

The Honorable Anne. K. Quinlan
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U.S. Surface Transportation Board
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RE: Motion to Compel - FD_35117_0 Petition for Exemption 223712,
Motion for Protective Order 223713

10-30-2008

Dear Secretary Quinlan:

I request the STB to compel both Summit View, Inc. ("SVI") and Genesee & Wyoming, Inc. ("G&W") to adequately address the following line segment ownership and operation issues prior to STB approving G&W's proposed buyout and assumed operation of SVI's Southern Division subsidiaries being the Ohio Central RR Co. ("OHCR"), the Columbus & Ohio River RR Co. ("CUOH"), and the Ohio Southern RR Co. ("OSRR") -

1. Neilston Connector
2. Columbus-Newark Division
3. Shared CUOH/OHCR Morgan Run-Trinway Region
4. Carman Connecting Track
5. Separate G&W Panhandle Rail Line Subsidiary
6. Panhandle Rail Line Infrastructure Inventory and Appraisals

A Background section precedes further elaboration upon each issue in the subsequent sections. A motion to compel G&W and SVI to publicize proposed line segment sales prices and related information per each issue is also requested.

This request is submitted in part to assure a fair competitive market with adequate oversight remains after the conveyance; to assist the State of Ohio's strained transportation infrastructure financing, and economic retention and development goals; and to increase the Panhandle Rail Line's beneficial usefulness and expedite operations to address the current transportation and energy crises not only within Eastern-Central Ohio but within its original Pittsburgh-Columbus corridor. These crises have resulted in significant electricity, agricultural, and agriculturally-derived alternative energy product price and rate spikes - all industries locally served by SVI's Southern Division subsidiaries - with those price increases subsequently passed along from producers and successive industrial and commercial supply chain interests to eventually end users/the public.

The opinions and information obtained from public sources provided herein is to the best of my knowledge true and accurate, although some data is or may be dated and may not reflect the current situations as they may be, and thus should require further field verification. I thank STB for its attention to this matter and can be contacted at your convenience for any further information.

Sincerely,

A handwritten signature in black ink that reads "Daniel L. Van Epps". The signature is written in a cursive, flowing style with a large initial 'D'.

Daniel L. Van Epps

Background

During the early-mid 1980s the former Consolidated Rail Corp. ("Conrail") began a network rationalization program of its former Penn Central Transportation Co. ("PCTC") lines that company acquired from the former Pennsylvania Railroad ("PRR"), the New York Central RR Co. ("NYC"), et al. One rationalization candidate was PRR's subsidiary Pittsburgh, Cincinnati, Chicago & St. Louis RR Co.'s Pittsburgh-Columbus-St. Louis main line, a.k.a. the "Panhandle". Conrail re-routed most traffic from the Panhandle to the other former PRR subsidiaries Cleveland & Pittsburgh Rwy Co.'s Pittsburgh-Cleveland main line and the Pittsburgh, Ft. Wayne & Chicago Rwy Co. Pittsburgh-Canton, OH-Chicago main line to justify reduced use and potential abandonment of the Panhandle.

Conrail filed for abandonment of an Eastern Ohio Panhandle section in ICC Docket No. AB 167 (Sub-No. 1088X), but was opposed by government officials and regional advocates. On 4-16-1992 an agreement was reached where Conrail sold its interest in a section of the Panhandle main line from the eastern portal of Gould Tunnel near Mingo Jct., OH to Columbus, OH, including an assortment of short branch lines, collectively known as the Panhandle Rail Line ("PRL"), to non-carrier Caprail I, now an Ohio-based subsidiary of Bryn Mawr, PA-based Civic Finance Associates, Inc. (Attachment #1, copy from the Tuscarawas County, OH Records Office). Caprail I

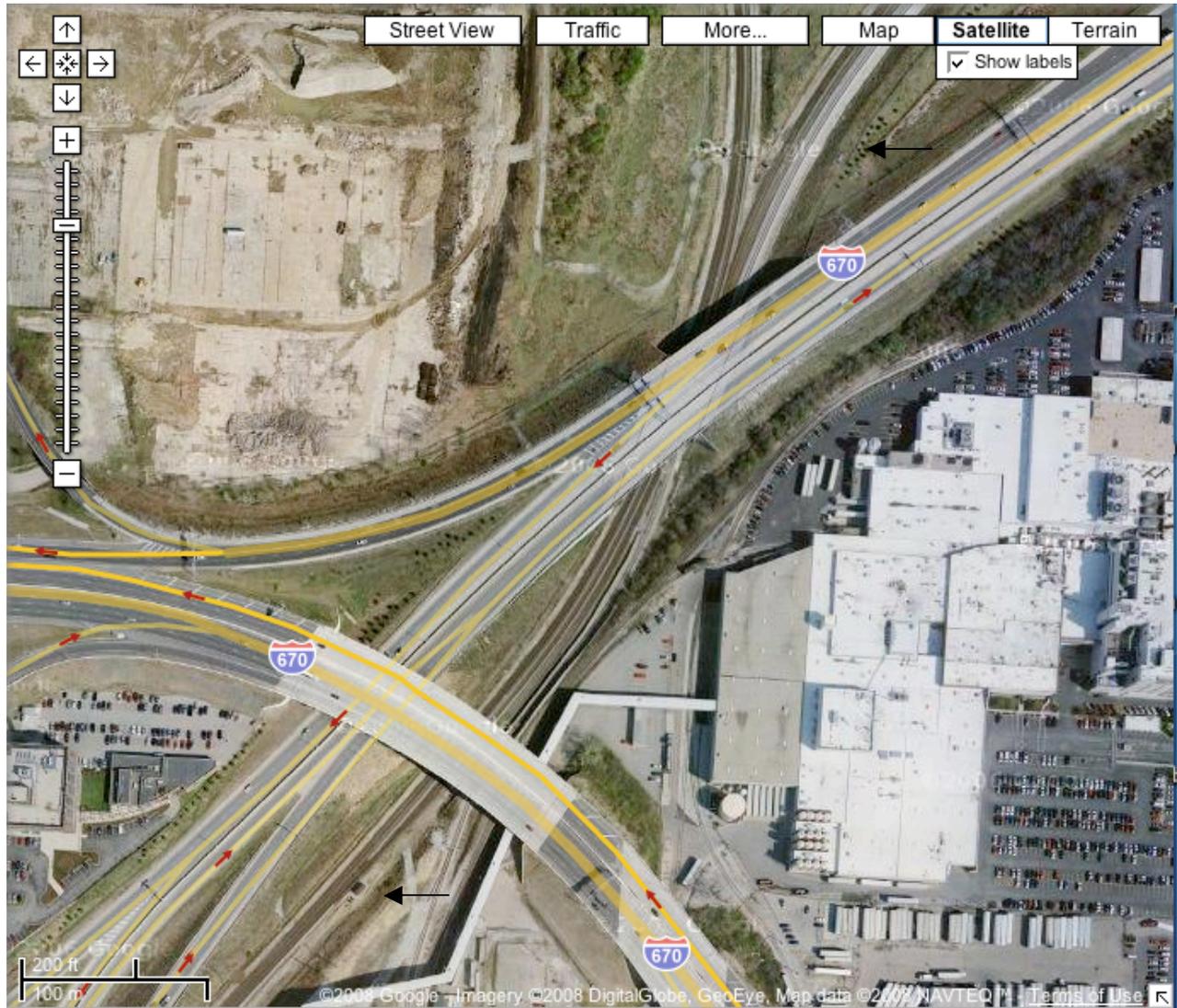
now net leases-to-own the line to the Ohio Rail Development Commission until 4-16-2012 (Attachment #2). ORDC has since 1992 assigned the net administration and operation of the line to CUOH (Attachment #3). An SVI system map as it relates to G&W's New York/Pennsylvania Region is Attachment #4.

CUOH grants trackage rights to the Wheeling and Lake Erie Rwy Co. ("WE") between Bowerston, OH to Jewett, OH. WE was permitted to abandon and railbank that adjacent segment of their main line in exchange for connecting their remaining main line to the PRL at both Bowerston and Jewett, and received overhead rights on that segment. NS also has overhead trackage rights on the PRL retained from the breakup of Conrail to CSX and NS. CUOH has the right of first refusal to serve PRL lineside customers.

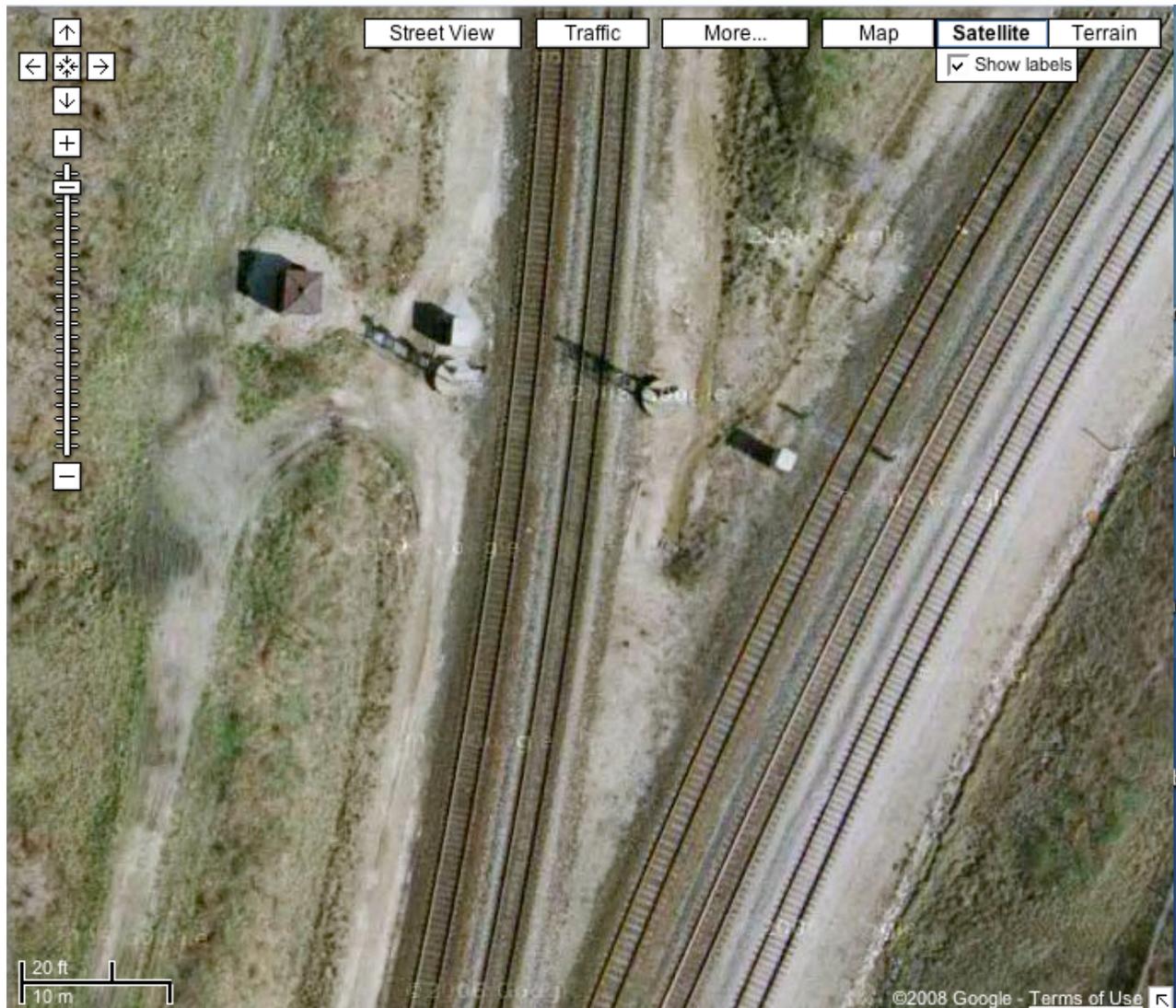
ORDC established a PRL Lease Committee that has been meeting over the last year to deliberate a new long-term no-bid net lease agreement with CUOH to replace the current PRL operating agreement either prior to or after 2012. ORDC has voted to convey the PRL operating agreement from CUOH to G&W so that G&W can complete the SVI buyout, and ORDC has since scheduled further lease committee meetings. One provision in the draft lease agreement permits G&W to buyout the PRL.

Issue 1. Neilston Connector

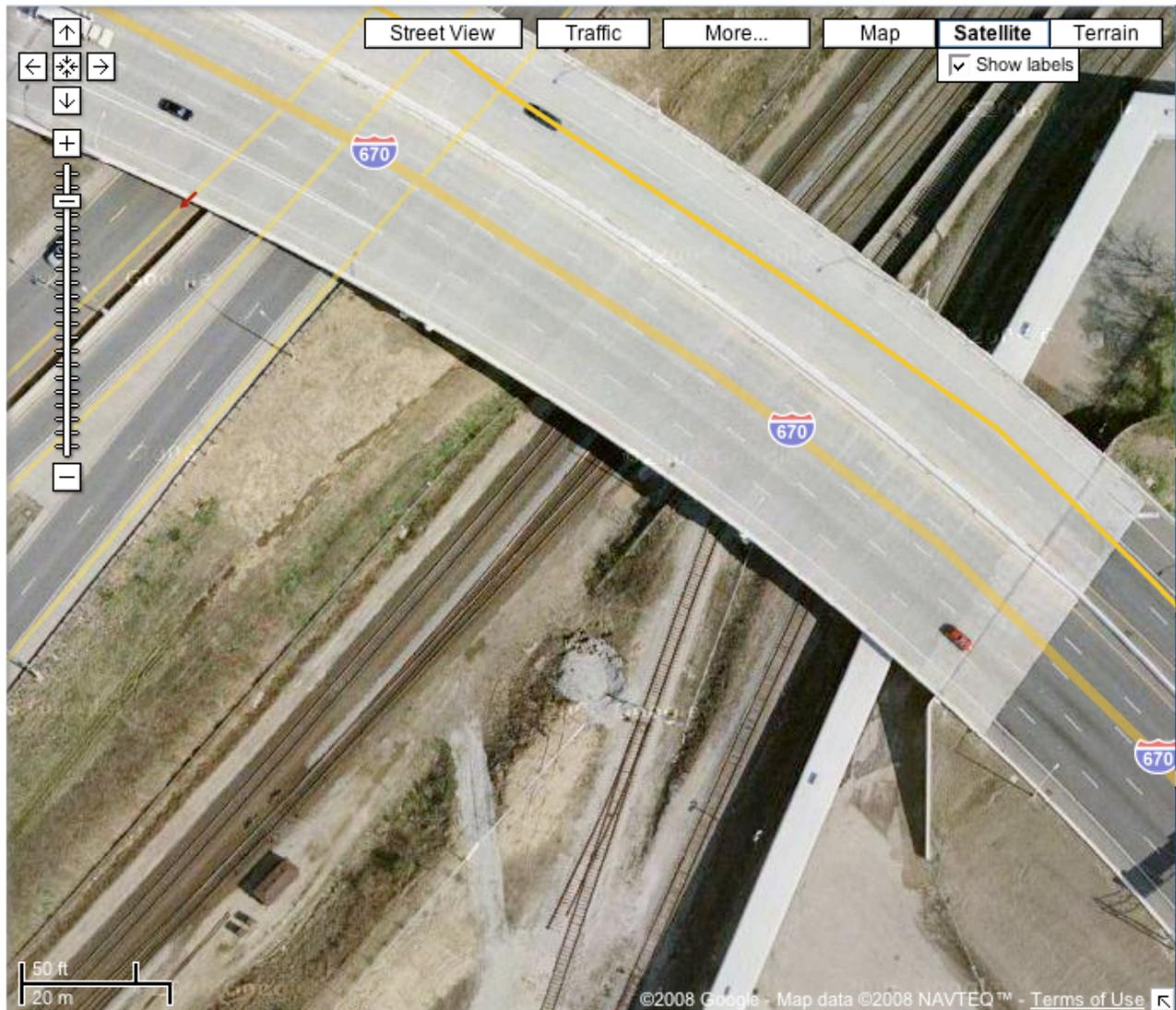
The Neilston Connector is apparently a couple thousand feet of track that connects the very west end of the PRL to the Columbus downtown area CSX and NS lines as shown below between the black arrows.



The eastern arrow location is known as "Grant" and is shown below in greater detail.



The tracks running due north are CSX's main line to Cleveland and NS's main line to Bellevue, the tracks diverging to the northeast beyond the white square signal box are the PRL, and the tracks below the signal box are apparently the Neilston Connector.



In the above photo the Neilston Connector is believed to be shown merging into the CSX and NS tracks at the switch and control box in the lower left known as Control Point Mile Post 138, or "CP-138". The track layout is better shown in Attachment #5 1988 Conrail Columbus Vicinity Map and Attachment #6 1988 Conrail Columbus Vicinity Map zoomed in on the Neilston Connector, although there have been numerous track removals and re-arrangements since then.

Formerly Conrail retained ownership of the Neilston Connector after it conveyed the PRL, but STB apparently assigned CSX the Neilston Connector upon Conrail's conveyance to CSX and NS, and in 2004 CSX sold the Neilston Connector to CUOH. Other yard and side tracks might currently be included with the Neilston Connector proper.

Article 5B of the current ORDC-CUOH PRL Operating Agreement permits CUOH to negotiate interchange access agreements with third party railroads seeking access to and use of the Neilston Connector. CUOH officials had reminded ORDC's Panhandle Lease Committee members of the agreement clause as leverage for more favorable terms and conditions in ORDC's proposed net lease agreement.

Article 5C of the current ORDC-CUOH PRL Operating Agreement permits ORDC the right of first refusal to buy the Neilston Connector pending any sale of it at fair market value. When ORDC conveyed the operating agreement from CUOH to G&W it elected not to pursue those rights, and thus the situation remains now with G&W as the proposed Neilston Connector owner.

The Neilston Connector being separately owned and operated by G&W can be used by G&W as an artificial barrier to marketplace entry against third party PRL users, and as stated to potentially gain more favorable future PRL net lease terms and conditions from ORDC. Separate ownership and operation of multiple line segments did not exist on the PRL during the Conrail era when it owned and operated the whole line from Pittsburgh-Newark, and shared ownership and operation from Newark-Columbus.

I therefore request that STB compel CUOH and/or G&W to convey the Neilston Connector at a fair market price to either ORDC or Caprail I and have it fully integrated into the PRL proper and governed under the current ORDC-CUOH Operating Agreement to ensure all parties enjoy unimpeded rail access between the PRL and the Columbus rail grid as a condition of the G&W's proposed buyout of SVI's Southern Division subsidiaries.

Issue 2. Columbus-Newark Division

In 1854 the Central Ohio RR Co. ("CO") completed construction of its main line from Bridgeport, OH to Columbus, OH. Later the Steubenville & Indiana RR Co. ("S&I") constructed its main line between Steubenville, OH to Newark, OH. However S&I at the time was financially unable to construct its own separate main line between Newark-Columbus, and in 1857 agreed to share the CO main line between Newark-Columbus instead. The segment has since been referred to as the Columbus and Newark Division, or "C-N Division". Caprail I now owns 50% of the segment it acquired from S&I successor Conrail, while CO successor CSX later sold its 50% interest to CUOH. CUOH currently operates both its and ORDC's shares of the segment. The 1992 Conrail track charts (the last year Conrail owned their share) and 1985 CSX track charts (showing more tracks existing then than there are now) detail the segment (Attachments #7 and #8).

The CO main line was eventually integrated into CSX's Pittsburgh-Wheeling, WV/Bridgeport, OH-Columbus line. CSX later abandoned a segment between Washington, PA to near Cambridge, OH, and now net leases the segment between Cambridge to Newark to CUOH together with another segment between Mt. Vernon, OH to Newark.

In the past when multiple C-N Division main line tracks existed, CSX may have exclusively used one and Conrail used another unless they had agreements to share each other's if/when necessary to expedite operations. C-N Division trackage rights are apparently governed on the Caprail I-side by the ORDC-CUOH PRL Operating Agreement, and by CUOH on the ex-CSX side. CSX may have also retained certain trackage rights over the segment. During ORDC's PRL Lease Committee meetings, CUOH argued it had exclusive rights to serve customers on the south (CUOH ex-CSX) side of the segment's right of way ("ROW") even if ORDC selected another PRL operator in the future, and that operator would be restricted to serving only the north (Caprail I ex-Conrail) side of the segment.

The C-N Division being jointly owned by G&W and ORDC and fully operated by G&W can be used by G&W as an artificial barrier to marketplace entry against third party PRL users and to potentially gain more favorable future PRL net lease terms and conditions from ORDC. During the S&I/CO to Conrail eras the C-N Division's shared multiple tracks facilitated the efficient overlapping of two separate rail networks, which due to regional property developments since then would be hard if not impossible to finance and construct separate ROWs and tracks today. The downgrading of those C-N Division multiple tracks to generally one single main line track complicates separate multiple carrier

operations, including potential regional rail commuter service on potentially separate freight- and passenger-only tracks.

The C-N Division's operation by a sole carrier able to use its leverage with right of first refusal to provide lineside service reduces the former dual rail service that had existed in the Newark-Columbus region. CUOH's customer service rights restrictions to serve lineside customers depending upon which side of the tracks they are located on or may locate to significantly inhibit State and local development agencies' economic retention and development efforts as certain C-N Division areas are already developed and choice parcel availability per desired side of the tracks/desired carrier(s) may not be available.

The most efficient solution for this segment would be for the C-N Division, PRL, and private CUOH lines to all be placed under one ownership and operation model. However Ohio Gov. Ted Strickland is currently opposed to re-privatizing the PRL, CSX has not indicated it would sell the Cambridge-Newark and Mt. Vernon-Newark lines to Caprail I/ORDC or to CUOH to be included as part of the PRL proper, and CUOH has not indicated it would sell its 50% interest in the C-N Division to Caprail I/ORDC to be included as part of the PRL proper, so the multiple business and governance

models will remain even after the G&W buyout, continuing the
aforementioned issues.

I therefore request that STB compel CUOH and/or G&W to convey
their full 50% interest in the C-N Division at a fair market price
to either ORDC or Caprail I and have it fully integrated into the
PRL proper and governed under the current ORDC-CUOH Operating
Agreement to ensure all parties enjoy unimpeded rail access
between Newark and Columbus as a condition of the G&W's proposed
buyout of SVI's Southern Division subsidiaries.

Issue 3. Shared CUOH/OHCR Morgan Run-Trinway Region

After the Panhandle was constructed between Coshocton, OH to Trinway, OH, the Massillon & Coshocton Rwy Co. and its successors constructed a line between Massillon, OH southwest to Coshocton completed in 1883. The line crosses and interchanges with the east-west PRL at Morgan Run as shown below, and routes south of but adjacent to the PRL between Morgan Run to Coshocton.



Then the Coshocton & Southern Rwy Co. constructed a line between Coshocton-Trinway-Zanesville, OH c.1885, as shown below at

Trinway. That line routes south of but adjacent to the PRL between Coshocton-Trinway. At the right the PRL is the northern line, and the Coshocton-Zanesville line is the southern line and the first line from the right arcing to the south. Also visible at the beginning of the first arc is one of numerous interchange tracks interconnecting the Coshocton-Trinway line to the PRL.



The Massillon & Coshocton Rwy Co. and Coshocton & Southern Rwy Co. were both acquired by the original Wheeling & Lake Erie RR

Co. ("W&LE") in 1899. W&LE leased itself to the New York, Chicago & St. Louis RR Co. ("NYC&StL", "Nickel Plate") in 1949, and then the Norfolk & Western Rwy Co. acquired NYC&StL in 1964. N&W successor NS then sold the Harmon, OH to Zanesville segment to OHCR in 1988, including trackage rights between Harmon-Warwick, OH on the RJ Corman RR Co.'s ("RJCL") Warwick-Newport, OH line for interchanging with CSX's main line at Warwick. The Trinway photo also shows the remains of the adjacent former Cincinnati & Zanesville RR Co.'s Trinway-Dresden-Zanesville line arcing just beyond the OHCR line to the west. Conrail sold the abandoned and downgraded remains of that "Trinway Secondary" line now ending at Dresden to Caprail I as part of the PRL package. The distance on the OHCR line between OHCR MP 110.5 Morgan Run - MP 127.75 Trinway is ~17.25 miles. The line is shown in Attachment #9 N&W 1983 track chart and Attachment #10 PRR 1950 track chart labeled as the "Nickel Plate Road - W&LE District" adjacent to the Panhandle main line. The distance on the PRL from PRL MP 118.2 Morgan Run - ~MP 135.8 Trinway is ~17.6 miles. The line is shown in Attachment #11 Conrail 1992 track chart prior to its conveyance to Caprail I in 1992.

After ORDC assigned CUOH the PRL operating franchise in 1992, SVI used its CUOH and OHCR subsidiaries to tightly integrate the formerly independent main lines together between Morgan Run-

Trinway. The subsidiaries constructed numerous new interchange tracks in the region with the apparent goal to use the PRL as the sole through route, and use the OHCR line as mostly a "last mile" connector to various lineside customers and yard areas and for car storage. The AEP Conesville power generating station and Coshocton Ethanol plant can theoretically be accessed from either OHCR alone or from the PRL via OHCR, but not from the PRL alone due to those facilities' transloading locations being on the OHCR line and economic infeasibilities to locate elsewhere in the region to obtain either joint CUOH and OHCR service or quasi-open access service under the ORDC-CUOH Operating Agreement. OHCR's Morgan Run-Trinway segment being owned and operated by G&W can be used by G&W as an artificial barrier to marketplace entry against third party PRL users and to potentially gain more favorable future PRL net lease terms and conditions from ORDC.

Because of the integrations neither subsidiary's line can now stand alone independently to serve those and other regional customers feasibly and efficiently. OHCR's Morgan Run-Trinway main line through route has been downgraded and effectively severed due to customer switching operations using the main line including AEP's backhoe coal car unloading operation taking hours to unload their coal trains, short term car storage for CUOH and OHCR customers, and long term car storage for other third party

customers. The sale of either CUOH or OHCR to an unrelated third party could significantly disrupt service operations to regional customers without amicable agreements between the carriers, an argument ORDC has used when electing not to sell the PRL or assign the PRL's operations to operators other than SVI. Those Morgan Run-Trinway customers including AEP, AK Steel, Coshocton Ethanol, and Coshocton Grain together constitute the majority of carload providers on the PRL.

I therefore request that STB compel 1) SVI and/or G&W to convey the OHCR line segment between OHCR MP 110.5 at Morgan Run to MP 127.75 at Trinway at a fair market price to either ORDC or Caprail I and have ORDC or Caprail I fully integrate the segment into the PRL proper to be governed under the current ORDC-CUOH Operating Agreement, 2) SVI and/or G&W to terminate the southern end of the OHCR proper at OHCR MP 110.5 at Morgan Run where it interchanges with the PRL, and extend the northern terminus of the OSRR proper over the OHCR main line north to OHCR MP 127.75 at Trinway where it interchanges with the PRL, 3) ORDC and future PRL assigns to grant G&W and its future assigns trackage rights over the PRL segment between PRL MP 110.5 at Morgan Run to MP 127.75 at Trinway and over the OHCR segment between OHCR MP 110.5 at Morgan Run to MP 127.75 at Trinway for seamless access between OHCR and OSRR subsidiary lines to ensure all parties enjoy unimpeded rail

access on both the PRL and OHCR Morgan Run-Trinway segments and to those segment's customers as a condition of the G&W's proposed buyout of SVI's Southern Division subsidiaries.

Issue 4. Carman Connecting Track

After S&I constructed its portion of the Panhandle, the Lake Erie, Alliance & Wheeling RR Co. ("LEA&P") constructed a line from Phalanx, OH south to Dillonvale, OH that crossed over but did not interchange with the Panhandle at PRL MP 62.56 at Carman, OH. LEA&P successor NYC and S&I successor PRR most likely did not desire to interchange the tracks then, but Conrail apparently did when it owned both lines. However Conrail sold the LEA&P "Piney Fork Line" section to ORDC in 1982 before the connection was constructed, and ORDC has since net leased the Piney Fork Line to the Ohi-Rail Corp. ("OHIC").

A 12-15-2004 Apex Rail Service Agreement signed by Apex Environmental, LLC; Liberty Waste Transportation, LLC; OHIC; Jeffco Resources, Inc.; LWR, Inc.; ORDC; and OHCR (actually CUOH) states-

3.4 OHCR shall construct, at its sole cost and expense, a connecting track of approximately 2,716 feet that will enable OHCR to connect with the Piney Fork Line at the Pan Interchange [actually Carman] (approximately milepost 74). OHCR shall complete such construction by the time the Apex Landfill is ready to receive rail shipments. OHCR will

acquire all of the property rights necessary to construct, operate and maintain such track at least three (3) months prior to the anticipated completion date. If for any reason OHCR divests itself of the connecting track, OHCR shall grant ORDC the right of first refusal to acquire such track.

CUOH has constructed the interchange track and retains sole ownership and operation of it to haul primarily municipal, construction, and demolition waste into the Apex landfill over it from the PRL. However CUOH apparently did not file with STB prior to constructing the track as they apparently agreed with ORDC to do. The connector is shown in the photo below being the multiply-curved line amidst the more newly spoiled earth.



The Carman Connector being separately owned and operated by G&W can be used by G&W as an artificial barrier to marketplace entry against third party PRL users to potentially gain more favorable future PRL net lease terms and conditions from ORDC. Separate ownership and operation of multiple line segments did not exist during the Conrail era when it owned and operated both the PRL and Piney Fork Line, and the connector's private ownership and

operation unnecessarily separates ORDC's Piney Fork Line from its to-be-owned PRL.

I therefore request that STB compel CUOH and/or G&W to 1) properly file the construction of the Carman Connector with STB, and 2) convey the Carman Connector at a fair market price to either ORDC or Caprail I and have it fully integrated into either the PRL proper or Piney Fork Line proper and be governed either under the current ORDC-CUOH Operating Agreement or the ORDC-OHIC Lease Agreement to ensure all parties enjoy unimpeded rail access between the PRL and the Piney Fork Line as a condition of the G&W's proposed buyout of SVI's Southern Division subsidiaries.

Issue 5. Separate G&W Panhandle Rail Line Subsidiary

The current SVI Southern Division subsidiaries apparently operate under three different business models – 1) Private line ownership and operation (OHCR, OSRR, and certain CUOH short segments); 2) Private line ownership/net leasing to third party private operator (CSX's Cambridge-Newark and Mt. Vernon-Newark lines net leased to operator CUOH); and 3) Quasi-public line ownership/net operation to third part private operator (Caprail I net lease-to-own of the PRL to ORDC, and ORDC net operation assignment to CUOH). As shown, CUOH has line segments falling under all three models. This integration of multiple business models within the same corporate subsidiary while perhaps efficient for the carrier makes independent auditing and oversight of publicly-owned but privately-operated lines hard if not impossible due to the entanglement of each models' confidential financial information. It is also assumed private railroads would oppose regulations requiring them to divulge any information that could potentially be "reverse engineered" to predict other non-disclosed confidential financial information.

The G&W #223712/STB Finance Docket No. 35177 Petition for Exemption filing on pp. 5-6/.pdf pp. 7-8 revealed a portion of the SVI business and governance models:

"The Ohio Central Railroads are operated as three systems, each of which constitutes a single system for Board regulatory purposes."

"Each division has one central office. The Southern Line Railroads are run from an office in Coshocton, which also acts as headquarters for the entire Ohio Central system."

"All ten of the railroads share upper management."

"Significant management, budgeting, capital expenditure and other decisions for all ten railroads are made at the central headquarters in Coshocton."

"The railroads rely on each other, or their common parent, for financing, equipment purchases, and cross-collateralization; and the customers of all railroads call a central location for service."

"G&W proposes to acquire control of the ten railroads and operate them as a part of the GWI system. GWI does not anticipate making any material changes in the scope or nature

of the railroads' operations, or of the maintenance of their lines."

and is later generally repeated in Exhibit 4 - Voting Trust Agreement on p. 3/.pdf p. 117:

" ... (the 'Southern Division Railroads') operate as a single system by virtue of the fact that the three railroads share management; the three railroads are treated as one division by the current owner, the three railroads are run from one local office and headquarters which makes all significant management, budgeting, capital expenditure, operating, and design decisions, and which manages all maintenance of way/signal activities; the three railroads interconnect ... ; the marketing efforts of the three railroads are coordinated and directed from the local headquarters; the three railroads rely on each other, or their common parent, for financing, equipment purchases, and cross-collateralization ... ".

SVI officials repeatedly stated in public meetings and public documents (Attachment #12) that they cross-subsidized the PRL from the other SVI subsidiaries for it to remain solvent - cross-subsidization assumed to involve the movement of certain amounts of revenues, assets, infrastructure, equipment, labor, services,

etc. among the subsidiaries in the various states where SVI operates. The G&W Control Exemption request suggests SVI subsidiaries were able to cross-subsidize each other, thereby embedding PRL information moreso within the private SVI corporate hierarchy.

Due to the permitted entanglement of public and private financial information, the public cannot verify whether the PRL truly requires cross-subsidization from CUOH's other lines and/or from the other SVI subsidiaries, or conversely if the PRL cross-subsidizes the other CUOH lines and/or the other SVI subsidiaries. Such entanglement inhibits public transparency and oversight that other state and local government agencies owning and administering property, infrastructure, and facilities regularly detail in their public comprehensive annual financial reports ("CAFR") to the State of Ohio Auditor.

G&W as noted in their Control Exemption request is similarly comprised of numerous subsidiaries located nationally and internationally. The same SVI-PRL fiscal issues will continue under the new G&W ownership and administration, but then on a worldwide scale.

A more efficient solution for these intra- and inter-subsidary business and governance model differences would be for the PRL and all other CUOH lines to be placed under the same completely private or completely public ownership and administration model. Cross-subsidized subsidiaries are normally a non-issue in similar private business models. However Ohio Gov. Ted Strickland is currently opposed to re-privatizing the PRL, CSX has not indicated it would sell its Cambridge-Newark and Mt. Vernon-Newark lines to Caprail I/ORDC to be included as part of the PRL proper or to CUOH, and CUOH has not indicated it would sell its 50% interest in the C-N Division and 100% interest in the other privately-owned PRL segments to Caprail I/ORDC to be included as part of the PRL proper. Thus the multiple business and governance models may well continue after the G&W buyout, together with aforementioned issues.

I therefore request that as a condition of the G&W's proposed buyout of SVI's Southern Division subsidiaries STB compel the PRL be extracted from CUOH and be conveyed to a new independent subsidiary with but not limited to the following terms and conditions.

1) The new PRL subsidiary will be a non-carrier, only administering PRL ROW, infrastructure, and certain facilities, and

be able to profit from the access to and use of the PRL by other G&W subsidiaries and third party users. ORDC may regulate access and use terms and conditions but will not regulate access and use profit margins.

2) The new PRL subsidiary will maintain all PRL ROW and infrastructure. Annual PRL maintenance of way ("MOW") costs will be based upon all users' total ton-miles of use, and ORDC and G&W will jointly determine the PRL's long term capital expenditures ("capex") needs. Each user will be assessed an access fee and/or use fee based upon their ton-mile use of the PRL, with set portions allocated to annual MOW and long term capex costs.

MOW responsibilities and costs may be wholly assumed by the new PRL subsidiary, or may be shared with other G&W subsidiaries using a methodology agreed to by STB. Shared MOW responsibilities and costs may be more efficient than independent MOW responsibilities and costs, but may require the G&W subsidiary divulge and agree to public audits of specific MOW financial information in return. Private MOW financial information disclosure should be limited to the G&W subsidiary sharing the service and need not include other G&W subsidiaries if they are not likewise providing that shared service.

If G&W does not desire the new PRL subsidiary wholly assume MOW responsibilities and costs, nor share PRL MOW responsibilities and costs with its other subsidiaries, then ORDC per Ohio Revised Code 4981.07(A) - "The Ohio rail development commission may restore, repair, relocate, or upgrade any rail property purchased, leased, or maintained by the commission. The commission may restore, repair, relocate, or upgrade any rail property owned by another person as long as such action is necessary for the efficient operation of rail services provided by the commission. The commission may obtain modernization loans from the federal government to restore or repair rail property acquired by the commission for the purpose of implementing rail service." - will maintain the PRL and assess all PRL trains and other vehicles, persons, etc. accessing and using PRL property fair fees to adequately cover its MOW costs. ORDC may alternatively assign the PRL MOW responsibilities and costs to another willing public state or local government agency.

3) The new PRL subsidiary will dispatch all PRL trains and control other vehicles, persons, etc. accessing and using PRL property. All access and use will be equal and fair, with priorities granted to national defense, homeland security, and other emergency situations. Queued slots and set operation windows may be assigned if congestion or other situations so warrant, or

auctioned in extreme use conditions. Dispatching responsibilities and costs may be wholly assumed by the new PRL subsidiary, or may be shared with other G&W subsidiaries using a methodology agreed to by STB. Shared dispatching responsibilities and costs may be more efficient than independent dispatching responsibilities and costs, but may require the G&W subsidiary divulge and agree to public audits of specific dispatching financial information in return. Private dispatching financial information disclosure should be limited to the G&W shared subsidiary sharing dispatching and need not include other G&W subsidiaries if they are not likewise providing shared dispatching. If G&W does not desire the new PRL subsidiary wholly assume dispatching responsibilities and costs, nor share PRL dispatching responsibilities and costs with its other subsidiaries, then ORDC per Ohio Revised Code 4981.07(B) - "The commission may operate any rail property acquired by it over track owned or leased by the commission, or over track owned by another person pursuant to an agreement with that person as long as such action is necessary for the efficient operation of rail service provided by the commission pursuant to this chapter" - will dispatch the PRL and assess all PRL trains and other vehicles, persons, etc. accessing and using PRL property fair fees to adequately cover its dispatching costs. ORDC may alternatively assign the PRL dispatching responsibilities and costs to another willing public state or local government agency.

4) The new PRL subsidiary may propose to jointly share other administration, responsibilities, and costs with its other G&W subsidiaries if greater efficiencies can be attained. Any shared administration, responsibilities, and costs and methodology must be first approved on a case-by-case basis by STB. Shared administration, responsibilities, and costs may be more efficient than independent administration, responsibilities, and costs, but may require the G&W subsidiary divulge and agree to public audits of specific financial information in return. Private financial information disclosure should be limited to the G&W shared subsidiary providing the service and need not include other G&W subsidiaries if they are not likewise using those shared administration, responsibilities, and costs. If G&W does not desire the new PRL subsidiary wholly assume administration, responsibilities, and costs, nor share PRL administration, responsibilities, and costs with its other subsidiaries, then ORDC may petition STB to assume certain administration, responsibilities, and costs. ORDC may alternatively assign those administration, responsibilities, and costs to another willing public state or local government agency.

5) The new PRL subsidiary will adequately self-insure PRL ROW, infrastructure, and certain facilities. All PRL train operators

and operators of other vehicles, etc. accessing and using PRL property will be required to secure their own adequate insurance coverage.

6) The new PRL subsidiary will owe annual ODT public utility real and certain personal property taxes on PRL ROW, infrastructure, and certain facilities. No PRL train operators and operators of other vehicles, etc. accessing and using PRL property will be taxed on the ROW, infrastructure, and certain facilities the new PRL subsidiary pays ODT taxes for. ODT will divulge the assessments and methodology since no confidential financial information will be entangled with those assessments.

7) The new PRL subsidiary will submit a CAFR to the State of Ohio Auditor with all cross-subsidies made transparent.

Panhandle Rail Line Infrastructure Inventory and Appraisals

The Panhandle its PRL segments have been the recipients of a portion of the \$Bs of federal assistance provided to PCTC and Conrail. ORDC and SVI officials report CUOH has invested approximately \$7M of "sweat equity" in the PRL over and above the various ORDC-CUOH operating agreements' line maintenance requirements since 1992. However, CUOH has altered, removed, and possibly liquidated certain PRL infrastructure. Known removals include the following cases among possibly others unknown or not readily observable due to restricted public access:

- Uhrich Jct., Uhrichsville, OH. Attachment #13 Conrail Zone Track Spot map, revised 9-15-1984, Zone 83, p.12, shows Uhrich Jct. located at PRL MP 91.8. CUOH crews were observed and photographed c.2000 removing the switch from the 202 Weirton Secondary (remaining PRL main line) leading to the 633 interchange track with the now-RJCL line. The loss of the interchange requires Uhrich Jct. area customers to route 26 miles north to Brewster/Harmon via RJCL, then route 32 miles southeast to Bowerston via WE to the PRL for a total of 58 miles vs. 10 miles from Uhrich Jct. to Bowerston directly via the PRL, or route 36 miles southwest to Morgan Run via OHCR to the PRL

for a total of 62 miles vs. 26 miles from Uhrich Jct. to Morgan Run directly via the PRL.

- Port Washington, OH. Attachment #13 Conrail Zone Track Spot map, revised 9-15-1984, Zone 83, p.12, shows Port Washington located at approximately PRL MP 101. CUOH reportedly hired a contractor to remove some of the 890 Belden Brick Lead, 893 Stub, and/or 889 Wickes Lumber spur, but they also removed the U.S. 36 grade crossing and all tracks beyond that including the 891 Belden Brick #1 and 892 Belden Brick #2 apparently by mistake, and none have been replaced. The former Belden Brick site was recently on the U.S. Department of Energy's FutureGen hydrogen production and carbon dioxide sequestration project short list, since awarded to another state's site.
- Dennison Yard, Dennison, OH. Attachment #14 Conrail Zone Track Spot map, revised 9-15-1984, Zone 83, p.13, shows Dennison Yard located between PRL MP 90.01-90.95. In preparation for its 2004 steam locomotive festival, CUOH removed what are believed to have been the 637 Dennison Yard Track #10 and the 638 Dennison Yard Track #16, which were replaced with cinders or similar gravel for festival parking. The tracks have not been replaced, and the resulting loss hampers the yard's capacity and switching efficiency affecting Associated Grocers' successor Laurel

Grocery Co., which has since 2-2007 been expanding in the number of jobs and trucks serving the facility, and Rosebud Mining's new Dennison deep coal mine that is now using rail.

The G&W #223712/STB Finance Docket No. 35177 Petition for Exemption filing on p. 6/.pdf p. 8 notes:

"The (SVI) railroads rely on each other, or their common parent, for financing, equipment purchases, and cross-collateralization ... "

that is generally repeated later in Exhibit 4 - Voting Trust Agreement on p.3/.pdf p.117:

" ... (the 'Southern Division Railroads') operate as a single system by virtue of the fact that the three railroads share management; the three railroads are treated as one division by the current owner, the three railroads are run from one local office and headquarters which makes all significant management, budgeting, capital expenditure, operating, and design decisions, and which manages all maintenance of way/signal activities; ... the three railroads rely on each other, or their common parent, for financing, equipment purchases, and cross-collateralization ... ".

Thus certain PRL infrastructure removals theoretically could also have ended up with SVI's other subsidiaries for use, sales, or liquidation there. Prior to the G&W buyout announcement, OHCR downsized a material yard in Coshocton, which possibly could have included PRL assets.

An appraisal may have been conducted when Conrail sold the PRL to Caprail I in 1992. ORDC does have in its possession the original PRR ICC valuation maps of the PRL main and branch lines, but whether they were updated to show exactly what infrastructure Conrail conveyed to Caprail I is unknown. According to experts and historians the accuracy of those maps has been known to be questionable, possibly including any Conrail revisions to them. During its proposed PRL privatization effort c.2004, ORDC contracted for an independent appraisal of the line. Although the appraisal offered a snapshot of that time period, its accuracy and precision can similarly be called into question, and apparently no comparison to a 1992 appraisal was conducted to analyze any infrastructure alterations, removals, and possible liquidations, and if any were discovered thereafter compensated for.

Per the ORDC-CUOH PRL operating agreements, CUOH must receive prior permission from ORDC before any alterations are made, yet

ORDC has had to be informed by the public of observed CUOH modifications, particularly the aforementioned Uhrich Jct. and Dennison cases. ORDC, as controller of the to-be State of Ohio-owned PRL property and infrastructure, is apparently also the sole agency charged with its auditing, as other State agencies have deferred auditing responsibilities to ORDC. The Ohio Dept. of Taxation relies upon the carriers, and county auditors and their appraisers (both of whom usually acquire their information from the carriers) for real and personal property information used to assess state public utility property taxes. However ODT does not make that appraisal information available for public analysis, and both ORDC and SVI officials said during a PRL Lease Committee meeting that ODT assessments are undervalued and are therefore not suitable for appraising rail lines.

The G&W #223712/STB Finance Docket No. 35177 Petition for Exemption filing on p. 6/.pdf p. 8 notes:

"G&W proposes to acquire control of the ten railroads and operate them as a part of the GWI system. GWI does not anticipate making any material changes in the scope or nature of the railroads' operations, or of the maintenance of their lines."

Once G&W acquires control of the PRL it too will be able to alter, remove, and possibly liquidate certain PRL infrastructure, with conveyances not only to former SVI regional subsidiaries but also to its own worldwide subsidiaries.

I therefore request that STB 1) compel CUOH and SVI to identify what PRL infrastructure has been altered, removed, and/or liquidated since being the PRL's assigned operator, 2) compel the State of Ohio Auditor to conduct an independent appraisal of the PRL and to audit internal SVI and ORDC PRL records and compare that data to all previous appraisals and other related records to determine any PRL infrastructure alterations, removals, and/or liquidations by CUOH or SVI, 3) compel the State of Ohio Auditor to balance any PRL infrastructure removals, alterations, and/or liquidations against SVI's PRL demonstrable sweat equity, and 4) compel the State of Ohio Auditor to require ORDC enact more stringent auditing requirements of lines it owns and/or controls as part of its CAFR as a condition of the G&W's proposed buyout of SVI's Southern Division subsidiaries.

Attachment #1

**4-16-1992 Conrail-Caprail I PRL Conveyance
Agreement**

6 9 8 4 7

D E E D

CONSOLIDATED RAIL CORPORATION

-to-

CAPRAIL I, INC.

Land known as the Panhandle Line
and situate in Coshocton, Franklin,
Harrison, Jefferson, Licking,
Muskingum and Tuscarawas Counties,
Ohio.

Prep: Descp:
Chkd: Compd:
Apvd:

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THIS INDENTURE WITNESSETH, that **CONSOLIDATED RAIL CORPORATION**, a Corporation of the Commonwealth of Pennsylvania, whose mailing address is Six Penn Center Plaza, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00), and other good and valuable consideration to it paid, the receipt of which sum is hereby acknowledged, releases and quitclaims to **CAPRAIL I, INC.**, a Corporation of the State of Ohio, having a mailing address of 425 Walnut Street, Suite 2200, Cincinnati, Ohio 45202, hereinafter referred to as the Grantee, all its right, title and interest of, in and to the following described Premises:

ALL THAT CERTAIN property of the Grantor, together with all of the improvements thereon, being portions of Grantor's lines of railroad known as the Panhandle Line, situate in the Counties of Jefferson, Harrison, Tuscarawas, Coshocton, Muskingum, Licking and Franklin, in the State of Ohio, hereinafter referred to as "Premises" and described in Exhibit "A" and generally depicted in Exhibit "B" hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest in and to any and all minerals, materials and fossil fuels, including but not limited to all coal, coal fill, gas and oil (hereafter referred to as "minerals") located in, on, through, under and beneath the Premises; and together with the rights and easements of immediate and unimpeded ingress and egress on, across and over said Premises for the purpose of testing and removing said minerals; and together with the right to lay pipes in, on, and under the surface of said Premises to effectuate such removal; and further together with the right to sell and collect any and all rents, profits and royalties from said minerals; Grantor, in exercising its rights hereunder, agrees that it will not unreasonably interfere with the railroad operations on the Premises; and further

EXCEPTING AND RESERVING further those parcels indicated on pages 6 and 8 in Exhibit "A" and shown on sheets 7, 10 and 11 in Exhibit "B"; and further

EXCEPTING AND RESERVING thereout and therefrom and unto the said Grantor operating rights over the Premises, to allow Grantor to conduct exempt rail operations between its connection with the property at Gould Tunnel, the landfill on the Georgetown Line, presently owned by Chambers Development Corporation, and the landfill at Fernwood presently owned by Crossridge, Inc.; subject, however, to the terms and conditions of Section IV, Subsection F of the Purchase and Sale Agreement between Grantor and Grantee.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the

Premises, and (3) any easements or agreements of record or otherwise affecting the land hereby conveyed, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of Ohio now or hereafter in force with respect to the covenants set forth below.

(1) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

(2) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on the Premises conveyed to the said Grantee; and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency; and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossings and their appurtenances.

(3) Grantor's use of the Premises and its right and obligations thereto shall be governed by those provisions of the Purchase and Sale Agreement between Grantor and Grantee dated November 20, 1991, as amended and supplemented, which Agreement survives closing and the delivery of this deed.

(4) Abandonment of any portion of the Premises pursuant to authorization of the Interstate Commerce Commission within 10 years of the date hereof is subject to the rights retained by Grantor in Section IV, Subsection G of the said Purchase and Sale Agreement.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the said Grantor has caused this

Indenture to be executed by M. Virginia Ebert, its Director-Asset Management, and attested by WILBERTA C. JACKSON its Assistant Secretary, this 16th day of April A.D. 1992.

Signed, sealed and delivered in the presence of:

CONSOLIDATED RAIL CORPORATION By:

Nancy B. Reynolds
NANCY B. REYNOLDS
Bernadette M. Richmond
Bernadette M. Richmond

M. Virginia Ebert
M. Virginia Ebert, Director-Asset Management

ATTEST:

Nancy B. Reynolds
NANCY B. REYNOLDS
Bernadette M. Richmond
Bernadette M. Richmond

Wilberta C. Jackson
Assistant Secretary
WILBERTA C. JACKSON

COMMONWEALTH OF PENNSYLVANIA)
: ss
COUNTY OF PHILADELPHIA)

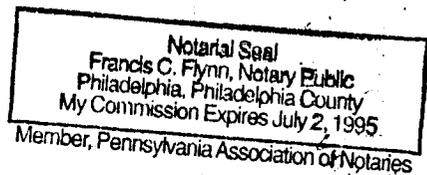
BEFORE ME, the undersigned, a Notary Public in and for said Commonwealth and County, personally appeared M. Virginia Ebert, as Director-Asset Management and WILBERTA C. JACKSON, its Assistant Secretary, respectively, of CONSOLIDATED RAIL CORPORATION, and severally acknowledged the execution of the foregoing Instrument to be the voluntary act and deed of said CONSOLIDATED RAIL CORPORATION, and their voluntary act and deed as such officers.

WITNESS my hand and notarial seal, this 16th day of April A. D. 1992.

Francis C. Flynn
Notary Public

THIS INSTRUMENT PREPARED BY:

Juliana R. Sparks
Consolidated Rail Corporation
Fifteenth Floor, Six Penn Center
Philadelphia, Pennsylvania 19103
Case No. 69847



:nls

MICROFILMED

DEED TO
CAPRAIL I, INC.

VOL 657 PAGE 230

EXHIBIT "A"

Jefferson County, OhioWeirton Secondary C.R., Line Code 2206

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Pittsburgh-St. Louis Main Line and in part a.k.a. the Fern Industrial Track) and identified as Line Code 2206 in the Recorder's Office of Jefferson County, Ohio in Volume 564 at page 214, situate in the County of Jefferson and State of Ohio, being further described as follows:

BEGINNING at about Railroad Station 275+66 at the east portal of Gould Tunnel, at approximately Railroad Mile Post 49.5 in the Township of Cross Creek, as indicated on sheet 1 of 22 of aforesaid Exhibit "B"; thence extending in a general westerly direction, passing through the Township of Wayne to the County Line, the County of Jefferson on the east and the County of Harrison on the west, being at approximately Railroad Mile Post 62.8, as indicated on sheet 2 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-69, dated March 29, 1976 and recorded on December 6, 1978, in the Recorder's Office of Jefferson County, Ohio, in Volume 564 at page 210&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 1 OF 12.

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CASE NO. 69847

DEED TO
CAPRAIL I, INC.

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EXHIBIT "A"

Harrison County, Ohio

Weirton Secondary C.R., Line Code 2206

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Pittsburgh-St. Louis Main Line) and identified as Line Code 2206 in the Recorder's Office of Harrison County, Ohio in Volume 196 at page 692, situate in the County of Harrison and State of Ohio, being further described as follows:

EXTENDING from the County Line, the County of Jefferson on the east and the County of Harrison on the west, being at approximately Railroad Mile Post 62.8, as indicated on sheet 2 of 22 of aforesaid Exhibit "B", in a general westerly direction passing through the Townships of German, Rumley, North and Monroe to the County Line, the County of Harrison on the east and the County of Tuscarawas on the west, being at approximately Railroad Mile Post 87.1, as indicated on sheet 3 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-68, dated March 29, 1976 and recorded on April 10, 1979, in the Recorder's Office of Harrison County, Ohio, in Deed Volume 196 at page 687&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 2 OF 12.

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CAPRAIL I, INC.

EXHIBIT "A"

VOL 657 PAGE 232

Tuscarawas County, Ohio

Weirton Secondary C.R., Line Code 2206/8106

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Pittsburgh-St. Louis Main Line) and identified as Line Code 2206/8106 in the Recorder's Office of Tuscarawas County, Ohio in Book 547 at page 769, ***below situate in the County of Tuscarawas and State of Ohio, being further described as follows:

EXTENDING from the County Line, the County of Harrison on the east and the County of Tuscarawas on the west, being at approximately Railroad Mile Post 87.1, as indicated on sheet 3 of 22 of aforesaid Exhibit "B", in a general southwesterly direction passing through the Townships of Union, Mill, Warwick, Clay, Salem and Oxford to the County Line, the County of Tuscarawas on the east and the County of Coshocton on the west, being at approximately Railroad Mile Post 108.9, as indicated on sheet 4 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-75, dated March 29, 1976 and recorded on June 5, 1979, in the Recorder's Office of Tuscarawas County, Ohio, in Volume 547 at page 764&c., granted and conveyed unto Consolidated Rail Corporation.

***which full description is attached hereto at Exhibit Z and made a part hereof.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 3 OF 12.

CASE NO. 69847

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CAPRAIL I, INC.

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EXHIBIT "A"

Coshocton County, Ohio

Weirton Secondary C.R., Line Code 8106

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Pittsburgh-Columbus Main Line) and identified as Line Code 8106 in the Recorder's Office of Coshocton County, Ohio in Volume 320 at page 468, situate in the County of Coshocton and State of Ohio, being further described as follows:

EXTENDING from the County Line, the County of Tuscarawas on the east and the County of Coshocton on the west, being at approximately Railroad Mile Post 108.9, as indicated on sheet 4 of 22 of aforesaid Exhibit "B", in a general southwesterly direction passing through the Townships of Oxford, Lafayette, Tuscarawas, Franklin and Virginia to the County Line, the County of Coshocton on the north and the County of Muskingum on the south, being at approximately Railroad Mile Post 132.0, as indicated on sheet 5 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-64, dated March 29, 1976 and recorded on January 23, 1979, in the Recorder's Office of Coshocton County, Ohio, in Volume 320 at page 463&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 4 OF 12.

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EXHIBIT "A"

Muskingum County, Ohio

Weirton Secondary C.R., Line Code 8106

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Pittsburgh-Columbus Main Line) and identified as Line Code 8106 in the Recorder's Office of Muskingum County, Ohio in Volume 760 at page 127, situate in the County of Muskingum and State of Ohio, being further described as follows:

EXTENDING from the County Line, the County of Coshocton on the north and the County of Muskingum on the south, being at approximately Railroad Mile Post 132.0, as indicated on sheet 5 of 22 of aforesaid Exhibit "B", in a general southwesterly direction passing through the Townships of Cass, Jackson and Licking to the County Line, the County of Muskingum on the east and the County of Licking on the west, being at approximately Railroad Mile Post 146.2, as indicated on sheet 6 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-73, dated March 29, 1976 and recorded on July 8, 1977, in the Recorder's Office of Muskingum County, Ohio, in Volume 760 at page 122&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 5 OF 12.

CASE NO. 69847

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CAPRAIL I, INC.

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EXHIBIT "A"

Licking County, Ohio

Weirton Secondary C.R., Line Code 8106

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Pittsburgh-Columbus Main Line) and identified as Line Code 8106 in the Recorder's Office of Licking County, Ohio in Volume 763 at page 404, situate in the County of Licking and State of Ohio, being further described as follows:

EXTENDING from the County Line, the County of Muskingum on the east and the County of Licking on the west, being at approximately Railroad Mile Post 146.2, as indicated on sheet 6 of 22 of aforesaid Exhibit "B", in a general southwesterly direction passing through the Townships of Hanover and Madison to approximately Railroad Mile Post 157.8 (a.k.a. CSX Railroad Mile Post 103.8), in the City of Newark, the place of ENDING as indicated on sheets 7 and 8 of 22 of aforesaid Exhibit "B".

TOGETHER with all of Grantor's right, title and interest in and to those three (3) parcels of land as indicated by "PS" on sheet 7 of 22 in Newark, Ohio.

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-70, dated March 29, 1976 and recorded on June 28, 1977, in the Recorder's Office of Licking County, Ohio, in Volume 763 at page 398&c., granted and conveyed unto Consolidated Rail Corporation.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest in and to that piece, parcel or tract of land indicated by cross hatched lines on sheet 7 of 22 in Exhibit "B".

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 6 OF 12.

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CAPRAIL I, INC.

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EXHIBIT "A"

Licking County, OhioWeirton Secondary C.R./CSX, Line Code 8106

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Pittsburgh-Columbus Main Line) and identified as Line Code 8106 in the Recorder's Office of Licking County, Ohio in Volume 763 at page 404, situate in the County of Licking and State of Ohio, being further described as follows:

BEGINNING at approximately CSX Railroad Mile Post 103.8 (a.k.a. CRC Railroad Mile Post 157.8), in the City of Newark, as indicated on sheets 7 and 8 of 22 of aforesaid Exhibit "B"; thence extending in a general southwesterly direction passing through the Townships of Newark, Granville, re-entering the Townships of Newark, Union, Harrison and Lima to the County Line, the County of Licking on the east and the County of Franklin on the west, being at approximately CSX Railroad Mile Post 124.5, as indicated on sheet 9 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-70, dated March 29, 1976 and recorded on June 28, 1977, in the Recorder's Office of Licking County, Ohio, in Volume 763 at page 398&c., granted and conveyed unto Consolidated Rail Corporation.

IT SHOULD be understood that Grantor is only conveying its 50% interest in the joint Chessie System/Conrail ownership between Mile Post 103.8 and Mile Post 124.5.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 7 OF 12.

DEED TO
CAPRAIL I, INC.

VOL. 657 PAGE 237

EXHIBIT "A"

Franklin County, Ohio

Weirton Secondary CRC/CSX, Line Code 8106

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Weirton Secondary (a.k.a. the Penn Central Main Line Pittsburgh-Columbus-Chicago) and identified as Line Code 8106 in the Recorder's Office of Franklin County, Ohio in Volume 3714 at page 168, situate in the County of Franklin and State of Ohio, being further described as follows:

EXTENDING from the County Line, the County of Licking on the east and the County of Franklin on the west, at approximately CSX Railroad Mile Post 124.5, as indicated on sheet 9 of 22 of aforesaid Exhibit "B", in a general westerly direction passing through the Townships of Jefferson and Mifflin to approximately CSX Railroad Mile Post 136.4 at approximately 1,141 feet easterly of the intersection of the existing I-670 centerline, as measured along the railroad centerline, being the Westbound Home Signal at CP 138, in the City of Columbus, the place of ENDING, as indicated on sheet 14 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-66, dated March 29, 1976 and recorded on March 19, 1979, in the Recorder's Office of Franklin County, Ohio, in Volume 3714 at page 163&c., granted and conveyed unto Consolidated Rail Corporation.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest in and to those pieces, parcels or tracts of land indicated by cross hatched lines on sheets 10 and 11 of 22 in Exhibit "B".

IT SHOULD be understood that Grantor is only conveying its 50% interest in the joint Chessie System/Conrail ownership between Mile Post 125.5 and Mile Post 136.4.

IT SHOULD be further understood that Grantor is not conveying to Grantee any of Grantor's right, title or interest in and to Grantor's wholly owned 20th Street Yard properties.

IT SHOULD be further understood that Grantor is not conveying to Grantee any of Grantor's rights to the Neilston Running Track which is in the process of being constructed by the State of Ohio, and Grantor reserves all rights in and to all agreements pertaining to the I-670/FRA-670-3.93 Project and the right to receive all compensation for any land and property taken by the State of Ohio or governmental agency for the I-670 Project.

DEED TO
CAPRAIL I, INC.

EXHIBIT "A"

Harrison County, Ohio

Cadiz Running Track, Line Code 2238/2239

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as (1) the Cadiz Running Track (a.k.a. the Penn Central Cadiz Secondary Track) and identified as Line Code 2238 in the Recorder's Office of Harrison County, Ohio in Volume 196 at page 693; and (2) Cadiz Running Track (a.k.a. the Penn Central Hanna Secondary Track), identified as Line Code 2239 in said Recorder's Office in Volume 196 at page 694, situate in the County of Harrison and State of Ohio, being further described as follows:

BEGINNING at approximately Railroad Mile Post 0.0, said beginning being adjacent to the Weirton Secondary, herein conveyed, at approximately Railroad Mile Post 66.2 of Line Code 2206, at Cadiz Junction in the Township of German, as indicated on sheet 15 of 22 of aforesaid Exhibit "B"; thence extending in a general southerly direction passing through the Townships of Green, Archer and Cadiz to the Township Line, the Township of Cadiz on the north and the Township of Athens on the south, being at approximately Railroad Mile Post 12.8, the place of ENDING, as indicated on sheet 16 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which John C. Kohl, as Trustee of the Property of Philadelphia, Baltimore and Washington Railroad Company, Debtor, by Conveyance Document No. PB&W-CRC-RP-68, dated March 29, 1976 and recorded on April 10, 1979, in the Recorder's Office of Harrison County, Ohio, in Deed Volume 196 at page 687&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 9 OF 12.

CASE NO. 69847

DEED TO
CAPRAIL I, INC.

VOL 657 PAGE 239

EXHIBIT "A"

Muskingum County, Ohio

Trinway Secondary, Line Code 8134

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Trinway Secondary Track and identified as Line Code 8134 in the Recorder's Office of Muskingum County, Ohio in Book 795 at page 227, situate in the Township of Cass, County of Muskingum and State of Ohio, being further described as follows:

BEGINNING at approximately Railroad Mile Post 0.3, said beginning being adjacent to the Weirton Secondary, herein conveyed, at approximately Railroad Mile Post 135.9 of Line Code 8106, at Trinway, as indicated on sheet 17 of 22 of aforesaid Exhibit "B"; thence extending in a general southerly direction to approximately Railroad Mile Post 1.43, being a Corporation Line, the Township of Cass on the north and the Village of Dresden on the south, the place of ENDING, as indicated on sheet 18 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which the Connecting Railway Company, Debtor, by Conveyance Document No. CONN-CRC-RP-13, dated March 30, 1976 and recorded on October 27, 1978, in the Recorder's Office of Muskingum County, Ohio, in Deed Book 795 at page 222&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 10 OF 12.

MICROFILMED

DEED TO
CAPRAIL I, INC.

EXHIBIT "A"

Licking County, OhioHebron Industrial Track, Line Code 8130

ALL THAT CERTAIN property of the Grantor, being the line of railroad known as the Hebron Industrial Track (a.k.a. the Thurston Secondary Track) and identified as Line Code 8130 in the Recorder's Office of Licking County, Ohio in Volume 781 at page 254, situate in the County of Licking and State of Ohio; being further described as follows:

BEGINNING at Railroad Station 7021+28, being Railroad Mile Post 133.0 at Heath, in the Township of Granville, as indicated on sheet 19 of 22 of aforesaid Exhibit "B"; thence extending in a general southerly direction passing through the Township of Newark, crossing the Weirton Secondary, herein conveyed, at approximately Railroad Mile Post 161.9 of Line Code 8106, to approximately Railroad Mile Post 138.5, being the south side of North Street, in the Township of Union, the place of ENDING, as indicated on sheet 20 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-157, dated March 30, 1976 and recorded on September 5, 1978, in the Recorder's Office of Licking County, Ohio, in Volume 781 at page 249&c. and as Document No. 95180, granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 12 PAGES, OF WHICH THIS IS PAGE 11 OF 12.

DEED TO
CAPRAIL I, INC.

VOL. 657 PAGE 241

EXHIBIT "A"

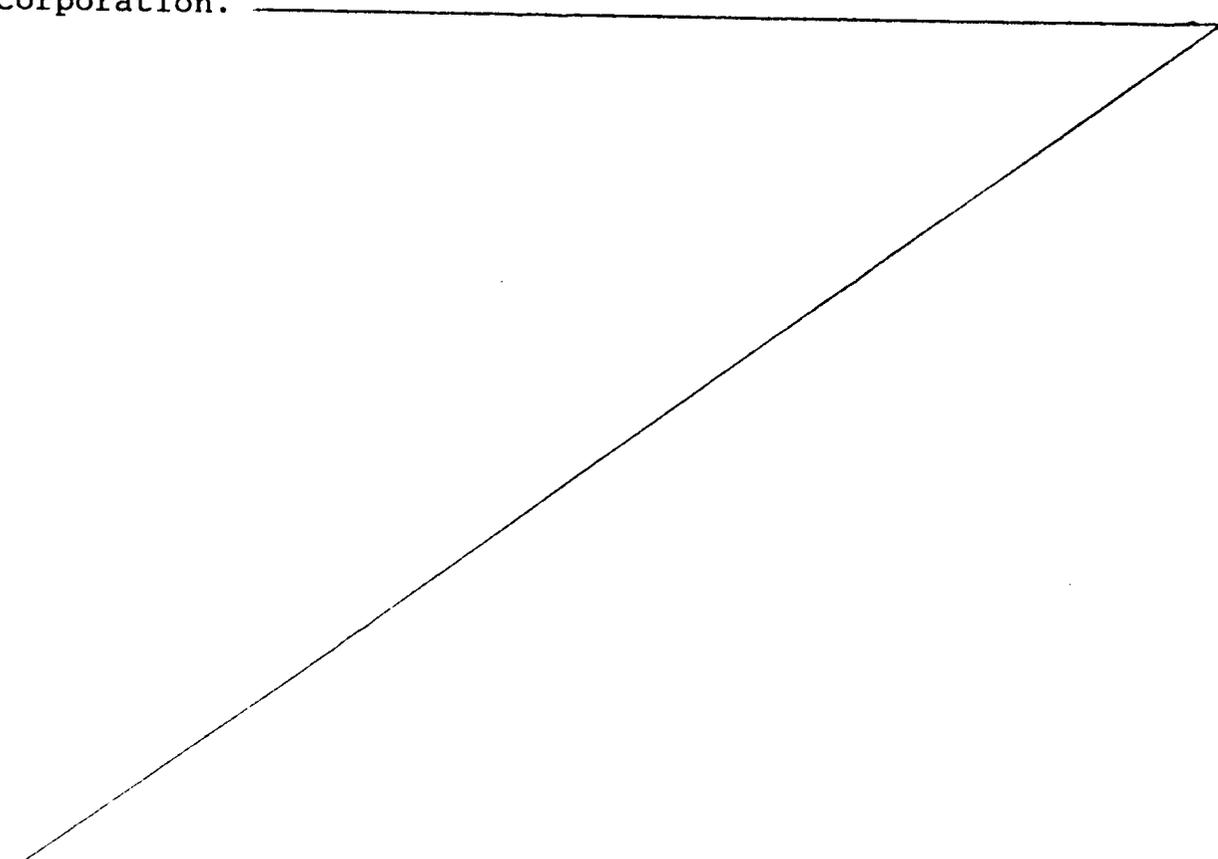
Franklin County, Ohio

East Columbus Industrial Track, Line Code 8149

ALL THAT CERTAIN property of the Grantor, being the line of railroad known as the East Columbus Industrial Track (a.k.a. the East Columbus Branch) and identified as Line Code 8149 in the Recorder's Office of Franklin County, Ohio in Volume 3714 at page 103, situate in the County of Franklin and State of Ohio; being further described as follows:

BEGINNING at approximately Railroad Mile Post 4.1, being adjacent to the Weirton Secondary, herein conveyed, at approximately Railroad Mile Post 186.1 of Line Code 8106, at East Columbus, in the Township of Mifflin, as indicated on sheet 21 of 22 of aforesaid Exhibit "B"; thence extending in a general westerly direction, being partly in the Townships of Truro and Marion, to approximately Railroad Mile Post 5.3 in the Township of Mifflin, the place of ENDING, as indicated on sheet 22 of 22 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-149, dated March 30, 1976 and recorded on March 19, 1979, in the Recorder's Office of Franklin County, Ohio, in Volume 3714 at page 97&c., granted and conveyed unto Consolidated Rail Corporation.



DEED TO
CAPRAIL I, INC.

EXHIBIT B

MAP ADDENDUM

THIS EXHIBIT "B" CONTAINS 22 MAPS.

MICROFILMED

CASE NO. 69847

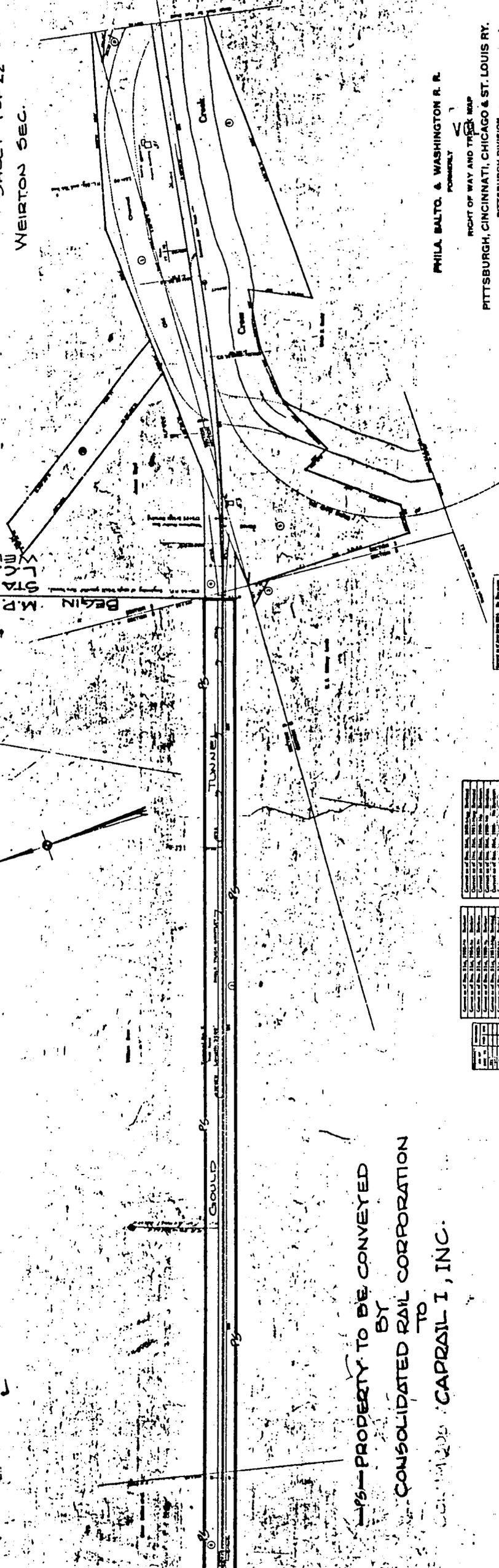
V.S. 104 (7190)/0-116 L.C. 2206/8106
 V.S. 204 (7194)/1-16 L.C. 8106
 V.S. 1504 (7191)/1-7 L.C. 2258/2289
 V.S. 1104 (7106)/142 L.C. 8134
 V.S. 301 (3016)/76-79 L.C. 8130
 V.S. 302 (3022)/776-777 L.C. 8149

SHEET 1 OF 22

WEIRTON SEC.

JEFFERSON COUNTY, OHIO
 CROSS CREEK TOWNSHIP
 L.S. 828

Begin M.P. 49.5 ±
 STA. 275+66
 L.C. 2206
 WEIRTON SEC.



PROPERTY TO BE CONVEYED
 BY
 CONSOLIDATED RAIL CORPORATION
 TO
 CAPRAIL I, INC.

PHILA. BALTO. & WASHINGTON R. R.

RIGHT OF WAY AND TRACK MAP
 PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RY.

657 PAGE 243

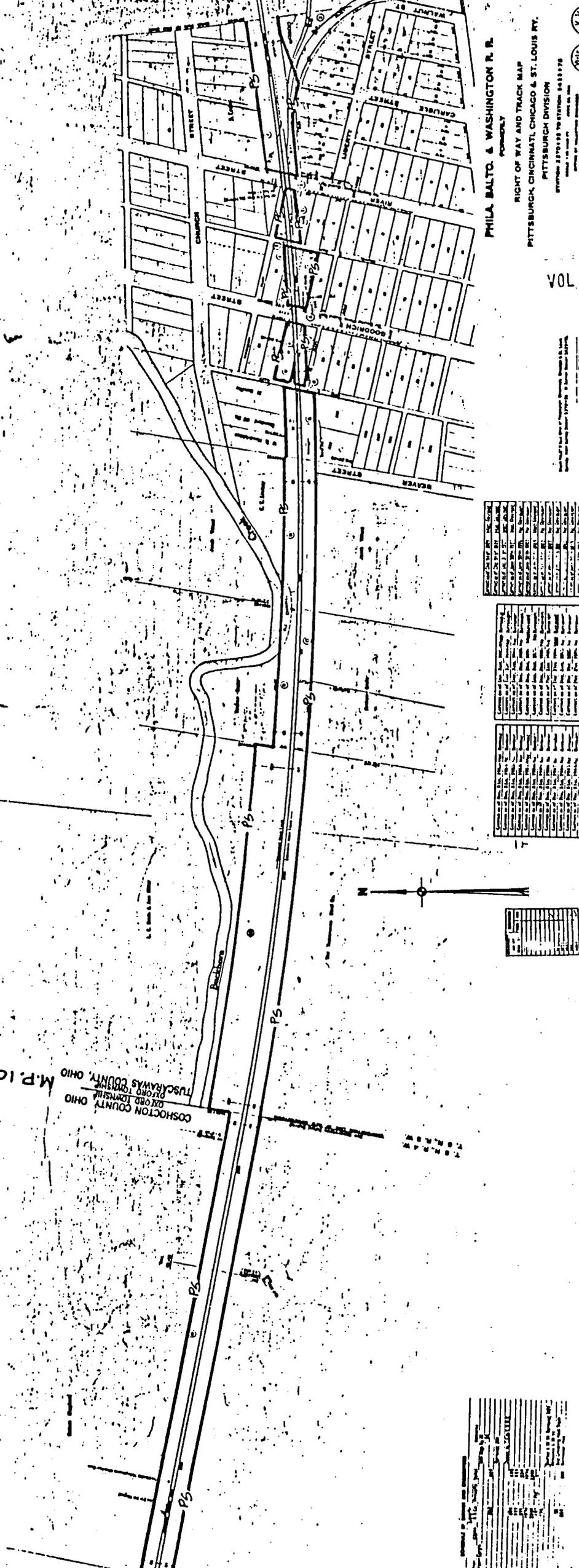
NO.	DESCRIPTION	DATE	BY
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MICROFILMED

CASE NO. 69847
SHEET 4 OF 22

TUSCARAWAS COUNTY, OHIO
DISTRICT OF TUSCARAWAS

M.P. 108.9 ±
TUSCARAWAS COUNTY, OHIO
DISTRICT OF TUSCARAWAS
COSHOCK TOWNSHIP, OHIO

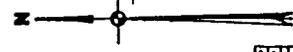


NO.	DESCRIPTION	ACRES	OWNER
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NO.	DESCRIPTION	ACRES	OWNER
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NO.	DESCRIPTION	ACRES	OWNER
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NO.	DESCRIPTION	ACRES	OWNER
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PHILA. BALTO. & WASHINGTON R. R.
FORMERLY
RIGHT OF WAY AND TRACK MAP
PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RY.
PITTSBURGH DIVISION
STATION 1079+00 TO STATION 1081+75
MADE 1-10-1914
CHECKED BY: [Signature]
DRAWN BY: [Signature]

VOL. 657 PAGE 246

Copyright 1914 by Phila. Balto. & Wash. R.R. Co.
This map is a part of the "Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Right of Way and Track Map" and is not to be used for any other purpose without the written consent of the Board of Directors of the Phila. Balto. & Wash. R.R. Co.

CASE NO. 69847

SHEET 8 OF 22

LICKING COUNTY, O.
NEWARK TWP.

M.P. 157.6
M.P. 103.8

END CR
BEAUN CR/CSX

NEWARK, O.

STATION MAP

OPERATED JOINTLY BY
THE BALTIMORE AND OHIO RAILROAD COMPANY
AND
THE PENNSYLVANIA RAILROAD COMPANY
OWNED JOINTLY BY
THE BALTIMORE AND OHIO RAILROAD COMPANY
AND
THE PHILADELPHIA, BALTIMORE AND WASHINGTON
RAILROAD COMPANY

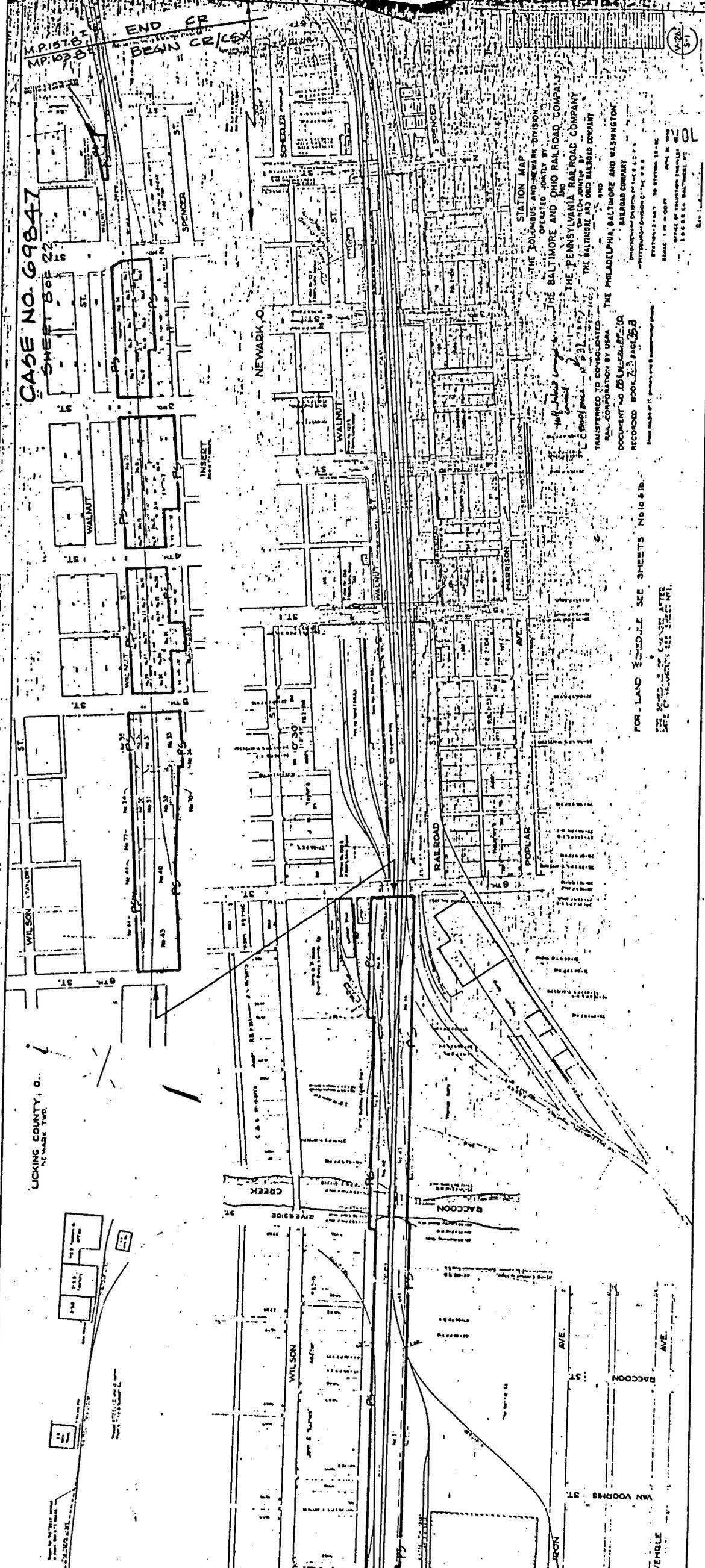
TRANSFERRED TO CONSOLIDATED
FULL CORPORATION BY USA
DOCUMENT NO. 201-10-10-10
RECORDED BOOK 23 PAGE 358

FOR LAND SCHEDULE SEE SHEETS NO. 10 & 11.

SEE SHEETS NO. 10 & 11
FOR LAND SCHEDULE

SCALE: 1" = 100 FT.
DATE: APRIL 1910
BY: OFFICE OF THE ENGINEER
STATE OF OHIO

657



CASE NO. 69847
SHEET 9 OF 22

M.P. 124.9 #

FRANKLIN COUNTY, OHIO

LOANS COUNTY, OHIO

RIGHT OF WAY AND TRACK MAP
THE COLUMBUS AND NEWARK DIVISION
OPERATED JOINTLY BY
THE BALTIMORE AND OHIO RAILROAD COMPANY
AND
THE PENNSYLVANIA RAILROAD COMPANY
OWNED JOINTLY
THE BALTIMORE AND OHIO RAILROAD COMPANY
AND
THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY
OHIO-WASH. DIVISION OF THE B&O
PITTSBURGH DIVISION OF THE P.R.R.
STATION MARK TO 25+00 MEAS.

L.C. 69847 (2) A. P. 12 (1942)
TRANSFERRED TO CONSOLIDATED
RAIL CORPORATION BY USRA
DOCUMENT NO. 2284, C.R. 20-70
RECORDED BOOK 22, PAGE 529

L.C. 69847 (2) A. P. 12
TRANSFERRED TO CONSOLIDATED
RAIL CORPORATION BY USRA
DOCUMENT NO. 2284, C.R. 20-70
RECORDED BOOK 22, PAGE 529

NO.	DATE OF GRANT	GRANTEE	QUANTITY	REMARKS	BLANDED		AREA	REMARKS
					ACRES	SQ. FT.		
1	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	1.000	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			1.000	
2	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
3	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
4	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
5	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
6	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
7	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
8	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
9	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	
10	1852	THE BALTIMORE AND OHIO RAILROAD COMPANY	0.250	GRANTED TO THE BALTIMORE AND OHIO RAILROAD COMPANY BY ACT OF THE OHIO LEGISLATURE, FEBRUARY 18, 1852.			0.250	

MICROFILMED



SEE SHEET
 2 OF 2 FOR
 E. COLUMBUS
 1-T.

EAST COLUMBUS, OHIO

RIGHT OF WAY AND TRACK MAP
 THE COLUMBUS AND NEWARK DIVISION
 OPERATED JOINTLY BY
 THE BALTIMORE AND OHIO RAILROAD COMPANY
 AND
 THE PENNSYLVANIA RAILROAD COMPANY
 THE BALTIMORE AND OHIO RAILROAD COMPANY
 AND
 THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY
 OHIO-NEWARK DIVISION OF THE P.B. & W.
 PITTSBURGH DIVISION OF THE P.B. & W.

L. C. B. (Area) M. P. 11 (S. 10)
 TRANSFERRED TO CONSOLIDATED
 RAIL CORPORATION BY U.S.A.
 DOCUMENT NO. 12141, C.E. 12-24
 RECORDED BOOK 221 PAGE 13

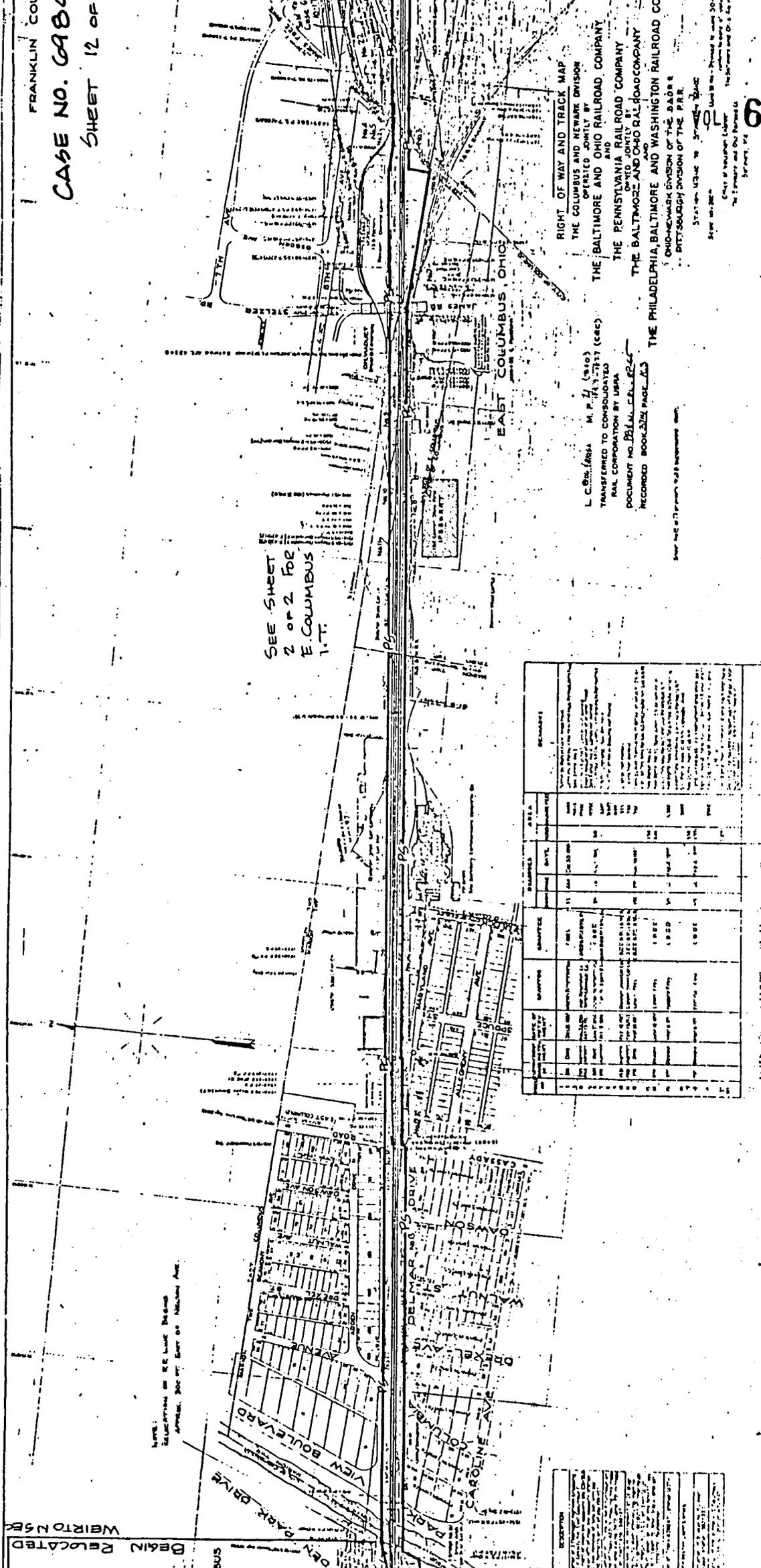
Station 147+00 to 157+00
 Scale 1"=200'
 Chief of Engineer: [Name]
 Surveyor: [Name]

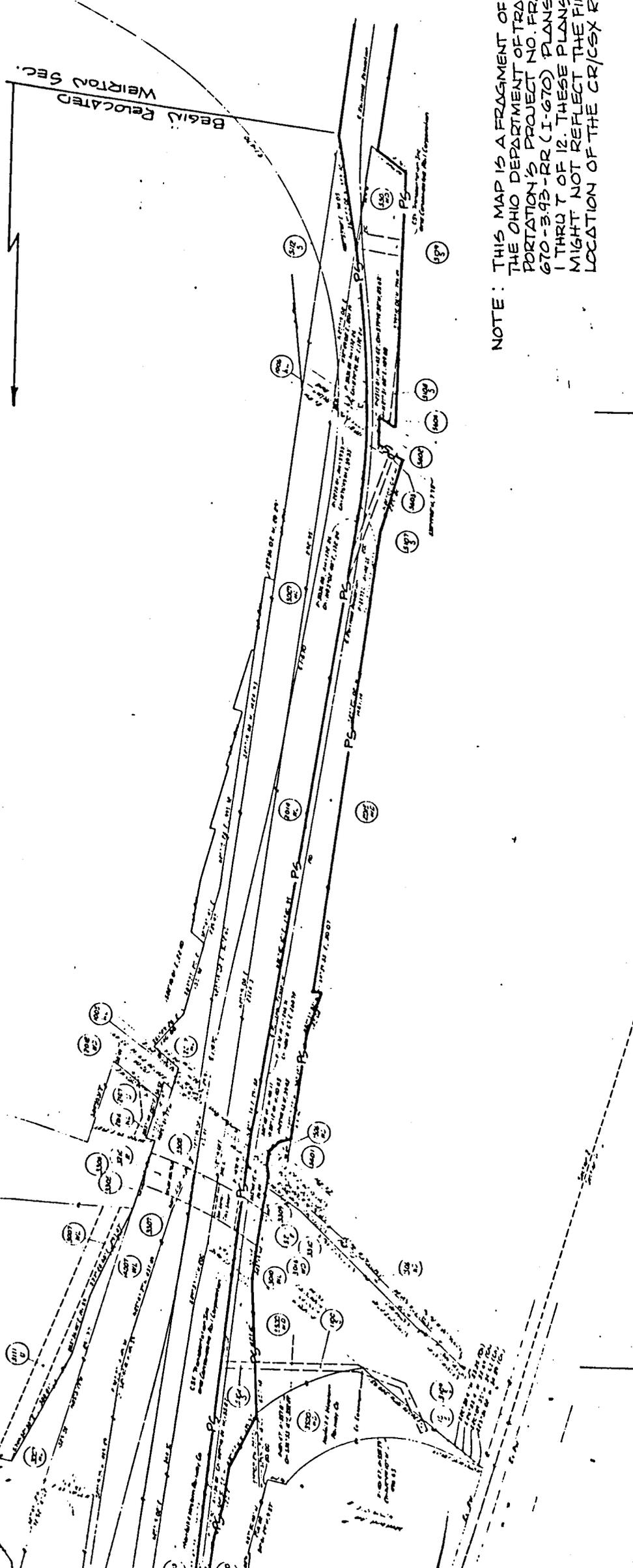
657 PAGE 254

BEGIN RELOCATED
 WEIRTON 58'

Notes:
 Elevation at E.E. Line Bridge
 Approx. 300' East of Nelson Ave.

LINE NO.	DESCRIPTION	DATE	AREA	REMARKS
1	Right of Way	1910	1.00	See map for details
2	Track	1910	1.00	See map for details
3	Right of Way	1910	1.00	See map for details
4	Track	1910	1.00	See map for details
5	Right of Way	1910	1.00	See map for details
6	Track	1910	1.00	See map for details
7	Right of Way	1910	1.00	See map for details
8	Track	1910	1.00	See map for details
9	Right of Way	1910	1.00	See map for details
10	Track	1910	1.00	See map for details





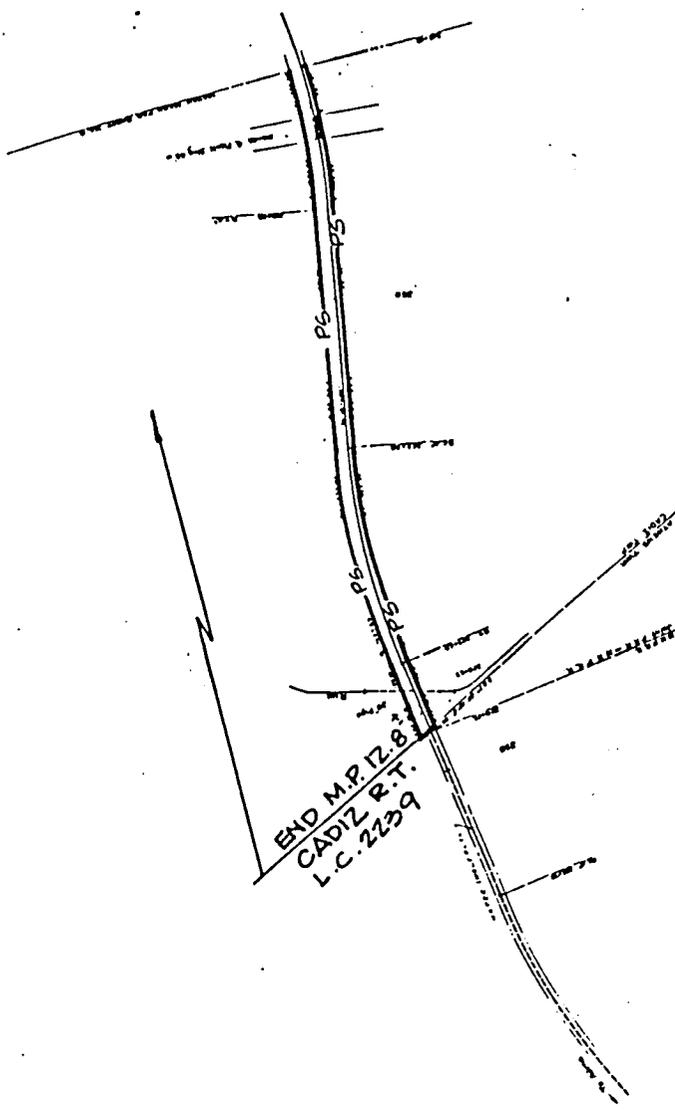
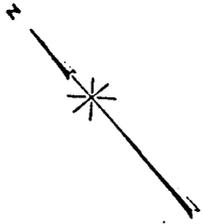
NOTE: THIS MAP IS A FRAGMENT OF THE OHIO DEPARTMENT OF TRANSPORTATION'S PROJECT NO. FR-670-3-93-RR (I-670) PLANS 1 THRU 7 OF 12. THESE PLANS MIGHT NOT REFLECT THE FINAL LOCATION OF THE CR/CSX RELOCATION.

40

1"=200'

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MICROFILMED



PHILA. BALTO. & WASHINGTON R. R.

FORMERLY

RIGHT OF WAY AND TRACK MAP

PITTSBURGH, CINCINNATI, CHICAGO & ST LOUIS RR.

GEORGETOWN BRANCH

STATION 28+00 TO STATION 28+60

SCALE 1" = 40' HORIZ. 1" = 4' VERT.

DATE OF PREPARATION: 1912

BY: [Signature]

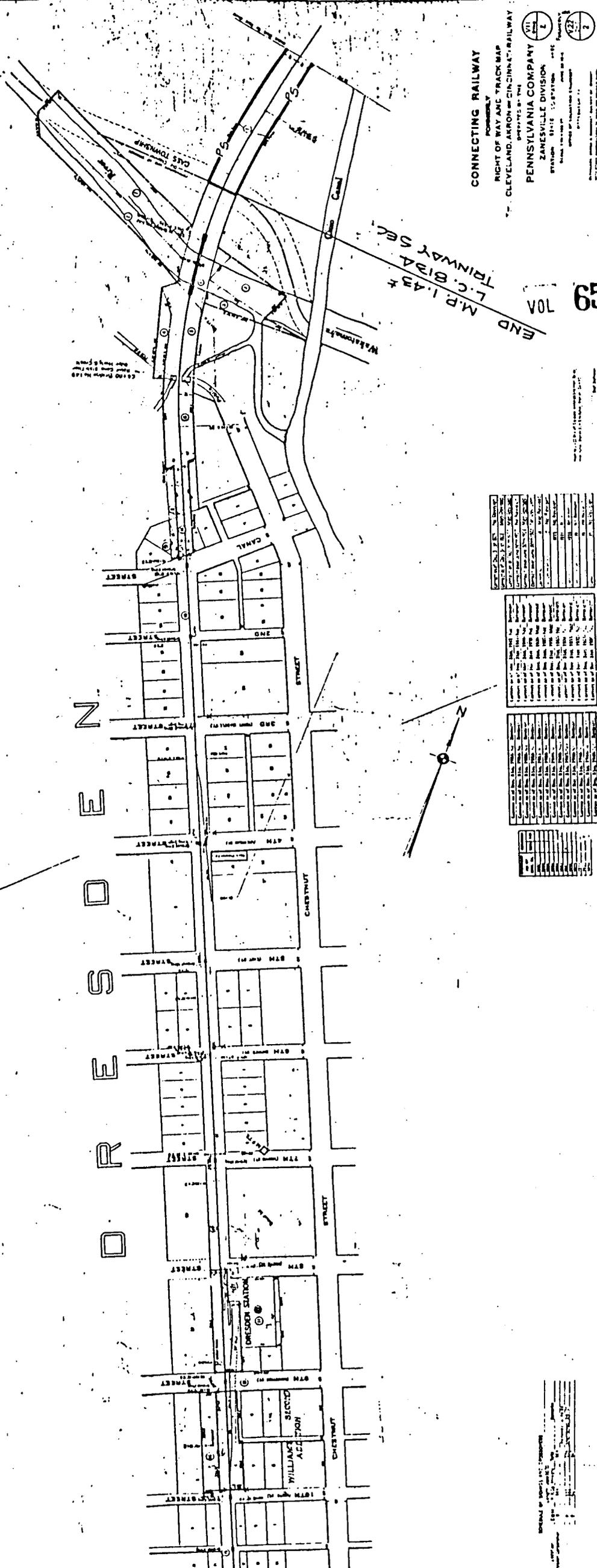
PROJECT NO. 7



1/2 7152 - 12' 11/16"

MUSKINGUM COUNTY, OHIO

N
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D



END M.P. 1.43+
L.C. 813A
TRINWAY SEC.

CONNECTING RAILWAY
Possibly
RIGHT OF WAY AND TRACK MAP
OF - CLEVELAND, AKRON AND CINCINNATI RAILWAY
PREPARED BY THE
PENNSYLVANIA COMPANY
ZANESVILLE DIVISION
ESTABLISHED 1912
SHEET NO. 18 OF 22

VS 736 45174 M7 1/3-23

NO.	DESCRIPTION	ACRES	OWNER
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RECORD OF DEEDS AND MORTGAGES
MUSKINGUM COUNTY, OHIO
1912

Acres

M.L. Pitts.-Cols. LC 2206-8106 VS 104

Union Twp. - Claymont CSD

_____ - R/W from Harrison Co. line to N. line of Dennison Corp. thru Secs. 19, 25, 31 (RR pcls. 1/3 - Maps 45/48)

32.38 16,190

X

Hill Twp. - Dennison Vill. Claymont CSD

_____ - R/W and Shop grounds from N. line of Dennison Corp. to E. line of Uhrichsville Corp. - Little Stillwater Creek (RR pcl. 4/13 - Maps 48/49)

24.43 12,215

X

Hill Twp. Uhrichsville City - Claymont CSD

_____ - R/W from E. Line of Uhrichsville Corp. to Stillwater Creek (RR pcls. 14/19 - Maps 49/50)

3.40L

657 PAGE 265

_____ - R/W from Stillwater Creek to W. line of Uhrichsville Corp. (RR pcls. 20 - Maps 50)

8.22

X

Subtotal

11.82 5,910

Hill Twp. Claymont CSD

_____ - R/W from W. Line of Uhrichsville Corp. to E. Line of Warwick Twp. (RR pcl. 25 - Maps 50/51)

10.24

X

_____ - Spur N. of R/W at former Uhrichsville sta. f connection

2.39

X

with B&O (RR pcl. 22 - Map 50.1)

Subtotal

12.63 6,315

PAGE 16

02
Carwas

CONSOLIDATED RAIL CORPORATION

M.L. Pitts. Cols. LC 2206-8106 VS 104

Warwick Twp. Indian Valley LSD

_____ - R/W from E. Line of Warwick Twp. to E. Line of Clay Twp. (RR pcls. 26/27, 6 - Maps 51/54)

51.45 25,730

X

Clay Twp., Indian Valley

_____ - Row lots 1 and 2

14.39

X

Subtotal

_____ - R/W from W. Line of Gnadenhutzen Vill. to E. Line of Salem Twp. (RR pcls. 31/35 - Maps 56/58)

29.73
44.12 22,060

Clay Twp. Gnadenhutzen Vill. Indian Valley LSD

_____ - R/W from E. Line of Gnadenhutzen Vill. to W. Line of Gnadenhutzen Vill. thru Lots 3/4 (RR pcls. 29/30 - Maps 55/56)

6.39 3,195

X

Salem Twp. - Indian Valley LSD

_____ - R/W from E. Line of Salem Twp. to N. Line of Port Washington Vill. (RR pcl. 36 - Maps 58/60)

24.13

X

_____ - R/W from S. Line of Port Washington Vill. to N. Line of Oxford Twp. (RR pcl. 39 - Maps 61/64)

33.24

X

Subtotal

57.37 28,685

Salem Twp. Port Washington Vill.

_____ R/W from N. Line of Port

10.31 5,155

— EXHIBIT Z —

MICROFILMED

Indian Valley LSD

Washington Vill. to S. Line of Port
Washington Vill. (RR pcls. 37/38 -
Maps 60/61)

X

23.80

X

Oxford Twp. Newcomerstown EVSD

_____ - R/W from W. Line of
Oxford Twp. to E. Line of Newcomerstown
Vill. (RR pcl. 40 - Maps 64/66)

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PAGE 17

9.03
TUSCARAWAS

CONSOLIDATED RAIL CORPORATION

Former Dover Sec. LC 2428 VS 1704

Oxford Twp. Newcomerstown EVSD
(Continued)

_____ - R/W from S. Line of
Newcomerstown Vill. to a point of
ending approx. 160 ft. N. of Sec. 14

1.21

Subtotal

25.01

12,505

N.L. Pitts. Cols. LC 2206-8106 VS 104

Oxford Twp. Newcomerstown Vill.
Newcomerstown EVSD

_____ - R/W from E. Line of
Newcomerstown Vill. to E. Line of
Coshocton Co. (RR pcls. 41/45, 47,
50/52 - Maps 66/67)

20.05

Passenger Sta. Frame

1,800

X

Subtotal

20.05

10,025

1,800

TOTAL TUSCARAWAS COUNTY

295.96

147,980

1,800

"Deed checked for tract
description only"
JOSEPH S. BACHEMAN
Tuscarawas Co. Engineer
4-17-92 CW Deputy

RECEIVED FOR RECORD
DOLORES HIXSON, County Recorder

4002

APR 17 1992 10:50 Am

Recorded APR 17 1992
Vol. _____ Page _____ of the
_____ Records of
Tuscarawas County, Ohio

8800

TRANSFERRED
TRANSFER FEE 23.00
CONVEYANCE EXAMINED,
SEC. 319-202 R. C. COMPLIED WITH
AMT. 29.49

APR 17 1992

JOHN A. BEITZEL
Tuscarawas County Auditor

MICROFILMED

Attachment #2

**4-15-1992 Caprail I-ORDC PRL Lease-to-Own
Agreement**

LEASE AGREEMENT

By and Between

CAPRAIL I, INC.

and

STATE OF OHIO DEPARTMENT OF TRANSPORTATION

Dated as of April 15, 1992

L E A S E A G R E E M E N T

This Lease Agreement ("Lease"), made and entered into as of this 15th day of April, 1992, by and between CAPRAIL I, INC., a corporation organized and existing under the laws of the State of Ohio ("Lessor"), and the State of Ohio Department of Transportation (the "Lessee").

W I T N E S S E T H:

WHEREAS, the purpose of this Lease is to provide an approximately 160 mile rail line from Columbus, Ohio to near Mingo Junction, Ohio for the use of Lessee;

WHEREAS, Lessor plans to acquire the approximately 160 mile rail line known as the Panhandle Line as described in Exhibit A; and

WHEREAS, Lessor wishes to lease to the Lessee, and the Lessee wishes to lease from Lessor, such rail line, subject to the terms and conditions set forth in this Lease.

NOW THEREFORE, in consideration of the rent to be paid hereunder and the covenants and agreements contained herein, it is agreed by and between the parties as follows:

Section 1. Certain Defined Terms and References. (a) In addition to the terms defined elsewhere in this Lease, the following terms have the meanings given below unless the context clearly requires otherwise:

"Additional Rent" means the payments required to be made pursuant to Section 7 in addition to the Base Rent.

"Appropriation Period" means the biannual period for which the state legislature, appropriates funds. Under current law, the State operates on a fiscal biennium running from July first on an odd-numbered year to June 30 in the next odd-numbered year.

"Assignment Agreement" or "Lease Assignment Agreement" means the Lease Assignment Agreement dated as of April 15, 1992 by and between Lessor and Trustee whereby Lessor absolutely assigns its rights and interests in the Lease to the Trustee.

"Assignee Lessor" means the Trustee, or its successor, as assignee of the Lessor pursuant to Section 19 hereof.

"Authorized Officer", when used:

(i) With respect to Lessee, means the Director of the Ohio Department of Transportation or any other officer of Lessee who is designated in writing by the Lessee as an Authorized Officer for the purposes of this Lease.

(ii) With respect to Lessor, means the President of Lessor or any other officer of Lessor who is designated in writing by the Board of Directors of Lessor as an Authorized Officer for purposes of this Lease.

(iii) With respect to any successor to Lessor as the Lessor, means the officer of the successor who is designated in writing by the successor's governing body as an Authorized Officer for purposes of this Lease.

"Bankruptcy Remote" means, with respect to a corporation or other organization, a single purpose corporation or organization organized solely to lease the Leased Facilities to the Lessee and so structured so the Lease Payments made by the Lessee will not be subject to the automatic stay provisions of Section 362(a) of Title 11 of the United States Code or constitute avoidable preferences within the meaning of Section 547(b) of Title 11 of the United States Code.

"Base Rent" means the payments, including the principal and interest components thereof, specified in Exhibit B.

"Business Day" means any day other than (i) a Saturday or Sunday, or (ii) a day on which the Federal Reserve System or banking institutions in the City of New York, New York or the City of Cincinnati, Ohio or the city in which the principal corporate trust office of the Trustee or any Paying Agent is located are authorized or obligated by law or executive order to be closed.

"Capital Guaranty" means the Capital Guaranty Insurance Company, a corporation organized under the laws of Maryland.

"Certificates" means the Certificates of Participation issued pursuant to the Trust Agreement.

"Code" means the Internal Revenue Code of 1986, as amended and regulations prescribed under that Section and any subsequent amendments or modification thereto.

"Contract" means the Purchase and Sale Agreement dated as of November 20, 1991 by and between Consolidated Rail Corporation, a Pennsylvania corporation and Columbus & Ohio River Railroad Company, an Ohio corporation (C&OR) and assigned to Lessor pursuant to the Assignment of Purchase Contract among Consolidated Rail Corporation, C&OR and Lessor dated as of its date.

"Defeasance Obligations" means (a) cash, (b) State and Local Government Series issued by the United States Treasury ("SLGS"), (c) United States Treasury bills, notes and bonds, as traded on the open market; and, (d) Zero Coupon United States Treasury Bonds.

"Event of Default" means any Event of Default described in Section 20.

"Event of Nonappropriation" means an event of nonappropriation as described in Section 8 hereof.

"Financial Guaranty Bond" means the financial guaranty bond issued by Capital Guaranty simultaneously with the issuance and delivery of the Certificates.

"Independent Counsel" means any attorney or attorneys duly admitted to practice law before the highest court of any state and not an officer or full time employee of Lessor or Lessee and who is not reasonably objected to by Lessee.

"Lease" means this Lease Agreement as the same may be amended or supplemented from time to time.

"Lease Payments" means the sum of the Base Rent and Additional Rent due at or during a stated time.

"Lease Payment Account" means the Lease Payment Account to receive Lease Payments, as established pursuant to the Trust Agreement.

"Lease Payment Date" means the fifth Business Day of each month during the Lease Term commencing May 7, 1992.

"Lease Term" means the initial term of the Lease (April 15, 1992 through June 30, 1993), and any renewal periods (Appropriation Periods) during which the terms and conditions of this Lease are in force pursuant to Section 6 hereof.

"Leased Facility" means the approximately 160 mile rail line described in Exhibit A and any replacements or additions thereto permitted under the provisions of Section 13 hereof.

"Lessor" means CAPRAIL I, INC., or its successors or assigns, including specifically the Trustee upon the assignment to the Trustee contemplated by Section 19 hereof.

"Mortgage" means the seven Open-End Mortgage and Security Agreements between the Lessor and Trustee dated as of April 15, 1992 as the same may be amended or supplemented from time to time which are collectively referred to as the Mortgage.

"Operating Agreement" means the Operating Agreement entered into by Lessee and The Columbus & Ohio River Railroad (the "C&OR") dated December 9, 1991 as the same may be amended or supplemented from time to time.

"Operator" means, initially, the C&OR but shall also mean any successor operator of the Leased Facility under the Operating Agreement or any subsequent Operating Agreement.

"Permitted Investments" means any of the following, with an appropriate market value and of an appropriate maturity:

1. Obligations of, or guaranteed as to principal and interest by, the United States of America, or by any agency or instrumentality thereof hereinafter designated when such obligations are backed by the full faith and credit of the United States of America. These are limited to:

- U.S. Treasury obligations
All direct or fully guaranteed obligations
- Farmers Home Administration
Certificates of beneficial ownership
- General Services Administration
Participation certificates
- U.S. Maritime Administration
Guaranteed Title XI financing
- Small Business Administration
Guaranteed participation certificates
Guaranteed pool certificates
- Government National Mortgage Association (GNMA)
GNMA-guaranteed mortgage backed securities
GNMA-guaranteed participation certificates
- U.S. Department of Housing & Urban Development
Local authority bonds

- Washington Metropolitan Area Transit Authority
Guaranteed transit bonds.
2. Obligations of instrumentalities or agencies of the United States of America. These are specifically limited to:
- Federal Home Loan Mortgage Corporation (FHLMC)
Participation certificates
Debt Obligations
 - Federal Home Loan Banks (FHL Banks)
Consolidated debt obligation
Letter of credit (LOC) backed issues
 - Federal National Mortgage Association (FNMA)
Debt obligations
Mortgage backed securities (Excluded are stripped mortgage securities which are valued greater than par on the portion of unpaid principal).
- Book entry securities listed in 1 and 2 above must be held in a trust account with the Federal Reserve Bank or with a clearing corporation or chain of clearing corporations which has an account with the Federal Reserve Bank.
3. Federal Housing Administration debentures.
4. Commercial paper, payable in the United States of America, having original maturities of not more than 92 days and which are rated in the highest rating category by Standard & Poor's Corporation.
5. Interest bearing demand or time deposits issued by state banks or trust companies, savings and loan associations, federal savings banks or any national banking associations, the deposits of which are insured by the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation (SAIF) or any successors thereto. These deposits: (a) must be continuously and fully insured by BIF or SAIF or (b) must have maturities of less than 366 days and be deposited with banks the short term obligations of which are rated A-1+ by Standard and Poor's Corporation.
6. Money market mutual funds or portfolios investing in short-term US Treasury securities rated AAA by Standard & Poor's Corporation. Trustee shall provide Capital Guaranty annual certification that the money

market portfolio into which funds are invested is then rated AAA by Standard & Poor's and, upon notice that the Standard & Poor's rating of the money market portfolio has dropped below AAA, the Trustee shall immediately withdraw funds and reinvest in Permitted Investments.

7. Such other investments as are approved in writing by Capital Guaranty Insurance Company.

All funds and accounts are to be mark to market valuation conducted on a quarterly basis by the Trustee. The Trustee shall promptly deliver copies of such quarterly valuations to Capital Guaranty.

"Purchase Price" means, as of any Purchase Price Date, the amount set forth in Exhibit C, which Lessee may pay to Lessor to purchase the Leased Facility.

"Purchase Price Date" means the applicable date set forth in Exhibit C on which Lessee may purchase the Leased Facility by payment of the applicable Purchase Price to Lessor which shall include all of the principal outstanding on the Certificates, accrued interest and any redemption premium on the Certificates and the fees and expenses of the Trustee.

"Redemption Account" means the Redemption Account to redeem Certificates, as established pursuant to the Trust Agreement.

"State" means the State of Ohio.

"Trust Agreement" means the "Trust Agreement Relating to the Financing of the Panhandle Rail Line" between Lessor and The Central Trust Company, N.A., as Trustee, dated as of April 15, 1992, as the same may be amended or supplemented from time to time in accordance with its terms.

"Trustee" means the Trustee under the Trust Agreement.

(b) References to sections or exhibits, unless otherwise indicated, are to sections of or exhibits to this Lease.

Section 2. Assignment of Warranties. Lessor shall assign to Lessee during the Lease Term pursuant to a separate Assignment Agreement, all rights and interests it has received in connection with the Leased Facility, and all warranties, including manufacturers' warranties, if any, express or implied with respect to the Leased Facility. Such assignment shall include an authorization to Lessee to obtain the customary

services furnished in connection with those warranties, at Lessee's expense.

Unless and only to the extent otherwise expressly provided in this Lease, this Lease shall not modify, affect or supersede the respective liabilities, obligations, rights, duties and responsibilities of Lessor and the Lessee under the Contract.

Section 3. Lease of Leased Facility. Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Leased Facility in accordance with the provisions of the Lease, to have and to hold for the Lease Term.

Section 4. Approval of Acquisition of Leased Facility. Lessee has approved the terms, inventories, rights, interests and specifications relating to the acquisition of the Leased Facility, and shall approve all modifications, changes, and amendments to such Contract. The assignment of Lessor's rights, title and interest in and under the Lease, provided for in Section 19 shall provide that Lessee shall have the right to cause the acquisition of the Leased Facility to be completed in accordance with the terms of this Lease, the Contract, the Trust Agreement and any applicable requirements of governmental authorities.

Section 5. Acceptance of Leased Facility. Acceptance of the Leased Facility by the Lessee shall be in accordance with and as contemplated by the provisions of the Contract. That acceptance shall not be unreasonably withheld or delayed. Acceptance of the Project (or nonacceptance, as the case may be) shall not affect the obligation of Lessee to make Lease payments under Section 7(b) hereof and payment of Additional Rent, which obligations are absolute and unconditional. Notice of acceptance of the Leased Facility shall be given by the Lessee to Capital Guaranty at their notice address provided in 7.06 of the Trust Agreement on the date of delivery of the Certificates.

Section 6. Term. The initial term of the Lease shall commence as of April 15, 1992 and shall end at twelve o'clock midnight of the last day of the state's fiscal biennium, currently June 30, 1993 (the "Initial Term").

The Lessee shall have the right to renew the term of the Lease for successive terms (each, a "Renewal Term") until April 15, 2012 or such later date if the Certificates are not yet fully paid and Lessee's obligations hereunder are still outstanding.

Subject to any change in the dates of the State's fiscal biennium, or the length of the last Renewal Term, each

such successive Renewal Term shall be for a term equal to a two year period. Each Renewal Term shall commence on the day succeeding the expiration of the preceding term and end at midnight of the last day of any fiscal biennium, currently June 30 of every odd-numbered year or, with respect to any Renewal Term commencing within two years of April 15, 2012 or any other date provided pursuant to the preceding paragraph, such lesser period as necessary to have such Renewal Term expire on April 15, 2012, upon the same terms as are contained in the Lease, unless sooner terminated in accordance with the provisions of the Lease and the Trust Agreement. The Lessee shall be deemed to have exercised its right to renew the term of the Lease and the Lease shall be renewed, upon the effectiveness (and the certification of the Director of Budget and Management), as or prior to the expiration of the Initial Term or Renewal Term then in effect, of legislation enacted by the General Assembly appropriating funds for rail purposes at least equal to the estimated Base Rent and amounts the Lessee estimates are necessary for Additional Rent and other sums payable under the Lease during the next succeeding Renewal Term Period. Immediately upon the effectiveness of such legislation, the Director of Budget and Management, shall certify, pursuant to Ohio Revised Code, that there is a balance, not already obligated to pay existing obligations, in the appropriation available to pay such Base Rent and Additional Rent during such succeeding Renewal Term, and the Lessee shall, within fifteen (15) days after the effectiveness of such legislation, deliver to the Trustee and Capital Guaranty (at its notice address provided in Section 7.06 of the Trust Agreement) written evidence of such certification.

The Lease shall terminate upon the earliest of any of the following events:

1. The exercise by the Lessee of an option to purchase the Leased Facility granted under the provisions of this Lease;
2. The occurrence of an Event of Default, as defined in this Lease, by the Lessee and the Trustee's election to terminate this Lease;
3. The payment by the Lessee of all Lease Payments and other payments due under the Lease during the term of this Lease and all renewals;
4. Subject to Section 8, the occurrence of an Event of Non-Appropriation;
5. The foreclosure of the Leased Facility by the Trustee pursuant to the Mortgage; or

6. Defeasance of this Lease pursuant to Section 22 hereof.

Section 7. Rent. (a) Lessee agrees to pay to Lessor during the Lease Term the Lease Payments, including the interest components thereof, equal to the amounts provided below in this Section. The Lease Payments during the Lease Term will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim or recoupment for any reason whatsoever. Lessee hereby pledges all payments received from the operation of the Leased Facility after payment of the costs of operating the Leased Facility (including the payment made by the operator of the Leased Facility) to the Lessor. However, to the extent payments have been made on a timely basis by the Operator under the terms of its agreement with the Lessee to operate the Leased Facility, and such payments have not been remitted by the Lessee to the Lessor, the Lessor shall look only to the Lessee, and not to the Operator, to recover such payments. No consideration shall be given to the payments to be due from the Operator under the Operating Agreement.

Lessee covenants to include in its proposed budget submitted to the Director of Budget and Management as a separate line item the appropriate requisition for the full payment of the Lease Payments hereunder due within the Appropriation Period. In the event that the appropriation is not established for the Lessee by the General Assembly, then the deputy director of the rail division of Lessee shall encumber, as the Department's first priority use of its appropriated 403 Rail Development funds and its 412 Business Rail Development funds an amount sufficient to fund the lease payments plus an amount for Additional Rent as set forth hereinbefore in this Lease. No consideration shall be given to the payments to be due from the Operator under the Operating Agreement or any other source when the Lessee makes its appropriation request.

(b) Lessee agrees to pay as Lease Payments directly to the Trustee the amounts specified in Exhibit B on each Lease Payment Date. Each payment shall be applied first to payment of the interest component of the respective Lease Payment; provided, however, Lessee may make advance payments of principal components of Base Rent. On or before the first day of each month beginning May 1, 1992, the Operator is obligated to pay to the Trustee for and on behalf of the Lessee the full Lease Payment due on the Lease Payment Date being the fifth Business Day of that month beginning May 7, 1992. If the Trustee does not receive the full Lease Payment or receives only a partial payment amount from the Operator, the Trustee will immediately give notice to the Lessee and Capital Guaranty by telephonic notice followed by written notice of the failure of the Operator to deposit funds into the Certificate Payment Account.

The Lessee must deposit the amount of the complete Lease Payment then due on or before the Lease Payment Date. If the Lessee fails to deposit the Lease Payment by that date, the Trustee will give Capital Guaranty the notice required by the Trust Agreement.

(c) Lessor and Lessee acknowledge that this Lease is a "triple net" lease and as a consequence, Lessee is solely responsible for the ongoing expenses incurred in the administration of the Leased Facility and its operation. Those ongoing expenses which are the responsibility of the Lessee include costs incurred in maintaining liability and property damage insurance policies, licenses, recordation and other fees, maintenance and repair costs and sales, the personal property, real property taxes imposed on the Leased Facility, Lessee or Lessor except as stated below. Lessee agrees to pay to the Trustee the following amounts as Additional Rent during the Lease term or any renewal thereof an amount estimated by the Lessee to be equal to the following expenses or any other expense required hereunder to be paid by the Lessee:

(i) Lessee acknowledges that no provision has been made for the inclusion of any charges or taxes in the Base Rent. Consequently, during the Lease Term, the ownership, leasing, rental, sale, purchase, possession or use of the Leased Facility resulting in the imposition on Lessor of any charges or taxes (local, State or federal), exclusive of taxes on or measured by Lessor's income, shall result in the requirement that Lessee shall promptly pay to Lessor, upon receipt from Lessor of a statement therefor, as Additional Rent an amount equal to those charges and taxes imposed on Lessor.

(ii) All reasonable costs and expenses incurred or to be paid by the Lessor or the Trustee under the Lease or the Trust Agreement, including any Trustee's fees (being \$3,500 per year) and expenses, Trustee's attorney fees, amounts owing by Lessee under Section 3.10 of the Trust Agreement, Lessor's out-of-pocket expenses, Lessor's attorney fees incurred during the term of the Lease which were not part of the original cost of the Leased Facility but which resulted from duties, services performed by either the Trustee or Lessor (or their respective attorneys) in connection with the Leased Facility.

(iii) Transfers from the Reserve Account (other than transfers of surplus investment income) to the Certificate Payment Account (as defined in the Trust Agreement) made pursuant to Section 4.06 of the Trust Agreement in the case of moneys in the Certificate

Payment Account being less than the amount of a semiannual payment then due or in the event the Value of the Permitted Investments is below the Reserve Requirement (as defined in the Trust Agreement).

(iv) Amounts representing costs of maintenance of the Leased Facility, property and liability insurance premiums, rebateable amounts and amounts advanced by the Trustee pursuant to this Lease.

(v) Amounts representing costs and expenses incurred by the Lessor and Trustee to which the Lessee agrees to reimburse pursuant to Section 12(e) hereof.

During the Initial Term of the Lease, the Lessee agrees to pay \$15,000 which will serve to provide Additional Rent under Section 7(c) and will meet the Lessee's obligations under Section 12 and Section 16 of this Lease. For each renewal period prior to April 1 of each odd-numbered year, the Lessee shall submit to the Trustee and the Director of Budget and Management a proposed budget to provide for the payment of the above Additional Rent (based upon the best efforts of the Lessee to estimate such amounts) and the Lessee's obligations under Section 12 and Section 16 of this Lease. This proposed budget is subject to the review and written approval of the Director of Budget and Management. The Lessee shall include the budgeted amount as approved by the Director of Budget and Management, in its request for appropriation for the next Appropriation Period. Payment of Additional Rent is subject to Appropriation following the above-stated procedure.

(d) If Lessee shall not pay all or any part of any Additional Rent referred to in Section 7(c) above, Trustee on behalf of the Lessor, or the Lessor, shall have the right, but not the obligation, to pay or advance the Additional Rent and Lessee may, in order to avoid default hereunder, pay a default charge equal to .8 of one percent (1%) per month of the unpaid balance of the funds so paid or advanced. If Trustee or Lessor pays or advances such Additional Rent and is repaid by the first Lease Payment Date in the next succeeding renewal period, then such failure to pay shall be deemed to be cured and shall not be deemed to be an event of default under Section 20 of the Lease.

(e) Lease Payments shall be payable at the principal corporate trust office of the Trustee or at such other place as Lessor may from time to time designate in writing.

Section 8. Non-Appropriation of Funds-Event of Non-Appropriation. If, on or before June 30 of any odd-numbered year, the State legislature has not appropriated

either as a separate line item or as a part of its 403 or 412 Rail Funds amounts to the Lessee for rail purposes sufficient to make the payments due under this Lease for the succeeding Renewal Term ("Event of Non-Appropriation"), the Lessee shall promptly notify the Trustee, the Lessor and Capital Guaranty (at its notice address provided in Section 7.06 of the Trust Agreement) of such matters. Thereupon, regardless of whether such notice is actually received, the Lease will terminate at the end of the Lease Term or the Renewal Term unless there are available non-appropriated funds (but not including funds in the Reserve Account) legally available to make Lease Payments during the next Renewal Term. The Lessee will also promptly notify Capital Guaranty (at its notice address provided in Section 7.06 of the Trust Agreement), if the appropriation is not in a separate line item but is provided in sufficient amounts to make payments due under the Lease for the succeeding Renewal Term in its 403 or 412 Rail Funds.

Notwithstanding the immediately preceding paragraph, the Lease (i) shall be renewed if by October 1 of each odd-numbered year the Lessee delivers a written statement to the Trustee that sufficient funds are legally available for making all Lease Payments due under the Lease during the next renewal period and that such funds have been made available for the purpose of paying all Base Rent and Additional Rent, together with such statement, the Lessee shall also deliver to the Trustee records, certificates, minutes of meetings or other evidence reasonably satisfactory to the Trustee as to the availability of such funds, and (ii) will continue in effect for the next renewal period so long as there is an appropriation for such purpose or other funds legally available on each Lease Payment Date sufficient to pay all Base Rent and Additional Rent then due and payable.

If the Lease terminates as a result of an Event of Non-Appropriation and the Lessee has not exercised its option to purchase the Leased Facility pursuant to Section 18 of this Lease, the Lessee shall surrender possession of the Leased Facility. At the direction of Capital Guaranty or a committee of Certificate Owners with the consent of Capital Guaranty, representing at least 51% in aggregate principal amount of all Certificates Outstanding (as defined in the Trust Agreement) of the Certificate Owners, the Trustee may employ a leasing or sales agent and the Leased Facility may be re-let or sold. The Trustee in acting for and on behalf of the majority of Certificate Owners will, to its satisfaction, be covered for the costs of reletting the Leased Facility as provided in the Trust Agreement. However, the Lessee will have no obligation to make any further payments with respect to the Leased Facility, and will have no liability to the Trustee or the Owners for the unpaid principal amount of the Certificates or

the interest which accrues for such renewal period for which no appropriation was made. No penalty, expense, or liability shall result to the Lessee due to termination of the Lease under this Section.

Section 9. Authority and Authorization. Lessee will deliver to Lessor an opinion of its counsel to the effect that: (i) the Lessee is an agency of the State; (ii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; and (iii) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms. Lessee agrees that: (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect; (ii) it has complied with all requirements applicable to it, and has taken all steps for approval and adoption of this Lease as valid and binding on its part; (iii) sufficient funds are appropriated to pay all amounts due under this Lease for the current Appropriation Period; (iv) funds appropriated to the Lessee for rail purposes and not specifically earmarked to a project other than the Leased Facility by the Ohio General Assembly shall be reserved for payment of Base Rent and Additional Rent except that to the extent such funds so reserved are not expended for such purposes because of payments made on behalf of the Lessee under the Operating Agreement such funds or any agreement made in substitution of the Operating Agreement shall immediately be available to Lessee for its use and purpose and (v) the Lessee will deliver to the Trustee upon each renewal for an Appropriation Period, a certificate of availability of funds from the Director of the Ohio office of Management and Budget, Lessee does not, and cannot, warrant or covenant to Lessor (or any other person or entity) that the appropriation(s) required from time to time to renew the Lease will occur.

Section 10. Title. (a) Lessor will retain title to the Leased Facility during the Lease Term but will grant a Mortgage lien to the Trustee pursuant to the Mortgage. Lessor and Lessee agree that this Lease or any other appropriate documents may be filed or recorded to evidence the parties' respective interests in the Leased Facility and the Lease.

(b) The Leased Facility shall become the property of Lessee and title thereto shall pass to Lessee upon (i) Lessee's exercise of the purchase option granted in Section 18 hereof, or (ii) defeasance of this Lease pursuant to Section 22 hereof, or (iii) the complete payment and performance by Lessee of all of its obligations during the Lease Term. In any of such cases, Lessor agrees to execute such instruments and do such things as Lessee reasonably requests in order to effectuate transfer of any and all of Lessor's right, title and interest in the Leased Facility, as is, to Lessee, without warranty,

express or implied by the Trustee, as Assignee Lessor, except that the Trustee, as Assignee Lessor, will warrant to Lessee that the Leased Facility is free and clear of any liens created by Trustee, as Assignee Lessor, and the Trustee will file a satisfaction of the Mortgage.

Section 11. Property. The Leased Facility is and will constitute real property and personal property.

Section 12. Use; Maintenance and Repair; Indemnification. (a) Lessee will, (i) operate the Leased Facility in a careful manner for the use contemplated by this Lease and the Ohio Revised Code with respect to rail transportation facilities; (ii) comply with all laws, insurance policies and regulations relating to the use, maintenance and operation of the Leased Facility; and (iii) pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance of the Leased Facility.

(b) Lessee, at its expense, (i) obtain and maintain all licenses and permits required for the ownership and operation of the Leased Facility, (ii) will cause the Leased Facility to be kept in safe condition, both inside and out and (iii) cause the Panhandle Branchlines to be maintained to a minimum of FRA Safety Class I Standards and Panhandle Mainlines to FRA Safety Class II Standards, however in the event Lessee determines that a segment of each the Panhandle Branchlines or Panhandle Mainlines is not needed to serve users Lessee shall not be required to maintain to said standards. Any determination of Lessee that a segment of the Panhandle Mainline or Panhandle Branchlines are not needed to serve users shall be reviewed by an independent rail consultant and verified in writing as accurate.

(c) Lessee will repair and maintain, or by contract provide for the proper repair and maintenance of, the Leased Facility in accordance with this Section 12 during the Lease Term.

(d) Lessor agrees that during the Lease Term it will not impair the Lessee's abilities to operate or maintain the Leased Facility in sound operating condition so that the Leased Facility will be able to carry out its intended functions.

(e) Lessee releases Lessor and the Trustee from, and agrees that they shall not be liable for costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial order or decision entered in any action brought to recover moneys under this Section) imposed upon, incurred by or asserted against either Lessor or the Trustee on account of (a) ownership of any interest in the Leased Facility or any part thereof, (b) any

accident, injury or death to persons or damage to property occurring on or about the Leased Facility or any part thereof or the adjoining curbs, streets or ways, (c) any use, disuse or condition of the Leased Facility or any part thereof, or the adjoining curbs, streets or ways, (d) any failure on the part of Lessee to perform or comply with any of the terms hereof or (e) the performance of any labor or services or the furnishing of any materials or other property in respect of the Leased Facility or any part thereof. In case any action, suit or proceeding is brought against Lessor or the Trustee for any such reason, Lessee, upon the request of Lessor or the Trustee, will at Lessee's expense, cause such action, suit or proceeding to be resisted and defended by Independent Counsel to the extent that it is not provided for by the insurance carrier. Such amounts shall constitute Additional Rent hereunder, and be subject to appropriation as provided in Section 7 hereof.

Upon the mutual consent of Lessor and Lessee and approval of the Attorney General, the Attorney General of Lessee may represent both Lessor and Lessee in instances where legal proceedings are brought against both the Lessor and Lessee with respect to this Lease or the Leased Facility.

Lessor agrees to indemnify and save harmless Lessee against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of Lessor in the performance of any covenant or agreement on the part of Lessor to be performed pursuant to the terms of this Lease, or arising from any act or negligence of or failure to act by Lessor, or any of its agents, contractors, servants, employees, or licensees, and from and against all cost, liability and expenses incurred in or in connection with any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against Lessee by reason of any such claim, Lessor upon notice from Lessee covenants to resist or defend such action or proceedings at Lessor's expense.

Section 13. Alterations. Following completion of the acquisition and construction called for under the Contract, Lessee will not make any alterations, additions, substitutions or replacements to the Leased Facility which would have an adverse effect on either the functionality or value of the Leased Facility without the prior written consent of the Assignee Lessor, which consent shall not be unreasonably withheld, unless such alterations, additions, substitutions, replacements or improvements may be readily removed without damage to the Leased Facility. Any alterations, additions or improvements to the Leased Facility which may not be readily removed without damage to the Leased Facility, and any substitutions or replacements, shall be and be considered to constitute a part of the Leased Facility.

Section 14. Location; Inspection. Except for removal for repair or replacement, no part of the Leased Facility will be removed without the prior written consent of the Assignee Lessor, which consent will not be unreasonably withheld. Lessor will be entitled during reasonable business hours to inspect, or observe the use and operation of the Leased Facility.

Section 15. Liens and Encumbrances. Lessee and Lessor shall keep the Leased Facility free and clear of all liens and encumbrances except those created or permitted under this Lease and the lien of the Mortgage.

Section 16. Risk of Loss; Damage; Destruction. Lessee assumes all risk of loss or damage to the Leased Facility from any cause whatsoever. No loss of or damage to, or appropriation by governmental authorities of, or defect in or unfitness or obsolescence of, the Leased Facility will relieve Lessee of the obligation under this Lease. To the extent funds are appropriated for such purpose and certified by the Director of Budget Management or otherwise legally available for such purpose, Lessee will cause the prompt repair or replacement of any portions of Leased Facility lost, destroyed, damaged or appropriated which are necessary to maintain the Leased Facility in sound operating condition so that at all times during the Lease Term the Leased Facility will be able to carry out its intended functions.

Section 17. Insurance. During the term of the Lease the Lessee will cause the Operator, or will itself, maintain commercial liability insurance for bodily injury and property insurance coverage, in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00) per each individual claim in regard to the operation of rail service on the Leased Facility. The Operator shall provide to Lessee and Capital Guaranty within ten (10) days before the execution of this Agreement, a copy of such insurance coverage. Lessee's acceptance of Operator's insurance shall be in writing from Lessee's Director. The Lessee shall require the initial Operator (and any successor Operator) to at all times maintain commercial liability insurance for bodily injury and property insurance coverage on the Leased Facility in the amounts and on the items stated in the Operating Agreement and said insurance policies shall name the Trustee as an Additional Named Insured. Subject to the procedures of the State of Ohio for the purchase of insurance for State agencies, in the event Operator fails to provide coverage, the Lessee itself will provide such coverage in the amounts and on the terms stated in the Operating Agreement.

Evidence of all insurance must be provided by Lessee to Capital Guaranty annually on or before the anniversary date of issuance of the Financial Guaranty Bond. Notice of

cancellation of any of said insurance must be furnished to Capital Guaranty by the insurance carrier 30 days in advance of such cancellation. Capital Guaranty must be notified immediately by the Lessee or Trustee in the event of a failure to renew or deficiencies in coverage.

The Operating Agreement shall require Operator to agree to indemnify and hold Lessee and Lessor harmless from and against any loss, claim, damage, cause of action, destruction, liability, (including without limitation, strict or absolute liability in tort or by statute imposed) charge, cost or expense (including, without limitation, counsel fees) caused by the Operator's negligent, reckless, intentional, willful or wanton actions or inactions, including such actions or the failures to act of any contractors, subcontractors or employees hired by the Operator under the Operating Agreement or otherwise arising in any way or connected with the Leased Facility.

Additionally, the Operating Agreement shall provide that in no event shall the Operator or any of its employees, agents, contractors or subcontractors be considered agents or employees of Lessee. The Operator shall agree that none of its employees, agents, contractors or subcontractor shall hold themselves out as, or claim to be, agents, officers or employees of Lessee, and will not, by reason of any relationship with Lessee, make any claim, demand or application to any agent, officer, or employee of the Lessee including, but not limited to, rights and privileges concerning worker's compensation benefits, social security coverage or retirement membership or credit.

Section 18. Purchase Option. Lessee, upon written notice to Lessor at least 90 days prior to any Purchase Price Date, shall have the right to purchase the Leased Facility on any such Purchase Price Date by paying to Lessor the Lease Payment then due together with the Purchase Price relating to that date as further defined in Exhibit C hereto.

Section 19. Assignments. (a) Lessee may not, without the prior written consent of Assignee Lessor and Capital Guaranty: (i) assign, transfer, pledge, hypothecate or grant any security interest in or otherwise dispose of this Lease or the Leased Facility (without replacement or substitution) or any interest in this Lease or the Leased Facility, or (ii) sublease the Leased Facility; provided that any Sublease shall terminate upon termination of the Lessee's rights hereunder. Before any assignment or sublease, Lessor shall receive an opinion of Bond Counsel that the assignment or sublease will not adversely affect the excludability from gross income of the interest on the Certificates for federal income tax purposes.

(b) CAPRAIL I. INC., as Lessor, represents, and Lessee acknowledges, that CAPRAIL I, INC. shall assign without recourse to the Trustee its rights, title and interest in and to this Lease, the Leased Facility and all Lease Payments and other documents executed with respect to this Lease and furthermore Lessor consents to the operation of the Leased Facility by the Operator pursuant to the Operating Agreement.

(c) Subject to the preceding subsections, this Lease inures to the benefit of and is binding upon the successors or assigns of the parties to this Lease.

Section 20. Events of Default. The occurrence of any one or more of the following events constitutes an "Event of Default" under this Lease:

(a) Lessee's failure to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of this Lease;

(b) Lessee's failure to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease, and the failure is not cured or steps satisfactory to Assignee Lessor taken to cure the failure, within 15 days after written notice of the failure to Lessee by Lessor; or

(c) The discovery by Lessor that any material statement, representation or warranty made by Lessee in this Lease or in any writing delivered by Lessee pursuant to or in connection with this Lease is false, misleading or erroneous in any material respect.

Section 21. Remedies. Upon the occurrence of an Event of Default, and as long as the Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies as to the Leased Facility, to whichever the Event of Default pertains:

(a) By written notice to Lessee, declare an amount equal to all amounts then due under this Lease and all remaining Lease Payments due during the Lease Term (being the then current Appropriation Period) to be immediately due and payable, whereupon that amount shall become immediately due and payable;

(b) By written notice to Lessee, enter and take immediate possession of the Leased Facility;

(c) Sell or lease the Leased Facility or sublease it for the account of Lessee, holding Lessee liable (but only to

the extent Lessee has received funds for this purpose from the Operator or certified as legally available by the Director of Budget and Management) for all Lease Payments and other payments due during the Lease Term to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable during the Lease Term by Lessee under this Lease; and

(d) Proceed by appropriate court action to enforce the terms of this Lease or the Mortgage or to rescind this Lease as to any or all of the Leased Facility.

Lessee will remain liable for all covenants and obligations under this Lease, when a court of competent jurisdiction has finally adjudicated that an Event of Default has occurred.

Section 22. Defeasance. (a) All Lease Payments will be deemed to be paid when:

(i) Defeasance Obligations which mature as to principal and interest in such amounts and at such times as will insure the availability, without further investment or reinvestment, of sufficient money, or a combination of both, are irrevocably deposited with or made available to the Lessor in trust and irrevocably set aside exclusively for payment of (A) the Purchase Price on a designated Purchase Price Date or (B) all Lease Payments through April 15, 2012 when due; and

(ii) All reasonable, necessary and proper fees, compensation and expenses of the Trustee specifically provided for in the Lease and the Trust Agreement, as they relate to the Leased Facility, and its duties in connection therewith are paid or provided for.

(b) When all Lease Payments are deemed paid, as provided above, and the Trustee has received the unqualified written legal opinion of nationally recognized bond counsel to the effect that the deposit of money or Defeasance Obligations in trust will not cause the Lease Payments, thereafter payable from those sources, designated as interest component on Exhibit B to be subject to federal income tax under the Internal Revenue Code of 1986, as amended, the Lessor will be entitled to payment of those Lease Payments solely from that money or the proceeds of those Defeasance Obligations and the right, title and interest of the Lessor and Lessee under this Lease as to the Leased Facility shall then cease, terminate and become void and, if Lessee has exercised its option to purchase the Leased

Facility and tendered all payments as required by Section 18 hereof, Lessor shall immediately cause all rights, title and interest in the Leased Facility to be conveyed to Lessee.

Prior to any defeasance becoming effective under this Lease, the Trustee shall have received the items required by Section 7.03 of the Trust Agreement.

Section 23. Appointment of Trustee. Upon receiving notice of the resignation of the Trustee or a successor Trustee, Lessor will exercise its right under the Trust Agreement and in writing appoint a successor Trustee within 30 days after receipt of that notice.

Section 24. Notices. All notices to be given under this Lease shall be made in writing and mailed by certified or registered mail, return receipt requested, to the party at its address stated below or at such other address as the party may provide in writing from time to time. All parties listed below shall be sent a copy of any notice sent to any party pursuant to this Lease.

If to Lessor: CAPRAIL I, INC.
425 Walnut Street, Suite 2200
Cincinnati, Ohio 45202

If to Trustee as
Assignee Lessor: The Central Trust Company, N.A.
Central Trust Center
Cincinnati, Ohio 45202
Attention: Corporate Trust
Department

If to Lessee: Ohio Department of Transportation
25 South Front Street
Columbus, Ohio 43216-0899

and a copy to the Attorney
General of the State of Ohio
c/o Chief, Transportation Section
Attorney General
Ohio Department of Transportation
25 South Front Street
Columbus, Ohio 43216

Section 25. Headings. All section headings contained in this Lease are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

Section 26. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Ohio. Any litigation arising out of or relating in

any way to this Lease shall be brought in a court of competent jurisdiction in Franklin, County, Ohio.

Section 27. Delivery of Related Documents. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

Lessor and Lessee agree that this Lease or any other appropriate documents may be filed or recorded to evidence the parties' respective interests in the Leased Facility and this Lease.

Section 28. Lessee's Performance Under Trust Agreement. The Lessee has examined the Trust Agreement, and agrees that Trustee may proceed directly against the Lessee to enforce Lessee's obligation to make Lease Payments and to exercise any other rights or remedies available under the Trust Agreement, this Lease or the Mortgage or pursuant to any other provision of law or equity.

Section 29. Entire Agreement; Amendment; Severability.
(a) This Lease, together with attachments and exhibits, and other documents or instruments executed by Lessee and Lessor in connection with this Lease, constitute the entire agreement between the parties with respect to the lease of the Leased Facility.

(b) This Lease may not be modified, amended, altered or changed except with the written consent of Lessee, Lessor, Capital Guaranty and the Trustee as provided for in the Trust Agreement.

(c) If any provision of, or any covenant, obligation or agreement contained in this Lease is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Lease. The invalidity or unenforceability shall not affect any valid or enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 30. Failure of Lessor to Perform. No Assignee Lessor shall have any liability or obligation to Lessee for any failure of Lessor to perform in accordance with the provisions of the Contract. Any such failure to perform or any other breach by Lessor will not modify Lessee's obligation to pay the Lease Payments during the Lease Term.

Section 31. Actions Relating to Tax Exemption of Interest Components. (a) Lessor and Lessee each covenant that it will restrict the use of moneys realized under this Lease or otherwise in connection with the acquisition and financing of the Leased Facility in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of entering into this Lease, so that there will not exist at any time any obligation in connection with this Lease or the Leased Facility that constitutes an obligation the interest on which is includible in gross income for federal income tax purposes or an "arbitrage bond" under Section 148 of the Code, and the regulations prescribed under that Section and any subsequent amendments or modifications thereto. Any officer of the Lessor or Lessee having responsibility with respect to the execution and delivery of this Lease shall, alone or in conjunction with any other officer, employee or agent of or consultant to the Lessor or Lessee, give an appropriate certificate of the Lessor or Lessee pursuant to Sections 103 and 148 of the Code and those regulations, setting forth the reasonable expectations of the Lessor or Lessee on the date of entering into this Lease regarding this Lease and the use of those moneys.

(b) Lessee represents and covenants that it will not use the Leased Facility, or permit the Leased Facility to be used, in such a manner as would result in the inclusion in gross income for federal income tax purposes of the component of the Lease Payments designated as interest on Exhibit B afforded under Section 103(a) of the Code.

(c) The Lessee will keep accurate accounts of the investment earnings on nonpurpose investments and will timely rebate to the United States (a) the excess of the aggregate amount earned on all nonpurpose investments over the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Certificates and (b) any income attributable to such excess, all in accordance with this Section of the Lease.

(d) The Lessor and Lessee each covenant to take all action required to maintain exclusion from gross income for federal income tax purposes afforded under Section 103(a) of the Code, of the Lease Payments designated as the Interest Component on Exhibit B hereto.

Section 32. Special Representations and Covenants of Lessor. (a) Lessor represents that it is an Ohio corporation formed solely for the purpose of owning and financing of the Leased Facilities and the leasing of the Leased Facilities to the Lessee and that such limited purposes are set forth in its Articles of Incorporation and Code of Regulations or other corporate by-laws.

(b) Lessor covenants with the Lessee and the Trustee as Assignee Lessor that no changes or amendments to its corporate purposes as set forth in paragraph (a) above shall be made.

(c) Lessor covenants and agrees with the Lessee and the Trustee as Assignee Lessor that Lessor shall not transfer all or substantially all of its assets to another person or corporation or entity unless such transferee shall be Bankruptcy Remote as evidenced by an opinion of Independent Counsel recognized as an expert in municipal bankruptcy law.

(d) Lessor covenants not to cause additional Certificates to be issued pursuant to the Trust Agreement unless the conditions of the Trust Agreement relating to Additional Certificates are satisfied.

(e) Lessor covenants not to file a voluntary petition in bankruptcy under the United States Bankruptcy Code.

Section 33. No Debt or Tax Pledge of Lessee. No agreement, certificate, covenant or provision contained herein or the breach thereof, and no obligation or duty herein imposed upon the Lessee, shall constitute a debt of the Lessee or any person or cause or create a charge against the general credit or taxing powers of the State. Notwithstanding any other provision of this Lease, all obligations of the Lessee under this Lease are subject to the appropriation of funds for such purposes by the Ohio General Assembly and the certification of the availability of such funds by the Director of Budget and Management pursuant to Ohio Revised Code. Neither the Lessee nor any person shall be obligated to pay any amounts in connection with the transactions contemplated hereby except with respect to funds which have been lawfully appropriated by the General Assembly and then only after a certification of the availability of such appropriation has been made by the Director of Budget and Management pursuant to Ohio Revised Code. Nothing herein shall constitute an obligation to appropriate or cause such funds not presently appropriated to be appropriated at any future time.

Section 34. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement by their authorized officers on the dates of the respective acknowledgments as of April 15, 1992.

WITNESS:

[Signature]
[Signature]

STATE OF OHIO DEPARTMENT OF
TRANSPORTATION

By:

[Signature]
Jerry Wray, Director

WITNESS:

[Signature]
[Signature]

CAPRAIL I, INC.

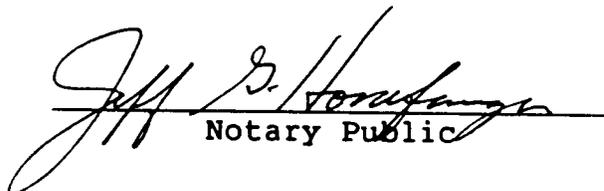
By:

[Signature]
Title: PRESIDENT

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

On this 14th day of April, 1992, before me, a notary public in and for the county and state aforesaid, personally appeared Jerry Wray, to me known and known to me to be the Director of the State of Ohio, Department of Transportation and to me known to be the person who executed the foregoing instrument, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned, and acknowledged to me that they did so sign said instrument in the name and upon behalf of said State of Ohio, Department of Transportation as such officer; that the same is his free act and deed as such officer, and the free act and deed of said State of Ohio, Department of Transportation; and that they were duly authorized thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.


Notary Public

(SEAL)

JEFF G. HONEFANGER
Notary Public, State of Ohio
My Commission Expires 3-23-94

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

On this 15th day of April, 1992, before me, a notary public in and for the county and state aforesaid, personally appeared Benjamin L. Noble, to me known and known to me to be the President of CAPRAIL I, INC. and to me known to be the person who executed the foregoing instrument and acknowledged to me the execution thereof to be his free act and deed and the free act and deed of CAPRAIL I, INC., for the uses and purposes therein mentioned, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said CAPRAIL I, INC., as such officer; that the same is his free act and deed as such officer, and the free and corporate act and deed of said CAPRAIL I, INC.; and that he was was duly authorized thereunto by its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notary seal the day and year in this certificate first above written.



Notary Public

(SEAL)

JANA LEE BROWN
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION EXPIRES APR. 05, 1995

This instrument prepared by:

John Weld Peck, Esq.
Attorney at Law
Peck, Shaffer & Williams
425 Walnut Street, Suite 2200
Cincinnati, Ohio 45202

Attachment #3

5-17-2007 ORDC-CUOH PRL Net Operating Agreement

ORIGINAL

OPERATING AGREEMENT

BETWEEN

THE STATE OF OHIO

OHIO RAIL DEVELOPMENT COMMISSION

and

THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY

for the

PANHANDLE RAIL LINE

JUNE 2007

AGREEMENT

This Agreement, made this 17th day of May, 2007 by and between the STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION, hereinafter referred to as "ORDC", with principal offices at 50 West Broad Street, Suite 1510, Columbus, Ohio; 43215; and THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY, hereinafter referred to as the "C&OR" with principal offices at 47849 Papermill Road, Coshocton, Ohio; 43812

WITNESSETH

WHEREAS, this Commission as the Ohio Rail Development Commission ("ORDC") created by Chapter 4981 of the Ohio Revised Code, has the authority to lease any real property in which it has an interest for the continuation and operation of rail service; and

WHEREAS, the ORDC is authorized by Chapter 4981 to exercise all powers necessary or appropriate to carry out its corporate purposes including the authority to make and enter all agreements necessary to the performance of its duties and the execution of its powers; and

WHEREAS, on June 5, 2002, the ORDC entered into an Operating Agreement with the C&OR for the operation of the Panhandle Rail Line ("Panhandle") which expires on June 30, 2007; and

WHEREAS, in accordance with Article 6 E (7) of the Operating Agreement, the ORDC now desires to enter into a new Operating Agreement with C & OR.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto, with the intention of being bound, hereby agree as follows:

ARTICLE 1 - DEFINITIONS

As used in this Agreement.

- A) "Agreement" means the terms and conditions as agreed by and between The Ohio Rail Development Commission (ORDC) and The Columbus & Ohio River Rail Road Company (C&OR) for the sole purpose of the C&OR operating the Rail Property as set forth herein.
- B) "Director" means the Executive Director of the Ohio Rail Development Commission.
- C) "Lease" means the lease agreement by and between CAPRAIL I, INC. and State of Ohio, Ohio Department of Transportation, of which the Ohio Rail Development Commission is a successor agency per Ohio Revised Code (O.R.C.) 4981.03.
- D) "Panhandle Mainline" means the so called Weirton Secondary track situated between Milepost 157.8 at Newark, Ohio, and Milepost 49.5 at the east side of Gould's Tunnel and the so called C&N (Columbus & Newark) track between Milepost 191.0 at Columbus and Milepost 157.8 at Newark, containing a total of 141.50 route miles of railroad line. These Panhandle Mainlines are shown in

Exhibit "A", the track charts for the Panhandle Mainlines, herein attached.

E) "Panhandle Branchline" means any and all side tracks including the Cadiz Running Track situated between Milepost 0.0 at Cadiz Junction to Milepost 12.8 at the Georgetown Mine; the Hebron Industrial Track between Milepost 133.0 at Hebron and Milepost 138.5 at Heath, Ohio; and the Trinway Secondary Track situated between Milepost 0.3 at its connection to the Panhandle main line, and Milepost 1.43 at Trinway, Ohio, containing a total of 19.43 route miles of road line. These Panhandle Branchlines are shown in Exhibit "B", the track charts for the Panhandle Branchlines, herein attached.

F) "Purchase and Sale Agreement" means the agreement by which Conrail agreed to sell the Rail Property (hereinafter defined) to the C&OR, which the C&OR subsequently assigned to Caprail I, a copy of which agreement is on file at the offices of ORDC.

G) "Rail Property" means Panhandle Mainlines, Panhandle Branchlines and all property conveyed by Conrail to Caprail I in 1992 via the Purchase and Sale Agreement.

ARTICLE 2 - THE RAIL PROPERTY

The Rail Property which is to be operated by the C&OR is that on the Panhandle Mainlines and Panhandle Branchlines and all property conveyed by Conrail in the Purchase and Sale Agreement.

ARTICLE 3 - COMMON CARRIER

Throughout the term hereof, C&OR shall have, and hereby assumes, full right and responsibility to provide common carrier rail service on the Rail Property, and to use and manage the Rail Property for all purposes consistent with the duties, rights, obligations and responsibilities of a rail carrier under the jurisdiction of the Surface Transportation Board, the Federal Railroad Administration, and other governing bodies or laws. Such rights shall include, but shall not be limited to, all rights of a rail carrier under the Revised Interstate Commerce Act, 49 United States Code (U.S.C). S10101, *et seq.* and the Interstate Commerce Commission Termination Act (Public Law 104-88, 109 Stat. 803). ORDC shall not undertake, and, subject to the terms of this Agreement, hereby waives any right it otherwise may have, to conduct or hold itself out to conduct common carrier rail operations on the Rail Property, for the term of this Agreement. Subject to the provisions of this Agreement, ORDC shall provide C&OR with quiet enjoyment of the Rail Property throughout the term of this Agreement.

ARTICLE 4 - NON-EXCLUSIVE OPERATIONS

A) This Agreement does not convey to C&OR exclusive rights to use the Rail Property. ORDC, in its sole discretion, may grant to other rail carrier(s) the right to jointly use on all, or any portion of, the Rail Property as provided in this Article 4 and as stated below.

- 1) ORDC may grant joint use access to another rail carrier if C&OR has petitioned the Surface Transportation Board (STB) for authority to abandon or discontinue operations over all, or any portion of the Rail Property, or has ceased to provide common carrier rail service over all, or a portion of the Rail Property for a period of six consecutive months,

other than pursuant to a lawful embargo; or because of lack of demand for service; or

- 2) ORDC may grant other rail carrier(s) limited access to jointly use any portion of the Rail Property, if such other carrier:
 - (i) agrees in writing to indemnify C&OR and hold it harmless against any and all liability arising in any way whatsoever from the other carrier(s) use of the Rail Property, except that of normal track wear and tear which shall be addressed in part (iv) below;
 - (ii) is an existing rail carrier or, if newly created, can demonstrate its financial and operational capabilities to competently operate a railroad (which determination will be solely within the discretion of ORDC);
 - (iii) agrees that at all times, the operations of the other rail carrier(s) shall be conducted in a manner which does not unduly interfere with the C&OR's operations and shall be in compliance with all dispatching orders, operating rules, directives and schedules of the C&OR;
 - (iv) agrees to pay a users fee or trackage rights charge to the C&OR of not less than thirty-two point one five cents (\$0.3215) per car mile for movement of any locomotive or car, loaded or empty, subject to annual escalation from July 1, 2007, based upon the Rail Cost Adjustment Factor, Unadjusted, published by the Association of American Railroads for the normal wear and tear on Rail Property track and other purposes.

B) In the event another rail carrier(s) agrees to meet and comply with sections (A)(2), (i), (ii), (iii), and (iv) above, the C&OR will make reasonable good faith efforts to accommodate the other carrier(s) operational requests.

C) Any other provision of this Article notwithstanding, the joint use appropriate exemption or operations over the Rail Property by any carrier other than C&OR shall be subject to such prior approval of the STB or other governmental bodies with jurisdiction over the premises as may be required under otherwise applicable law.

D) Any other provision of this Article notwithstanding, ORDC shall in no event grant any rail carrier other than C&OR the right to jointly use or operate over the Rail Property during the term of this Agreement pursuant to the above provisions for the purpose of (1) providing transportation service of any kind to an Existing Rail User: or (2) transporting traffic that is the subject of a valid contract between the C&OR and a shipper. For purpose of this Agreement, "Existing Rail User" is defined as any shipper presently located along the Rail Property that shipped or received a rail car or cars via the C&OR over the Rail Property at any time during the three years prior to the execution of this Agreement.

E) Nothing in this Article shall be construed as permitting ORDC to grant any carrier the right to operate over any line of railroad other than the Rail Property, except as stipulated herein in Article 5, "ORDC Rights on Contiguous Lines/Right of First Refusal."

F) The procedure by which ORDC will determine whether to grant limited operating rights under the above provisions to a rail carrier other than the C&OR pursuant to this Article shall be as follows:

- 1) Upon receipt of a written request for limited rights to jointly use any portion of the Rail Property under this article, ORDC will provide a copy of the request to the C&OR.
- 2) Within forty-five (45) days after receipt of the request, the C&OR shall (i) provide ORDC and the requesting railroad with a written explanation of the terms and conditions that will apply to the requesting railroad's operations over the Rail Property, consistent with this Article; and (ii) at the C&OR's option, provide ORDC with a confidential proposal of terms, including, where appropriate, rates or division of rates under which the C&OR would agree to provide the service proposed to be provided by the requesting railroad.
- 3) If the requesting railroad objects to terms or conditions provided by the C&OR under Paragraph 2(i), above, it shall so inform ORDC and promptly thereafter ORDC shall confer with the C&OR with respect to the establishment of revised terms and conditions. If the C&OR and ORDC have not agreed upon such revised terms or conditions within thirty (30) days after the requesting railroad's notice hereunder, then subject to Paragraph 5, below, ORDC may determine the revised terms and conditions that will apply.
- 4) In making its determination whether to grant limited rights to jointly use rail facilities to a requesting railroad under this article, ORDC shall at a minimum consider the following:
 - (i) The impact that granting joint rights would have on the C&OR's ability to continue to operate profitably.
 - (ii) The comparative efficiency and value to the shipping public of any proposal submitted by the C&OR under Paragraph 2(ii), above.
 - (iii) Whether the fee to be paid to the C&OR under Part A(2)(iv) of this Article is adequate to cover any increase in the cost of maintaining the Rail Property resulting from a granting of joint rights.
 - (iv) Any increase in operating costs that would be incurred by the C&OR as a result of accommodating the requesting railroad's operations.
 - (v) Whether and on what terms the requesting railroad will agree to grant the C&OR or its affiliates rights to operate over the requesting railroad's lines.
 - (vi) The impact that the requesting railroad's operations over the Rail Property would have on the quality of transportation service available to the public, including shippers that would continue to be served by the C&OR.
- 5) Any other provision of this Agreement notwithstanding, and subject to any necessary regulatory approval, in the event that ORDC grants joint rights to another rail carrier under this Article 4 over the C&OR's objection, the C&OR shall have the right to terminate this Agreement without further obligation to ORDC, except for the duty to facilitate the orderly change in

service from the C&OR to another carrier, and cease to operate over the Panhandle, upon one hundred eighty (180) days prior written notice to ORDC.

6) Any grant of joint rights to another rail carrier under this Article shall be a matter of agreement exclusively between ORDC and such other rail carrier, which shall be solely responsible for procuring any regulatory approvals necessary for the exercise of such joint rights. No privity of contract shall be deemed to exist between the C&OR and a rail carrier granted joint rights by ORDC under this Article with respect to such rights, or any claims or liability that may arise thereunder or in connection therewith. C&OR agrees, however, that C&OR shall fully cooperate as needed with ORDC before the Surface Transportation Board, and/or any other federal or state entity with jurisdiction over the granting of joint rights, to provide any C&OR filings or documentation which is required for ORDC to provide joint rights as described in this Article.

G) ORDC shall retain the absolute right to grant joint rights to railroads other than the C&OR under the terms and conditions of this Article.

ARTICLE 5 - ORDC RIGHTS ON CONTIGUOUS LINES/RIGHT OF FIRST REFUSAL

A) The C&OR currently owns and operates a rail line which connects to the western most end of the Rail Property at approximately Mile Post 191 in Columbus, and which connects to CSX Transportation and Norfolk Southern at CP 138 in Columbus (hereinafter known as the Neilston Connector); and may in the future own, lease, or otherwise control and operate a rail line from MP P-49.5 at Gould Tunnel east to a connection with Norfolk Southern in Mingo Junction (hereinafter the Mingo Connector).

B) The C&OR acknowledges that it may be necessary for trains to move over the Neilston Connector or the Mingo Connector to connect the Rail Property with CSX Transportation and Norfolk Southern or successor railroads at Columbus or at Mingo Junction. The C&OR therefore agrees that in the event the ORDC grants joint rights over the Rail Property to another rail carrier in accordance with Article 4 hereof, and this Agreement remains in effect, the C&OR will enter into an appropriate interchange access agreement with such other carrier allowing the carrier direct access to interchange of traffic with CSX Transportation and Norfolk Southern or their successors at Columbus or Mingo Junction. The terms of such agreement shall be negotiated by the C&OR with the tenant rail carrier; provided, however, that the C&OR shall not require compensation or terms for use of the Connection Tracks that exceed the level of compensation or terms determined in accordance with Article 4, "Non Exclusive Operations" of this Agreement.

C) In the event the C&OR, or a related entity, decides to sell or abandon either the Neilston Connector or the Mingo Connector (in the event that C&OR, or a related entity, has acquired the latter), the C&OR, or a related entity, shall first offer the ORDC the opportunity to purchase the Neilston Connector and/or the Mingo Connector for Fair Market Value. In the event this Agreement expires or is terminated and the C&OR, or a related entity, no longer conducts rail freight operations over the Rail Property, the C&OR, or a related entity, shall agree to sell to ORDC and ORDC reserves the right to purchase from the C&OR, or a related entity, the Neilston Connector and/or the Mingo Connector for Fair Market Value.

ARTICLE 6 - TERM

- A) The term of this Agreement shall commence on July 1, 2007 and shall continue until June 30, 2012. ORDC retains, however, the right to terminate this Agreement at its discretion.
- B) It is ORDC's intent, but not obligation, to maintain this Agreement for the full term of this Agreement.
- C) ORDC's obligations under this Article 6, "Term", are subject to and may be limited or excused pursuant to the terms of Article 30, "Limitations".
- D) Notwithstanding, any of the foregoing provisions of this Article 6 "Term" to the contrary ORDC's ability to maintain this Agreement, or to enter into subsequent Agreements, is subject to and dependent on, among other things, the Ohio legislature duly and validly authorizing the appropriations necessary for ORDC to continue to perform its obligations under the Lease during each successive biennial budget period.
- E) Nothing in this Article shall be construed to extend this Agreement beyond the term described in this Article. However, ORDC recognizes that C&OR's performance under this Agreement shall be the determining factor in the methodology which the ORDC employs to choose the contract operator for the Rail Property for the period of time from July, 2012 to June, 2017. ORDC and C&OR hereby establish the following performance standards for the C&OR for the duration of this Agreement:
- 1) Shipper Satisfaction: In or about July, 2011, ORDC shall conduct a survey using the survey form herein included as Exhibit "C" of twenty rail users on the Rail Property including the ten (10) most active rail users plus ten (10) others selected at random. ORDC shall deem the performance of the C&OR to be satisfactory in this category if ninety percent (90%) of responses or more are in the "3", "4", or "5" classifications.
 - 2) Safety: In or about July, 2011, ORDC shall contact the Federal Railroad Administration (FRA) to determine the C&OR's safety performance for the previous four year period for the three categories below. ORDC shall deem the C&OR's performance to be satisfactory if the corresponding average annual performance standards are met or exceeded.

<u>Categories</u>	<u>Performance Standard</u>
- FRA Incidents Ratio	Lower Than Class I Average
- Employee Injury Ratio	Lower Than Class I Average
- Track Accidents/1000 miles	Lower Than Class I Average

- 3) Carloading: ORDC shall deem the C&OR's performance to be satisfactory in this category if by July, 2011, the revenue carloadings generated by the C&OR on or over the Rail Property exceeded 20,000 carloads during the previous twelve month period, or during calendar year 2010.

- 4) Track Maintenance: ORDC shall deem the C&OR's performance to be satisfactory in this category if the C&OR meets the standards set out in Article 10, "Maintenance and Repairs", of this Agreement.
- 5) Operations/Financials: ORDC shall deem the C&OR's performance to be satisfactory in this category if by July 2011, the C&OR shall demonstrate that it has a Current Asset Ratio which is more than .75 for the previous 12 month period or for calendar year 2010. ORDC shall calculate this Current Asset Ratio using the audited financial statements of the C&OR. The Current Asset Ratio will be calculated as follows: Current Assets divided by Current Liabilities.
- 6) Connectivity/Value Added: ORDC shall deem the C&OR's performance to be satisfactory in this category if in or about July 2011, the C&OR, through its affiliated Ohio Central System rail companies, maintains effective interchanges with Class I railroads at Warwick, Ohio, and Massillon, Ohio, or at points equivalent or better to these locations.
- 7) Compliance With Operating Agreement: ORDC shall deem the C&OR's performance to be satisfactory in this category if the C&OR is not in default of any of the provisions of this Agreement. In the event that ORDC's analysis under this category is done at such time when the C&OR is in default of this Agreement, the C&OR shall have the full time allotted in Article 29 "Default" of this Agreement, to correct the default to meet the stipulations of this Article.

In the event that ORDC deems the C&OR's performance in all of the Categories included in this Section "E" of this Article to be satisfactory, ORDC shall not pursue a Competitive Selection Process to determine the operator of the Rail Property for the period of time between July 2012 and June 2017. Instead, ORDC shall commence good faith negotiations with the C&OR for the operation of the Rail Property in this 2012 to 2017 time frame. ORDC shall use the terms and conditions of this Agreement as the basis to negotiate the next five year term. It is ORDC's intent to enter into a new operating agreement with the C&OR from July 2012 to June 2017 if the C&OR agrees to the same terms and conditions as contained in this Agreement.

ORDC, however, reserves the right to stipulate new terms and conditions in the July 2012 to June 2017 agreement with the C&OR. ORDC shall limit new terms and conditions to areas where there have been tangibly demonstrated, substantial changes in conditions involving the operation of the Rail Property or to rail lines contiguous with the Rail Property. Further, in the event that the C&OR and ORDC cannot reach an agreement on new terms and conditions by December 31, 2011, then ORDC reserves the right to commence a competitive selection process.

In the event that ORDC chooses the C&OR as the contract operator for the Rail Property for the July 2012 to June 2017 time period through negotiations as described herein in this Article, it is ORDC's intent that the ORDC-C&OR agreement shall contain the same or similar Performance Standards as contained in this Article for this 2012 to 2017 time period. Further, it is ORDC's intent to reach a negotiated contract with the C&OR for the July 2012 to June 2017 time period if ORDC deems that the Performance Standards from the 2007 to 2012 agreement have been satisfactorily met by the C&OR.

ARTICLE 7 - C&OR PAYMENTS

During the term of this Agreement, C&OR shall pay from the gross revenues received from operation of the Rail Property the amount of FIFTY-EIGHT THOUSAND DOLLARS (\$58,000) per month. Such payments shall fulfill ORDC's Lease requirements with First Capital Corp or its subsidiary, CAPRAIL I, INC. The abovementioned payments shall be made to a special account established and maintained at the Bank of New York by means of direct electronic transfer by the first of each month, or 24 hours before said Lease payments are due, whichever comes later. In addition, a check for TWO THOUSAND, FIVE HUNDRED DOLLARS (\$2,500), made payable to: Treasurer State of Ohio, shall be mailed to ORDC by the first business day of each month.

ARTICLE 8 - INSPECTION AND AUDIT

The C&OR agrees that ORDC, or its duly authorized representatives, shall, at all reasonable times and upon reasonable notice, be permitted to inspect said Rail Property, and such records and data maintained by the C&OR as may be necessary to monitor the C&OR's compliance with this Agreement; provided, however, that so long as C&OR is not in default hereunder, ORDC shall not audit C&OR's financial records more frequently than once each year. Additionally, non-financial records will not be audited more than once a year as long as C&OR is not in default. As part of the annual audit, upon request by ORDC the records of the C&OR parent and affiliates shall be made available to ORDC for the purposes of documenting those revenues and expenses that are prorated between C&OR, said parents and affiliates and the methodology used for that proration. Disclosure of information on parent and affiliates shall be limited to that information that applies to the proration basis among Summit View enterprises and/or methodology of proration.

To the extent possible under applicable law, all aspects of ORDC's exercise of audit rights and the results thereof shall be held confidential, and shall not be disclosed without C&OR's prior consent. However, to the extent that disclosure is required by law or by court or administrative order, the C&OR's prior consent shall not be required. In such event, ORDC shall provide the C&OR with as much advance notice of the disclosure, and the circumstance under which disclosure is to be made, as practicable.

Subject to this Article 8, C&OR shall provide confidential carloading information in connection with operations over the Rail Property by customer, commodity, origin and destination, and interchange point (s) as of the end of the C&OR's fiscal year. Further, C&OR shall provide to ORDC Gross ton miles/mile information broken down by various segments as requested by ORDC.

During the term of this Agreement and subject to this Article 8, the C&OR shall, within one hundred five (105) days after the end of its fiscal year provide the Director with a confidential, audited financial report prepared by a Certified Public Accountant, including profit-loss statements, balance sheets and cash flow statements. C&OR shall respond within thirty (30) days to ORDC's request for relevant information and data concerning C&OR's railroad operation.

ARTICLE 9 - ALTERATIONS AND IMPROVEMENTS

C&OR, for the duration of this Agreement, shall have the right to make alterations to and improvements upon the Rail Property provided rail alterations and improvements are kept in good order,

repair and in a safe condition and provided further that prior written notification of the proposed alteration or improvement is submitted to and approved by ORDC, which approval shall not unreasonably be withheld. ORDC shall grant such approval subject to the terms of the Lease. The C&OR within sixty (60) days after completion of any construction, alterations, repairs or improvements in or upon the Rail Property, shall furnish to ORDC a certified statement that all charges for labor and materials furnished have been paid, or all schedules of such payments are current, and provide to ORDC copies of releases of liens. The creation or imposition of any lien or charge upon the Rail Property through the failure of the C&OR, its agents, contractors, or subcontractors to render any such payments when due shall be deemed a default under the provisions of this Agreement with the C&OR remaining liable for liens and any other encumbrance so incurred.

For the purpose of this Agreement, "Alterations and Improvements" shall mean any activity which substantially changes the nature of the Rail Property, including but not limited to, the taking up of any portion of rail or track (mainline, branchline, or siding), the changing of the centerline of any track (mainline, branchline or siding), modifications of any bridges or culverts, construction of any new track, structure or appurtenance on or along the Rail Property, modification of drainage system, or any other non-maintenance activity. Normal track maintenance shall not be considered an Alteration or Improvement. Normal maintenance includes, but is not limited to, tie replacement, surfacing, aligning, bolt tightening, replacement of rail, rail switches, or rail hardware, turning worn rail, replacing ballast and other normal maintenance activities. Further, the C&OR shall have the right to modify its building in Coshocton without prior approval of the Director. Nothing in this Article shall eliminate, alter, or change the C&OR's responsibilities described in Article 10, "Maintenance and Repairs" below.

It is specifically understood and agreed to by the parties that all improvements to the Rail Property are owned by ORDC. Nothing in this Article shall be construed to grant to the C&OR the right to sell, trade or otherwise profit from the removal of track, track structures or appurtenances. C&OR agrees that ORDC reserves the right to be the sole beneficiary of the proceeds of any salvaging of any track, track structure or appurtenances on the Rail Property. However, the C&OR shall have the right to request in writing to the Director that the C&OR be allowed to salvage un-needed track or track structures. The C&OR's written request shall contain the reasons why the track or track structures are no longer needed for the operation of the Rail Property, an estimation of the net liquidation value of the items to be salvaged, and a detailed description of the improvements to the Rail Property which will be made with the proceeds from the salvaging, including the exact location of such improvements. The C&OR may commence with the salvaging of materials upon written permission to do so by the Director, and such permission will not be unreasonably withheld.

ARTICLE 10 - MAINTENANCE AND REPAIRS

- A) The C&OR has inspected and accepts the Rail Property in its present condition and agrees that no representations or warranties with regard to condition and fitness for use of the Rail Property have been made.
- B) The C&OR agrees that, at the C&OR's sole cost and expense, to put, keep, and maintain the Rail Property in good order, repair, and safe condition. The C&OR agrees that the following level of Federal Railroad Administration (FRA) Track Class will be attained and maintained in the following territories:

Main Line - Newark to Coshocton	FRA III
Main Line - Coshocton to Bowerston	FRA II
Main Line - Bowerston to Jewett	FRA III
Main Line - Jewett to Gould	FRA II
Georgetown Line to MP 0.0 to 5.5	FRA I
Georgetown Line MP 5.5 to 12.8	FRA I*
Trinway Industrial	FRA I*
Hebron Line	FRA I

* It is understood between the contracting parties that there is no demand for local or overhead service on the Georgetown Line between MP 5.5 to 12.8 or the Trinway Industrial and that they are currently not in service. The C&OR commits to attaining and maintaining FRA I Track Class within one year after receipt of a bona fide request for service over any portion of these lines.

It is understood that the above FRA standards shall be attained and maintained independent of the number of rail carloads generated over and upon the Rail Property or any segment thereof.

C) The C&OR commits to expend the following amounts in each year of the contract in the year after the following traffic levels are attained:

<u>ANNUAL CARLOADS</u>	<u>CAPITAL REPAIR</u>	<u>MAINTENANCE</u>
14,000-14,999	\$800,000	\$390,000
15,000-15,999	\$900,000	\$401,000
16,000-16,999	\$1,000,000	\$409,000
17,000-18,499	\$1,100,000	\$418,000
18,500-19,999	\$1,300,000	\$430,000
20,000-22,499	\$1,500,000	\$443,000
22,500-24,999	\$1,600,000	\$460,000
25,000 and Over	\$1,700,000	\$475,000

D) ORDC and the C&OR agree that the Engineering Plan and Budget is critical to the future of the Panhandle Rail Line and that communication between ORDC and the C&OR is central to the accomplishment of the Program. To that end:

1) By each March 15 thereafter during the life of this Agreement the C&OR shall submit to ORDC its work plan for the upcoming maintenance season.

2) By each April 15 thereafter ORDC shall either accept the C&OR's plan or offer modifications to it. ORDC's proposed modifications, if any, will be structured so as to not unduly affect the operation or profitability of the C&OR. The C&OR will make reasonable efforts to accommodate ORDC's modification proposals. Should the C&OR receive no ORDC modifications by April 15 in each year thereafter, it may proceed with its work plan as proposed.

The C&OR will specify in its work plan an estimate of the cost of the various elements of its

plan broken down by equipment, materials, and labor. The description and cost of materials will include the specifications for said materials.

E) The C&OR shall fully cooperate with the ORDC in the inspection of materials and work. Materials found defective by ORDC inspectors will not be installed.

F) The C&OR shall annually provide the ORDC with a report on the Maintenance and Capital Repairs performed during the previous calendar year including but not limited to:

1) Narrative of work describing efficiencies and improvements arising therefrom.

2) A listing of material installed on a Mile Post-by-Mile Post basis.

3) Breakdown of project cost by labor, material, and equipment cost.

G) ORDC and the C&OR agree that fluctuation in traffic or in the profitability of traffic may cause financial pressures on the C&OR. Recognizing this, the ORDC shall not find the C&OR in default of its obligations provided that C&OR demonstrates to ORDC's satisfaction that C&OR net revenues from increased carloads was significantly lower than the average net revenue of other traffic on the Rail Property. The C&OR shall, however, be in default of this Agreement in the event that C&OR expends less than Ninety Percent (90%) of the appropriate target goal in any year.

H) Should the C&OR fail to meet the commitment level established in Part "C" of this Article 10, in a given Year, it shall have the right to clear the default by adding the shortfall (target minus actual work value) to its work plan for the following year.

I) In the event the C&OR exceeds the commitment level established in Part "C" of this Article 10, for any given year, the resulting credit (Actual Work Value minus commitment) may be applied against commitment level established in Part "C" of this Article 10, for future years.

J) The C&OR's maintenance responsibilities for the Rail Property shall include all railroad responsibilities inherited from previous railroad operators or owners in chronological order. To advance the public interest in the preservation of infrastructure and jobs, ORDC and the C&OR will work together to relieve the Rail Property and its patrons of the responsibility for ownership and/or maintenance of facilities not directly used in or useful in the conduct of railroad operations. Nothing in this subsection shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent, or of partnership, or of joint venture.

Should the C&OR be required by law or other competent authority to expend funds for maintenance of facilities not identified in its annual Engineering Plan" such funds will credited against the C&OR's annual obligations delineated in Part "C" of this Article 10.

In no event shall the C&OR be required to expend any of its funds for the maintenance, repair, and/or replacement of an over-grade highway bridge without first apprising the ORDC of the total cost attributable to any single project and of its possible negative impact on the C&OR's contractual

maintenance and capital repair commitments. Should ORDC agree with the C&OR's findings, ORDC will take action including, but not limited to:

1) ORDC will accept the C&OR's application for a grant equal to at least 90% of the total cost of the project which grant shall be promptly considered.

2) Should ORDC fund less than 90% of the project cost via a grant, the ORDC will permit the C&OR to reduce C&OR's maintenance and capital repair commitment level delineated in Part "C" of this Article by the same amount for that or subsequent contract year depending on the timing of the project.

3) In no event will ORDC require the C&OR to fully fund both over-grade highway bridges and maintenance and capital projects which would unduly affect the C&OR's ability to continue profitable operations.

ARTICLE 11 - TAXES AND ASSESSMENTS

The C&OR shall have the sole responsibility to pay all taxes and assessments arising after the effective date of this Agreement for the Rail Property, or C&OR's use of the rail property including, but not limited to, real estate taxes and other assessments if any, throughout the term of this Agreement, or in any renewals of this Agreement. The C&OR shall pay such taxes and assessments directly to the taxing or assessing authority before such payments become delinquent and shall certify to ORDC that these tax obligations have been met. It is further agreed that C&OR shall have the right, at its sole cost and expense, to challenge the application, assessment or computation of any tax, as provided under applicable law.

ARTICLE 12 - ASSIGNMENT AND SUBLETTING

This Agreement and all the terms and conditions hereof shall inure in favor of, and be binding upon, the parties hereto and upon their respective successors and permitted assigns.

Further, the C&OR shall not assign or transfer this Agreement in whole or in part, or sublet the Rail Property, or any part thereof, without the prior written consent of the Director of ORDC which shall not be unreasonably withheld. An assignment, or transfer, or merger, or consolidation by operation of law or proceeding in equity, bankruptcy, insolvency or reorganization, or a transfer of any controlling interest of the stock of the C&OR to a person or persons not now in control, shall be deemed to be an assignment within the meaning of this provision.

For the purpose of timely filing of a Notice of Exemption pursuant to 49CFR Part 1150 and 49 U.S.C. 10901, the C&OR shall be allowed to assign a parent, subsidiary, or corporate affiliate of the C&OR and/or to a voting trustee under 49CFR Part 1013, a controlling interest of stock in the C&OR without prior ORDC approval.

ARTICLE 13 - INSURANCE AND INDEMNIFICATION

This Agreement is without force and effect until such time that the C&OR demonstrates to the satisfaction of ORDC that the C&OR has liability insurance coverage (i.e., bodily injury and property damage coverage) in amounts not less than Ten million dollars (\$10,000,000.00) for each individual claim with regard to the operation of the Rail Property. The C&OR shall provide a certified complete copy of all such insurance policies to ORDC not more than ten (10) days prior to the execution of this Agreement. Each such policy of insurance must (i) name ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio as an additional insured, and (ii) prohibit cancellation or material changes (including but not limited to any decrease in the amount of insurance) without at least thirty (30) days prior written notice to ORDC. The C&OR shall deliver to ORDC verification as to the replacement or renewal of each such policy not less than thirty (30) days prior to the expiration (or other termination) date of any such policy.

The C&OR agrees to indemnify and hold ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio harmless from and against any loss, claim, damage, cause of action or absolute liability, (including without limitation, counsel fees) caused by the C&OR's negligent, reckless, intentional, willful or wanton actions or inactions, including such actions or the failures to act of any contractors, subcontractors or employees hired by or working under the direction of the C&OR.

However, nothing in this Article 13 shall be construed as imposing on the C&OR any liability or duty of indemnification whatsoever with respect to any acts or omissions of rail carriers other than the C&OR conducting operations on or over the Rail Property pursuant to Article 4, "Non-Exclusive Operation" or Article 26, "Passenger Service".

In no event shall the C&OR or any of its employees, agents, contractors or subcontractors be considered agents or employees of ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio. The C&OR agrees that none of its employees, agents, contractors or subcontractors shall hold themselves out as, or claim to be, agents, officers or employees of ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio, and will not, by reason of any relationship with ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio, make any claim, demand or application to any agent, officer, or employee of the State of Ohio including, but not limited to, rights and privileges concerning worker's compensation benefits, social security coverage or retirement membership or credit.

ARTICLE 14 - TAX PENALTIES

The C&OR agrees to pay any penalties assessed to ORDC or to the C&OR due to lack of payment or late payment by C&OR of any taxes described in Article 11, "Taxes and Assessments", of this Agreement.

ARTICLE 15 - UTILITIES

The C&OR, at its sole cost and expense, shall arrange for and obtain necessary water, electricity and other utility services required for its use. ORDC shall not be liable for any such services, or the suspension of such services.

ARTICLE 16 - PROPERTY MANAGEMENT

- A) Subject to the other provisions of this Agreement and this Article, the C&OR shall be obligated to fulfill all responsibilities, obligations, and duties assumed by ORDC under the Lease. In addition to the foregoing, the C&OR's responsibilities shall include, but not be limited to, fulfilling the ORDC's obligation under the Lease by providing services and collecting fees.
- B) The C&OR may enter into new leases, easements, or other property management responsibilities, hereinafter referred to as Property Transactions, which ORDC might enter into under the terms of the Lease only after the C&OR obtains written permission from the Director of ORDC, which permission shall not be unreasonably withheld. ORDC shall have no obligations under such Property Transactions unless the Director accepts such obligations in writing.
- C) ORDC reserves the right to require that the C&OR pay directly to ORDC fees, revenues, or other payments which accrue from Property Transactions involving telecommunications, fiber optics, or cellular telephone towers or apparatus. However, in no event shall C&OR be required to pay more than Fifty Percent (50%) of said fees, revenues, or other payments directly to ORDC.
- D) The C&OR shall establish a separate interest bearing account called the "Special Projects Fund" which shall consist of all fees, revenues, or other payments the C&OR receives from Property Transactions entered into after the effective date of this Agreement. ORDC shall have no rights, title, or interest in this Special Projects Fund except as described in this Article 16. ORDC shall have the right to determine which projects may be paid for by the C&OR with the Special Project Fund in accordance with the following procedure:
- 1) At any time, the C&OR may request in writing ORDC's approval to spend all or part of the Special Projects Fund on a project or projects of the C&OR's choosing. The request will include a detailed description of the project or projects to be performed, the method to be used to perform them, and the costs broken down by the various elements of the project or projects.
 - 2) Within thirty (30) days after receiving the C&OR's written request, ORDC shall respond in writing whether or not ORDC approves of the project or projects. ORDC shall retain the right to suggest alterations to the proposed project or alternative projects. ORDC's approval of projects which the C&OR proposes shall not be unreasonably withheld.
 - 3) If ORDC approval is provided, the C&OR may proceed with the project or projects and pay for them using the Special Projects Fund. Within sixty (60) days after project completion, the C&OR shall provide ORDC with a detailed accounting of the actual costs to complete the project or projects.
 - 4) If ORDC approval is not provided for a project or projects, then the C&OR shall retain the right to proceed with the project or projects, subject to the terms and conditions of this Agreement, but shall not use any portion of the Special Projects Fund to pay for any portion of the project or projects.

E) At its sole discretion, ORDC may allow that expenditures of Special Projects Fund monies by the C&OR be counted against the C&OR's obligations in Article 10, "Maintenance and Repairs" of this Agreement. However, ORDC and the C&OR agree that it is the intent of this Article 16 that the Special Projects Fund be used to supplement, not take the place of, the C&OR maintenance and repair expenditures stipulated by Article 10, "Maintenance and Repair".

F) In the event that this Agreement is terminated for any reason, including but not limited to, the default by the C&OR as contained herein in Article 29, "Default", the termination of this Agreement by the C&OR as provided for in Article 4, "Non-Exclusive Operations", or because the term has expired pursuant to Article 6, "Term", then the C&OR shall immediately pay to ORDC any and all funds held in the Special Projects Fund. However, in the event that the C&OR and ORDC are in the process of negotiating a new Operating Agreement for the Rail Property, the C&OR shall not be required to pay to ORDC the monies held in the Special Projects Fund until such time as the negotiations are formally terminated by either party.

Nothing in this Article 16 precludes ORDC from entering into a Property Transaction involving the Rail Property with parties of ORDC's selection under terms and conditions consistent with Article 16 and this Agreement. However, ORDC shall coordinate and cooperate with the C&OR to ensure that the interests of the C&OR are not unduly harmed before entering into the proposed Property Transaction. In the event that the C&OR has an objection to a proposed ORDC Property Transaction, the parties agree to mediate the disagreement as provided for in Article 35, "Alternative Dispute Resolution", of this Agreement.

ARTICLE 17 - C&OR MANAGEMENT FEE

As stipulated in the Articles above, the C&OR shall be responsible for collecting all fees and charges associated with the provision of property management and common carrier services on the Rail Property.

In addition to the payments required under Article 7, "C&OR Payments", of this Agreement, within thirty (30) days after the end of each calendar quarter, the C&OR shall deposit available gross revenues up to five percent (5%) of the gross revenues realized from the operation of the Rail Property for the said previous calendar quarter into an escrow account. The escrow agent upon receipt of said gross revenues shall then pay to C&OR a fixed fee of \$300,000.00 per quarter as C&OR's management fee for the previous quarter. Any remaining funds after said payments shall be known as "Excess Funds" and shall be deposited into ORDC accounts as determined by the Director and approved by the Director of the Office of Budget and Management of the State of Ohio. However, in the event that the escrow agent is unable to pay the entire \$300,000.00, the C&OR shall receive the maximum amount available in the escrow account and shall receive a non-recourse credit from the escrow agent for the sum equal to the difference between \$300,000.00 and the amount paid by the escrow agent. Any credit amount shall be paid to the C&OR by the escrow agent prior to depositing any "Excess Funds" into the specified ORDC accounts. At the end of the management agreement term, any amounts listed by the escrow agent as credit to the C&OR shall be considered as an uncollected fee and neither the escrow agent, ORDC, nor anyone else shall be liable for payment of any C&OR management fee. All liability for the management fee shall be limited to funds held in the escrow account.

ARTICLE 18 - FORCE MAJEURE

In the event of an occurrence beyond the reasonable control of C&OR, such as an act of God, a flood, a major explosion or fire or an act of any government, which prevents or materially impairs C&OR's ability to provide rail service over part or all of the Rail Property, the C&OR's obligation to provide rail service under this Agreement is excused until such time the Rail Property becomes operational. In the event of such an occurrence, ORDC and the C&OR shall determine jointly and in good faith how the expense of repairing or rebuilding the Rail Property shall be divided between ORDC and the C&OR; provided, however, that in the absence of ORDC's commitment to pay for same, C&OR shall not be obligated to undertake any repair or replacement of asset or equipment that would not be required under otherwise applicable law.

An incidence of Force Majeure shall not excuse C&OR's obligations under Article 7 "C&OR Payments". However, it is expressly agreed that ORDC or the C&OR retains the option to terminate this Agreement in accordance with Article 28, "Termination", upon the occurrence of any act deemed to be "Force Majeure" under this Article.

Normal track rehabilitation shall not be considered an occurrence of Force Majeure under this Agreement. Normal track rehabilitation includes, but is not limited to, extensive track repair necessary because of the lack of adequate maintenance or extraordinary use of the line over a period of five (5) or more years.

ARTICLE 19 - EEO REQUIREMENTS

In the hiring of employees or for any contract or subcontract, the C&OR, its sublessee, contractors or subcontractors shall not by reason of race, color, religion, sex, age, disability, national origin, or ancestry discriminate in the employment of persons qualified and available to perform the work. Neither the C&OR nor its sublessees, contractors, subcontractors, or any person acting on behalf of C&OR, sublessee, or any contractors or subcontractors shall, in any manner, discriminate against, intimidate, or retaliate against any employee on account of race, color, religion, sex, age, disability, national origin, or ancestry.

ARTICLE 20 - NOTICES

All notices, requests, demands, directions and other communications (collectively "notices") given to or made upon any party hereto under the provisions of this Agreement shall be in writing (including electronic mail) and shall be delivered or sent by first class, certified, return receipt requested, or first class express mail or overnight air courier service, or by electronic mail with confirmation in writing mailed first class, in all cases with postage or charges prepaid, to the applicable party, addressed:

If to ORDC:

Executive Director
Ohio Rail Development Commission
Suite 1510, LeVeque Tower
50 West Broad Street
Columbus, OH 43215

If to the C&OR:

President
The Columbus & Ohio River Rail Road Company
47849 Papermill Road
Coshocton, Ohio 43812

Or, notice may be given to another party and/or at another address in accordance with any unrevoked written direction from any party to any other party hereto. Each such notice shall be deemed to have been given or received on the date sent except when sent by first class express mail or overnight air courier service, in which case on the next Columbus Banking Day thereafter, and except when sent by first class mail, in which case on the third Columbus Banking Day thereafter.

ARTICLE 21 - REMEDIES

No remedy herein conferred upon or reserved by either party is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be, in addition to every other remedy given under the Agreement now or hereafter existing at law or in equity.

ARTICLE 22 - NO WAIVER

No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by the non-breaching party.

Further, if any term, provision, covenant or condition contained in this Agreement is breached by either party and thereafter such breach is waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. A written record of such waiver shall be included in the records of this Agreement.

ARTICLE 23 - COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS REQUIREMENTS

The C&OR agrees to comply with applicable federal, state, and local laws and regulations in its performance under this Agreement. In the event that any provision of this Agreement conflicts with any law or regulation, the law or regulation shall prevail.

ARTICLE 24 - SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable except that if the savings clause as set forth in Article 30, "Limitations", herein is determined to be invalid, unenforceable or unconstitutional, this Agreement shall terminate.

ARTICLE 25 - NO ABANDONMENT

The C&OR shall not apply for abandonment of or discontinuance of service over any portion of the Rail Property without securing the advance written consent of the ORDC.

ARTICLE 26 - PASSENGER SERVICE

- A) In recognition of the potential for rail passenger service on the Rail Property, ORDC encourages the C&OR to promote, develop and support safe and efficient rail passenger service.
- B) The C&OR shall exercise the right to provide passenger service on the Rail Property by providing ORDC's Director a written notice Thirty (30) days in advance of any proposed rail passenger service. Such notice shall include, but not be limited to, evidence that C&OR has obtained all necessary Federal or other approvals to operate such service, and the location, times, schedules and dates of any and all passenger trains the C&OR proposes to operate. The C&OR may request blanket approvals from ORDC of certain types or classes of rail service over a specified time period.
- C) Upon receiving the request from C&OR to operate passenger service on the Rail Property, ORDC's Director shall respond to the C&OR's request no later than thirty (30) days from ORDC's receipt of such notice. Further, ORDC reserves the right to request that the C&OR change, alter or amend such request so as to protect the public from damage and injury. ORDC reserves the right to reject C&OR requests under this Article; however, such requests shall not be unreasonably denied. ORDC may deny requests for passenger service on grounds that the C&OR is not in compliance with otherwise applicable safety regulations, or has failed to procure the insurance required in Paragraph "D" hereof.
- D) Before approving any C&OR request to operate passenger service, ORDC will require that the C&OR demonstrate to the satisfaction of ORDC that the C&OR has the necessary liability coverage to operate passenger service on the Rail Property. ORDC shall be the Final Arbitor of the amount of insurance C&OR must obtain to operate passenger trains. In addition, the C&OR agrees to indemnify and hold ORDC and Caprail I, Inc. harmless from and against any loss, claim, damage, cause of action, destruction, liability, (including, without limitation, counsel fees) caused by the C&OR's negligent, intentional, willful or wanton actions or inactions, including such actions or the failures to act of any contractors, subcontractors or employees hired by the C&OR including independent contractors.
- E) 1) ORDC reserves the right to allow qualified rail passenger and excursion operators other than the C&OR to operate on the Rail Property. ORDC and the C&OR agree that provisions for initiating such passenger and excursion service shall be conducted under the same process and

terms as established for other freight carriers using the Rail Property in Article 4, "Non-Exclusive Operations", of this Agreement.

- 2) ORDC agrees that ORDC, not the C&OR, shall be the party which contracts with said qualified passenger or excursion operator to operate on the Rail Property. ORDC agrees that said operating contract will, as a minimum, provide that:
 - i) Said qualified operator shall agree to indemnify the C&OR and hold it harmless from and against any loss, claim, damage, cause of action, destruction, or liability (including, without limitation, attorneys' fees) which arises in any way from, during or in connection with said operator's presence on, use of or operation over the Rail Property. ORDC further shall require said operator to provide and maintain insurance against the liability herein described, naming the C&OR as an additional insured, in the amount of at least Ten Million Dollars (\$10,000,000). If at any time for any reason said insurance shall lapse, be canceled, or otherwise cease to be in effect, ORDC shall require the qualified operator to immediately vacate the Rail Property and refrain from any use thereof or operation thereover until said insurance is again full effective.
 - ii) Said qualified operator will abide by special operating terms and conditions concerning radios, telemetry, flagging, and other matters which the C&OR may from time-to-time bring to the ORDC's attention.
- 3) ORDC agrees that the C&OR will not be compelled to operate or accept for operation passenger equipment which does not meet passenger car standards as determined by a qualified independent passenger car inspector who shall be selected by the ORDC and the C&OR. Charges of the inspector will be paid by the party offering the passenger equipment for operation. In no event shall passenger equipment which does not meet FRA standards be accepted for excursion operation nor shall equipment which does not meet Amtrak standards be accepted for regular scheduled intercity, commuter, or suburban service.
- 4) ORDC agrees that the C&OR will not be compelled to provide personnel, equipment, or services for the operation of passenger or excursion service by a third party.
- 5) ORDC agrees that in its considerations as to whether to allow another operator to conduct passenger or excursion services on the Rail Property, ORDC shall take into account whether that other operator and/or another railroad already sponsoring passenger excursion service on their lines, is willing to allow the C&OR, or its affiliated railroads and companies, to utilize their lines for excursion or passenger services under similar terms and conditions.
- 6) ORDC will make its good faith efforts to encourage Ohio railroads to allow C&OR to operate excursion or passenger services over their lines as a quid pro quo for other operator(s) seeking to use the Rail Property for passenger or excursion service.

7) Subject to section E (1) of this Article 26, the C&OR and the operator seeking to use the Rail Property will negotiate the compensation to be paid for allowing passenger service but such compensation shall be approximately equal to the actual costs to the C&OR caused by the passenger service on the Rail Property, including a management fee and other C&OR personnel costs. In no event will the C&OR be compelled to subsidize or otherwise underwrite expenses of the passenger or excursion service operator on the Rail Property. ORDC shall be the final arbiter in determining compensation to be paid to the C&OR in accordance with the terms and conditions of this Article 26.

8) In any grant of passenger or excursion service rights to an operator the ORDC will not require the C&OR to pay for or maintain the track at its expense to a higher standard than is noted in Article 10, "Maintenance and Repairs" of this Agreement.

ARTICLE 27 - C&OR CONTRACTS

ORDC recognizes that the effective operation of the Rail Property requires that the C&OR enter into certain contracts for periods of time which may exceed the five year term of this Agreement. The C&OR recognizes that ORDC has an interest in knowing the terms and conditions of said C&OR contracts which may be in effect beyond the termination of this Agreement.

The C&OR agrees that it shall not enter into contractors beyond the terms of this Agreement unless the contract is assignable, at the option of the successor railroad, to any railroad which may be retained by ORDC to be the contract operator for the Rail Property.

ARTICLE 28 - TERMINATION

A) The C&OR shall have the right to terminate this Agreement at its discretion upon written notification to the Director of ORDC ONE HUNDRED AND EIGHTY (180) DAYS in advance of the C&OR's actual cessation of service. ORDC shall have the right to terminate this Agreement, or any renewal of this Agreement, only in accordance with the provisions Article 6, "Term", Article 18, "Force Majeure", Article 24, "Severability", Article 29 - "Default" or Article 30, "Limitations" of this Agreement.

B) Upon termination or non-renewal of this Agreement for any reason, ORDC agrees that so long as permitted by law, it shall grant to C&OR, or its designee, for a period of not less than ten (10) years, joint rights over the Rail Property for the limited purpose of transporting coal destined for Conesville, Ohio. C&OR or its designee shall obtain such joint rights in accordance with in Article 4, "Non-Exclusive Operations" of this Agreement. The provisions of this Part "B" of this Article 28 shall only apply to coal traffic which the C&OR develops during the term of this Agreement which originates on lines other than the Panhandle.

ARTICLE 29 - DEFAULT

ORDC may notify the C&OR in writing that the C&OR is in default of this Agreement if the C&OR is not performing or complying with any condition or provision of this Agreement including but not limited to the following:

- 1) The C&OR fails to make any Lease payments as required by Article 7, "C&OR Payments".
- 2) The C&OR fails to provide financial and/or C&OR carloading and gross ton mile/mile information as required by Article 8, "Inspection and Audit".
- 3) The C&OR makes unauthorized alterations and improvements as defined in Article 9, "Alterations and Improvements".
- 4) The C&OR fails to maintain track as provided for in Article 10, "Maintenance and Repairs".
- 5) The C&OR fails to pay taxes as required by Article 11, "Taxes and Assessments".
- 6) The C&OR sub-leases any of the Rail Property or in any way transfers Controlling interest of the C&OR in violation of Article 12, "Assignment and Subletting".
- 7) The C&OR fails to acquire the required insurance, as provided in Article 13, "Insurance and Indemnification", or the required insurance is canceled.
- 8) The C&OR fails to pay any tax penalties as described in Article 14, "Tax Penalties".
- 9) The C&OR violates the EEO requirements as provided in Article 19, "EEO Requirements".
- 10) The C&OR abandons any portion of the Rail Property without the advanced written permission of the ORDC Director as provided in Article 25, "No Abandonments".
- 11) The C&OR operates passenger service without the Director's approval as provided in Article 26, "Passenger Service".
- 12) If C&OR is insolvent or files, or consents to the filing against it of a petition for relief or reorganization in bankruptcy or insolvency under the laws of any jurisdiction.
- 13) The C&OR fails to abide by Article 27, "C&OR Contracts".

In the event that ORDC informs the C&OR in writing of a C&OR default, the C&OR shall have Sixty (60) days to cure the default except that: 1) there shall be no grace period for the payment of any monetary obligations; and 2) for obligations that would be reasonably expected to take more than Sixty (60) days to cure, the C&OR shall begin steps to cure the default within Thirty (30) days and there after make good faith efforts to prosecute same with due diligence so that the cure shall take place in a reasonable amount of time. If C&OR fails to so cure within this period, or pay all monetary amounts when due, then ORDC may terminate this Agreement. In the event ORDC terminates this Agreement, in addition to any other action or remedy which ORDC may have at law or in equity to recover damages or otherwise by reason of breach by C&OR of any provision of this Agreement, ORDC shall have the right to remove C&OR from the Rail Property and take possession thereof by all available legal means, including, but not limited to, the assignment of trackage operating rights to another carrier at ORDC's

discretion without regard to Article 4, "Non-Exclusive Operation" of this Agreement, free and clear and discharged of this Agreement and of all right of the C&OR hereunder. C&OR shall pay to ORDC upon demand all fees and expenses, including reasonable attorney's fees, incurred in connection with and in obtaining possession of the Rail Property as aforesaid.

At its discretion, ORDC may request that the C&OR continue operations on the line for an agreed upon period of time after ORDC's termination of this Agreement because of C&OR default to facilitate the orderly change in service from the C&OR to another carrier. Such continued operations shall be governed by the terms of this Agreement but shall not constitute a reinstatement of this Agreement.

ARTICLE 30 - LIMITATIONS

Notwithstanding anything stated in this Agreement to the contrary, any provision, agreement, condition, understanding, or the like contained in this Agreement which contravenes, violates, conflicts with or is not authorized by the Constitution or Statutes of the State of Ohio shall be void ab initio. It is further understood that if at any time sufficient funds are not appropriated or available to continue funding the payments due under the Lease, this Agreement will terminate on the date the available appropriation expires without further obligation by the State of Ohio. Notwithstanding any other provision of this Agreement, ORDC shall not be required to expend funds under this Agreement unless funds for such purpose are appropriated by the General Assembly and certified as available by the Director of the Office of Budget and Management of the State of Ohio.

ARTICLE 31 - ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. No terms shall be altered or otherwise amended except by an instrument in writing signed by each party hereto.

ARTICLE 32 - CAPTIONS

The article captions in this Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or any part hereof and shall not be considered in any construction hereof.

ARTICLE 33 - CONSTRUCTION

This Agreement shall be construed, interpreted, and the right of all parties determined, in accordance with the laws of the State of Ohio. The parties agree that the exclusive venue for any dispute regarding this Agreement shall be in a court of competent jurisdiction located in Franklin County, Ohio.

ARTICLE 34 - EFFECTIVE DATE

This Agreement shall become effective on July 1, 2007 which will be termed the "effective date".

ARTICLE 35 - ALTERNATIVE DISPUTE RESOLUTION

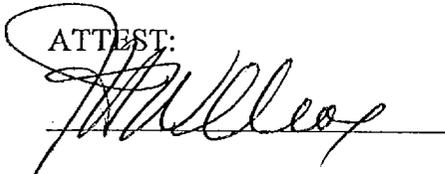
The parties hereby agree that they will attempt in good faith to promptly resolve any controversy or claim arising out of or relating to this Agreement through negotiation. If a disputed matter cannot be timely resolved between the parties, ORDC and C&OR further agree to pursue the alternative dispute mechanism of mediation, and to share in the costs of the same, to resolve any controversy or claim under this agreement before pursuing litigation.

ARTICLE 36 - DRUG FREE WORKPLACE

C&OR agrees to comply with all applicable state and federal laws regarding drug-free workplace. C&OR shall make good faith efforts to ensure that all of its employees while working on Rail Property will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any manner.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year first above:

ATTEST:



By 
William A. Strawn II
President
The Columbus & Ohio River Rail Road Company

ATTEST:



By 
State of Ohio
Ohio Rail Development Commission
Matthew R. Dietrich
Acting Executive Director

Attachment #4

8-22-2008 G&W NY/PA Region Map Showing SVI Lines

Ohio Central

Southern Lines

-  Ohio Central Railroad, Inc. (OHCR)
-  Ohio Southern Railroad, Inc. (OSRR)
-  The Columbus and Ohio River Railroad Company (CUOH)

Youngstown Division

-  Mahoning Valley Railway Company (MVRY)
-  Ohio and Pennsylvania Railroad Corporation (OPRA)
-  Warren and Trumbull Railroad Company (WTRM)
-  Youngstown and Austintown Railroad Inc. (YARR)
-  The Youngstown Belt Railroad Company (YB)

Pittsburgh Division

-  The Pittsburgh and Ohio Central Railroad (POHC)
-  Aliquippa and Ohio River Railroad (AOR)

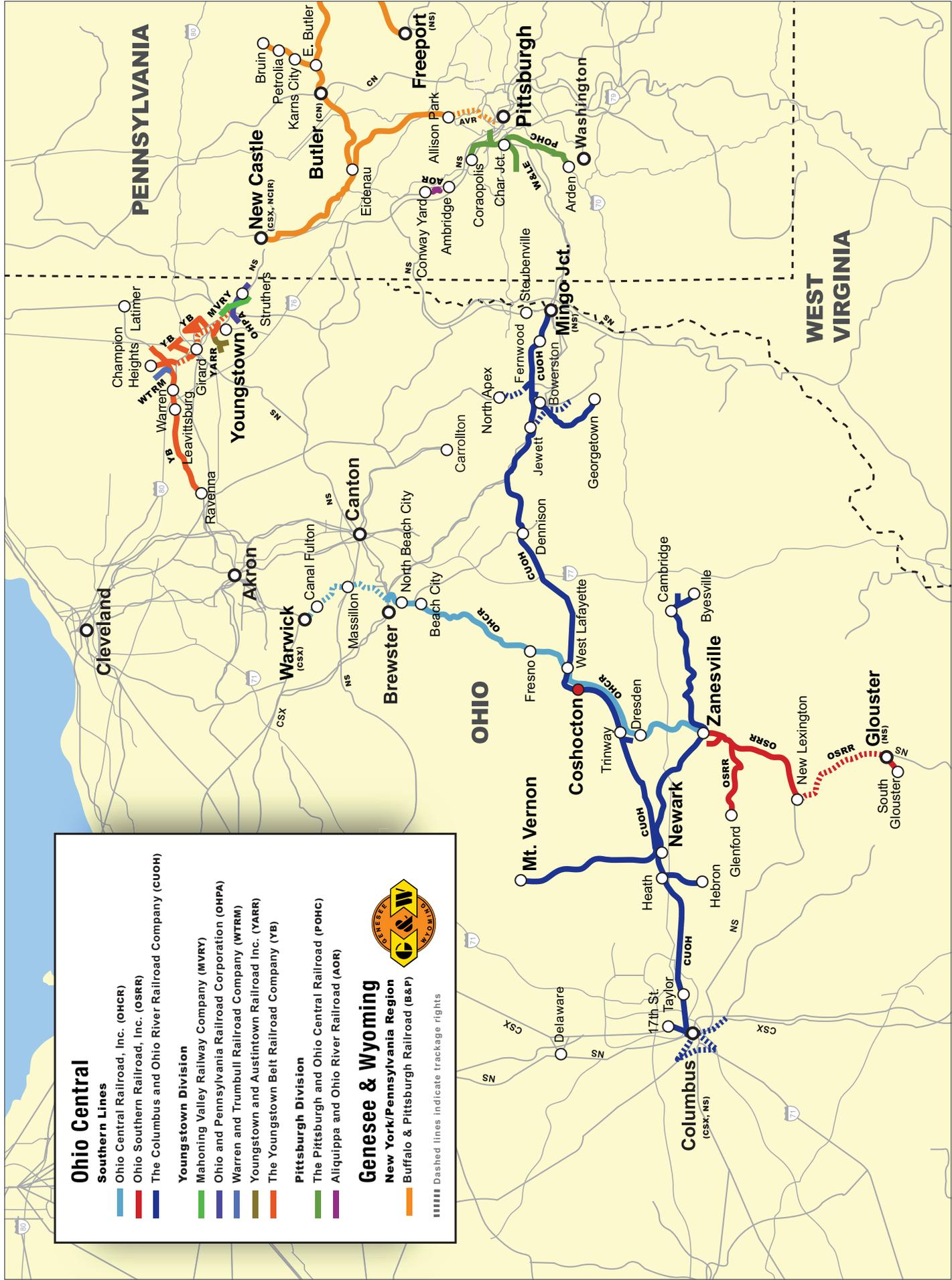
Genesee & Wyoming

New York/Pennsylvania Region

-  Buffalo & Pittsburgh Railroad (B&P)



 Dashed lines indicate trackage rights



Attachment #5

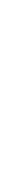
1988 Conrail Columbus Vicinity Map

COLUMBUS, OHIO AND VICINITY RAILROADS & INDUSTRIES

OFFICE OF CHIEF ENGINEER,
DESIGN AND CONSTRUCTION
CONSOLIDATED RAIL CORPORATION

PHILADELPHIA, PA
JULY, 1968

SCALE IN MILES



LEGEND

- CONRAIL LINES
- INDUSTRIES
- OTHER RAILROADS
- VALUATION SECTION MILEPOST
- OPERATIONS MILEPOST



Attachment #6

**1988 Conrail Columbus Vicinity Map With Zoomed-
In View of the Neilston Connector**

N. HIGH

4TH

2ND

AVE. NW 143

Grant
190

CP-138

COLUMBUS

LONG ST.

E. BR

ST.

ST.

Ohio State Capitol

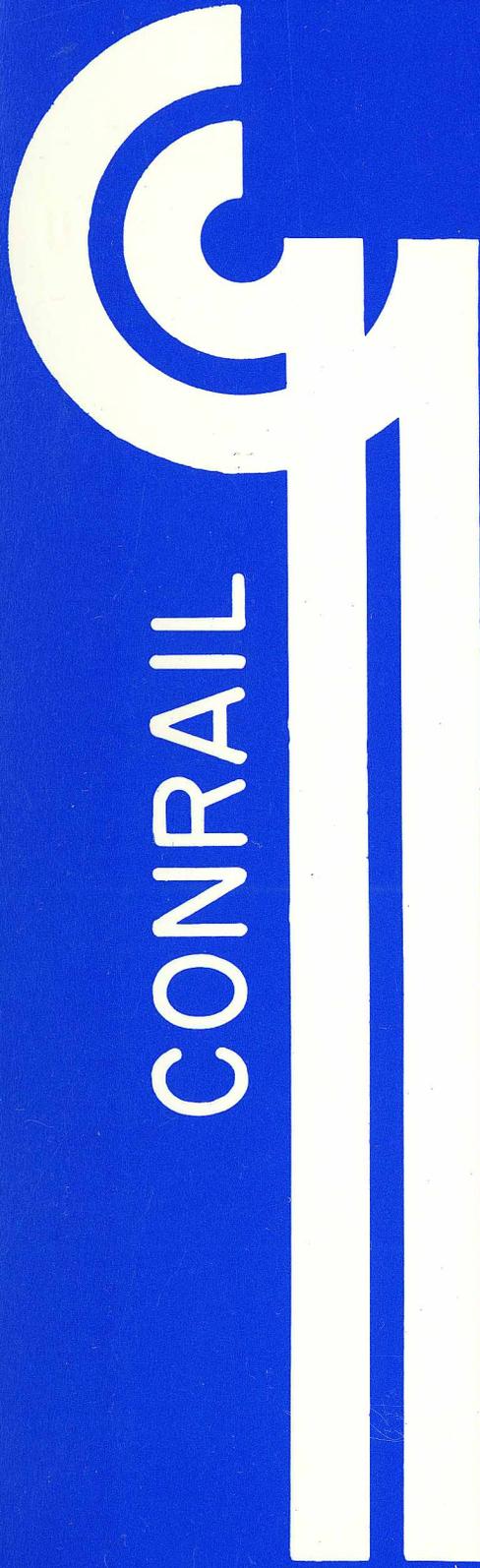


33

Attachment #7

**1992 Conrail Indianapolis Division Track Chart
Excerpts Showing the PRL C-N Division**

CONRAIL



MAINTENANCE PROGRAM

AND

TRACK CHART

INDIANAPOLIS DIVISION

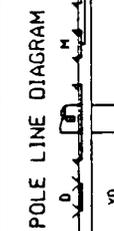
1992

PROGRAM LEGEND
DATE OF WORK PRECEDES CODE (IF KNOWN)

CONDITIONS	CODES
GRINDING	(NO. OF PASSES)
SURFACING	TYPE OF MACHINE USED
TIES	YEAR INSTALLED ONLY FOR MAJOR REHABILITATION
UNDERCUTTING	TYPE OF MACHINE USED
RAIL	TYPE AND CONDITION

NOTE: ON RAIL WEIGHTS OF OVER 100 LBS., THE NUMBER 1 IS DROPPED. EXAMPLE: 140 LBS. WOULD BE WRITTEN 40. THE WEIGHT WILL PRECEDE THE YEAR RAIL WAS LAID.

PROGRAMMED WORK	SURFACE	AFTER RAIL
CRITICAL CLEARANCE STRUCTURE (SEE SUMMARY SHEETS)	---	----
M/W TEST LOCATION	[C]	[TI]
TUNNEL	---	---
BRIDGE (OH & UG)	---	---
LONG BRIDGE	---	---
RR XING	---	---
PUB RD XING (GRADE)	---	---
PUB RD XING (GRADE) (W/FLASH)	---	---
PUB RD XING (GRADE) (W/FLASH & GATES)	---	---
PRIVATE RD XING	---	---
AUTOMATIC SIGNAL	---	---
CURVE LUBRICATOR	---	---
DRAWING EQUIP DET	---	---
HOT BOX DET (PT. DIR. TRAFFIC)	---	---
HOT BOX & DRAG EQUIP (WITHIN 250')	---	---
TIMETABLE M.P.	---	---
VALUATION M.P.	---	---
ENDANGERED PLANT SPECIES	---	---

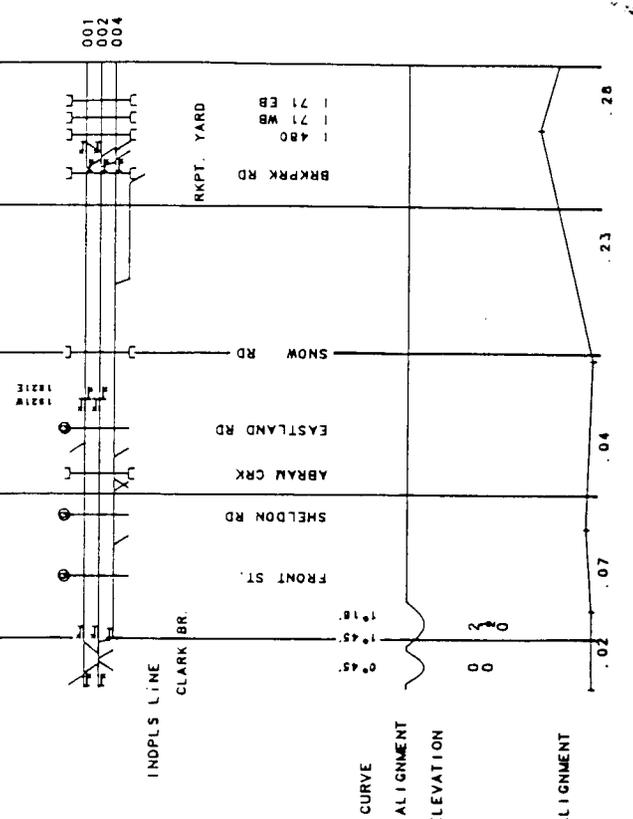


- KEY TO PIN SYMBOLS
- D = DISPATCHER
 - R = RADIO
 - LD = CARRIER
 - P = POWER
 - PBX = EXT. (WITHIN 250')
 - SP = SPARE
 - B = BLOCK
 - M = MESSAGE
 - C = CODE
 - YD = YARD
 - X = CROSSING
 - HD = DISTANT

CONDITIONS	CODES
GRINDING	(NO. OF PASSES)
SURFACING	TYPE OF MACHINE USED
TIES	YEAR INSTALLED ONLY FOR MAJOR REHABILITATION
UNDERCUTTING	TYPE OF MACHINE USED
RAIL	TYPE AND CONDITION

NOTE: ON RAIL WEIGHTS OF OVER 100 LBS., THE NUMBER 1 IS DROPPED. EXAMPLE: 140 LBS. WOULD BE WRITTEN 40. THE WEIGHT WILL PRECEDE THE YEAR RAIL WAS LAID.

PROGRAMMED WORK	SURFACE	AFTER RAIL
CRITICAL CLEARANCE STRUCTURE (SEE SUMMARY SHEETS)	---	----
M/W TEST LOCATION	[C]	[TI]
TUNNEL	---	---
BRIDGE (OH & UG)	---	---
LONG BRIDGE	---	---
RR XING	---	---
PUB RD XING (GRADE)	---	---
PUB RD XING (GRADE) (W/FLASH)	---	---
PUB RD XING (GRADE) (W/FLASH & GATES)	---	---
PRIVATE RD XING	---	---
AUTOMATIC SIGNAL	---	---
CURVE LUBRICATOR	---	---
DRAWING EQUIP DET	---	---
HOT BOX DET (PT. DIR. TRAFFIC)	---	---
HOT BOX & DRAG EQUIP (WITHIN 250')	---	---
TIMETABLE M.P.	---	---
VALUATION M.P.	---	---
ENDANGERED PLANT SPECIES	---	---



APPENDIX C

GRINDING	83
SURFACING	78
TIES	
UNDERCUTTING	
BALL CLEAN	
POINTE (CUT)	
SPREAD	25
UG. CABLE	40

007

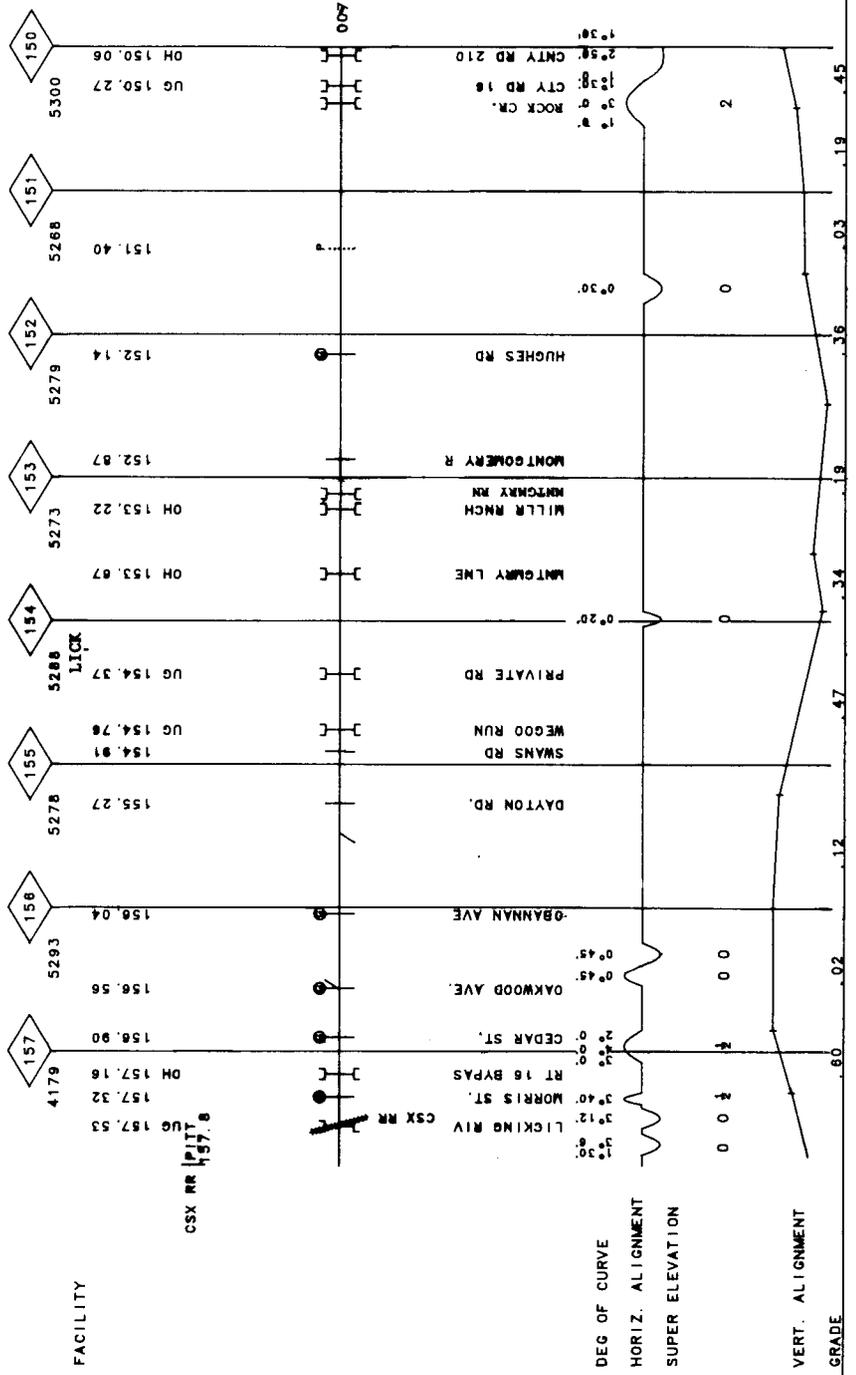
MARNE

V7130

NEWARK

VALUATION TOWN

FACILITY



DEG OF CURVE

HORIZ. ALIGNMENT

SUPER ELEVATION

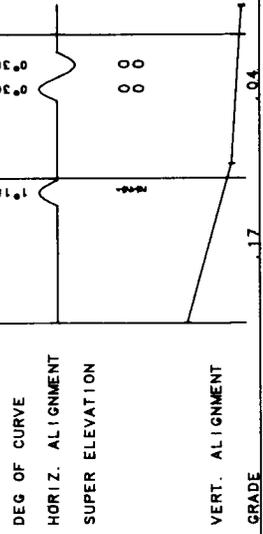
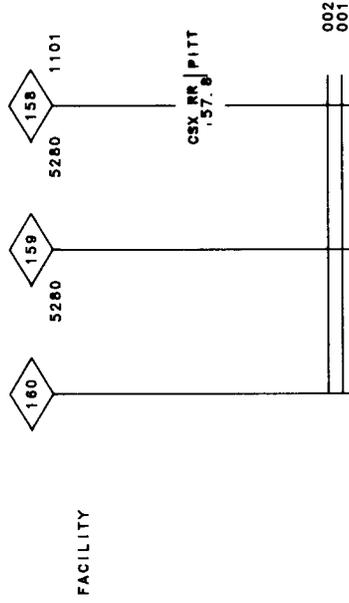
VERT. ALIGNMENT

GRADE

APPENDIX D

GRINDING	BALTO	002
SURFACING	AND	
TIES	OHIO	
UNDERCUTTING	45/45	
RAIL CLEAN		
CONCRETE		
SPREAD		
UG. CABLE		
GRINDING	BALTO	001
SURFACING	AND	
TIES	OHIO	
UNDERCUTTING	45/45	
RAIL CLEAN		
CONCRETE		
SPREAD		
UG. CABLE		

VALUATION TOWN V7130



APPENDIX D

GRINDING	
SPRACING	
UNDERCUTTING	
BAL CLEAN	BALTO
TONNAGE (CMT)	AND
UG. CABLE	OHIO
	45745

002

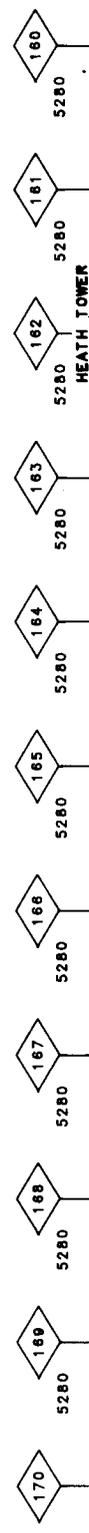
GRINDING	
SURFACING	
TIES	
UNDERCUTTING	
BAL CLEAN	BALTO
TONNAGE (CMT)	AND
UG. CABLE	OHIO
	45745

001

V7130

OUTVINE

VALUATION TOWN



DEG OF CURVE

HORIZ. ALIGNMENT

SUPER ELEVATION

VERT. ALIGNMENT

GRADE

0° 25'

0° 20'

1° 0'

0° 52'

1° 0'

00

00

00

00

00

29

69

59

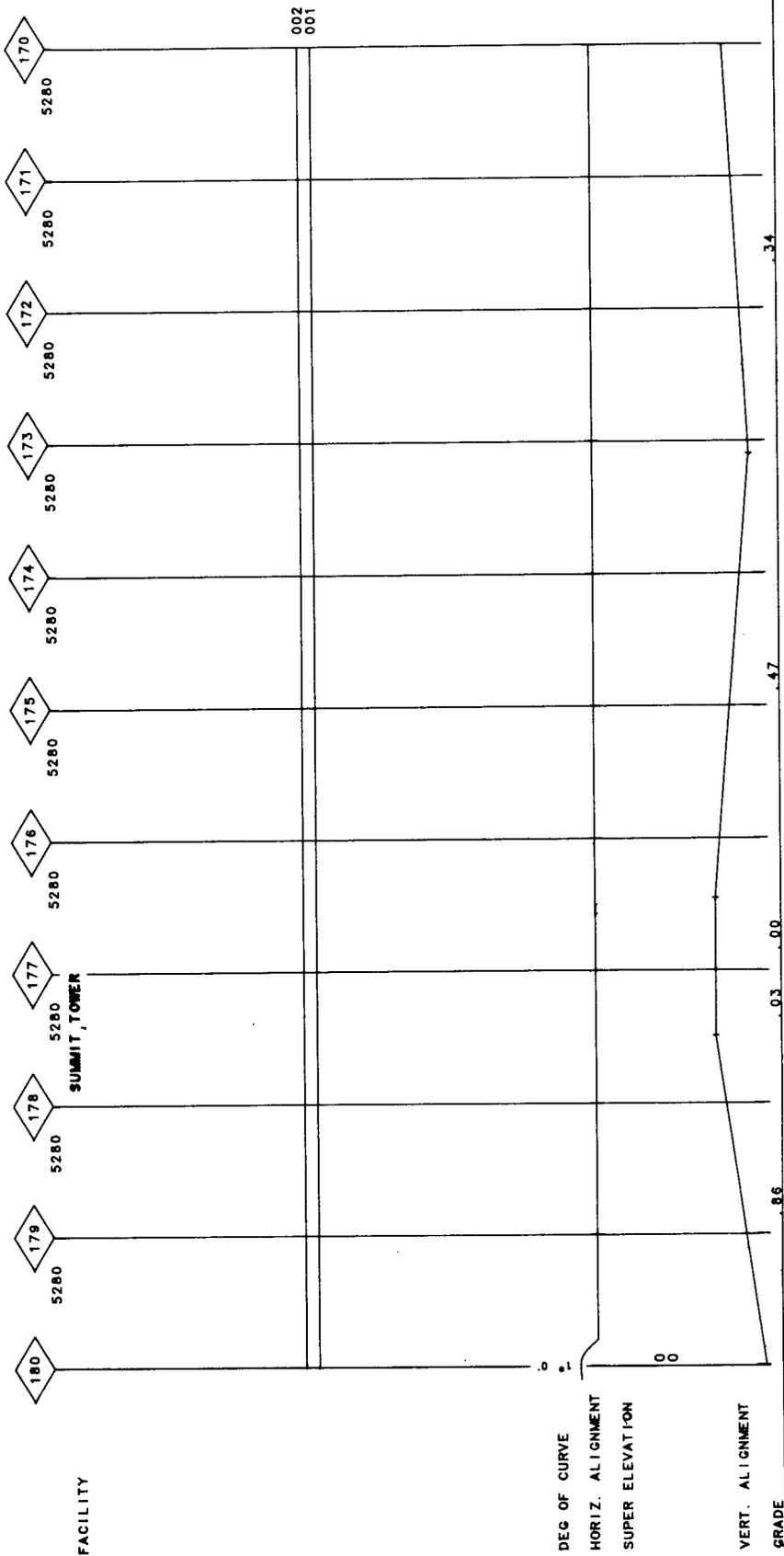
17

APPENDIX D

GRINDING	BALTO	002
SPINDLING	AND	
TIES	OHIO	
UNDERCUTTING	45/45	
RAIL		
BAL CLEAN		
TONNAGE (MGT)		
UG. CABLE		
UG. CABLE		
GRINDING	BALTO	001
SURFACING	AND	
TIES	OHIO	
UNDERCUTTING	45/45	
RAIL CLEAN		
TONNAGE (MGT)		
UG. CABLE		
UG. CABLE		

PATASKALA

V7130



VALUATION
TOWN

FACILITY

DEG OF CURVE
HORIZ. ALIGNMENT
SUPER ELEVATION

VERT. ALIGNMENT
GRADE

002
001

0.86 0.03 0.00 0.47 0.34

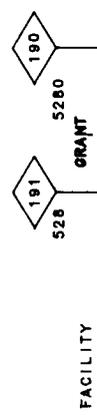
APPENDIX D

GRINDING			
SURFACING		BALTO	
UNDERCUTTING		AND	002
RAIL CLEAN		OHIO	
TORNADE (NOT)		13/15	
UG. CABLE			25/25

GRINDING		BALTO	
SURFACING		BALTO	
TIES		AND	001
UNDERCUTTING		OHIO	
RAIL CLEAN		OHIO	
TORNADE (NOT)		13/15	
UG. CABLE			

VALUATION TOWN

V7135 NEILSTON



FACILITY

002
001

DEG OF CURVE
HORIZ. ALIGNMENT
SUPER ELEVATION
VERT. ALIGNMENT
GRADE

.99 1.03

Attachment #8

**1985 CSX Ohio Division Track Chart Excerpts
Showing the PRL C-N Division**

Attachment #9

**1983 N&W Pittsburgh Division Track Chart
Excerpts Showing the Zanesville District Line**

NORFOLK AND WESTERN RAILWAY CO. JAN 1 1983

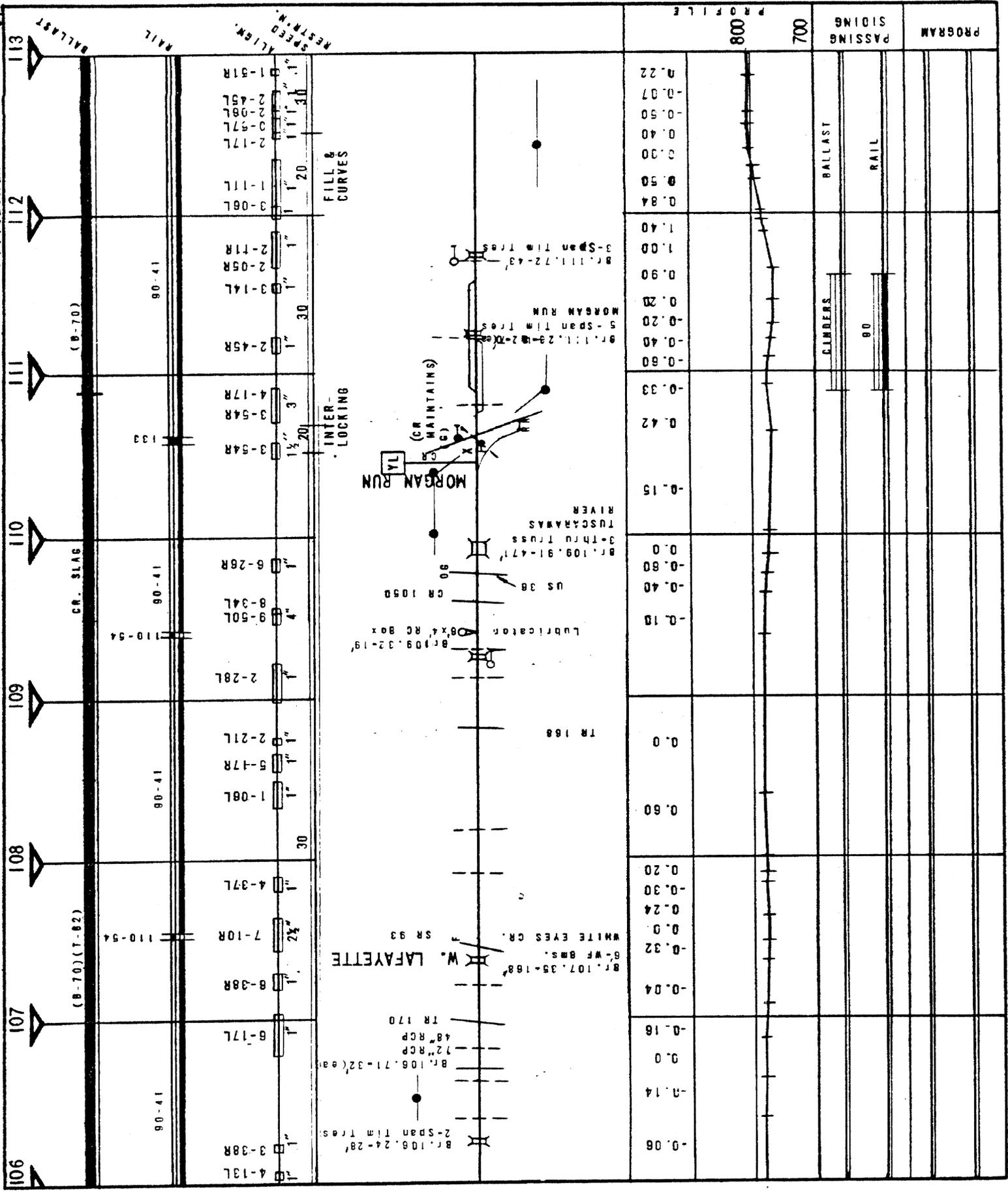
WESTERN REGION - PITTSBURGH DIVISION

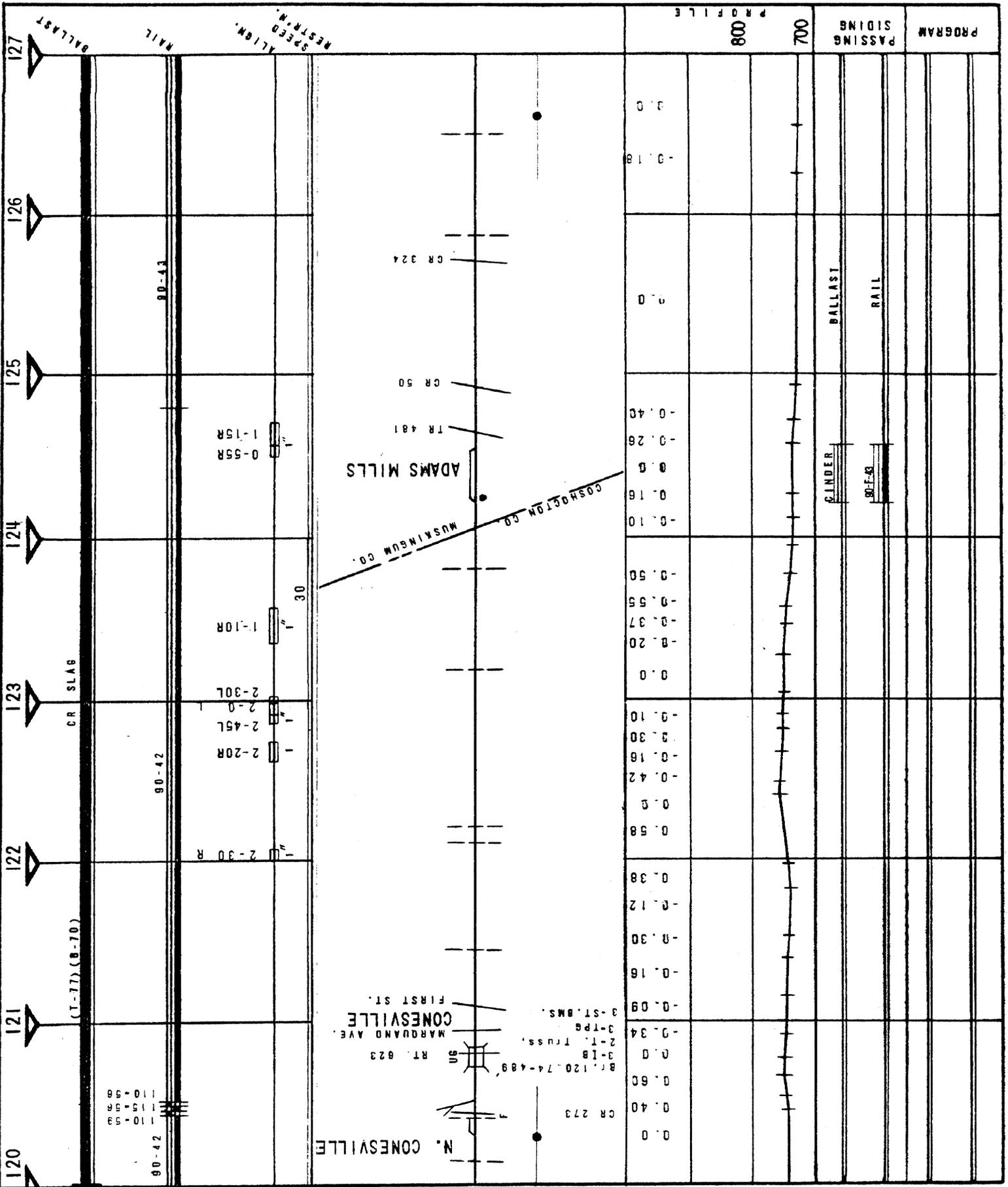
TRACK CHARTS

<p> MAINT. PROGRAMS BUFFALO DISTRICT ----- P 1 TO P-18 CLEVELAND DISTRICT ----- P 19 TO P-38 TOLEDO DISTRICT ----- P 39 TO P-58 WHEELING DISTRICT ----- P 59 TO P-70 CANTON DISTRICT ----- P 71 TO P-81 ZANESVILLE DISTRICT ----- P 82 TO P-92 CONNELLSVILLE DISTRICT ----- P 93 TO P-109 AKRON DISTRICT ----- P 110 TO P-134 CLEVELAND DISTRICT ----- P 135 TOLEDO DISTRICT ----- P 136 TO P-149A WHEELING DISTRICT ----- P 150 TO P-159 CANTON DISTRICT ----- P 160 TO P-169 ZANESVILLE DISTRICT ----- P 170 TO P-172 CONNELLSVILLE DISTRICT ----- P 173 TO P-176 </p>	<p> BUFFALO TO CONNEAUT ----- P 1 TO P-18 CONNEAUT TO BELLEVUE ----- P 19 TO P-38 TOLEDO TO BREWSTER ----- P 39 TO P-58 BREWSTER TO TERMINAL JCT. ----- P 59 TO P-70 CLEVELAND TO HARMON ----- P 71 TO P-81 HARMON TO ZANESVILLE ----- P 82 TO P-92 CONNELLSVILLE TO PITTSBURGH JCT. ----- P 93 TO P-109 DELPHOS TO WOODGARD ----- P 110 TO P-134 BRANCHES ----- P 135 BRANCHES ----- P 136 TO P-149A BRANCHES ----- P 150 TO P-159 BRANCHES ----- P 160 TO P-169 BRANCHES ----- P 170 TO P-172 BRANCHES ----- P 173 TO P-176 </p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SYMBOLS

<p> MAINT. PROGRAMS T - TIES ONLY B - BALLAST ONLY A - TIES & BALLAST F - FABRIC CR. ROCK CR. SLAG OTHER AS MARKED ALIGNMENT CURVES DEGREES-MINUTES-DIRECTION ALIGNMENT CURVES SUPERELEVATION-INCHES </p>	<p> BALLAST CINDERS SAND CHATS GRAVEL CR. ROCK CR. SLAG OTHER AS MARKED DEGREES-MINUTES-DIRECTION SUPERELEVATION-INCHES </p>	<p> RAIL 80 LB. AND UNDER 80 LB 100 LB. 110 LB. 112, 116 LB. 130, 131, 132 LB. OTHER AS MARKED CONTINUOUS WELDED RAIL 30 SPEED RESTRICTION-MPH GRD SPEED RESTRICTION-REASON R. R. CROSSING-GRADE R. R. CROSSING-UNDERGRADE R. R. CROSSING-OVERGRADE INTERLOCKING LOCAL OPERATOR XA AUTOMATIC XAD AUTOMATIC WHEN OPERATOR NOT ON DUTY XR REMOTELY CONTROLLED RADIO BASE STA </p>
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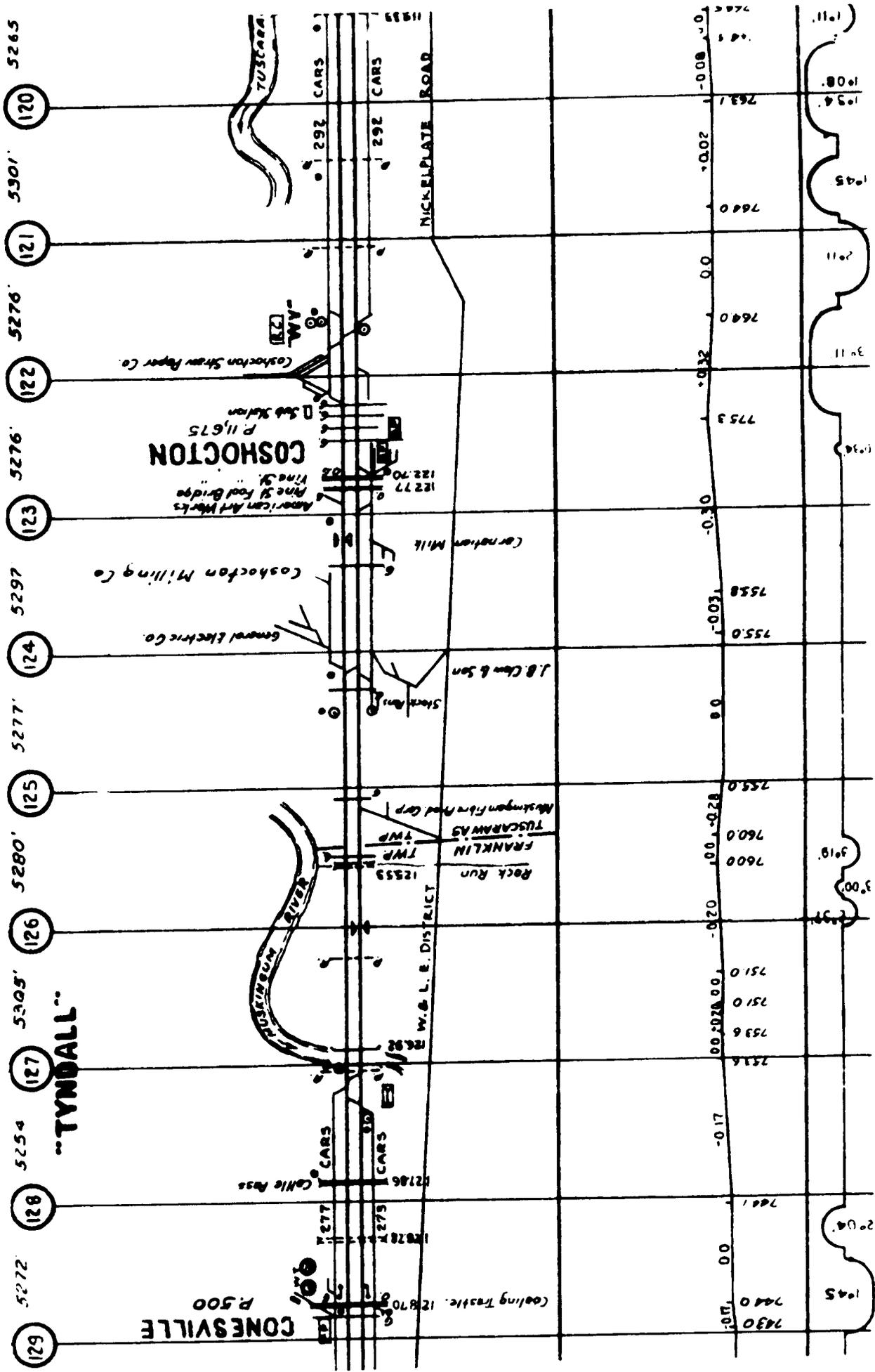
Attachment #10

**1950 PRR Panhandle Track Chart Excerpts Showing
the Morgan Run-Trinway Segment**

Pennsylvania Railroad 1950 Track Charts

New York - Chicago Pittsburgh - Columbus

VOLUME I

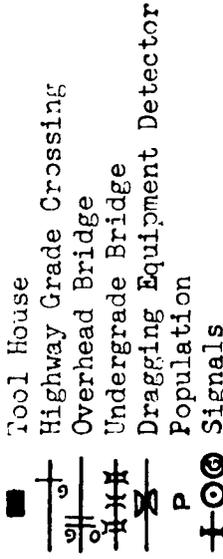


COLUMBUS TO CONESVILLE

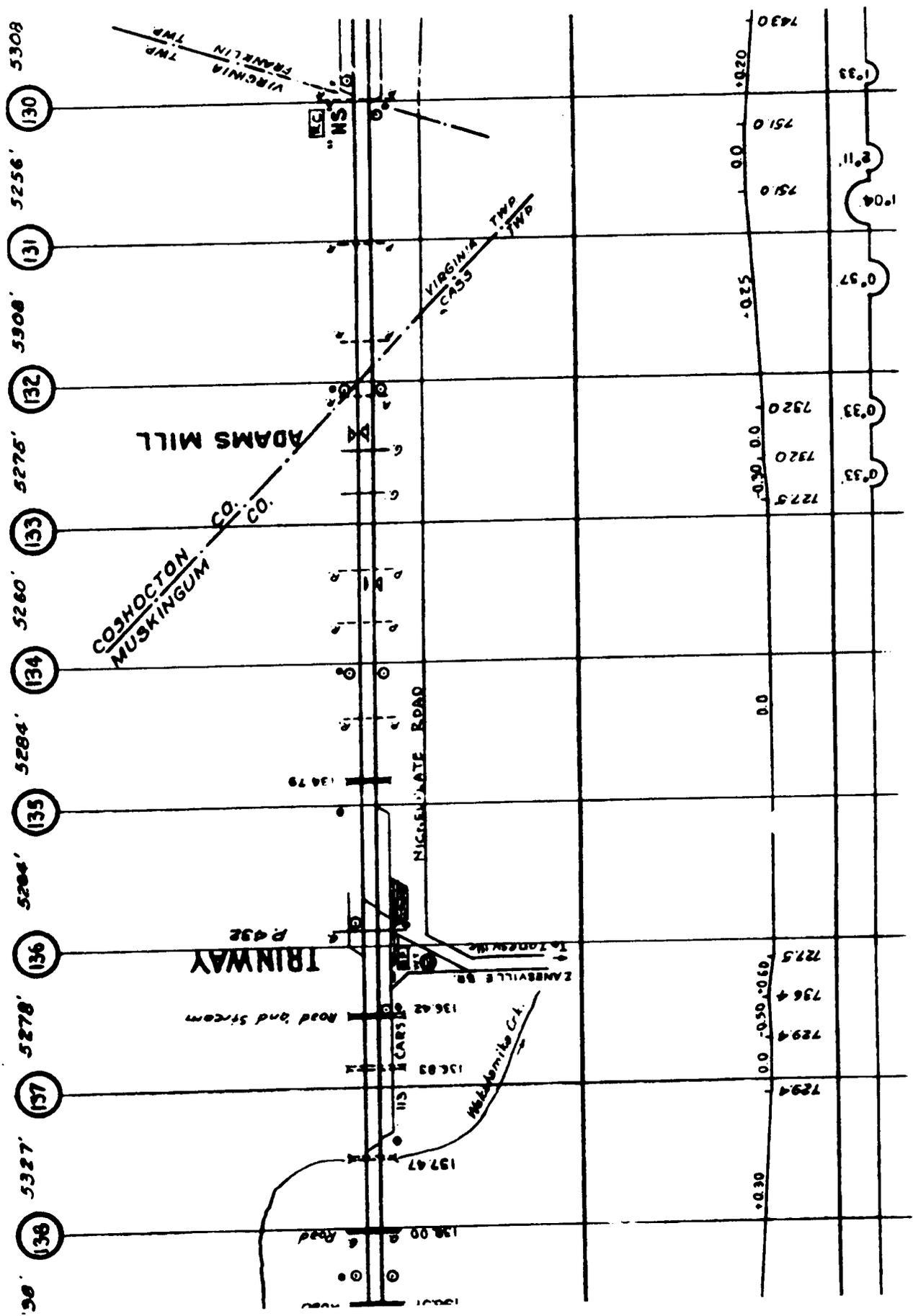
LEGEND



Track
Grades
Alignment
Passenger Station
Freight Station
Interlocking Tower
Telephone Booth or Box



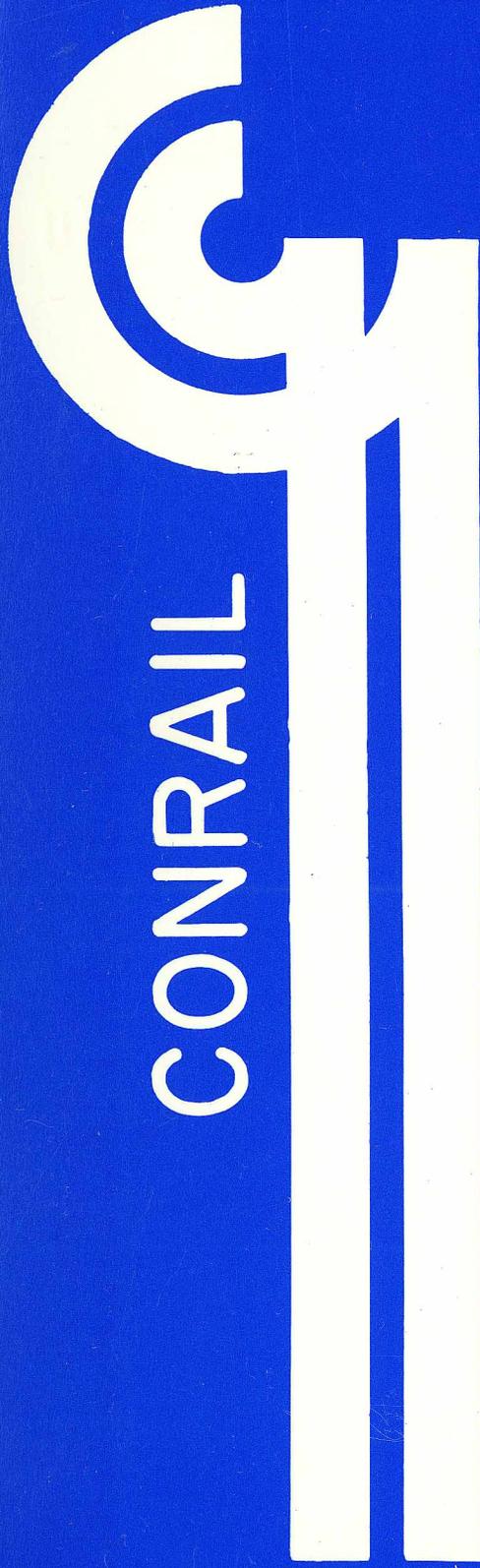
Tool House
Highway Grade Crossing
Overhead Bridge
Undergrade Bridge
Dragging Equipment Detector
Population
Signals



Attachment #11

**1992 Conrail Indianapolis Division Track Chart
Excerpts Showing the Morgan Run-Trinway Segment**

CONRAIL



MAINTENANCE PROGRAM

AND

TRACK CHART

INDIANAPOLIS DIVISION

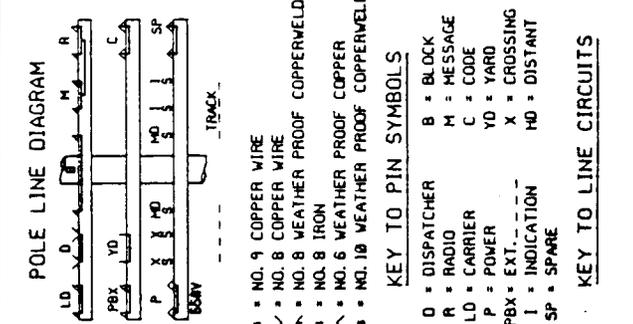
1992

PROGRAM LEGEND
DATE OF WORK PRECEDES CODE (IF KNOWN)

CONDITIONS	CODES
GRINDING	(NO. OF PASSES)
SURFACING	TYPE OF MACHINE USED
TIES	YEAR INSTALLED ONLY FOR MAJOR REHABILITATION
UNDERCUTTING	TYPE OF MACHINE USED
RAIL	TYPE AND CONDITION

NOTE: ON RAIL WEIGHTS OF OVER 100 LBS., THE NUMBER 1 IS DROPPED. EXAMPLE: 140 LBS. WOULD BE WRITTEN 40. THE WEIGHT WILL PRECEDE THE YEAR RAIL WAS LAID.

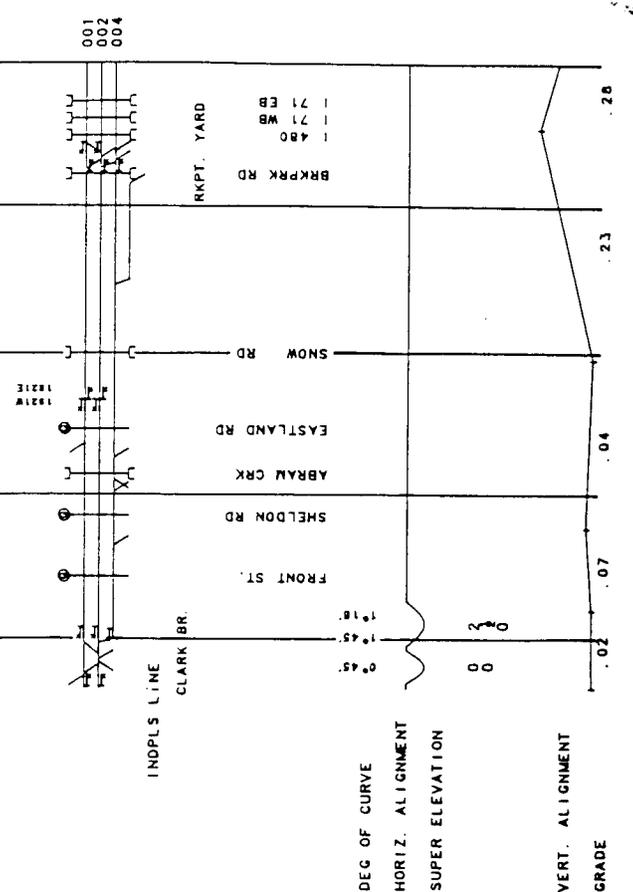
PROGRAMMED WORK	SURFACE	AFTER RAIL
CRITICAL CLEARANCE STRUCTURE (SEE SUMMARY SHEETS)	---	----
M/W TEST LOCATION	[C]	[TI]
TUNNEL	---	---
BRIDGE (OH & UG)	---	---
LONG BRIDGE	---	---
RR XING	---	---
PUB RD XING (GRADE)	---	---
PUB RD XING (GRADE) (W/FLASH)	---	---
PUB RD XING (GRADE) (W/FLASH & GATES)	---	---
PRIVATE RD XING	---	---
AUTOMATIC SIGNAL	---	---
CURVE LUBRICATOR	---	---
DRAWING EQUIP DET	---	---
HOT BOX DET (PT. DIR. TRAFFIC)	---	---
HOT BOX & DRAG EQUIP (WITHIN 250')	---	---
TIMETABLE M.P.	---	---
VALUATION M.P.	---	---
ENDANGERED PLANT SPECIES	---	---



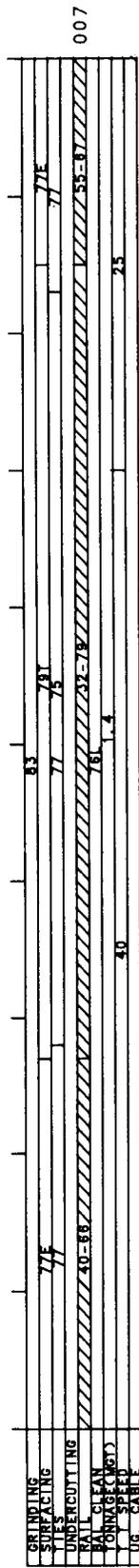
CONDITIONS	CODES
GRINDING	(NO. OF PASSES)
SURFACING	TYPE OF MACHINE USED
TIES	YEAR INSTALLED ONLY FOR MAJOR REHABILITATION
UNDERCUTTING	TYPE OF MACHINE USED
RAIL	TYPE AND CONDITION

NOTE: ON RAIL WEIGHTS OF OVER 100 LBS., THE NUMBER 1 IS DROPPED. EXAMPLE: 140 LBS. WOULD BE WRITTEN 40. THE WEIGHT WILL PRECEDE THE YEAR RAIL WAS LAID.

PROGRAMMED WORK	SURFACE	AFTER RAIL
CRITICAL CLEARANCE STRUCTURE (SEE SUMMARY SHEETS)	---	----
M/W TEST LOCATION	[C]	[TI]
TUNNEL	---	---
BRIDGE (OH & UG)	---	---
LONG BRIDGE	---	---
RR XING	---	---
PUB RD XING (GRADE)	---	---
PUB RD XING (GRADE) (W/FLASH)	---	---
PUB RD XING (GRADE) (W/FLASH & GATES)	---	---
PRIVATE RD XING	---	---
AUTOMATIC SIGNAL	---	---
CURVE LUBRICATOR	---	---
DRAWING EQUIP DET	---	---
HOT BOX DET (PT. DIR. TRAFFIC)	---	---
HOT BOX & DRAG EQUIP (WITHIN 250')	---	---
TIMETABLE M.P.	---	---
VALUATION M.P.	---	---
ENDANGERED PLANT SPECIES	---	---



APPENDIX C

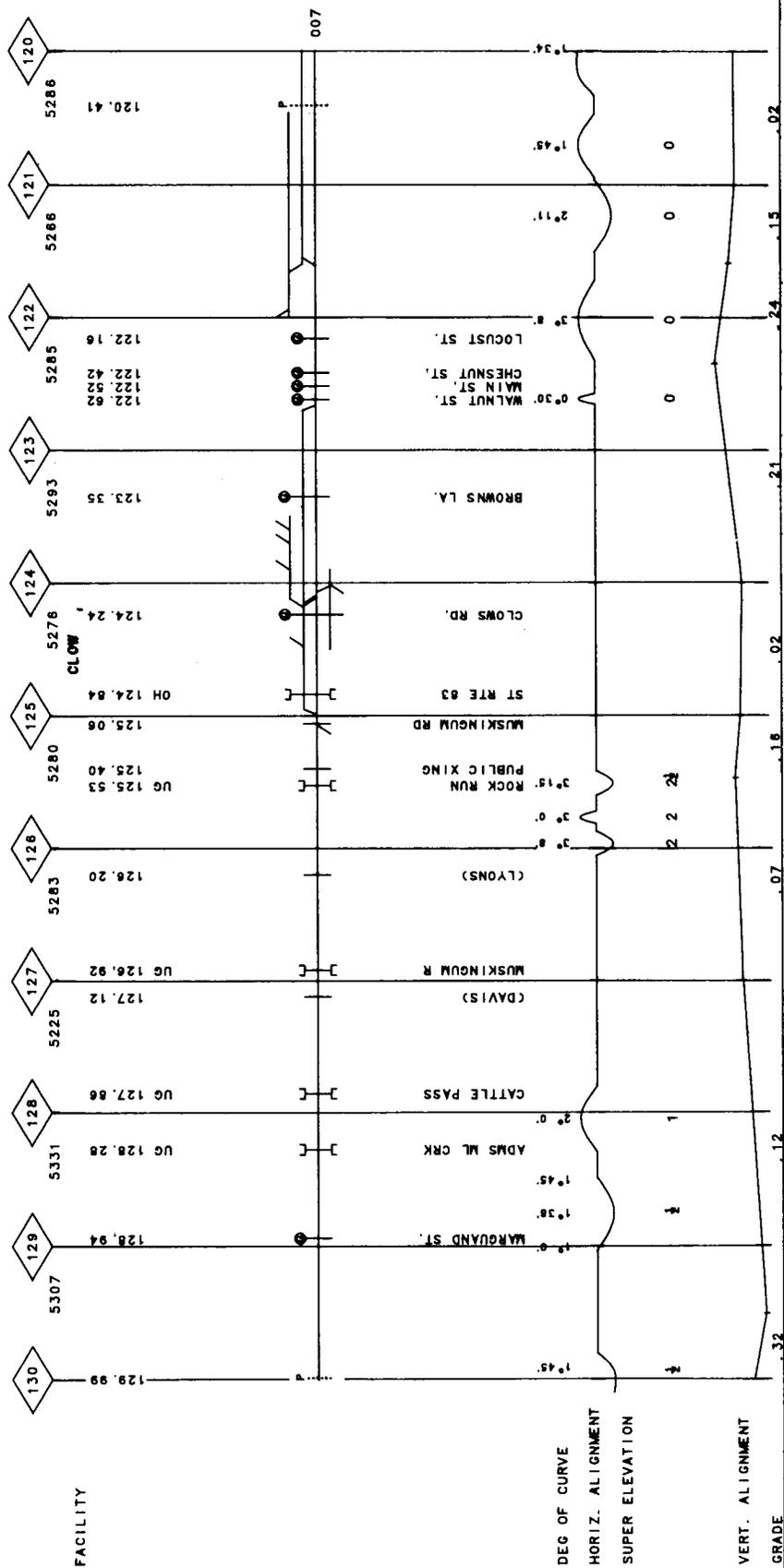


VALUATION TOWN

CONESVILLE

V7130

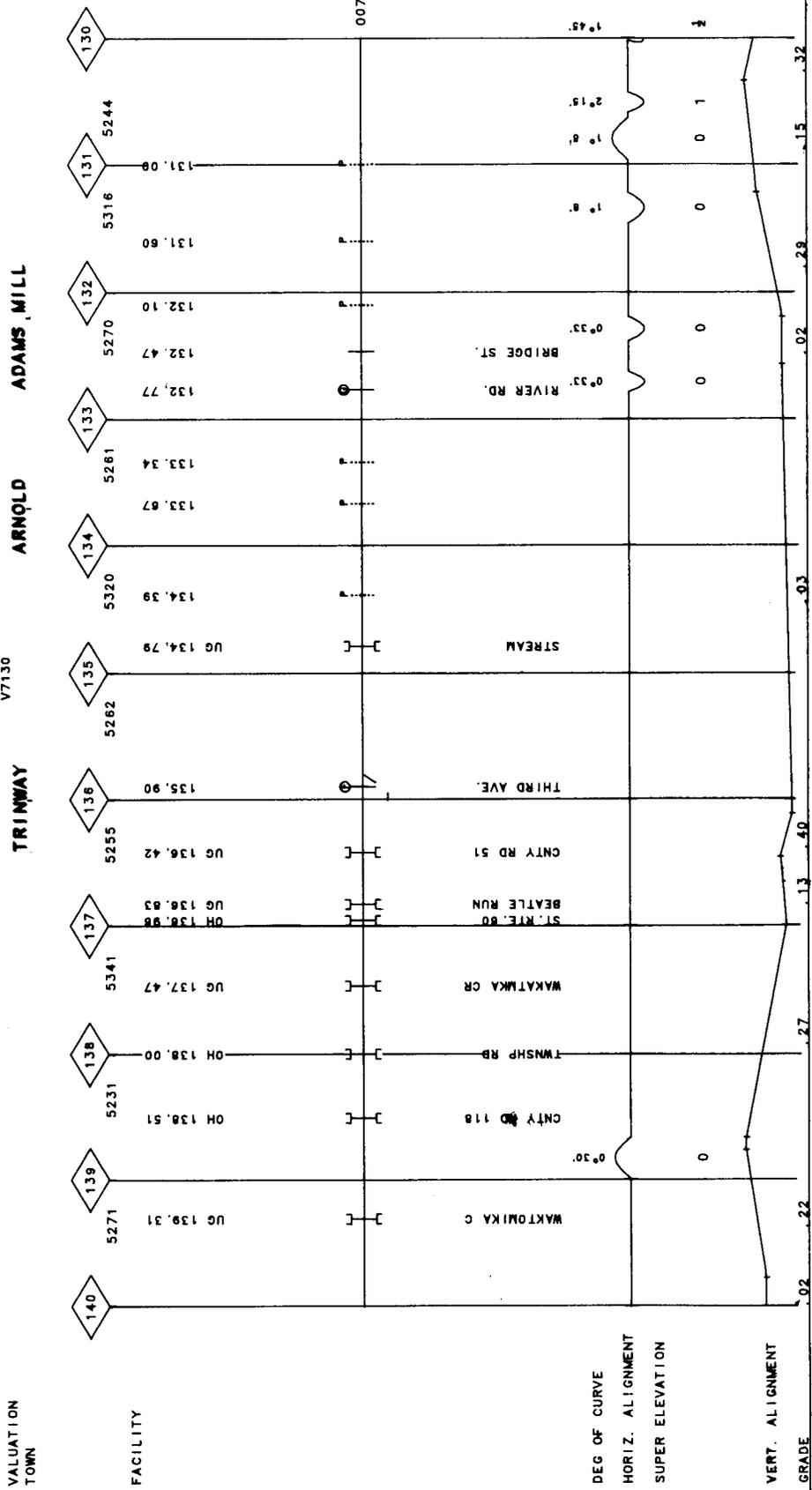
COSHOCTON



DEG OF CURVE
 HORIZ. ALIGNMENT
 SUPER ELEVATION
 VERT. ALIGNMENT
 GRADE

APPENDIX C

GRINDING	781	83	77E
SURFACING	75	77	
UNDERGRUTTING	32-79	78	40-66
PAV. CLEAN			
POURING CONC			
1" SPC		40	
UG. CABLE			



Attachment #12

**2-9-2006 SVI Letter To ORDC Requesting a 50-Year
Lease and Noting the PRL's Cross-Subsidization
By Other SVI Subsidiaries**



The Columbus & Ohio River Rail Road
Mahoning Valley Railway Company
Ohio Central Railroad, Incorporated
Warren & Trumbull Railroad Company
Aliquippa & Ohio River Railroad Company

Youngstown Belt Railroad Company
Ohio and Pennsylvania Railroad Company
Ohio Southern Railroad, Incorporated
Youngstown & Austintown Railroad Company
Pittsburgh & Ohio Central Railroad Company

William A. Strawn II, President

47849 Paper Mill Road
Coshocton, OH 43812
Phone (740)-622-8092 * Fax (740)-623-4529

Mr. James Seney
Ohio Rail Development Commission
50 West Broad Street
Suite 1510
Columbus, Ohio 43215

February 9, 2006

RE: Long Term Lease of the Panhandle Line to the Columbus & Ohio River Railroad

06 FEB 10 PM 1:09
RECEIVED
MNOB

Dear Director Seney,

The Columbus & Ohio River Railroad has successfully partnered with the State of Ohio in preserving and safely operating the Panhandle Rail Line since March of 1992. The C&OR has spent approximately \$22 million, during this period to make payments on the bonds used to purchase the line. Additionally, the C&OR has exceeded its required maintenance of the line by well over \$6 million, which was critically needed due to its deplorable condition when purchased. Our business plan and strategy was and remains to keep this line active because of the corridor it provides for traffic moving on and off our other railroads that connect to it.

* Our marketing development on this line has produced a few new customers, and we are working diligently on several initiatives designed to attract new business to the line. However, several large customers such as Ohio Oil Gathering, Koch Asphalt, and General Electric have closed down, producing a combined loss of well over 5,000 annual carloads. Some carloads losses were catastrophic in the decline of revenue generation, and as a result, the C&OR has been subsidized by capital contributions from our other railroads in those years when it could not meet its financial obligations. The Panhandle Rail Line today still does not produce sufficient annual revenues to adequately cover its immediate and long-term maintenance requirements, and therefore cannot stand-alone. It is the synergy and strength of the combined Ohio Central Railroad System that has and will continue the preservation of this corridor for freight and for future passenger operations to come.

It is imperative that continued capital investments be made in the Panhandle Line on an annual basis. We are quickly approaching major rehabilitation and in some cases replacement of rail, bridges, and a tunnel, many of which approach 100 years in age. The C&OR cannot consider a level of participation in these types of investments, without the assurance of continued operations on the line that would be provided for in a long-term lease with the State of Ohio. Then and only then can the C&OR and its lenders consider providing longer term capital for projects whose completed benefits would accrue to the owner of the line, which is the State of Ohio. Therefore, the C&OR requests that the ORDC enter into a 50 year lease of the Panhandle Rail Line with the C&OR, and we are prepared to work together to develop the terms needed to produce a workable document. Time is of the essence, as we are rapidly approaching rehabilitation costs that far exceed our ability to address them under the current operating agreement.

The C&OR appreciates the partnership with ORDC and continues to apply its due diligence efforts to the Panhandle Rail Line, knowing that our joint efforts will continue to produce positive results for rail transportation in the State of Ohio.

Sincerely,

William A. Strawn, II /rew

William A. Strawn, II

President

The Ohio Central Railroad System

Attachment #13

**9-15-1984 Conrail Zone Track Spot Map, Zone 83,
p.12, Uhrich Jct. and Port Washington**

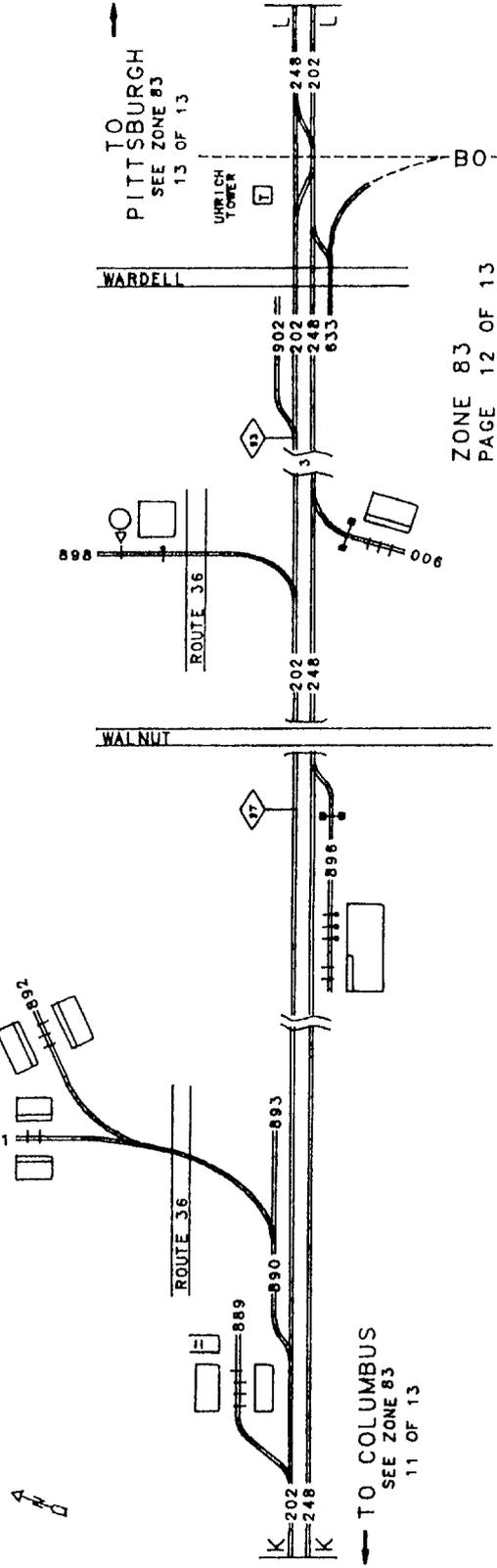
ZONE 83

Page 12 of 13

Revision: 09/15/84

- 83 202 00 00 Weirton Secondary
- 83 248 00 00 Industrial Track
- 83 633 00 00 Intchg.-B0-Uhrichsville
- 83 889 01 04 Wickes
- 83 890 99 99 Belden Brick Lead
- 83 891 01 02 Belden Brick #1
- 83 892 01 03 Belden Brick #2
- 83 893 99 99 Stub
- 83 896 01 05 AlSCO Anaconda
- 83 898 01 02 Stocker Concrete
- 83 900 01 03 U.S. Chemical & Plastic
- 83 902 99 99 Former Barnett Industrial

PORT WASHINGTON OH
GNADENHUTTEN OH
UHRICHSVILLE OH



ZONE 83
PAGE 12 OF 13
RDBR 22-2206
DIVISION PITTSBURGH
REV 10-01-84

Attachment #14

**9-15-1984 Conrail Zone Track Spot Map, Zone 83,
p.13, Dennison Yard**

ZONE 83

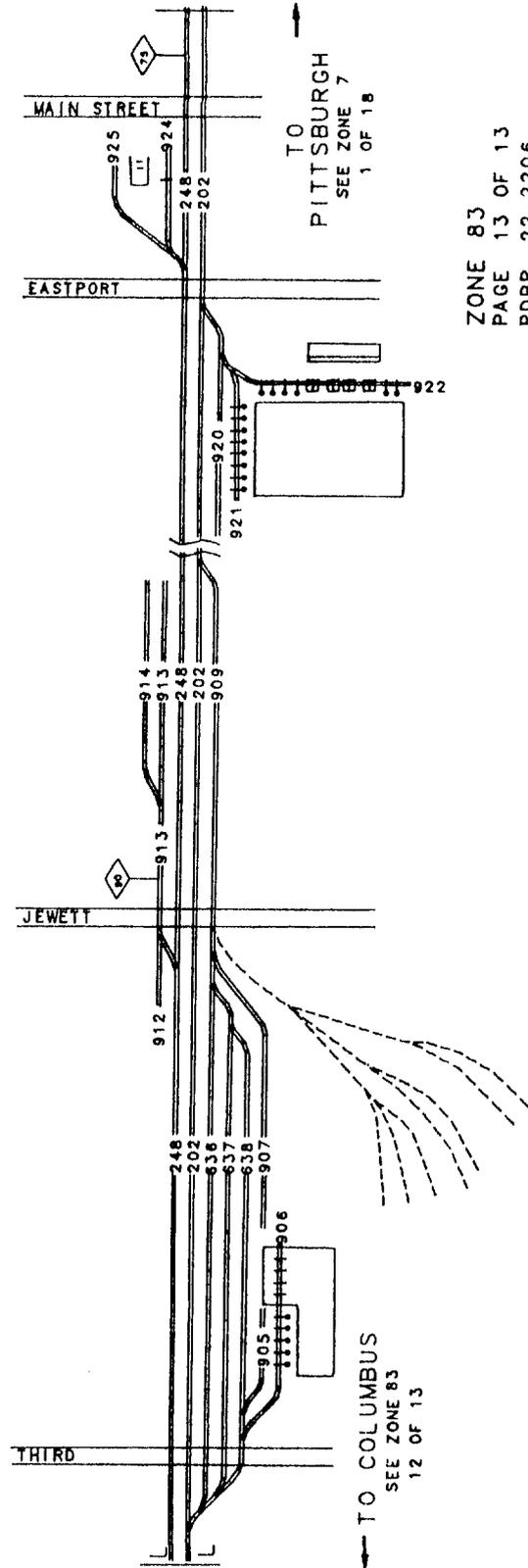
Page 13 of 13

Revision: 09/15/84

- 83 202 00 00 Weirton Secondary
- 83 248 00 00 Industrial Track
- 83 636 00 00 Dennison Yard Trk #101
- 83 637 00 00 Dennison Yard Trk #10
- 83 638 00 00 Dennison Yard Trk #16
- 83 905 99 99 Associated Grocers Stub
- 83 906 01 05 Associated Grocers
- 83 907 99 99 Associated Grocers
- 83 909 99 99 Depeco
- 83 912 99 99 Stub
- 83 913 99 99 Old Westbound Siding/Stge.
- 83 914 99 99 Storage
- 83 920 99 99 Old Eastbound Siding/Stge.
- 83 921 01 08 Scio Pottery #1
- 83 922 01 10 Scio Pottery #2
- 83 924 97 97 Team Track - Scio #1
- 83 925 97 97 Team Track - Scio #2

DENNISON OH

SCIO OH



ZONE 83
 PAGE 13 OF 13
 RDBR 22-2206
 DIVISION PITTSBURGH
 REV 10-01-84