

Proposed New Lease Passenger Language

By: Representative Mark Okey

3.)

b.) Requested by Lessor

i.) Lessor reserves the right to permit qualified Rail Passenger Operators other than Lessee to operate passenger service on the Leased Premises subject to the terms and conditions set forth herein. For purposes of this section the term Rail Passenger Service shall include Excursion Rail Service.

ii.) To qualify for Rail Passenger Service on the leased premises a Third Party Operator shall:

1. Provide Lessor and Lessee with a written request for all passenger service days on the Leased Premises in any calendar year, not later than six months prior to the first requested passenger service date.
2. Agree that Lessee may object to a requested passenger service date(s) in writing to Lessor, with service on the Third Party Operator, not later than sixty days after receipt of the Third Party Operator's written request for passenger service days.
3. Agree in writing to indemnify the Lessee and hold same harmless against any and all claims, damages or liability resulting from the Third Party Passenger Service Operator's use of the Leased Premises.
4. Provide and maintain insurance against the liability described in sub paragraph 3 above identifying Lessor and Lessee as additional named insureds in accordance with Ohio Revised Code Section 4981.033. If at any time for any reason said insurance shall lapse, be cancelled or otherwise cease to be in effect, Lessor shall require the qualified Third Party Passenger Service Operator to immediately vacate the Leased Premises and refrain from any use thereof or operation thereof until said insurance is again fully effective.
5. Demonstrate its financial and operational capabilities to competently operate passenger service on the Leased Premises to the satisfaction of the Lessor, as more specifically detailed below;

(Lessor shall list all financial and operation requirements a Third Party Passenger Service Operator must meet to be considered competent).

6. Abide by special operating terms and conditions concerning radios, telemetry, flagging and other matters which Lessee may from time to time bring to the attention of Lessor.

7. Understand that neither Lessor nor Lessee will 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, selected by Lessor. Charges of the inspector will be paid by the Third Party Passenger Service Operator. In no event shall passenger equipment that does not meet FRA standards be accepted for passenger operation nor shall equipment that does not meet Amtrak standards be accepted for regular scheduled commuter, or suburban service.

8. Agree that neither Lessor nor Lessee shall be compelled to provide personnel, equipment, or services for operation of passenger service to a Third Party Operator. Lessee shall not unreasonably deny a request to provide personnel, equipment or services from a competent Third Party Passenger Service Operator.

9. Negotiate with Lessee the compensation to be paid to Lessee for allowing passenger service.

Compensation shall be approximately equal to the actual cost to Lessee caused by passenger service on the Leased Premises. Compensation shall include a reasonable management fee and other personnel costs incurred by Lessee. In no event will Lessee be compelled to subsidize or otherwise underwrite expenses of the Third Party Passenger Service Operator.

10. Agree that Lessee will not be required to pay for or maintain the track at its expense to a higher standard than is noted in Article II, Maintenance and Repairs, of this Agreement.

11. Agree that Lessee and any Third Party Passenger Service Operator shall negotiate in good faith all terms and conditions not expressly set forth herein for passenger service on the Leased Premises. In the event of a disputed term or condition Lessee and any Third Party Passenger Service Operator shall submit same to Lessor in writing. Lessor shall be the Final Arbiter of all disputed terms and conditions. Lessor shall advise all parties of its decision in a reasonable and timely manner.