell Fittings and the Colebrookdale Industrial Park.

The Parties acknowledge that said track rehabilitation will be an important part of the redevelopment of the Rail Line but will need to be accomplished as funds allow and with such timing as to accommodate other necessary goals of that redevelopment; provided, however, said track rehabilitation shall be completed no later than twelve (12) months following the Commencement Date of this Lease. Notwithstanding the foregoing the Parties, by mutual written agreement, may designate specific tracks that are not subject to the minimum track standards set forth herein.

2.03 The Authority shall have the right to encumber the Leased Premises for any purpose whatsoever, including but not limited to mortgages liens to secure financing or the granting of easements or rights-of-way provided such granting of mortgages liens, easements or rights-of-way do not inhibit or restrict EBGR's use and occupation of the Leased Premises.

3. INSPECTION OF LEASED PREMISES – [INTENTIONALLY DELETED]

4. TERM

4.01 Subject to the terms and provisions of this Lease Agreement, the Term of this Lease Agreement shall become effective on the Commencement Date and shall continue for a period of ten (10) years (the "Term"). Provided that Lessee is not in default of any material terms of this Agreement, Lessee shall have the right to renew for three (3) additional terms of ten (10) years by providing written notice at least six (6) months before the expiration of said lease term.

5. RENT

5.01 EBGR shall pay to the Authority monthly rent in the amount of \_\_\_\_\_ (the "Base Rent"), which shall be due and payable, in advance, without demand and without any offsets or deductions whatsoever, on the first day of each month during the Term of this Lease Agreement, commencing on the Commencement Date. In the event that the Commencement Date of this Lease Agreement shall commence on a date other than the first day of a calendar month, then

the Base Rent shall be prorated based upon the number of days left within said calendar month.

5.02 In addition to the Base Rent, EBGR agrees to pay to the Authority, during the Term of this Lease Agreement, without set-off, deduction or abatement, the following additional sums (which, together with all other amounts (except Base Rent) payable by EBGR under this Lease Agreement are referred to as "Additional Rent"):

(a) any and all costs and expenses incurred by the Authority as a result of its ownership and leasing of the Leased Premises, including but not limited to all costs of insurance (with such coverage and in such amount as the Authority deems advisable, including without limitation liability insurance for personal injury, death and property damage, insurance against fire, extended coverage, theft or other casualties, workmen's compensation insurance covering personnel); removal of snow, ice, trash and debris; regulation of traffic; costs and expenses of repair or replacement of paving, curbs, walkways, landscaping, drainage, pipes, ducts, conduits and similar items, and lighting facilities; costs and expenses of providing energy to heat, ventilate and air-condition any buildings or structures located on the Leased Premises and owned by the Authority but utilized by EBGR, and reasonable legal, accounting and other professional fees provided in connection with the Leased Premises, and

(b) any and all costs and expenses incurred by the Authority in connection with financing improvements to the Leased Premises or additional real property, together with any improvements located thereon, to be added to the Leased Premises, including but not limited to loan fees, appraisals, installments of principal and/or interest, etc.

5.03 All Additional Rent shall be paid by EBGR in such amounts as are billed by the Authority to EBGR for each calendar quarter of each Lease year. Within thirty (30) days after the end of each calendar quarter of each Lease year, the Authority will certify to EBGR the amount of Additional Rent for payment by EBGR. In the event that the total Base Rent paid by EBGR during the immediately preceding calendar quarter (three months Base Rent) shall exceed the amount of Additional Rent for the same calendar quarter, the Authority shall credit the excess amount towards EBGR's next installment of Base Rent to effect such adjustment (or, if such adjustment is at the end of the Term of this Lease Agreement, pay EBGR), as the case may be. The failure of the Authority to provide such certification within the time prescribed above shall not relieve EBGR of its obligations generally for the specific Lease year in which any such failure occurs. In the event that the first or last Lease year shall consist of less than twelve (12) full calendar months, the provisions of this Section 5.03 shall still apply, but the quarterly period effected thereby shall be prorated.

5.04 EBGR shall pay a late charge in the amount of ten percent (10%) of the outstanding delinquent balance for any payment of Base Rent or Additional Rent not made within ten (10) days after the due date thereof to cover the extra expense involved in handling delinquent payment.

5.05 Any payment made by EBGR or acceptance by the Authority of a lesser amount than shall be due shall be treated as a payment on account. The acceptance by the Authority of a check or other form of payment for a lesser amount with an endorsement or statement thereon or upon any letter accompanying such check or

other form of payment that such lesser amount is payment in full shall be given no effect, and the Authority may accept such check or other form of payment without prejudice to any other rights or remedies which the Authority may have against EBGR.

5.06 The terms "Base Rent" and "Additional Rent" may, from time to time, be hereinafter referred to as "Rent".

## 6. OPERATING AUTHORITY

### Authority

6.01 The Authority requires EBGR to provide, and EBGR agrees to provide service upon reasonable demand defined as service within no more than three business days after a customer has requested service; however EBGR shall be under no obligation to provide service more than twice weekly.

6.02 At such time as EBGR has handled [ deleted ] revenue carloads of freight in any twelve consecutive calendar month period, or sooner in its sole discretion as applicable law may provide, EBGR may seek full authority from the Surface Transportation Board (the "STB"), pursuant to 49 U.S.C. 10902, or an exemption therefrom, to lease and operate the Line. In such event, the Authority, at the request of EBGR, shall advise the STB of the Authority's consent to such action.

## 7. MAINTENANCE OF THE LEASED PREMISES

7.01 EBGR and the Authority shall conduct a joint inspection of the Line on the Commencement Date and again at the termination of the Lease accompanied by such

personnel having expertise in the maintenance of rail lines including right-of-way, tracks, bridges, and signals. The parties shall note the condition of the Line at the time of inspection and the work required to rehabilitate the Line to the condition required in section 2.02.

7.02 EBGR agrees to maintain the Leased Premises including, but not limited to, all main tracks and all team, industrial, switching yard and side tracks on the Leased Premises to not less than the condition they were in on the Commencement Date as provided in SECTION 2.02 and upon completion of rehabilitation program to that condition, normal wear and tear excepted.

7.03 In the course of EBGR or its contractors conducting any maintenance or emergency repairs upon, appurtenant to or otherwise affecting the Leased Premises, it shall be the non-delegable responsibility of EBGR to notify the State Utility Notification Center and to comply with all laws, rules and regulations thereof.

7.04 EBGR shall be responsible to provide the Authority with an annual Maintenance Report identifying all maintenance and inspections performed by EBGR during the previous year. Notwithstanding anything to the contrary contained herein, during the first year of the Term of this Lease Agreement, EBGR shall provide to the Authority periodic written updates and reports (but no less than thirty days) on its operation of and maintenance and repairs to the Leased Premises and Rail Line.

7.05 EBGR shall be responsible for all inspections, maintenance, capital reconstruction and replacements of or repairs to all bridges on the Line and any track

and roadbed on the bridges, and the cost thereof during the Term of this Lease Agreement. In addition, EBGR shall do the following:

(a) EBGR shall be responsible for selecting a qualified railroad bridge inspector to perform all bridge inspections, including inspections required under the FRA'S Bridge Safety Standards set forth at 49 C.F.R Part 237 ("Bridge Safety Standards"), and the cost thereof.

(b) EBGR shall be responsible for the cost of all maintenance, capital reconstruction and replacements of or repairs to all bridges and any track and roadbed on the bridges, and the cost of all capital reconstruction and replacements of or repairs to the Leased Premises necessitated by: (a) man-made or nature disasters against which insurance is not normally available; (b) non-routine maintenance of the structural integrity of the infrastructure of the Leased Premises; and (c) all other items in the nature of major capital improvements of the Leased Premises including rehabilitating crossings. EBGR shall also be responsible for the cost of compliance with the FRA's Bridge Safety Standards set forth at 49 C.F.R. Part 237 regarding bridge ratings and any rehabilitation, reconstruction, replacements or repairs required thereunder once such standards become effective. EBGR shall, upon written approval by the Authority of EBGR's plans for such work, undertake to perform at its sole cost and expense such reconstruction, replacements, and repairs and such work as necessary to comply with the FRA's Bridge Safety Standards within a reasonable time after the need to do so arises.

7.05 EBGR and not the Authority shall be responsible for the cost of all routine maintenance (including the cost of replenishing ballast, replacing track material and signal components) necessary to maintain the tracks on the Leased Premises to the minimum standards specified in SECTION 2.02 and to comply with all rules and regulations of the FRA.

## 8. REPORTS AND AUDIT OF RECORDS

8.01 EBGR shall diligently prepare and file all reports, returns, and information required in connection with EBGR's operation of the Leased Premises by any and all federal, state and local governmental regulatory and taxing authorities with jurisdiction over the Leased Premises.

8.02 EBGR shall provide the Authority with a detailed written report on rail traffic on the Line annually including numbers, types of cars, commodities handled, and gross revenues generated from that traffic as well as from stored rail cars and transportation charges imposed for moving stored cars on or off the Line.

8.03 EBGR shall provide the Authority with a copy of any and all reports generated or issued by third parties which pertain to the Leased Premises within fifteen (15) days of EBGR's receipt of such materials. EBGR shall further provide the Authority with a copy of any and all reports regarding track, bridge crossing, and signal inspections conducted by the Pennsylvania Department of Transportation, the FRA and any other agency having jurisdiction, within fifteen (15) days of EBGR's receipt of such materials.

8.04 EBGR shall indemnify and hold the Authority harmless against any penalty and/or damages incurred by the Authority resulting from EBGR's failure to file or maintain any such reports, returns, or information.

8.05 Pursuant to Section 708 (b) (11) of the Pennsylvania Right-to-Know Law, the Authority shall hold in confidence and shall not disclose, except as may be ordered by a Court of competent jurisdiction, any confidential proprietary information contained in any report provided to the Authority by EBGR.

## 9. COMPENSATION

9.01 As compensation for all services rendered by EBGR in operating the Line, EBGR shall collect, for its use and benefit, the revenues to EBGR generated by any lawful use of the Leased Premises, which revenues shall include, but shall not be limited to:

(a) Revenue derived from charging customers for the transportation of freight on the Line including any applicable fuel or other surcharges;

(b) Revenue derived from connecting carriers, including, but not necessarily limited to: handling line charges, switching allowances, intra-line moves, and Rule 11 charges.

(c) Revenue derived from charging customers for special non-freight rail movements;

(d) Revenue derived from demurrage or rail car storage;

- (e) Revenue derived from any rail passenger service;
- (f) Revenue derived from providing warehousing, transloading or distribution services; and
- (g) Proceeds of any subsidy paid by shippers or receivers on the Line pursuant to 49 C.F.R. 1150.22.

9.02 EBGR shall be prohibited from the following acts:

- (a) Salvaging any part of the Rail Line without the prior written approval of the Authority, which approval may be withheld at the discretion of the Authority; or
- (b) Entering into any sub-leases involving the use, occupancy or operation of the Line by a third party without the prior written approval of the Authority, which approval may be withheld at the discretion of the Authority.

## 10. RAIL PASSENGER SERVICE

10.01 EBGR shall be permitted, but shall not be required, to provide rail passenger service including tourist or excursion service on the Line.

10.02 Any and all additional maintenance or operating expenses including liability insurance and indemnification of the Authority for its liability shall be borne in the entirety by EBGR or the sponsor of the rail passenger service.

## 11. SUB-LEASES AND LICENSES

11.01 EBGR shall not, without the Authority's prior written consent, enter into licenses, subleases or any other agreements with third parties for use of the Leased Premises.

## 12. INSURANCE

12.01 During the Term of this Lease Agreement, EBGR shall obtain and maintain the following insurance coverage relating to the Leased Premises:

(a) Railroad liability insurance coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate with a self-insured retention of not more than Twenty-Five Thousand Dollars (\$25,000) per occurrence. Such liability insurance shall include liability coverage for injury to or death of any persons whomsoever, and for damage to or destruction of any property whatsoever, and shall include, without limitation, pollution and environmental insurance coverage acceptable to the Authority.

(b) All risks property insurance coverage in an amount not less than One Hundred Thousand Dollars (\$100,000) per occurrence with a self-insured retention of not more than Twenty-Five Thousand Dollars (\$25,000) per occurrence to repair, replace or restore any loss or damage for which EBGR is liable under SECTION 22 herein to tangible property upon the Leased Premises, including all tracks, roadbeds, non-industry owned side tracks and spurs, bridges and any abutments, piers or approach structures related to a bridge and any track and roadbed on the bridges, located on the Leased Premises.

(c) Liability coverage for bodily injury to railroad employees arising under the Federal Employers Liability Act, 45 U.S.C. 51 et seq. ("FELA").

(d) Business automobile insurance coverage with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence and which shall include coverage for, but not be limited to bodily injury and property damage and any and all vehicles owned, used or hired by EBGR.

12.02 During the Term of this Lease Agreement, the Authority shall obtain and maintain the following insurance coverage relating to the Leased Premises:

(a) Liability insurance coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate. Such liability insurance shall include liability coverage for injury to or death of any persons whomsoever, and for damage to or destruction of any property whatsoever, except property specified in SECTION 12.01(b) above.

12.03 Additional requirements:

(a) If liability insurance coverage is written on a "claims-made and reported" basis, the Parties shall maintain coverage in force for a minimum of three (3) years after expiration, cancellation or termination of this Lease Agreement.

(b) EBGR shall name the Authority and its respective officers, agents, employees, servants and assigns as additional insureds on EBGR's policies of insurance.

(c) Each insurance policy of a Party shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to endeavor to notify the other Party to this Lease Agreement in writing at least thirty (30) days prior to any cancellation

of such policy. Such cancellation provision shall be indicated on the certificate of insurance. Each Party shall be responsible for providing notice of any such cancellation to its employees, servants and assigns shown as additional insureds on such policy. Each Party shall provide at least thirty (30) days written notice to the other Party prior to any modification of any policy.

(d) All policies (applying to coverage listed above) shall exclude punitive damages and the certificates of insurance shall reflect that such exclusion exists.

(e) The Authority shall not be responsible for EBGR'S deductible, self-insured retention or other financial responsibility under its insurance policies. EBGR shall not increase its self-insured retention under any insurance coverage required in this Lease Agreement without the prior written consent of the Authority.

(f) Prior to EBGR commencing operations under this Lease Agreement, EBGR shall furnish to the Authority acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage, endorsements, and amendments.

(g) Each Party represents that the provisions of this SECTION 12 have been thoroughly reviewed by its insurance agent(s)/broker(s) or other persons with requisite knowledge and authority, who have been instructed to procure the insurance coverage required in this SECTION 12. Not more frequently than once every five (5) years, the Parties by mutual agreement may modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(h) If either Party hires any contractor to perform any of its obligations under this Lease Agreement, such Party shall require such contractor to provide and maintain insurance coverage equivalent to that required of such Party, naming each of the Parties as an additional insured, and such contractor shall release, defend and indemnify the other Party to the same extent and under the same terms and conditions as the Parties are required to release, defend and indemnify one another herein, provided however, that any contractor retained by either Party to perform work on the Leased Premises shall be required to obtain and maintain workers compensation insurance, unless such contractor is subject to FELA and maintains liability coverage as set forth in SECTION 12.01(c).

(i) Failure to provide evidence of insurance as required by this SECTION 12 shall entitle the other Party to terminate this Lease Agreement immediately. Acceptance by the Authority of a certificate of insurance from EBGR shall not operate as a waiver of EBGR's obligations hereunder.

(j) In the event of a claim or lawsuit involving either Party or both Parties arising out of this Lease Agreement, each Party shall make available to the other Party any required policy covering such claim or lawsuit.

(k) Any insurance policy obtained by a Party to satisfy its obligations hereunder shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, authorized to do business in the Commonwealth of Pennsylvania, and acceptable to the Authority.

(l) By virtue of obtaining insurance coverage as set forth above, the Parties are in no way signifying their intent or evidencing any alternative or dual employment

relationship with one another. Rather, the Parties agree: (1) neither Party has any right to direct or control the other Party's employees with respect to the physical conduct or the performance of services; (2) neither Party supervises, nor has the right to supervise, details of the other Party's employees' work or the manner in which such work is accomplished; (3) neither Party retains any control over the details of the other Party's employees' work; and (4) neither Party has any right to select, hire, train, discipline or discharge the other Party's employees.

### 13. UTILITIES

EBGR shall pay, when due, all charges for telecommunications, water, sewer, gas and electric service arising from EBGR's use and operation of the Leased Premises.

### 14. LIABILITY FOR TAXES

14.01 EBGR shall be solely liable for and shall pay all income, Railroad Retirement, sales and use or other taxes or other government levies imposed upon EBGR's operating revenues derived from the use of the Leased Premises except where being lawfully contested.

14.02 The Authority shall be solely responsible for all property taxes, levies and other governmental assessments imposed upon the Leased Premises.

### 15. TERMINATION

15.01 Subject to the provisions of this SECTION 15, this Lease Agreement may be terminated as follows:

(a) By either Party upon the occurrence of a Default by the other Party which is not cured as provided in SECTION 26;

(b) If EBGR is operating the Line pursuant to a modified certificate of public convenience and necessity under 49 C.F.R. 1150.23, by EBGR immediately upon expiration of the sixty (60) days' notice of intent to terminate service on the Line required under 49C.F.R. 1150.24 , provided that EBGR shall have provided a copy of such notice to the Authority at the time it is given.

(c) If EBGR is operating the Line pursuant to STB authority under 49 U.S.C. 10902, or on exemption therefrom, by EBGR following EBGR's obtaining all necessary regulatory approvals or exemptions to permit EBGR to discontinue rail service on the Line.

(d) By EBGR upon written notice to the Authority in the event that EBGR is no longer able to interchange traffic with NSR or its successor at Pottstown, Pennsylvania, or at an alternate location satisfactory to EBGR, or NSR terminates its commercial agreement with EBGR.

(e) By both Parties by written agreement.

(f) As otherwise set forth in this Lease Agreement.

Authority

15.02 In the event of termination as provided in SECTION 15.01, future Rent shall be abated as of the date this Lease Agreement is terminated. EBGR shall be liable for, and pay to the Authority in accordance with the provisions of SECTION 5.03, all Rent accruing prior to the date of such termination.

15.03 In the event this Lease Agreement is terminated, EBGR shall cooperate with the Authority and/or its designee in obtaining operating rights over the Line equivalent to those enjoyed by EBGR

15.04 If EBGR is operating the Line pursuant to a modified certificate of public convenience and necessity under 49 C.F.R. 1150.23, in the event of termination of this Lease, EBGR shall, within seven (7) days of delivery or receipt of notice of termination, provide the sixty (60) days' notice of intent to terminate service on the Line required under 49 C.F.R. 1150.24. Any termination of this Lease Agreement pursuant to SECTION 15.01 (b), (c), (d), (e) or (f) shall not become effective until the sixty (60) days' notice required under 49 C.F.R. 1150.24 has expired. If EBGR is operating the Line pursuant to full authority from the STB pursuant to 49 U.S.C. 10902, or an exemption therefrom, upon receiving notice of termination, EBGR shall promptly initiate discontinuance proceedings before the STB and, upon receiving STB approval, shall peacefully vacate the Line. In the event EBGR fails to provide such sixty (60) days' notice, the Authority shall have the right to initiate discontinuance proceedings before the STB in EBGR's name, and EBGR shall cooperate with the Authority and its third-party operator designee in arranging for the transfer of the common carrier obligation in an orderly manner so as not to disrupt service to customers on the Line. In such

circumstances, the Authority, or its designee at Authority's discretion, may immediately begin operation over the Leased Premises if EBGR fails to comply with the requirements of SECTION 6.03 herein.

15.05 Termination of this Lease Agreement hereunder shall not relieve or release either Party from any obligation incurred hereunder prior to such termination.

15.06 EBGR may not terminate service until the expiration of the 60 day notice of termination under 49 C.F.R. 1150.24 or, in the event it is operating the Line pursuant to authority granted under 49 U.S.C. 10902, or an exemption therefrom, until said discontinuance of service has been authorized by the STB and is effective.

#### 16. RETURN OF LEASED PREMISES

Upon the expiration or termination of this Lease Agreement, EBGR shall promptly remove all of its personal property and return the Leased Premises to the Authority in such condition as the Leased Premises were in on the Commencement Date, or to which the Leased Premises have been improved during the Term of this Lease Agreement, normal wear and tear excepted.

#### 17. COMPLIANCE WITH GOVERNING LAW AND AUTHORITY'S FUNDING AGREEMENTS

(a) EBGR shall comply with all laws, statutes, ordinances, rules, orders, regulations and requirements of the federal, state and local governments that are applicable to the Leased Premises and EBGR's operation of the Line. EBGR shall not use or permit the Leased Premises to be used for any illegal purpose.

(b) EBGR shall comply with all requirements, covenants and obligations of the Authority under any written loan documents, grant agreements or such other documents related thereto which the Authority is currently bound by or shall enter into during the Term of this Lease and which relate to the Leased Premises including, but not limited to, any agreements under the federal Rail Freight Assistance Program with the Pennsylvania Department of Transportation. As security for EBGR's performance of such obligations, upon written request from the Authority, EBGR shall cause a letter of credit in the amount of such obligations to be issued and delivered to the Authority. Such letter of credit shall contain an evergreen provision and shall remain in effect until all such obligations are satisfied, which letter of credit shall be increased from time to time, if necessary, to cover any additional obligations. The parties acknowledge that the Authority would not otherwise secure financing or grants for the renovation and improvement of the Leased Premises unless EBGR secures its obligations under this Section 17.

18. NOTICE TO EBGR OF AUTHORITY'S INTENT TO INSPECT AND REPAIR

18.01 The Authority, its agents, or representatives shall have the right to enter upon the Leased Premises during normal business hours upon three (3) business days advance written notice to EBGR to inspect and examine the Leased Premises. EBGR's consent to provide access shall not unreasonably be withheld. EBGR has the right to be present for any inspection.

18.02 Following inspection, the Authority, its agents, or representatives shall notify EBGR of any necessary maintenance or repairs. Unless otherwise agreed

between the Parties, EBGR shall have the responsibility for completing such maintenance or repairs in a timely and efficient manner. In the event EBGR should fail, after reasonable notice and opportunity, to undertake the repairs and/or maintenance, the Authority may make such repairs and/or maintenance as necessary for the proper use, safety and preservation of the Leased Premises. The Authority, upon completion of such repairs and/or maintenance, shall provide to EBGR written evidence of the cost of such repairs and/or maintenance. EBGR shall reimburse the Authority within ninety (90) days following receipt of the Authority's notice for reimbursement.

18.03 Nothing contained in this Section shall be deemed a covenant by the Authority, and should not be construed as creating an obligation on the part of the Authority, to make any inspection or repairs.

18.04 Nothing contained in this Section shall be deemed to operate, to override, limit or otherwise restrict the Authority's right to enforce any law or protect public safety.

## 19. NOTICE OF CASUALTY

EBGR shall give immediate notice to the Authority of any fire damage, personal injury, property damage or other casualty occurring upon the Leased Premises.

## 20. ALTERATIONS AND IMPROVEMENTS TO THE LEASED PREMISES

20.01 Except as otherwise provided herein, EBGR shall make no alterations, additions, obstructions, encumbrances or improvements to the Leased Premises

without the prior written consent of the Authority, which consent shall not be unreasonably withheld.

20.02 Additions and improvements pre-approved by the Authority and made by EBGR at its own expense shall remain on the Leased Premises and become the property of the Authority at the expiration or earlier termination of this Lease Agreement; provided, however, if the Authority shall request the removal of said additions and improvements at the expiration or earlier termination of this Lease Agreement by EBGR then, in such case, EBGR shall remove said additions and improvements in such a way that the removal process shall not impair the utility of the Leased Premises.

20.03 EBGR shall not make any alterations to the Leased Premises that are inconsistent with the primary use of the Leased Premises as a railroad line in accordance with this Lease Agreement.

## 21. LIMITATIONS ON SIGNS AND STRUCTURES

EBGR shall not place nor permit to be placed any signs or structures of third parties unrelated to the provision of railroad service or railroad operations on the Leased Premises, including but not limited to billboards, without the prior written consent of the Authority. Any such third party signs or structures permitted by the Authority shall at all times conform to all applicable laws, ordinances or regulations. Notwithstanding the foregoing, EBGR may without the consent of the Authority, place and maintain such signs as are necessary for marketing transportation and related

services on the Line, for the safe operation of railroad service or to the operation of grade crossings, bridges, and other facilities on the Leased Premises.

## 22. RELEASE, HOLD HARMLESS & INDEMNIFICATION

22.01 Environmental Laws. During the Term of this Lease Agreement, EBGR will comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. EBGR, at its own expense, shall make all modifications, repairs, or additions to the Leased Premises, install and bear the expense of any and all structures, devices, or equipment, and implement and bear the expense of any remedial action which may be required under any such laws, rules, regulations, ordinances, or judgments as a result of EBGR's use, occupancy or maintenance of the Leased Premises hereunder. For purposes of this SECTION 22, acts or omissions of any third party under the Lessee Agreements shall not be deemed a result of EBGR's use, occupancy or maintenance of the Leased Premises. During the Term of this Lease Agreement, EBGR will properly dispose of all wastes of any kind, whether hazardous or not, deposited on the Leased Premises.

### 22.02 Environmental Indemnity.

(a) The Authority for itself, its successors and assigns, shall, to the maximum extent permitted by law, waive, release, remise, acquit, discharge, protect, indemnify, defend and save harmless EBGR, its affiliates, their employees, agents, officers, successors

and assigns, from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities and expenses, including attorney's fees (collectively, "Costs"), in any way arising out of or connected with a known or unknown, physical or environmental condition of the Leased Premises occurring prior to September 2, 2010 or after the date of expiration or termination of this Lease Agreement as provided in this Lease Agreement ("Lease Termination Date"), or arising from the acts or omissions of any third party under the Lessee Agreements, or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act), and including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of the Authority, EBGR or any third party, and damage to property of the Authority, EBGR or any third party.

(b) Notwithstanding the provisions of section 22.02(a), EBGR shall be responsible for all such costs as defined above in any way arising out of or connected with a known or unknown, physical or environmental condition of the Leased Premises occurring prior to September 2, 2010 or after the Lease Termination Date, or arising from the acts or omissions of any third party under the Lessee Agreements, or any federal, state or local law, ordinance, rule or regulation applicable thereto where the actions of EBGR have exacerbated a preexisting condition on the Line or where the condition is due to the presence of the Railroad or its agents, consultants, employees, officers, contractors, agents or invitees on the Line.

(c) EBGR for itself, its successors and permitted assigns, shall, to the maximum extent permitted by law, waive, release, remise, acquit, discharge, protect, indemnify, defend and save harmless the Authority, its constituent agencies, their employees, agents, officers, successors and assigns, from and against any and all Costs, in any way arising out of or connected with a known or unknown, physical or environmental condition of the Leased Premises arising from EBGR's use, occupancy or maintenance of the Leased Premises between the date of September 2, 2010 and the Lease Termination Date (including, without limitation, any contamination in, on, under or adjacent to the Leased Premises by any hazardous or toxic substance or material), or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act), and including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of the Authority, EBGR or any third party, and damage to property of the Authority, EBGR or any third party. The foregoing provision shall apply only if the Costs are incurred as a result of EBGR's use of the Leased Premises during the period commencing on September 2, 2010 through the Term of this Lease Agreement or any hold over period.

#### 22.03 General Indemnity.

(a) EBGR shall protect, defend, save harmless, indemnify and reimburse the Authority from and against any and all Costs incurred by or assessed against the Authority and/or its constituent agencies, due to or resulting from personal injuries, death, or property loss or damage arising from EBGR's use, occupancy or maintenance

of the Leased Premises between the date of September 2, 2010 and the Lease Termination Date, or as a result of EBGR's breach of, or from its failure to comply with, any provisions of this Lease Agreement.

(b) The Authority shall defend, hold harmless, indemnify and reimburse EBGR from and against all liabilities caused by the Authority's gross negligence or illegal or criminal conduct. Additionally, the Authority shall protect, defend, hold harmless, indemnify and reimburse EBGR from and against any Costs incurred by EBGR arising from or relating to any license or other third party rights granted by the Authority over the Leased Premises.

22.04 Notice of Violations. EBGR will promptly furnish the Authority with written notice of any and all (i) FRA violations, (ii) OSHA violations, (iii) releases of hazardous wastes or substances of which it becomes aware which occur during the Term of this Lease Agreement whenever such releases are required to be reported to any federal, state, or local authority, and (iv) alleged water or air permit condition violations, and (v) any notification received by EBGR alleging any violation of any state, federal or local statute, ordinance, ruling, order or regulation pertaining to environmental protection and/or hazardous material, handling, transportation or storage. To the extent practicable, such written notice will identify the substance released, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, will identify the nature and extent of the alleged violation and the measures taken to eliminate the violation, and will certify that EBGR has complied with all applicable regulations, orders, judgments or decrees in connection

therewith, or the date by which such compliance is expected. EBGR will also provide Authority with copies of any and all reports made to any governmental agency which related to such releases or such alleged violations during the Term of this Lease Agreement.

## 23. ASSIGNABILITY

23.01 This Lease Agreement shall inure to the benefit of and be binding upon the successors of the Authority and EBGR, and the permitted assigns of EBGR, subject to the limitations hereinafter set forth. EBGR shall not assign, mortgage, or hypothecate this Lease Agreement, nor sublet or sublease any part of the Leased Premises, nor permit the Leased Premises to be occupied or used for any purpose other than those uses contemplated herein, except as: (a) may be agreed upon by the Authority in writing; (b) may result from condemnation of all or part of the Leased Premises; or (c) may result from the legally enforceable rights of others to have easements on the Leased Premises. Nothing herein shall prohibit assignment of this Lease Agreement within EBGR's corporate family, including, without limitation, the Colebrookdale Railroad Preservation Trust or any entity controlled by it, profit or non-profit. Control shall mean ownership and voting authority of or over 51% or more of the shares, board of directors, trustees or other governing body.

23.02 Any sale of the Leased Premises during the Term of this Lease Agreement or any extensions thereof by the Authority to a party other than EBGR shall be conditioned upon the assignment of the Authority's rights hereunder to, and the

assumption of the Authority's obligations hereunder by, the purchaser who shall agree in writing to be bound thereby.

#### 24. CORPORATE GUARANTEE

The Colebrookdale Railroad Preservation Trust, the sole shareholder of EBGR, (the "Guarantor") shall serve as the guarantor of EBGR's obligations and responsibilities under this Lease Agreement, and such Guarantor agrees to be jointly and severally liable for EBGR's debts and liabilities under this Lease Agreement.

#### 25. WAIVER

The failure of either Party hereto to enforce at any time any of the provisions of this Lease Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Lease Agreement or any part hereof or the right of either Party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Lease Agreement shall be held to be a waiver of any other or subsequent breach.

#### 26. DEFAULT

26.01 The following acts or omissions of EBGR if not cured within the applicable time periods set forth in this SECTION 26 shall constitute a Default on the part of EBGR:

(a) Failure by EBGR to make payments of Rent or failure to make payments of other amounts due and payable for any reason arising in connection with this Lease Agreement.

(b) Filing by EBGR of a petition for bankruptcy, reorganization or arrangement by EBGR of an assignment for the benefit of creditors, or if this Lease Agreement shall pass to another party by virtue of any court proceeding or operation of law, or be placed in receivership, or otherwise should EBGR avail itself of the protection afforded pursuant to the Bankruptcy Reform Act or any similar proceeding, which petition is not dismissed within thirty (30) days;

(c) Failure by EBGR to comply with maintenance requirements under SECTION 7;

(d) Failure of EBGR to comply with the audit requirements of SECTION 8;

(e) Failure of EBGR to comply with the insurance requirements of SECTION 12;

(f) Failure by EBGR to comply with the reporting requirements of SECTIONS 7.03, 7.04, 8, and 22;

(g) Failure by EBGR in the performance of any terms, conditions, or covenants contained herein, which default results in the disruption of the railroad services as provided for in this Lease Agreement and such failure continues for thirty (30) days following receipt of written notice as provided for hereunder.

- (h) Failure by EBGR to provide the minimum acceptable level of service required in SECTION 6.01;
- (i) EBGR littering the right of way;
- (j) EBGR conducting operations on the Leased Premises in violation of FRA regulations;
- (k) EBGR conducting illegal activities on the Leased Premises;
- (l) EBGR engaging in any of the acts prohibited by SECTION 9.02, or
- (n) EBGR's breach of any other term, condition or covenant contained in this Lease Agreement and such failure continues for thirty (30) days following receipt of written notice from the Authority.

26.02 The following acts or omissions of the Authority, if not cured within the applicable time periods set forth in this SECTION 26, shall constitute a Default on the part of the Authority:

- (a) Failure by the Authority to make any payments or other amounts due and payable by the Authority, if any, under this Lease Agreement and such failure continues for thirty (30) days following receipt of written notice as provided hereunder; or
- (b) Failure by the Authority in the performance of any terms, conditions, or covenants contained herein, if any, which Default results in the impairment of EBGR's ability to provide the railroad services as provided for in this Lease Agreement, and

such failure continues for thirty (30) days following receipt of written notice as provided for hereunder.

26.03 Upon the occurrence of any Default hereunder or breach of any term hereof, the injured Party shall notify the defaulting or breaching Party in writing and specify the Default or breach and what corrective action is desired to cure it. If, upon the expiration of thirty (30) days from the receipt of said notice, the Default or breach has not been cured (or, if such Default or breach cannot be cured within thirty (30) days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and such Default or breach is material, the injured Party shall have the right, at its sole option, to cure such Default or breach if possible and be reimbursed by the defaulting or breaching Party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured Party from resorting to any other remedy permitted under this Lease Agreement or at law or equity, including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole in the premises. Failure of the injured Party to demand or enforce a cure for a Default or breach in one instance shall not be deemed a waiver of its right to do so for any subsequent Default or breach by the defaulting or breaching Party.

## 27. FORCE MAJEURE

EBGR shall have no obligation to provide service over any portion of the Leased Premises when prevented from so doing as a result of any act of nature, public authority, strikes, riots, civil disturbance, labor disputes, threats or acts of terrorism, or

threats or acts of war; provided however, EBGR shall use reasonable best efforts to take whatever action is reasonably necessary or appropriate to resume operations at the earliest reasonable date unless damage or destruction of the Leased Premises requires major reconstruction or renovation, in which event EBGR will exercise reasonable diligence in performing such reconstruction or renovation at Authority's expense as provided herein. In the event that the Authority is unwilling or unable to fund such reconstruction or renovation, EBGR may terminate this Lease Agreement pursuant to SECTION 15.

## 28. EMINENT DOMAIN

28.01 In the event that at any time during the Term of this Lease Agreement the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose, the following provisions shall be applicable:

28.02 If such proceeding shall result in the taking of the whole or a portion of the Leased Premises which materially interferes with EBGR's use of the Leased Premises for railroad purposes, EBGR shall have the right, upon written notice to the Authority, to terminate this Lease Agreement in its entirety. In that event, and subject to any necessary regulatory notices, approvals or exemptions, this Lease Agreement shall terminate and expire on the date title to the Leased Premises vests in the condemning authority.

28.03 If such proceeding shall result in the taking of less than all of the Leased Premises which does not materially interfere with EBGR's use of the Leased Premises for railroad purposes, then this Lease Agreement shall continue for the balance of its Term as to the part of the Leased Premises remaining.

28.04 Except as otherwise expressly provided in this Section, the Authority shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by EBGR; provided, however, that nothing contained herein shall be construed to preclude EBGR from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

28.05 Each Party shall provide prompt notice to the other Party of any eminent domain proceeding involving the Leased Premises. Each Party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other Party and its attorneys and experts. EBGR and the Authority shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure EBGR's continued ability to use the Leased Premises for the conduct of rail freight operations.

## 29. GENERAL NOTICE

All notices required pursuant to this Lease Agreement shall be in writing and addressed to the other Party at the address set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail registered or certified, return receipt requested or by electronic communication with

evidence of receipt.. This Section shall not be construed as waiving proper service of process. Notice to each Party will be to the following:

Redevelopment Authority of the County of Berks  
Berks County Services Center  
633 Court Street, 14th Floor  
Reading, PA 19601-4310  
kpick@countyofberks.com  
610-478-6325

Eastern Berks Gateway  
Railroad Company  
PO Box 492  
Boyertown, PA 19512  
ncg1@cornell.edu  
610-724-9611

30. SECTION AND PARAGRAPH HEADINGS

Section and paragraph headings in this Lease Agreement are for ease of reference only and shall have no bearing on the construction or interpretation of this Lease Agreement.

31. ENTIRE AGREEMENT

This Lease Agreement and the exhibits attached hereto set forth all the covenants, provisions, agreements, conditions and understandings between the Parties and all prior covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties are hereby superseded and shall have no further effect. No modification or addition to this Lease Agreement shall be binding or effective unless executed in writing as an amendment to this Lease Agreement and signed by both Parties.

32. SEVERABILITY

If any provision of this Lease Agreement is held to be illegal, the remainder of this Lease Agreement shall remain operative and in full force and effect.

### 33. GOVERNING LAW, DISPUTE RESOLUTION, AND FORUM

33.01 This Lease Agreement and all rights of the Parties thereunder shall be governed and construed in accordance with applicable Federal law and the laws of the Commonwealth of Pennsylvania.

33.02 If at any time a question, dispute or controversy ("Dispute") shall arise between the Parties in connection with this Lease Agreement upon which the Parties cannot agree, before seeking judicial resolution of such Dispute, both Parties will engage in the dispute resolution process set forth in this Section.

(a) The Authority and EBGR initially shall attempt to resolve such Dispute through informal negotiations conducted by the Executive Director of the Redevelopment Authority of the County of Berks and the President of Colebrookdale Railroad Preservation Trust. Either Party may request such negotiations by written notice to the other Party specifying the Dispute.

(b) If such Dispute cannot be resolved under subsection (a) of this Section within thirty (30) days of receipt of the written notice requesting such negotiations, or such longer time as the Parties may mutually agree upon, such Dispute shall be submitted to mediation by written notice of the Party seeking mediation to the other Party. In the mediation process, the Authority and EBGR shall attempt in good faith to resolve their differences voluntarily with the aid of an impartial mediator (who will

attempt to facilitate negotiations). The mediator shall be selected by mutual agreement of the Authority and EBGR. If the Authority and EBGR cannot agree on a mediator, the American Arbitration Association or JAMS shall designate a mediator at the request of either Party. Any mediator so designated must be acceptable to both Parties. The mediation shall be confidential and the mediator may not testify for either Party in any later proceeding relating to the Dispute. Each Party shall bear its own costs in the mediation. The fees and expenses of the mediator shall be shared equally by the Parties.

(c) If such Dispute cannot be resolved under subsection (b) of this Section, after the conclusion of the mediation process and such Dispute arises out of this Lease Agreement under State law, such Dispute shall be submitted to arbitration under the Pennsylvania Arbitration Act, 42 Pa. C.S.A. § 7304, and brought in the Court of Common Pleas in Berks County, Pennsylvania. If the Dispute arises out of this Lease Agreement under Federal law, such Dispute shall be submitted to arbitration under the Federal Arbitration Act and shall be brought in the United States District Court for the Eastern District of Pennsylvania.

#### 34. RIGHT TO PURCHASE LINE

34.01 Subject to the Authority's rights, covenants, restrictions and obligations under any written agreement or any and all ordinances, regulations, rules or local, state or federal laws, , EBGR or its parent corporation, shall have the option to purchase the Leased Premises during the Term of this Lease Agreement pursuant to the terms set forth herein and any written agreement for the sale of the Leased Premises to which the

Parties shall mutually agree. The purchase price for the Leased Premises shall be [deleted]; provided, however, such purchase of the Leased Premises shall be subject to any and all encumbrances, judgments, municipal claims and mortgage liens as of the date of such sale. EBGR, or its parent corporation, at its sole cost and expense, shall obtain any necessary STB authority or exemption therefrom for its purchase of the Leased Premises. The sale agreement and the deed transferring the Leased Premises to EBGR or its parent corporation shall include or be accompanied by provisions that shall survive closing which (i) requires EBGR or its parent corporation to compensate the Authority up to [deleted] upon the sale of the Leased Premises by EBGR or its parent corporation to any third party for any amount exceeding the sum of any mortgage or encumbrance imposed on the Line, or (ii) provide the Authority with the option to repurchase the Leased Premises in the event that EBGR or its parent corporation offers the Leased Premises for sale, at the offered price, or, in the event that EBGR or its parent corporation receives a bona fide offer acceptable to EBGR or its parent corporation from a prospective purchaser of the Leased Premises, at such offered price.

34.02

(a) If at any time after purchasing the Leased Premises from the Authority, EBGR proposes to abandon the Line, EBGR shall provide the Authority with written notice thereof and the Authority shall have one hundred twenty (120) days to purchase the Leased Premises at a price equal to the price paid to the Authority by EBGR for the Leased Premises. Should EBGR initiate abandonment proceedings at the STB and obtain a decision authorizing or exempting the abandonment of any portion of the Line

and should the Authority submit an Offer of Financial Assistance to acquire the Line under 49 U.S.C. 10904 and regulations promulgated thereunder, EBGR will pick the Authority as the party with whom it "wishes to transact business" as that phrase is used in 49 CFR 1152.27 in the event multiple purchase offers are filed

(b). Should the Authority decide to reacquire the Line, it will at its sole cost and expense, obtain any necessary STB authority or exemption therefrom for its purchase of the Leased Premises. Immediately upon EBGR accepting the Authority's offer to purchase the Line, EBGR shall request that any abandonment proceeding be held in abeyance pending negotiation of a Purchase and Sale Agreement ("PSA") and, upon execution of the PSA, shall withdraw its application, petition for, or notice of exemption for abandonment authority.

34.03 The Authority shall not invite nor accept offers to purchase the Leased Premises from any third party without the written consent of EBGR and its parent corporation.

### 35. COUNTERPARTS

This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

### 36. MUTUAL COOPERATION AND FUTURE PROJECTS

The Parties agree to mutually cooperate with each other's good faith efforts to obtain grant monies and funding from outside sources and programs for the purpose of

improving the Leased Premises. Each Party shall make such good faith efforts upon the other Party's timely and reasonable request.

The Parties will cooperate in the redevelopment of the Leased Premises as a tourist and freight railroad. To that end, the list of projects on which the Parties will cooperate will include, but may not be limited to, the following: the purchase of the Boyertown rail yard and its redevelopment as a tourist railroad station complex; the acquisition of real estate and development of an engine house and storage area; and the acquisition of real estate and development of transload facility.

#### 37. MARKETING

EBGR agrees that, during the Term of this Lease Agreement, it shall actively promote, advertise and market the availability of its rail freight services to the general public including but not limited to any and all past, anticipated or potential future rail freight service customers. As a public service, and not as a principal, agent, contractor, joint venturer or otherwise, the Authority may, at its discretion, but not as a requirement of this Lease Agreement, participate in or otherwise assist EBGR's marketing efforts, activities and initiatives.

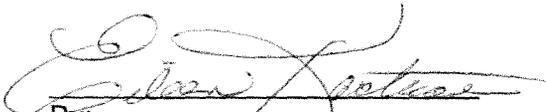
#### 38. LIABILITY FOR COMPLIANCE COSTS

Except as set forth in SECTION 7.02, EBGR, shall be solely liable for compliance costs associated with State or Federal mandates, laws, rules, or regulations concerning improvements to the tracks, right-of-way, crossings, wayside signals, warning devices and the like, switches, and bridges.

IN WITNESS WHEREOF, the Parties have caused this Lease Agreement to be duly executed on their behalf as of the day and year written on page one of this Lease Agreement.

REDEVELOPMENT  
AUTHORITY OF THE COUNTY OF BERKS

EASTERN BERKS GATEWAY  
RAILROAD COMPANY

  
By: \_\_\_\_\_  
Title: Chairman/Vice Chair

By:

  
\_\_\_\_\_  
Title: President

  
EILEEN KASTURA

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John D. Heffner,  
Strasburger & Price, LLP  
Attorney of Record  
Redevelopment Authority of the  
County of Berks

JOINDER AND CONSENT

The undersigned, sole shareholder of EBGR, hereby joins in and consents to the terms, provisions, conditions, liabilities and obligations under this Lease Agreement, as a Guarantor of such liabilities and obligations and as a third party beneficiary to this Lease Agreement.

COLEBROOKDALE RAILROAD PRESERVATION TRUST

By: 

DATED: March 27, 2014