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ROBERT HALE  
Medina County Recorder  
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**AGREEMENT**

**BETWEEN**

**THE STATE OF OHIO,**

**DEPARTMENT OF TRANSPORTATION**

**AND**

**THE WHEELING AND LAKE ERIE RAILWAY SYSTEM**

**November, 1994**

**SPENCER TO BREWSTER**

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## AGREEMENT

THIS AGREEMENT, made and entered into this 23<sup>rd</sup> day of NOVEMBER 1994, by and between the STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "ODOT", 25 South Front Street, Columbus, Ohio 43216-0899; and the WHEELING AND LAKE ERIE RAILWAY COMPANY, hereinafter referred to as the "W&LE" with principal offices at 100 East First Street, Brewster, Ohio 44613.

## WITNESSETH

WHEREAS, W&LE seeks to abandon its line of railroad between Brewster, Ohio and Spencer, Ohio through docket number AB-227 (Sub-No. 2X) before the Interstate Commerce Commission (ICC), and

WHEREAS, the ICC has declined to stay the exemption authority granted to W&LE to abandon the portion of the line between Brewster and Orrville; and

WHEREAS, ODOT fully expects that the ICC will vacate its temporary stay of exemption authority granted to W&LE to abandon the rest of the line in the near future; and

WHEREAS, the Babcock & Wilcox Corporation of Barberton needs to ship oversized, overweight vessels it manufactures for use in nuclear powered Navy ships over the Orrville-Spencer segment of the Spencer to Brewster line; and

WHEREAS, Babcock & Wilcox has orders to produce and ship nuclear vessels for the next five years and would be adversely affected if the Spencer to Brewster line was torn-up; and

WHEREAS, current users located along the Spencer to Brewster line, as well as potential future economic development opportunities for communities along the line, would be adversely affected by the tearing-up of the Spencer to Brewster line; and

WHEREAS, various rail users on the W&LE system located both east and west of the Spencer to Brewster line benefit from the continued W&LE use of the line because it provides a timely, effective rail routing for their rail traffic; and

WHEREAS, these various rail users could in the long term be adversely affected by the lack of optimal routing if the Spencer to Brewster line is torn-up and traffic is rerouted over other lines; and

WHEREAS, much of the through traffic now traversing the Spencer to Brewster line would be rerouted through Canton, Akron, and Medina if the Spencer to Brewster line is torn-up; and

WHEREAS, this increased rail traffic through Canton, Akron, and Medina would cause traffic delays in these cities as well as other smaller towns along that route; and

WHEREAS, W&LE needs capital to help it restructure its debt with creditors and to effectively operate the railroad in the upcoming months; and

WHEREAS, W&LE could raise this capital by the removal and sale of the track on the Spencer to Brewster line; and

WHEREAS, ODOT desires to facilitate rail service on the Spencer to Brewster line unhindered by any threat of abandonment; and

WHEREAS, ODOT desires to ensure rail service is implemented on the Spencer to Brewster line in a manner which obviates potential adverse effects described above; and

WHEREAS, ODOT is willing to make a payment of \$2,400,000 to the W&LE in order to facilitate the implementation of this desired rail service and to secure certain rights with respect to the line; and

WHEREAS, in exchange for the \$2,400,000, ODOT will secure certain rights including the right of first refusal to purchase track and property, the right to require W&LE to make reasonable, good faith efforts to utilize the line for the movement of prescribed traffic, the right to require that the line be maintained to a Class II standards, the right to designate that

W&LE grant freight trackage rights to certain other railroads over the line for purposes of interchanging traffic with Conrail and CSX, the right to designate that W&LE grant access to certain other railroads for purposes of serving new industries; and the right to designate that W&LE grant passenger trackage rights over the line to a railroad designated by ODOT; and

WHEREAS, W&LE is willing to continue rail service on the Spencer to Brewster line and provide Certain other rights with respect to the line to ODOT in exchange for the \$2,400,000;

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

#### ARTICLE 1 - THE RAIL LINE

The rail line which is the subject of this Agreement is the W&LE line of railroad between milepost 133.0 at Brewster, Ohio and milepost 93.6 at Spencer, Ohio and will hereinafter be referred to as the RAIL LINE. The RAIL LINE is graphically depicted on the map herein included as Exhibit "A".

#### ARTICLE 2 - PAYMENTS

ODOT agrees to provide W&LE a grant of Two Million, Four-Hundred Thousand Dollars (\$2,400,000) in return for the rights and considerations enumerated in this Agreement. ODOT shall make its

best effort to provide these funds to W&LE in one lump sum as soon as possible. ODOT funds shall be taken from fiscal year 1995 ODOT appropriations. This Agreement in no way obligates ODOT to provide any funds whatsoever to W&LE from any appropriation for any period beyond fiscal year 1995 which ends on June 30, 1995.

ARTICLE 3 - W&LE AGREES TO UTILIZE RAIL LINE

A) W&LE shall continue to utilize the RAIL LINE as its principal east-west mainline. W&LE shall make reasonable good faith efforts to use the RAIL LINE for the movement of overhead traffic (as defined below) rather than the W&LE's northern route which passes through Canton, Akron and Medina (hereinafter referred to as the ALTERNATIVE ROUTE) in situations where it is possible to move traffic by either route. For the purposes of this Agreement, overhead traffic shall be defined as:

1) Traffic which originates on W&LE lines, or is received by W&LE from another railroad at a location which is west of Spencer, and which terminates on W&LE lines or lines on which W&LE has trackage rights, at a location south and east of Harmon (including but not limited to the Sandyville and Carrollton branches, the Pittsburgh/Connellsville/Hagerstown line, the Mingo junction to Benwood line, and the various lines in Harrison, Jefferson and Belmont Countries), or is interchanged with another railroad at a point south and east of Harmon.

2) Traffic which originates on W&LE lines, or on lines over which W&LE has trackage rights, at a location which is south and east of Harmon (including but not limited to the lines delineated in part number one (1) of this Article above), or is received by W&LE from another railroad at a location south and east of Harmon, which terminates on W&LE lines at a location west of Spencer or is interchanged with another railroad at a location west of Spencer.

B) In the event that ODOT has a reasonable basis to assert that W&LE is not making good faith efforts to use the RAIL LINE rather than the ALTERNATIVE ROUTE, ODOT may request that an independent arbitrator mutually agreeable to ODOT and W&LE knowledgeable in rail transportation matters (hereinafter referred to as the ARBITRATOR) be selected to evaluate the situation. W&LE shall provide the ARBITRATOR with any and all relevant information the ARBITRATOR requests within thirty (30) days of W&LE's receipt of said request. The ARBITRATOR will decide whether or not W&LE is using good faith efforts to utilize the RAIL LINE as required herein.

If the ARBITRATOR decides that W&LE is not making good faith efforts to meet W&LE obligations under this Article, ARBITRATOR will develop a remediation plan for W&LE to route traffic efficiently using the RAIL LINE.

The W&LE will have sixty (60) days to make good faith efforts to comply with the ARBITRATOR's remediation plan. By the ninetieth

(90th) day after the ARBITRATOR has provided W&LE a remediation plan, W&LE will again supply the ARBITRATOR with any and all relevant information which the ARBITRATOR requests. The ARBITRATOR will issue a second report to both parties stating whether or not W&LE has made good faith efforts to route traffic efficiently over the RAIL LINE. In the event that in this second report the ARBITRATOR finds that the W&LE is not making good faith efforts to comply, ODOT may require W&LE to make cash reparations to ODOT of up to FIFTY-THOUSAND DOLLARS (\$50,000).

In the event W&LE has not complied with the ARBITRATOR's remediation plan within one (1) year after the ARBITRATOR's second report, ODOT may require W&LE to make another cash reparation to ODOT of up to FIFTY-THOUSAND DOLLARS (\$50,000). ODOT may require W&LE to make other FIFTY-THOUSAND DOLLARS (\$50,000) reparations for each and every year thereafter wherein W&LE is not in compliance with the ARBITRATOR's remediation plan. W&LE may at any time submit information to the ARBITRATOR to demonstrate W&LE's compliance with the remediation plan. W&LE shall provide any said non-compliance payments to ODOT within ninety (90) days of receipt from ODOT of a notice to pay.

C) In the event ODOT requests that an arbitrator be hired under part "B" above of this Article, ODOT shall pay for the expenses incurred. However, if said arbitrator finds that the W&LE is not making good faith efforts, then W&LE shall reimburse ODOT for all expenses incurred for said arbitrator. This W&LE

reimbursement shall be over and above any payments W&LE makes to ODOT under part B of this Article above.

ARTICLE 4 - ACCEPTABLE TEMPORARY STOPPAGES TO RAIL LINE USE

ODOT recognizes that there may be instances where, for reasons of efficient and effective track repair or for special and occasional operational needs, W&LE may choose to temporarily use the ALTERNATIVE ROUTE rather than the RAIL LINE for movement of traffic as delineated in Article 3 parts A,1 and A,2 above. W&LE shall have the said authority under this Article to do so under the following conditions:

- 1) The temporary use of the ALTERNATIVE ROUTE is for less than a total of twenty-five (25) days in duration within any one (1) year period.
- 2) Disputes concerning whether or not a use of the ALTERNATIVE ROUTE is truly a temporary use of limited duration is subject to arbitration as to W&LE's good faith effort as delineated in Article 3 above.

ARTICLE 5 - FORCE MAJEURE/NOTICE OF USE OF ALTERNATIVE ROUTE

A) If by reasons of force majeure, W&LE must use the ALTERNATIVE ROUTE instead of the RAIL LINE, actions available to ODOT under Article 3 above shall be postponed for the time period required for W&LE to rectify the effects of the force majeure occurrence. The term "force majeure" as used herein shall mean, without limitation: acts of God; strikes, lockouts or other

industrial disturbances; acts of public enemies, orders of any kind of the government of the United States or of the state of any of their political sub-divisions or any of their departments, agencies or officials or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government; civil disturbances; explosions; partial or entire failure of utilities; or any other cause not reasonably in the control of the W&LE that prevents W&LE from carrying out its covenants contained herein.

B) In the event of an occurrence of force majeure, or for any other reason, W&LE routes a significant amount of traffic over the ALTERNATIVE ROUTE rather than the RAIL LINE for a period greater than twenty-five (25) days, W&LE shall immediately notify ODOT in writing of the expected duration of the rail traffic reroute, the expected number and trains per day to be rerouted, and other relevant information. W&LE will cooperate with ODOT in notifying other relevant agencies if ODOT deems it necessary.

For purposes of this part, "significant amount of traffic" shall be defined as the transfer of traffic from the RAIL LINE to the ALTERNATIVE ROUTE in the amount of two (2) trains or more per day, five days per week, or ten (10) trains or more per week.

ARTICLE 6 - ODOT RIGHT OF FIRST REFUSAL FOR PURCHASE OF RAIL LINE

A) ODOT shall have the right to purchase the RAIL LINE in the event any one of the following conditions occur:

1) W&LE decides to sell or otherwise divest the RAIL LINE or any part thereof.

2) W&LE files to abandon the RAIL LINE or any part thereof of the through route.

3) The ARBITRATOR finds that W&LE has not made good faith efforts to move traffic over the RAIL LINE and W&LE does not take the remedial action designated by the ARBITRATOR as described in Article 3 above within three (3) years of the issuance of the ARBITRATOR's remedial plan.

B) The price for ODOT to purchase the RAIL LINE including real estate and track and fixtures shall be the sum of the net liquidation value of the underlying real estate, plus the net liquidation value of track, track fixtures, and appurtenances as determined by an appraisal conducted by a party or parties mutually acceptable to ODOT and W&LE. The net liquidation value assessed by said party or parties for track, track fixtures and appurtenances, however, shall be reduced in accordance to the table below to determine ODOT's purchase price for this element:

REDUCTION IN TRACK NLV

Within four (4) years*	\$2,400,000 less
Between four (4) and eight (8) years*	\$2,100,000 less
Between eight (8) and twelve (12) years*	\$1,800,000 less
Between twelve (12) and sixteen (16) years*	\$1,500,000 less
Between sixteen (16) and twenty (20) years*	\$1,200,000 less

\*Starting on the date of execution of this Agreement

Thus, if ODOT were to purchase the RAIL LINE including real estate and track and fixtures in the fifth (5th) year after the execution of this Agreement, the ODOT purchase price would be calculated as follows:

$$\begin{array}{r} \text{NLV} \\ \text{(Real Estate)} \end{array} (+) \begin{array}{r} \text{NLV} \\ \text{(Track)} \end{array} (-) \$2,100,000 (=) \text{Purchase Price}$$

C) In the event one of the conditions listed in part "A" of this Article above occurs, ODOT shall have the right to purchase only the track and fixtures of the RAIL LINE. The method of determining the price shall be the same as in part "B" of this Article above.

Thus, if ODOT were to purchase only the track and fixtures of the RAIL LINE in the fifth (5th) year after the execution of this Agreement, the ODOT purchase price would be calculated as follows:

$$\begin{array}{r} \text{NLV} \\ \text{(Track)} \end{array} (-) \$2,100,000 (=) \text{Purchase Price}$$

D) In the event ODOT exercises its rights to purchase the RAIL LINE as described in this Article, W&LE will not be responsible to make further reparations described herein in Article 3 of this Agreement.

ARTICLE 7 - RAIL MAINTENANCE AND REPAIR/TWENTY YEAR REQUIREMENT

After execution of this AGREEMENT, the W&LE, or its successor and assigns, agrees to maintain the RAIL LINE to not less than

FRA Class II Standards for a period of twenty (20) years as long as W&LE, its successor and assigns, remains as the operator of said line. If during this twenty (20) year period, ODOT determines that the RAIL LINE does not comply with FRA Class II standards, ODOT may notify the W&LE, or its successor and assigns, to perform, or cause to be performed, all work necessary to bring the RAIL LINE into compliance with FRA Class II standards within ninety (90) days. In the event W&LE does not perform said work, ODOT and W&LE shall appoint a mutually agreeable arbitrator knowledgeable in track maintenance hereinafter referred to as the TRACK ARBITRATOR. In the event that the TRACK ARBITRATOR determines said RAIL LINE does not meet FRA Class II Standards the TRACK ARBITRATOR will develop a list of work items needed to bring the track into compliance with these Class II standards as well as a reasonable cost estimate. ODOT shall have the right to require, that the W&LE pay to ODOT an amount equal to this cost estimate. However, the W&LE shall have the right to perform or cause to be performed the work items identified by the TRACK ARBITRATOR within one-hundred and fifty (150) days of the TRACK ARBITRATOR issuing his findings instead of paying to ODOT the amount equal to the TRACK ARBITRATOR's cost estimate.

ARTICLE 8 - OTHER RAILROADS ACCESS TO RAIL LINE

A) W&LE retains the right to grant trackage rights over the RAIL LINE to any other railroad under conditions and terms agreed to by W&LE and such other railroad.

B) W&LE agrees to grant certain railroad freight interchange access rights and trackage rights for the duration of this Agreement as follows: W&LE shall grant access through its Brewster Yard (that is Brewster to Justus for the R.J. Corman Railroad and Brewster to Harmon for the Ohio Central Railroad) pursuant to the current interchange agreements with these two railroads, and to provide these railroads, at ODOT's request, trackage rights over the Spencer to Brewster line for purpose of interchange with CSX Transportation, Inc. (CSX) at Creston and Consolidated Rail Corporation (Conrail) at Orrville, or for the purpose of serving a rail customer which at some future date locates a facility on the RAIL LINE pursuant to the provisions below.

C) ODOT shall not be able to designate that W&LE grant trackage rights as described in part B of this Article unless all of the following conditions are met:

1) The railroad obtaining trackage rights shall not be allowed to serve any existing W&LE rail user now located on the Spencer to Brewster line;

2) The railroad obtaining trackage rights shall indemnify W&LE against any and all damages and liabilities from the trackage rights operation;

3) The railroad obtaining trackage rights must prove its financial and operational capabilities to competently operate as a railroad as determined by ODOT;

4) The railroad obtaining trackage rights shall not interfere with W&LE operations. W&LE shall retain the right to dispatch the railroad; and

5) All required approvals by the Interstate Commerce Commission (or other governmental bodies) are obtained by the railroad obtaining trackage rights.

D) W&LE shall be compensated for granting trackage rights. Compensation shall be negotiated but in the event no agreement can be reached, ODOT may stipulate a rate not less than \$0.25 per car mile (for movement of any car, loaded or empty, locomotives to move free) subject to annual escalation from 1994 based upon the Rail Cost Recovery Index published by the Association of American Railroads for normal wear and tear.

E) Before stipulating the \$0.25 per mile charge or enforcing these provisions on W&LE to provide trackage rights, ODOT shall consider the effect the trackage rights will have on each of the following:

- 1) W&LE overall profits and ability to repay its debt;
- 2) The ability of the W&LE to efficiently operate on its own lines and serve its customers;
- 3) The public need for W&LE to provide trackage rights;
- 4) The value of trackage rights to the other carrier; the ability of the other carrier to pay more than the minimum fee;

5) The type of traffic that will traverse the line, i.e. the weight of the carloads and the hazardous or non-hazardous nature of the materials transported; and

6) The willingness of the railroad obtaining trackage rights to provide W&LE reciprocal trackage rights on their system.

F) Upon request of ODOT W&LE shall grant passenger trackage rights over the Spencer to Brewster line to an ODOT designee under the following conditions:

1) The railroad obtaining passenger trackage rights and/or ODOT must comply with State of Ohio law concerning the protection of freight railroads from the liability of passenger operations and give W&LE indemnities typically obtained in excursion contracts;

2) W&LE and the railroad obtaining passenger trackage rights shall negotiate the compensation to be paid for allowing passenger service but such compensation shall be approximately equal to what other freight rail line owners are paid by passenger carriers for comparable passenger service.

3) W&LE will not be required to pay for upgrade of the line to passenger standards.

ARTICLE 9 - SOLE OWNER

The parties agree that the W&LE shall be the sole owner of the RAIL LINE and shall maintain all rights, privileges, obligations and responsibilities of ownership.

ARTICLE 10 - TAX LIABILITY

ODOT, by virtue of entering into this Agreement, does not assume any tax responsibility. Any tax responsibility that arises due to the operation, or maintenance of the line shall be the sole responsibility of the W&LE.

ARTICLE 11 - TERM OF AGREEMENT/TERMINATION

A) Article 2 "Payments" of this Agreement will expire on June 30, 1995. All other Articles will remain in effect for a period of twenty (20) years from the date of execution except Article 6 "ODOT Right of First Refusal for Purchase of RAIL LINE" which shall be effective in perpetuity.

This Agreement is subject to the determination by ODOT that sufficient funds or authority to spend state funds have been appropriated by the Ohio General Assembly to ODOT for the purposes of this Agreement and to the certification of funds by the Office of Budget and Management as required by the Ohio Revised Code, Section 126.07.

If ODOT determines that sufficient funds have not been provided for the purposes of this Agreement, or if the Office of Budget and Management fails to certify the availability of funds, this Agreement will be terminated.

B) W&LE Termination: W&LE shall have the right to terminate this Agreement in the event of a material breach of this Agreement by ODOT or the failure of ODOT to make any payments in accordance to Article 2 "Payments" of this Agreement. W&LE shall provide ODOT

thirty (30) days written notice in the exercise of its rights under this provision.

Suspension of Funding or Termination by ODOT: ODOT shall have the right to suspend funding of the project at any time, and for so long as the W&LE fails substantially to comply with material terms and conditions of this Agreement. If ODOT determines that substantial non-compliance cannot be corrected within a reasonable time, then ODOT may terminate the Agreement.

ARTICLE 12 - CONTINGENCIES

It is expressly understood by the parties that none of the rights, duties and obligations described in this Agreement shall be binding on either party until all statutory provisions of the Ohio Revised Code, including but not limited to Section 126.07 have been complied with, and until such time that all necessary funds are made available and forthcoming from the appropriate state agency and such expenditure of funds is approved, if necessary, by the Controlling Board of the State of Ohio pursuant to Section 127.16 of the Ohio Revised Code."

ARTICLE 13 - INSURANCE, INDEMNIFICATION AND RELEASE

A) This Agreement is without force and effect until such time as W&LE demonstrates to the satisfaction of ODOT that W&LE has liability insurance coverage, i.e., bodily 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 RAIL LINE. ODOT's acceptance of W&LE's insurance shall be in writing from ODOT's Director.

B) Further, W&LE agrees to indemnify and hold ODOT 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 to the extent permitted by law) incurred in connection with, or arising out of, in any manner, the loss of, or damage to the RAIL LINE, or injury to, or death of, any person resulting from, or arising out of, the management, control, use of, or operations of, the RAIL LINE. ODOT further requires the W&LE and its successors and assigns to indemnify and hold ODOT harmless from liability for any loss arising from injury or death to persons or damage to RAIL LINE.

C) In no event shall the W&LE or any of their employees or agents, be considered agents or employees of ODOT. The W&LE agrees that none of its employees or agents, shall hold themselves out as, or claim to be, agents, officers or employees of ODOT, and will not, by reason of any relationship with ODOT, make any claim, demand or application to an agent, officer, or employee of the State including, but not limited to, rights and privileges concerning worker's compensation benefits, social security coverage or retirement membership or credit.

D) The indemnification described in parts "A" and "B" of this Article above applies only to ODOT and its employees.

ARTICLE 14 - COUNTY FILING

W&LE shall file in the Recorder's Office of the counties where the real property is located, a notice reciting that the use and disposition of the RAIL LINE are subject to this ODOT/W&LE Agreement. The W&LE shall furnish ODOT an original of the recorded document. This filing shall take place within sixty (60) days following the execution of this Agreement.

ARTICLE 15 - NOTICES

Unless otherwise specified herein, all notices, requests, consents, demands, or other communications desired or required to be given by one party to the other shall have been deemed to have been given only when received via United States mail, certified, return receipt requested, directed to the recipient as follows (or at such other addresses either of the parties hereto may designate by written notice to the other party hereto):

If to ODOT:

Director  
Ohio Department of Transportation  
25 South Front Street  
Columbus, Ohio 43216-0899

With a copy to:

Deputy Director  
Division of Rail  
Ohio Department of Transportation  
25 South Front Street  
Columbus, Ohio 43216-0899

If to W&LE:

President  
Wheeling & Lake Erie Railway Inc.  
100 East First Street  
Brewster, Ohio 44613

ARTICLE 16 - REMEDIES

No remedy herein conferred upon or reserved by ODOT 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 17 - NO WAIVER

No delay or omission to exercise any right or option accruing to ODOT upon any breach by W&LE 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 ODOT.

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 18 - COMPLIANCE WITH FEDERAL, STATE, AND LOCAL REQUIREMENTS

W&LE shall fully comply with all federal, state, and local laws, regulations, executive orders and other legal requirements as they apply to railroad transportation.

ARTICLE 19 - DISPUTE RESOLUTION

In the event of a dispute in the interpretation of the provisions of this Agreement, such dispute shall be settled through negotiation between the Director of ODOT and W&LE. If no resolution can be reached, the dispute will be referred to the Director of ODOT. However, this paragraph shall not be construed to prevent W&LE from having any decision made by the Director or determined by a court of competent jurisdiction.

ARTICLE 20 - 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.

ARTICLE 21 - THIRD PARTY BENEFICIARY

It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions hereof or of any other document to create in the public, or any person whomsoever, a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage or for loss, damage or delay of cargo or shipment by reason of, or under the terms or provisions of, this Agreement. The duties, obligations and responsibilities of the parties to this

AGREEMENT with respect to third parties shall remain solely as imposed by law.

ARTICLE 22 - REPRESENTATIONS AND WARRANTIES

A) W&LE: W&LE represents and warrants the following:

1) W&LE has the power and authority to enter into this Agreement and is duly qualified to do business in the State of Ohio; and,

2) W&LE has the authority to carry out the functions which it has undertaken in this Agreement.

B) ODOT: ODOT represents and warrants the following:

1) ODOT has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement;

2) Funds for the payments required by this Agreement shall be obtained by or have been authorized, appropriated or reappropriated to and by ODOT subject however to the limitations set forth in Article 12, "Contingencies", of this Agreement.

ARTICLE 23 - OHIO ETHICS LAW REQUIREMENTS

A) The W&LE agrees to adhere to the requirements of Ohio Ethics law as provided by Section 102.04 of the Ohio Revised Code. O.R.C. Section 102.04(A) prohibits a state official or employee from receiving compensation, other than from his own agency, for

personal services rendered in a case, proceeding, application, or other matter before any state agency. O.R.C. Section 102.04(B) prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding.

B) It is understood by the parties that non-elected state officials and employees may qualify for an exemption under O.R.C. Section 102.04(D), if (1) the agency with which the official or employee seeks to do business is an agency other than the one with which he serves; and, (2) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files an O.R.C. Section 102.04(D) statement with the Ohio Ethics Commission, the agency with which he serves, and the agency with which he seeks to do business. The statement must include a declaration that the Contractor disqualifies himself for a period of two years from any participation in his official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.

C) It is expressly understood and agreed to by the parties that a failure by Contractor to file a declaration statement as required under O.R.C. Section 102.04(D), may be considered by the State, a breach of a material condition of this contract and the State may, if it so elects, void this contract.

ARTICLE 24 - EQUAL EMPLOYMENT OPPORTUNITY

A) In carrying out this contract, the W&LE shall not discriminate against any employee or applicant for employment

because of race, religion, color, sex, sexual orientation, national origin, handicap, age, or Vietnam-era veteran status. The W&LE will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, handicap, age, or Vietnam-era veteran status.

Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

B) Further, the W&LE, or any person acting on behalf of the W&LE, shall not in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, handicap, national origin, or ancestry.

C) The W&LE agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The W&LE will, in all solicitations or advertisements for employees placed by or on behalf of the W&LE, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, handicap, age, or Vietnam-era veteran status. The W&LE shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than

subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

ARTICLE 25 - DRUG-FREE WORKPLACE

W&LE agrees to comply with all applicable state and federal laws regarding drug-free workplace. W&LE shall make a good faith effort to ensure that all W&LE employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

ARTICLE 26 - OHIO ELECTIONS LAW

W&LE affirms that, as applicable to the vendor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totalling in excess of \$1,000.00 to the Governor or to his campaign committees.

ARTICLE 27 - CAPTIONS

The section "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 28 - CONSTRUCTION

This Agreement shall be construed, interpreted, and the rights of all parties determined, in accordance with the laws of the State of Ohio.


ARTICLE 29 - ENTIRE AGREEMENT

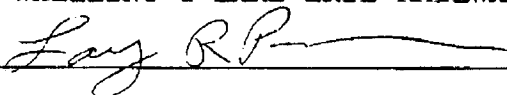
This Agreement and Exhibits constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. No terms shall be altered or otherwise amended except by an instrument in writing signed by each party hereto.

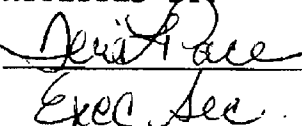
ARTICLE 30 - EFFECTIVE DATE

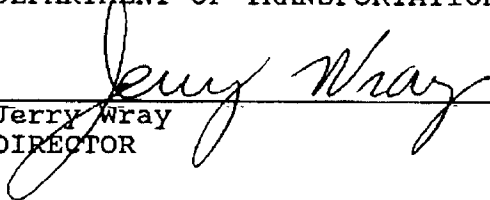
This Agreement shall become effective on November 23<sup>1994</sup> which will be termed the "effective date".

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

ATTESTED BY:   
U. P. Law  
TITLE: Secretary

THE WHEELING & LAKE ERIE RAILWAY COMPANY  
  
TITLE: President + CEO

ATTESTED BY:   
Exec. Sec.  
TITLE: \_\_\_\_\_

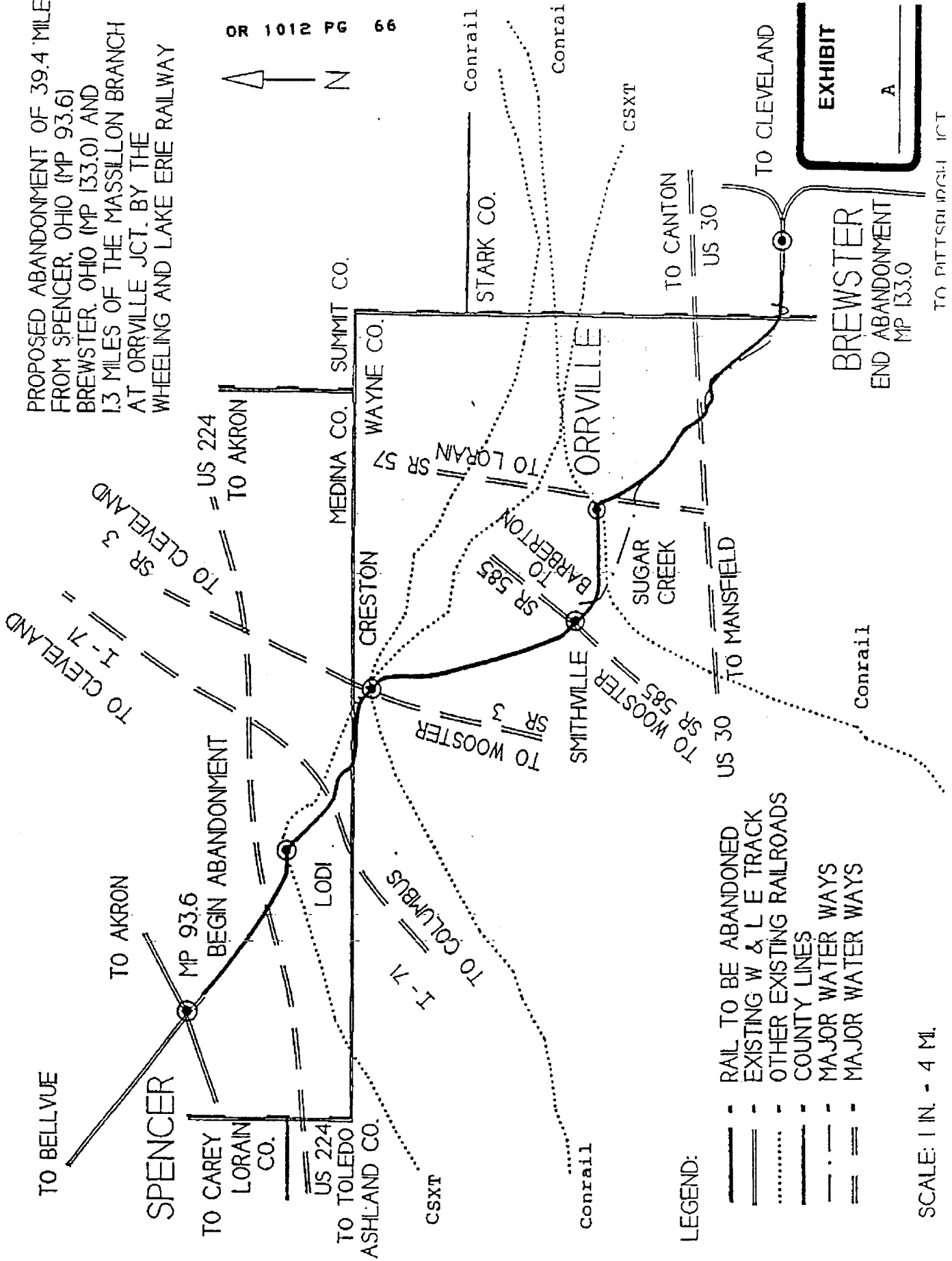
STATE OF OHIO  
DEPARTMENT OF TRANSPORTATION  
  
Jerry Wray  
DIRECTOR

a:spenbrew.121:sja  
11/17/94

I hereby certify this is a true and correct copy of the original document as executed.

PROPOSED ABANDONMENT OF 39.4 MILE  
 FROM SPENCER, OHIO (MP 93.6)  
 BREWSTER, OHIO (MP 133.0) AND  
 1.3 MILES OF THE MASSILLON BRANCH  
 AT ORRVILLE JCT. BY THE  
 WHEELING AND LAKE ERIE RAILWAY

OR 1012 PG 66



LEGEND:

- - - RAIL TO BE ABANDONED
- ==== EXISTING W & L E TRACK
- ..... OTHER EXISTING RAILROADS
- COUNTY LINES
- . - . MAJOR WATER WAYS
- == == MAJOR WATER WAYS

SCALE: 1 IN. = 4 MI.

EXHIBIT  
A

BREWSTER  
 END ABANDONMENT  
 MP 133.0

TO PITTSBURGH JCT