

# LEBANON VALLEY RAILS TO TRAILS

2/16/07

March 23, 2006



Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K St., NW  
Washington, DC 20423

Re: R.J. Corman Railroad Company / Allentown Lines Exemption Abandonment - Lebanon County, Pa.-  
AB 550 (Sub-No. IX)

Dear Mr. Williams:

By decision dated October 11, 2001, the Surface Transportation Board granted Lebanon Valley Rails-to-Trails' (LVRT) request for a Notice of Interim Trail Use (NITU) for the above referenced line. This NITU was subsequently extended, most recently by decision dated September 30th, 2005.

At this time, LVRT is pleased to report that a railbanking agreement has been reached with RJC� as part of an agreement of sale that closed on March 15<sup>th</sup>, 2006. A copy of this agreement is enclosed for the record.

By my signature below, I certify service upon applicants representative: Edward J. Fishman, Kirkpatrick & Lockhart Nicholson Graham LLP, 1601 K St., NW, Washington, DC 20006., By U.S. Mail, postage prepaid, first class, this 23rd day of March, 2006.

Respectfully Submitted,

John B. Wengert  
President

on behalf of: Lebanon Valley Rails-to-Trails

CC w/out enclosure: Edward J. Fishman, Kirkpatrick & Lockhart  
Bruce Greinke, RJ Corman Railroad Co.  
William C. Basney, Edwards Cohen

**PURCHASE SALE AGREEMENT**

THIS AGREEMENT, hereinafter called the "Agreement", made and entered into by and between **R. J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.**, located at One Jay Station, Nicholasville, Kentucky 40536, hereinafter called the "Seller", and **LEBANON VALLEY RAILS-TO-TRAILS, INC.**, whose address is P. O. Box 2043, Cleona, Pennsylvania 17042, hereinafter called the "Buyer", provides:

1. **PURCHASE AND SALE:** Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer, the land or property rights shown or identified on Exhibit "A", attached hereto and made a part hereof, hereinafter called the "Premises". The Premises is/are located at Lebanon, County of Lebanon, State of Pennsylvania, and contains \* acres, more or less.

2. **PRICE:**

2.1 The purchase price for the Premises is ONE HUNDRED FORTY THOUSAND AND NO/100 U.S. DOLLARS (\$140,000.00) (hereinafter the "Purchase Price").

3. **DEPOSIT:**

3.1 A non-interest bearing deposit in the amount of FOURTEEN THOUSAND AND NO/100 U.S. DOLLARS (\$14,000.00) (hereinafter the "Deposit") accompanies Buyer's execution of this Agreement. The balance of the Purchase Price shall be paid at settlement or closing of the transaction (hereinafter the "Closing"), in cash, by certified or cashier's check, or by other readily available funds acceptable to Seller.

3.2 The Deposit shall be applied to the Purchase Price at Closing. The Deposit shall be refunded to Buyer only in the event Buyer's Offer (as defined in Section 4.1) is not accepted by Seller as provided for in Section 4.1 or upon termination as provided for in Sections 7.2, 10.4, 13.4 and/or 17 hereof.

3.3 If Buyer fails to Close pursuant to Section 9 or perform in accordance with the terms hereof, Buyer agrees and consents that the Deposit may be forfeited to and retained by Seller, at Seller's sole option.

4. **OFFER, ACCEPTANCE, CONTRACT:**

4.1 Until accepted by Seller, Buyer's offer to purchase the Premises (hereinafter the "Offer") as evidenced by its execution and delivery of this Agreement shall be a firm offer for a period of 30 days from the date of this Agreement. Seller's acceptance of the Offer is to be evidenced by its execution of this Agreement. Failure of Seller to accept the Buyer's Offer and execute this Agreement within the above mentioned period shall render the Offer null and void, and the Deposit shall be returned to Buyer.

4.2 This Agreement, when accepted by Seller, shall constitute a contract and the entire agreement between the parties hereto, and they shall not be bound by any terms, oral or written conditions, statements or representations not contained herein or attached hereto.

4.3 Neither the Buyer's Offer nor, upon its execution by all parties, this Agreement may be changed, altered or modified except by an instrument in writing signed by Buyer and Seller.

4.4 The Buyer's Offer and this Agreement shall be executed in duplicate, each of which may be treated as an original.

5. **CONTINGENCIES:**

5.1 This Agreement is contingent upon the following events, if any:

None

6. **DEED:**

6.1 As early as practicable after execution of this Agreement by all parties, Seller will prepare and submit to Buyer, for Buyer's comments, a form of deed in conformance with the terms of this Agreement to convey the Premises to Buyer. Buyer shall have a period of five (5) calendar days after receipt of said deed to examine same and notify Seller of any comments. If no comments are received within the five (5) day period, Buyer shall be deemed to have approved the deed in the form submitted. Seller shall have no obligation to modify the deed to conform to Buyer's comments if the deed otherwise conforms to the terms of this Agreement.

6.2 Title to the Premises shall be conveyed to:

Lebanon Valley Rails-to-Trails, Inc.  
Pennsylvania Corporation, February 26, 1996

**IF A CORPORATION, STATE THE DATE AND STATE OF INCORPORATION; IF A LIMITED LIABILITY COMPANY, STATE THE DATE AND STATE OF FORMATION; IF A PARTNERSHIP, STATE THE DATE AND STATE OF ITS CREATION, WHETHER IT IS A GENERAL OR LIMITED PARTNERSHIP, AND THE NAMES OF ALL GENERAL PARTNERS; IF A GOVERNMENTAL AGENCY, STATE THE CORRECT STATUTORY DESIGNATION; IF MORE THAN ONE INDIVIDUAL, STATE ANY DESIRED FORM OF CO-TENANCY: HUSBAND AND WIFE, JOINT WITH RIGHTS OF SURVIVORSHIP, COMMON, OR BY THE ENTIRETY.**

6.3 The conveyance shall be by quitclaim deed conveying all of Seller's right, title and interest in the Premises, if any, but shall be expressly subject to: all existing roads, fiber optic facilities, public utilities; all matters of record; any applicable zoning ordinances and subdivision regulations and laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance and which Buyer assumes and agrees to pay; all matters that would be revealed by a survey meeting applicable State minimum technical requirements or by an inspection of the Premises; the items or matters identified in Section 10.1 of this Agreement; and all existing occupancies, encroachments, ways and servitudes, howsoever created and whether recorded or not. The provisions of this Section shall survive Closing

6.4 The release of Seller's mortgage(s), if any, shall be obtained at Seller's expense and included in the deed or, at Seller's option, by separate instrument at or prior to Closing.

6.5 The deed shall contain one or more restrictive covenants, reading substantially as follows, to run with title to the Premises, and to be binding upon Buyer, Buyer's heirs, legal representatives and assigns, or corporate successors and assigns, or anyone claiming title to or holding the Premises through Buyer:

(\*) **FENCING:** Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or

maintaining such fences, railings or guard rails or any part thereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails. Grantee assumes all liability and responsibility respecting fences, railings or guard rails, or the absence thereof.

(\*) **DRAINAGE:** Grantee, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns shall maintain the existing drainage on the Premises in such a manner as not to impair adjacent railroad operating property drainage and not to redirect or increase the quantity or velocity of surface water runoff or any streams into Grantor's drainage system or upon the railroad operating property or other lands and facilities of Grantor. If the Premises or existing drainage are modified or improved, Grantee agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Premises to the nearest public or non-Grantor owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon railroad operating property or other adjacent lands and facilities of Grantor.

(\*) Grantee acknowledges that this deed is made upon Grantee's solicitation and request, and was not in anyway initiated by Grantor. Grantor does not represent or warrant to Grantee any ownership or estate in the Premises or any specific title or interest in the Premises, which constituted a strip of Grantor's former railroad operating property; and Grantee hereby releases Grantor, its officers and agents, from any claim or demand resulting from this deed, or from any failure of or defect in Grantee's title to the Premises.

(\*) **TITLE INDEMNIFICATION:** Grantee hereby agrees, as additional consideration for the conveyance of the Premises, to defend, indemnify and hold Grantor harmless from and against any and all liability, loss, cost and/or expense, including reasonable attorney fees, arising out of or in connection with any and all suits or causes of actions instituted by third parties against Grantor or Grantee as a result of the conveyance of the Premises to Grantee or as a result of the failure of title to any portion of the Premises.

(\*) **CROSSING INDEMNIFICATION:** Grantee hereby agrees, as additional consideration for the conveyance of the Premises, to defend, indemnify and hold Grantor harmless from and against any and all liability, loss, cost and/or expense, including reasonable attorney fees, arising out of or in connection with removal of the nine (9) at grade street crossings located on the Premises or compliance with the Pennsylvania Public Utility Commission's ("PUC") removal requirements in PUC Proceeding A-00117750 and hereby assumes Seller's obligations pursuant to all orders or directives issued by the PUC relating to the nine crossings and/or in PUC Proceeding A-00117750.

(\*) **KEYSTONE ACT RESTRICTION:** The Premises were acquired with funds provided by the Pennsylvania Department of Conservation and Natural Resources ("Department") through the Keystone Recreation, Park and Conservation Fund Act of July 2, 1993, P.L. 359, No. 50 ("the Keystone Act"). The Premises are restricted solely to the uses permitted by the Keystone Act. No change of use and no transfer of ownership, control, or interest in these Premises may occur without the written consent of the Department other than for resumption of railroad service.

6.6 Seller shall except and reserve unto itself as Grantor, its successors and assigns, the following easements, rights and interests:

(\*) **EXCEPTING** unto Grantor all oil and gas, and the constituents of each, underlying the Premises; and **RESERVING** the right for Grantor, its successors and assigns, to remove the same; **HOWEVER**, Grantor will not drill or permit drilling on the surface of the Premises without the prior written consent of Grantee, which consent shall not be unreasonably withheld.

(\*) EXCEPTING unto Grantor the ownership of all railroad tracks and other track material (including switches, signals, ballast and crossties), hereinafter "the Track", within or on the Premises; and RESERVING unto Grantor a railroad easement twenty feet (20') in width, ten feet (10') in each direction from center of the Track, for the continued location, maintenance, use, repair, replacement and removal of the Track, TOGETHER WITH the right of ingress and egress to and from the Track until removal. Said reserved railroad easement shall automatically terminate and all title in the Premises vest in Grantee upon cessation of use and removal of the Track. Grantor shall remove the Track, at its expense, within eighteen (18) months after Closing. Any portion of the Track not removed by Grantor shall become the property of Grantee after the eighteen (18) month period.

**7. TITLE SEARCH, INSURANCE:**

7.1 Buyer has the option of arranging and paying for such examination of title or title insurance on the Premises as Buyer may desire, at Buyer's sole cost.

7.2 Irrespective of whether Buyer obtains a title examination or insurance, Buyer shall, if Buyer closes on the Premises, accept the Premises in their AS IS, WHERE IS, WITH ALL FAULTS condition.. The provisions of this Section shall survive Closing.

7.3 As information, Seller's source of title to the Premises is believed to be:

<u>INSTRUMENT/PARTY</u>	<u>DATE</u>	<u>RECORDATION DATA</u>
Consolidated Rail Corporation	October 14, 1997	Deed Book 352, page 101

This information is provided solely to assist Buyer in reviewing title to the Premises and is not intended to and shall not be relied upon by Buyer.

**8. SURVEY:**

8.1 Immediately upon notice of Seller's acceptance of this Agreement, Buyer shall obtain a survey of the Premises conforming applicable State minimum technical requirements at Buyer's expense.

8.2 Within thirty (30) days after notice of Seller's acceptance of this Agreement, Buyer shall furnish Seller with a copy of any title insurance commitment covering the Premises and three (3) copies of a metes and bounds description of the Premises, a 1.44 MB diskette in Microsoft Word or Wordperfect format of the description and three (3) prints of a survey plat acceptable to Seller and to the Recorder of Deeds for the County or City in which the Premises is located, certified to Buyer and Seller, for use by Seller in preparation of the deed and other papers. If Seller does not accept Buyer's Offer by executing this Agreement, Seller shall reimburse Buyer for the cost of the survey, and Buyer shall thereupon assign all rights therein and copies thereof to Seller.

**9. CLOSING:**

9.1 Closing hereunder shall be held on or before March 1, 2006 at such time and place as Seller and Buyer shall mutually agree. If Buyer and Seller do not agree upon a time and place for Closing, Seller shall designate the time and place for Closing. The time and date for Closing may be extended only by Seller in writing, time expressly being of the essence in this Agreement.

**10. POSSESSION:** Buyer shall obtain possession of the Premises at Closing, subject to the

limitations, terms and conditions of Section 6 of this Agreement, and such other leases, licenses, easements, occupancies or other limitations which are identified by Section 10.1, or which are discovered by Seller during the term of this Agreement (which may not necessarily be stated in the deed), unless canceled by Seller or otherwise terminated (whether by notice, expiration, nonrenewal or any other reason) prior to Closing.

10.1 Seller believes that the Premises are currently subject to the following leases, licenses, easements, occupancies and/or limitations (which may or may not be of record):

- (i) Leases (\*None or List)
  - (a) \* dated \* with \*
- (ii) Licenses (\*None or List)
  - (a) \* dated \* with \*
- (iii) Easements (\*None or List)
  - (a) \* dated \* with \*
  - (b)

During the term of this Agreement, Seller will research its archives for, and shall advise Buyer if Seller discovers, any additional leases, licenses, easements, occupancies and limitations affecting the Premises. As to items discovered as a consequence of such research, Seller may elect, in its sole discretion, to either cancel or otherwise terminate such items or, pursuant to Section 10.3, to assign or if such item is applicable to an area greater than the Premises, the Buyer shall be included as party at Closing.

10.2 Seller shall cancel or terminate, at or prior to Closing, \*[specify applicable items identified of Section 10.1].

10.3 At Closing, Seller shall assign to Buyer, and Buyer shall assume, Seller's right, title and interest in all items identified by Section 10.1, or which are subsequently discovered by Seller, unless canceled or otherwise terminated, at or prior to Closing. However, if such item is applicable to an area greater than the Premises, the Buyer shall be included as party to a partial assignment of the item(s), which may be executed after Closing.

10.4 If, prior to Closing, all or any portion of the Premises is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), Seller shall notify Buyer of such fact promptly after obtaining knowledge thereof and either Buyer or Seller shall have the right to terminate this Agreement by giving notice to the other not later than ten (10) days after the giving of Seller's notice. If neither Seller nor Buyer elects to terminate this Agreement as aforesaid, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer (without recourse) at the Closing the rights of Seller to the awards, if any, for the taking, and Buyer shall be entitled to receive and keep all awards for the taking of the Premises or such portion thereof.

10.5 If this conveyance involves sale of any buildings or structures on the Premises, Seller shall have no duty to insure Buyer's interest or to amend or alter Seller's existing insurance policy(ies), if any, to reflect Buyer's interest. Damage to or destruction of the buildings or structures shall not be grounds for Buyer to terminate this Agreement or to postpone Closing. Upon acceptance of the Offer by Seller, as evidenced by Seller's execution of this Agreement, the risk of damage to or destruction of the buildings or structures shall be borne by Buyer until Closing or other termination of this Agreement. This provision shall survive Closing or termination.

10.6 Buyer may, at its option and at its sole cost, secure a policy of Fire and Extended Coverage Insurance on the buildings or Structures, provided that Buyer's liability for damage to or destruction of the buildings or structures during the term of this Agreement shall not be limited by the amount of such insurance.

## 11. ANNUAL TAXES; RENTS; LIENS; CHARGES:

11.1 All annual or periodic taxes or assessments on the Premises, both general and special, shall be prorated as of the Closing. Any proration shall be based on the taxes assessed against the Seller in the year of the delivery of possession to or entry by Buyer and shall allow the maximum discount permitted by law. If current taxes assessed against the Seller are not available at the time of Closing, Buyer and Seller agree to prorate taxes based upon the latest tax information available to the parties and equitably adjust the proration when taxes for the year of entry or possession become available.

11.2 Any certified governmental assessments or liens for improvements on the Premises which are due and payable at the time of Closing shall be paid in full by Seller, and any pending liens or assessments for improvements not yet due and payable at Closing shall be thereafter paid in full by Buyer.

11.3 Any rents and license fees (individually in excess of \$500.00 prorated amount on annual rental) accruing to the Premises shall be prorated at Closing, with rents and fees prior to the date of Closing retained by Seller.

## **12. TAXES ON TRANSFER; CLOSING COSTS:**

12.1 Buyer shall pay all transfer taxes, however styled or designated, all documentary stamps, recording costs or fees or any similar expense in connection with this Agreement, the conveyance of the Premises or necessary to record the deed.

12.2 Buyer shall be solely responsible for and shall pay any reassessments or taxes generated by reclassification of the Premises resulting from conveyance of the Premises.

12.3 If any state or local governmental authority requires, presently or in the future, the payment of any sales, use or similar tax upon the sale, acquisition, use or disposition of any portion of the Premises, (whether under statute, regulation or rule), Buyer assumes all responsibility for and shall pay the same, directly to said authority, and shall hold Seller harmless from such tax(es) and any interest or penalty thereon. Seller shall cooperate (at no expense to Seller) with Buyer in the prosecution of any claim for refund, rebate or abatement of said tax(es).

12.4 Seller shall pay the cost of recording any release of Seller's mortgage(s) or lien(s). In the event Buyer finances any portion of the Purchase Price (whether through third parties or from Seller), Buyer shall pay all costs thereof, including recordation, intangible taxes, etc.

## **13. BUYER'S RIGHT OF ENTRY, ENVIRONMENTAL AND OTHER INSPECTIONS:**

13.1 During the term of this Agreement, upon compliance with the terms of this Section 13, Buyer and/or its agents shall be permitted to have access to the Premises, subject to the rights of any tenant, licensee, utility or other third party occupying any portion of the Premises, in order to make surveys, make measurements, conduct environmental or engineering tests (including drilling and coring for preconstruction soil analysis), and to make such physical inspections and analyses thereof as Buyer shall deem necessary; PROVIDED, however, that Buyer hereby assumes all risks of such entry and agrees to defend, indemnify and save Seller harmless from and against any claim, cost or expense resulting from any damage to or destruction of any property (including the Premises or any improvements thereon) and any injury to or death of any person(s), arising from the acts or omissions of Buyer or its agents in the exercise of this right-of-entry. Buyer agrees to do no act which would encumber title to the Premises in exercising this right-of-entry. Any drilling and coring holes shall be filled upon completion of testing. All investigation-derived waste, including without limitation drilling waste, ground water and cuttings, shall be promptly handled, characterized and disposed of properly and in accordance with all local, State and Federal requirements, all at Buyer's sole cost.

13.2 Buyer acknowledges that Seller makes no guarantee, representation or warranty regarding the physical or environmental condition of the Premises, and Seller expressly disclaims any and all

obligation and liability to Buyer regarding any defects which may exist with respect to the physical condition of the Premises. To Seller's knowledge, being the actual knowledge of Kenneth D. Adams, CFO, without investigation, there are no violations or assessments relating to the environmental condition of the Premises.

13.3 Buyer shall give Seller ten (10) days prior written notice of any entry onto the Premises under this Section 13. Together with such notice, Buyer shall provide Seller with a schedule and scope of work for each of the activities Buyer proposes to undertake during such entry. Seller reserves the right to monitor and approve all procedures in the conduct of any environmental assessments, tests, studies, measurements or analyses performed by or for Buyer in, on, to or with respect to the Premises. Buyer shall provide in any contract or bids for site assessment or environmental inspections of the Premises a "confidentiality clause", limiting disclosure of the results and any report only to Buyer (or to Seller, upon request). Buyer shall also keep Seller fully apprised of the progress of, and procedures followed with respect to, all such environmental work; and fully cooperate with all reasonable requests of Seller in undertaking and carrying out such work. Buyer shall prepare split samples (which may then be separately tested at Seller's sole option and cost) for delivery to Seller and shall deliver to Seller, at no cost to Seller, within five (5) days after receipt, copies of all results, assessments, reports and studies, whether of an environmental nature or otherwise, resulting from any tests or inspections conducted by Buyer pursuant to this Section 13 or otherwise in accordance with this Agreement. At or before Closing, Buyer shall provide Seller a reliance letter from Buyer's consultant, in form and substance reasonably acceptable to Seller, granting Seller the right to rely on the environmental data and reports generated as part of buyer's environmental due diligence, including without limitation, any Phase I and Phase II Environmental Site Assessment Reports. The reliance letter shall not impose any additional limitations or restrictions on Seller's reliance on said data and reports except as may be specified within the report documents themselves.

13.4 If environmental contamination of the Premises is revealed by the studies and tests conducted by Buyer pursuant to this Section 13, in an amount and/or concentration beyond the minimum acceptable levels established by current applicable governmental authorities, or, if Buyer is unwilling to accept the environmental condition of the Premises as a result of such tests or assessments, Seller's and Buyer's sole and exclusive remedy shall be to terminate this Agreement and refund the Deposit to the Buyer. Under no circumstances shall Seller be required to correct, remedy or cure any condition or environmental contamination of the Premises, which Buyer's tests and studies may reveal, as a condition to Closing or other performance hereunder.

13.5 If Buyer elects not to secure environmental tests or inspections, or if Buyer does not elect to terminate after receipt of test results, Buyer shall take the Premises "as is" at Closing, and hereby assumes all risks associated with the environmental condition of the Premises, regardless of the cause or date of origin of such condition, and also hereby releases all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition.

13.6 The provisions of this Article 13 shall survive Closing or termination of this Agreement.

#### **14. SUBDIVISION APPROVAL; ZONING:**

14.1 Any subdivision approval needed to complete the transaction herein contemplated shall be obtained by Buyer at Buyer's sole risk, cost, and expense. Seller shall cooperate with Buyer in obtaining said approval, to the extent necessary or required, but Buyer shall reimburse Seller for any and all charges, costs and expenses (including portions of salaries of employees of Seller assigned to such project) which Seller may incur in such cooperation.

14.2 Seller makes no guarantee or warranty that any subdivision approval will be granted and assumes no obligation or liability for any costs or expenses if same is not approved.

14.3 Costs and expenses shall include all fees, costs and expenses, including reasonable

attorneys' fees, of obtaining subdivision plats, or filing same with the applicable governmental body(ies), or recordation thereof, including attorneys' fees, and all other related and/or associated items.

14.4 Seller makes no guarantee, warranty or representation as to the permissibility of any use(s) contemplated by Buyer under existing zoning of the Premises or as to any ability to secure any rezoning for Buyer's use.

**15. BROKER'S FEES:** The Buyer and the Seller each represent and warrant to the other that neither has introduced into this transaction any person, firm or corporation who is entitled to compensation for services as a broker, agent or finder. The Buyer and the Seller each agree to indemnify the other against and hold the other harmless from any and all commissions, finder's fees, costs, expenses and other charges claimed by real estate brokers or sales persons by, through or under the indemnifying party. Seller shall be under no obligation to pay or be responsible for any broker's or finder's fees, commissions or charges in connection with handling this transaction, or Closing.

**16. ASSIGNMENT, LIMITS, SURVIVAL:**

16.1 This Agreement may not be assigned by Buyer without the prior written consent of Seller.

16.2 As limited above, this Agreement shall be binding upon the parties, their successors and permitted assigns, or upon their heirs, legal representatives and permitted assigns, as the case may be.

16.3 Any provision calling for obligations continuing after Closing or termination of this Agreement shall survive delivery of the deed and not be deemed merged into or replaced by any deed, whether or not the deed so states.

**17. DEFAULT:**

17.1 In the event of a default by Buyer under this Agreement (including, but not limited to payment of the Deposit within the time specified), Seller may elect to terminate this Agreement by delivery of notice to Buyer and to retain the Deposit and any other money paid by Buyer to or for the account of Seller, as agreed-upon liquidated damages in full settlement of any and all claims arising under or in any way related to this Agreement.

17.2 In the event of a default by Seller under this Agreement, Buyer's remedy shall be to terminate this Agreement by delivery of notice to Seller and to receive an immediate return of the Deposit and reimbursement for any reasonable third-party expenses incurred by Buyer pursuant to this Agreement, not to exceed \$5,000, as agreed-upon liquidated damages in full settlement of any and all claims arising under or in any way related to this Agreement. Alternatively, Buyer may file an action for the specific performance of this Agreement.

17.3 Upon the termination of this Agreement pursuant to this Article 17, Buyer and Seller shall be relieved of all obligations under Agreement, including the duty to close, other than (a) any liability for breach of any of the provisions of Section 13 shall remain as obligations of Buyer and (b) Buyer shall furnish Seller with a copy of all materials and information (including but not limited to any engineering reports, studies, maps, site characterizations and/or zoning related materials) developed by Buyer during the term of this Agreement relating to the potential use or the physical condition of the Premises.

17.4 "Default" shall include not only the failure to make prompt payment of any sums when due under this Agreement, but also the failure to fully and timely perform any other acts required of Buyer under this Agreement.

**18. NOTICES:**

18.1 Notice under this Agreement shall be in writing and sent by Registered or Certified Mail, Return Receipt Requested, or by courier, express or overnight delivery, or by confirmed e-mail or facsimile.

18.2 The date such notice shall be deemed to have been given shall be the business day of receipt if received during business hours, the first business day after the business day of receipt if received after business hours on the preceding business day, the first business day after the date sent by courier, express or overnight ("next day delivery") service, or the third business day after the date of the postmark on the envelope if mailed, whichever occurs first.

18.3 Notices to Seller shall be sent to:

R. J. Corman Railroad Company  
/Allentown Lines, Inc.  
One Jay Station  
Nicholasville, Kentucky 40536  
Attn: Kenneth D. Adams  
Fax: (859) 885-2619  
E-mail: kdadams@rjcorman.com

Notices to Buyer shall be sent to:

Lebanon Valley Rails-to-Trails, Inc.  
P. O. Box 2043  
Cleona, PA 17042  
Attn: John Wengert

With a copy to:  
Timothy J. Huber, Esq.  
Buzgon Davis Law Offices  
525 S. Eighth Street  
Lebanon, Pa 17042

18.4 Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this Section.

**19. RULES OF CONSTRUCTION:**

19.1 In this Agreement, all singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

19.2 All references herein to particular articles, sections, subsections or clauses are references to articles, sections, subsections or clauses of this Agreement.

19.3 The headings contained herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

19.4 Each party hereto and its counsel have had the opportunity to review and revise (or request revisions of) this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto or amendments hereof.

**20. TIME OF ESSENCE:** Time shall be considered of the essence both to the Buyer and the Seller for all activities undertaken or required pursuant to this Agreement.

**21. CHARITABLE DONATION:**

21.1 Buyer and Seller believe the Purchase Price is less than the fair market value of the Premises, and Seller, being interested in assisting in the development of recreational facilities in Lebanon Pennsylvania, desires to make a charitable donation to Buyer of the difference between the Purchase Price and the fair market value. Buyer will provide Seller with any documentation required by the United States Internal Revenue Service (IRS) to substantiate the donation to Buyer and the tax exempt status of Buyer, including Buyer's execution of IRS Form 8283, for land and a separate IRS Form 8283 for improvements attached hereto as Exhibit "B", and the Letter of Acknowledgment, attached hereto as Exhibit "C", at Closing or thereafter as needed.

21.2 Provisions of this Section shall survive Closing, termination of this Agreement and/or delivery of the deed, whether or not the deed so states, there being neither express nor implied merger hereof into said deed.

**22. TRAIL USE:**

If the STB imposes Notice of Intended Trail Use, ("NITU"), conditions on the Premises, the following shall constitute the Interim Trail Use Agreement:

22.1 By Decision and Notice of Interim Trail Use or Abandonment served October 1, 2001 STB Docket No. AB-550 (Sub-No. 1X), as extended, the Surface Transportation Board ("STB") imposed a 180-day period for Buyer to negotiate an interim trail use/rail banking agreement with Seller for the Premises.

22.2 Buyer agrees that upon acceptance of a quitclaim deed conveying the Premises to Buyer pursuant to the STB's aforementioned order, Buyer or its designee or assignee shall assume full responsibility for management of the Property; Buyer shall be responsible for any and all taxes that may be levied or assessed against the Premises after Closing; and Buyer shall assume full responsibility for and will indemnify Seller against any potential legal liability arising out of transfer or use of the Premises pursuant to this Agreement. The provisions of this paragraph shall survive the Closing or termination of this Agreement.

22.3 Buyer acknowledges that the Premises remains subject to the jurisdiction of the STB for purposes of reactivating rail service. As an inducement to Buyer to enter into this Agreement, and in the event action is taken to reactivate rail service on the Premises, Seller agrees to compensate Buyer, or assist Buyer as follows:

A. ) In the event the STB, or any other entity of the United States Government compels Seller, its successors or assigns, to reactivate rail service on the Premises, or in the event Seller, its successors or assigns, voluntarily takes steps to reactivate rail service on the Premises by seeking to vacate the Notice of Interim Trail Use (the "NITU"), and if the STB approves the vacation of the NITU and reactivation of rail service requiring conveyance of the Premises by the Interim Trail Manager to the Seller, then, in such event, Seller, its successors or assigns, shall pay to the Interim Trail Manager at the time of reactivation a sum equivalent to the Purchase Price.

In the event that rail service is reactivated and reimbursement is required by Seller as set out herein, Buyer shall re-convey the Premises together with all improvements located thereon to Seller

B. ) In the event a party other than Seller, its successors or assigns, seeks to reactivate rail service by petitioning the STB to vacate the NITU, and the STB in consideration of its decision to reactivate requires a letter of concurrence to be provided by Seller, its successors or assigns, supporting the vacation of the NITU and reactivation of rail service by such third party, then Seller, its successors or assigns, covenants and agrees that it shall withhold such letter of concurrence until it has received a letter from the Interim Trail Manager stating the Interim Trail Manager's support for reactivation of rail service and vacation of the NITU, and that the Interim Trail Manager has reached a satisfactory agreement with such third party petitioning for reactivation of rail service for the depreciated value of trail related improvements and compensation for transfer and conveyance of the Premises, provided that such compensation shall not be greater than the fair market value of the Premises at that time.

22.4 This Agreement shall be deemed to be the interim trail use agreement between Buyer and Seller for purposes of 16 U.S.C. 1247(d) and all STB orders relating to same pertaining to the Premises.

22.5 The provisions of this paragraph shall survive Closing, termination of this Agreement and/or acceptance of the deed by Buyer.

IN WITNESS WHEREOF, the Buyer has caused this Agreement to be signed the 17<sup>th</sup> day of November, 2005, in duplicate, each of which shall be considered an original.

WITNESS(ES):

[Signature]

[Signature]

BUYER(S):

LEBANON VALLEY RAILS-TO-TRAILS, INC.

[Signature]  
Print Name: JOHN B. WENGERT  
Print Title: President

[Signature] (SEAL)  
Print Name: Tod G Dissinger  
Print Title: Treasurer

**NOTICE OF SELLER'S ACCEPTANCE**

Buyer's Offer to purchase the Premises is accepted by Seller this 9 day of December, 2005.

WITNESS(ES):

R. J. CORMAN RAILROAD  
COMPANY/ALLENTOWN LINES, INC.

[Signature]

By: [Signature]  
Print Name: Kenneth D. Adams  
Print Title: CFO

## EXHIBIT "A"

Those premises which Consolidated Rail Corporation, a Pennsylvania corporation conveyed to R. J. Corman Railroad Company/Allentown Lines, Inc., a Pennsylvania corporation, by deed dated October 14, 1997, recorded June 24, 1999 in Lebanon County Deed Book 352, Page 101, **less and except** the following two (2) parcels:

- (i) That parcel conveyed by R. J. Corman Railroad Company/Allentown Lines, Inc., a Pennsylvania corporation, to 16th & Cumberland Associates, L. P., a Pennsylvania limited partnership, by deed dated December 5, 2003, recorded on December 29, 2003 in Lebanon County Deed Book 2037, Page 7670, containing 8,262 square feet, more or less.
- (ii) That parcel conveyed by R. J. Corman Railroad Company/Allentown Lines, Inc., a Pennsylvania corporation, to Agway, Inc., a Delaware corporation, by deed dated September 26, 2001, recorded on November 20, 2001 in Lebanon County Deed Book 378, Page 236, containing 21,158 square feet, more or less.

Form **8283**  
(Rev. October 1998)

### Noncash Charitable Contributions

OMB No. 1545-0908

▶ **Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.**

Attachment  
Sequence No. **55**

Department of the Treasury  
Internal Revenue Service

▶ **See separate instructions.**

Name(s) shown on your income tax return

Identifying number

**Note:** Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A**—List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also, list certain publicly traded securities even if the deduction is over \$5,000 (see instructions).

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) Description of donated property
A		
B		
C		
D		
E		

**Note:** If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (d), (e), and (f).

	(c) Date of the contribution	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) Fair market value	(h) Method used to determine the fair market value
A						
B						
C						
D						
E						

**Part II Other Information**—Complete line 2 if you gave less than an entire interest in property listed in Part I. Complete line 3 if conditions were attached to a contribution listed in Part I.

- 2 If, during the year, you contributed less than the entire interest in the property, complete lines a–e.
- a Enter the letter from Part I that identifies the property ▶ \_\_\_\_\_. If Part II applies to more than one property, attach a separate statement.
  - b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_ (2) For any prior tax years ▶ \_\_\_\_\_
  - c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):  
 Name of charitable organization (donee) \_\_\_\_\_  
 Address (number, street, and room or suite no.) \_\_\_\_\_  
 City or town, state, and ZIP code \_\_\_\_\_
  - d For tangible property, enter the place where the property is located or kept ▶ \_\_\_\_\_
  - e Name of any person, other than the donee organization, having actual possession of the property ▶ \_\_\_\_\_

3 If conditions were attached to any contribution listed in Part I, answer questions a – c and attach the required statement (see instructions).

- a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? \_\_\_\_\_
- b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? \_\_\_\_\_
- c Is there a restriction limiting the donated property for a particular use? \_\_\_\_\_

	Yes	No

Name(s) shown on your income tax return

Identifying number

**Section B—Appraisal Summary**—List in this section only items (or groups of similar items) for which you claimed a deduction of more than \$5,000 per item or group. **Exception.** Report contributions of certain publicly traded securities only in Section A.

If you donated art, you may have to attach the complete appraisal. See the **Note** in Part I below.

**Part I Information on Donated Property**—To be completed by the taxpayer and/or appraiser.

**4** Check type of property:

- Art\* (contribution of \$20,000 or more)
- Real Estate
- Gems/Jewelry
- Stamp Collections
- Art\* (contribution of less than \$20,000)
- Coin Collections
- Books
- Other

\*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antique furniture, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

**Note:** If your total art contribution deduction was \$20,000 or more, you must attach a complete copy of the signed appraisal. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If tangible property was donated, give a brief summary of the overall physical condition at the time of the gift	(c) Appraised fair market value
A			
B			
C			
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	See instructions	
					(h) Amount claimed as a deduction	(i) Average trading price of securities
A						
B						
C						
D						

**Part II Taxpayer (Donor) Statement**—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ▶

Signature of taxpayer (donor) ▶

Date ▶

**Part III Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I hold myself out to the public as an appraiser or perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this appraisal summary may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I affirm that I have not been barred from presenting evidence or testimony by the Director of Practice.

Sign

Here Signature ▶

Title ▶

Date of appraisal ▶

Business address (including room or suite no.)

Identifying number

City or town, state, and ZIP code

**Part IV Donee Acknowledgment**—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on ▶

(Date)

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 2 years after the date of receipt, it will file **Form 8282**, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ▶  Yes  No

Name of charitable organization (donee)	Employer identification number	
Address (number, street, and room or suite no.)	City or town, state, and ZIP code	
Authorized signature	Title	Date



**Draft**

**Exhibit "C"**

To Be Written On Grantee's Letterhead

Date \*

To Whom It May Concern

Re: Donation of \* acres, more or less, of land \*together with a \*(specify improvements, if any, i.e. bridge, depot etc.) at \*

Dear Sir/Madam:

The undersigned grantee hereby acknowledges receipt of certain R J Corman ("Corman") property situated in \*.

This letter confirms that no additional goods or services, other than the consideration stipulated in the deed, were provided to Corman (or a subsidiary titleholder) in exchange for this contribution. The full amount of the donation should be tax deductible to the extent allowed by law for federal tax purposes.

Sincerely,