



Appendix H

Draft Rail with Trail Agreement

TRAIL LEASE AGREEMENT

THIS AGREEMENT, made this ___ of _____, 202_, by and between the **CANONIE ATLANTIC CORPORATION**, a Virginia [non-profit] corporation, having its principal office address at _____ (hereinafter known as "CANONIE"), party of the first part, the **DELMARVA CENTRAL RAILROAD COMPANY**, a Delaware corporation, having its principal office address at Building 1, Suite 100, 519 Cedar Way, Oakmont, PA 15139 (hereinafter known as "DCR"), party of the second part, and the _____, a [501C-3 Non-Profit] corporation incorporated in the State of _____ and authorized to do business in the State of _____, having as its principal office address, _____ [Bike Trail Operator] _____ (herein known as "BTO"), party of the third part.

RECITALS

WHEREAS, CANONIE is the owner of a certain rail line identified as the Delmarva Industrial Track between Railroad Mile Post 45.05 being the south side of Main Street in Hallwood, Virginia and Mile Post 45.7 being Taylor Street in Hallwood Virginia (the "Rail Line"), as illustrated in Appendix A, and CANONIE leases this rail line and associated right-of-way to DCR, pursuant to an Operating Agreement dated June 5, 2018; and

WHEREAS, DCR, as the operator of the rail line, operates trains and performs related railroad operations and track maintenance activities; and

WHEREAS, BTO desires to construct a trail which would be open to the public free of charge for recreational purposes (the "Trail") immediately adjacent to the rail line; and

WHEREAS, CANONIE and DCR are agreeable allowing BTO to construct the Trail; and

WHEREAS, BTO is requesting a Trail lease to allow the BTO to go upon the right-of-way of the rail line, adjacent to the track located on the rail line for purposes of construction, periodic inspection, maintenance, repair, upgrades and improvements; and

WHEREAS, CANONIE and DCR are willing to grant the Trail Lease under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the sum of One and No/100th Dollars (\$1.00) paid to CANONIE by BTO, and the other covenants and agreement herein contained on the part of BTO to be paid, kept and performed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. GRANT OF LEASE

1.1 BTO Lease: Subject to the terms and conditions of this Agreement and for the term hereof, CANONIE hereby grants to BTO a non-perpetual, non-exclusive Lease to allow the BTO to use the Right-of-Way immediately adjacent to the [western] property line of the rail line. The parties agree that under no circumstances shall a Trail be constructed north of Main Street in Hallwood Virginia. In addition, this Trail Lease authorizes BTO to go upon the Leased Premises for the purpose of constructing, maintaining, inspecting, repairing, improving or removing the Trail. The Trail Lease shall commence as of the date of this Agreement and shall remain in effect for 25 years, unless earlier terminated pursuant to the terms of this Agreement.

SECTION 2. FEE

2.1 BTO shall pay annually to CANONIE, payable on the first business day of each calendar year, a fee in the amount of One and No/100th Dollars (\$1.00).

2.2 BTO shall not, at any time, charge an admission price or fee in return for invitation or permission to enter or go upon the Trail.

SECTION 3. USE

3.1 The Trail Lease is solely for the purpose of allowing the Trail for pedestrian and non-motorized vehicle travel on the Trail, and for the purpose of constructing, inspecting, maintaining, repairing, improving and upgrading the Trail. Except as hereinafter provided for, snowmobiles, atv's and other motorized uses or horseback riding are specifically prohibited on the Trail.

3.2 Signs placed by BTO shall be limited to warning, interpretative and directional signs relating to non-motorized public recreational uses. Sign content and sign placement location shall be subject to advance written approval of CANONIE and DCR. BTO shall post and maintain such signs and posters on the Trail as are necessary and suitable to delineate and locate the Trail, to prohibit the use of CANONIE and DCR's adjacent track and property, and to expressly inform the general public that the BTO Lease Premises is for "no horseback riding and non-motorized use only." In no event shall BTO permit the placement of any commercial signage upon the Trail Lease Premises. The Trail Lease Premises shall be used for no other purpose without CANONIE and DCR's prior written consent.

3.3 Only BTO or BTO contractor's, subcontractor's or agents motor vehicles and equipment shall be allowed to be operated on the Trail but only when permission to be on the Trail has been obtained per the terms of this Agreement and then only when necessary to accomplish a specific maintenance or repair project, when pedestrian access is not sufficient.

3.4 At no time shall BTO, its contractors or agents interfere with the operation of railroad trains and equipment upon the rail line adjacent to the Trail. BTO shall assure that BTO, its contractors, subcontractors, and agents, maintain proper clearances on the railroad line and take all actions necessary to assure that railroad operations will not be in any way interfered with, impeded or delayed.

3.5 BTO shall not use this Trail for any purpose which is forbidden by any applicable law, regulation or rule of any governmental agency, including local, state or federal, or which may invalidate any policy of insurance issued to BTO, CANONIE or DCR.

3.6 BTO, its agents, servants, employees, directors, officers, contractors, subcontractors, and suppliers, shall not permit any hazardous materials to be deposited on the Right-of-Way or other lands of CANONIE or DCR through its/their operations or actions. If hazardous material is so deposited as a result of BTO's (or its agent's, servant's, employee's, director's, officer's, contractor's, subcontractor's and supplier's) action or omission or due to the transportation of hazardous materials, BTO, its successors and any permitted assigns, shall indemnify, save harmless and defend CANONIE and DCR, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, from and against any claims made against CANONIE or DCR, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, arising there from. For the purposes of this Agreement, "Hazardous Material" shall mean any substance (i) defined as "hazardous substance" under Section 1.01(14) of CERCLA, 42 U.S.C. 9601(14) or any successor regulation; (ii) containing petroleum, including any fraction thereof; or (iii) determined to be deleterious to human health or the environment by any federal, state or local environmental, occupational health, or public health agency or authority. BTO expressly agrees to be

responsible for any such contamination of the lands, property or Right-of-Ways of CANONIE and DCR or any adjacent premises as a result of BTO's (or its agent's, servant's, employee's, director's, officer's, contractor's, subcontractor's and supplier's) acts, omissions, or negligence, and if any such contamination occurs, BTO, its successors and any permitted assigns, shall be responsible to clean-up, remediate and restore the land, property and Right-of-Way to their original condition or to a condition that is in compliance with applicable state and federal laws and regulations and all local ordinances.

SECTION 4. INGRESS AND EGRESS

4.1 CANONIE and DCR do not undertake to provide a means of ingress and egress for BTO to the leased premises.

SECTION 5. MAINTANANCE, UPGRADES AND IMPROVEMENTS

5.1 The document *Rails-with BTOs: Lessons Learned*, March 2020, published by the United States Department of Transportation (Report # DOT-VNTSC-FHWA-20-06), (the "Best Practice Guide"), shall be the primary reference document with respect to design, construction, operations, and maintenance of the Trail. The principals contained in Section VI (Design) of the Best Practice Guide shall apply to the design and construction of any future upgrades or improvements to the Trail. The principals contained in Section VII (Construction, Operations and Maintenance) of the Best Practice Guide shall apply to all construction, operations, and maintenance of the Trail. In addition, any future improvements or upgrades to the Trail must also conform with The Manual on Uniform Traffic Control Devices ("MUTCD") guidelines.

5.2 The design and construction of any improvements or upgrades to the Trail will be solely the responsibility of BTO, subject to the advance review and written approval by CANONIE and the DCR Chief Engineer with regard to final design, location and manner of construction and materials, which approval shall be in the sole and absolute discretion of DCR and shall be final and conclusive. The BTO shall be of durable materials designed for long service life and relatively free from routine servicing and maintenance. Conformance with current applicable material specifications and codes is mandatory. BTO shall be responsible for determining the location, elevation and extent of all utilities, underground structures and/or obstructions in the vicinity of the installation whether shown on the approved plans and specifications or not.

5.3 The Plans and Specifications, insofar as they pertain to the Trail or to any construction activity, means or methods within the Right-of-Way, or in any way pertaining to or affecting the Right-of-Way, shall not be amended, modified, changed, nor shall anything be added to or deleted from the Plans and Specifications, nor any change orders issued, without the prior written consent of CANONIE and the DCR Chief Engineer.

5.4 Prior to any excavation taking place, BTO must obtain the advance written approval of CANONIE and the DCR Chief Engineer as to the location thereof. If it is determined by DCR that shoring is necessary for any excavation, which approval shall be in the sole and absolute discretion of DCR and shall be final and conclusive, it will be the responsibility of BTO to submit a shoring design for advance approval by CANONIE and the DCR Chief Engineer.

5.5 BTO's use, as herein defined, shall be such that it shall do so with a minimum of interference with drainage of CANONIE's lands, railroad tracks and Right-of-Way and under no circumstances should any drainage be directed towards any railroad track, ballast or sub-ballast of railroad track. Any drainage facilities required shall be constructed, maintained, repaired and removed by BTO, at BTO's sole cost and expense, and all work associated therewith shall be subject to the advance written approval of the DCR Chief Engineer, or his duly authorized representative, which approval shall be in the sole and absolute discretion of DCR and shall be final and conclusive. BTO shall avoid disturbing existing drainage facilities except as approved by the DCR Chief Engineer.

5.6 All ground profiles and vegetation cover on the CANONIE property or affecting drainage from or to CANONIE's property, disturbed by BTO while acting under this lease or during construction of upgrades or improvements to the Trail and all future maintenance work, must be reestablished. Areas of CANONIE's property and/or Right-of-Way disturbed by the upgrade, improvement, maintenance, removal, or relocation of the Trail shall be kept to a minimum. Disturbed areas shall be returned by BTO to normal grade and elevation, with compaction of backfill material and all excess or undesirable material removed by BTO at its sole expense. Protection against erosion shall be provided by BTO and must be included in any Trail Plans and Specifications.

5.7 Exceptions to any design, location, construction, or methods of installation provisions contained in this Agreement and attachments, must be authorized in writing by the DCR Chief Engineer, or his duly authorized representative, and which approval shall be in the sole and absolute discretion of DCR and shall be final and conclusive. All requests for exceptions shall be fully documented by BTO including design data, cost comparisons and other pertinent information.

5.8 Any exercise by DCR of its approval rights hereunder is not intended to, nor does it, create any duty on the part of DCR hereunder or serve as grounds for a cause of action hereunder for breach of contract, negligence or liability.

SECTION 6. FLAGGING AND MATERIAL STORAGE

6.1 BTO shall obtain and maintain, at the sole cost and expense of BTO, any flagmen, watchmen and/or inspectors DCR deems necessary or advisable for the proper protection of traffic moving on its tracks and to ensure the safety of its railroad operations during the construction of upgrades or improvements, maintenance, repair, relocation and/or removal of the BTO. Movement of personnel, equipment, and materials over, across or on the tracks and Right-of-Way of CANONIE shall be held to a minimum and such movements shall be made only under the supervision and direction of DCR.

6.2 Flagging services shall be performed by DCR, or such other entity as DCR may designate, and it shall be the responsibility of BTO to contract directly with DCR or other entity designated by DCR for necessary flagging services, the total cost of such services to be borne solely by BTO.

6.3 Except as otherwise specifically permitted in and approved Plans and Specifications, other equipment necessary for BTO's operation of the Trail must be located outside the limits of the Right-of-Way.

SECTION 7. MATERIALS AND WORKMANSHIP

7.1 All materials and workmanship required in the upgrade, improvement, maintenance, repair, replacement, relocation and removal of the Trail shall be furnished by BTO, but shall be subject at all times to inspection by the CANONIE and the DCR Chief Engineer or his duly authorized representative. Any materials or workmanship not meeting the requirements of the Plans and Specifications or declared to be unsatisfactory by CANONIE or DCR shall be replaced by BTO at its own expense with materials and workmanship satisfactory to the DCR Chief Engineer or his duly authorized representative. The privilege of inspecting the materials and workmanship involved in the upgrade, improvement, maintenance, repair, relocation and/or removal of the Trail and to notify BTO to renew, repair or replace materials and workmanship unsatisfactory to CANONIE or DCR shall not be construed as imposing any obligations whatsoever on CANONIE or DCR to inspect such materials and workmanship and to notify BTO to renew, repair and replace any materials or workmanship, it being the intent of the parties to this Agreement that the sole responsibility for the materials and workmanship used in the upgrade, improvement, maintenance, repair, relocation and/or removal of the Trail shall at all times be that of BTO alone.

7.2 When, in the sole opinion of DCR, the Trail is in a defective or dangerous condition, and regardless of cause and regardless of whether the condition affects the Trail or DCR's Right-of-Way, DCR shall have the option, but not a duty or obligation, to insist that BTO immediately shut down and close all or part of the Trail, or to shut down all or part of the Trail itself. If DCR incurs any reasonable costs or expenses in shutting or closing the Trail, BTO shall promptly reimburse DCR for the same.

7.3 When, in the sole opinion of DCR, the Trail is in a defective or dangerous condition, and regardless of whether the Trail was closed pursuant to Section 7.2, BTO shall, at its own cost and expense, within ten (10) calendar days after mailing of written notice from DCR, submit a preliminary, tentative plan to renew, repair or replace the Trail in a manner reasonably satisfactory to the Chief Engineer of DCR, or his duly authorized representative, in his or her sole and absolute discretion and shall be final and conclusive. Upon approval of a final plan by the Chief Engineer of DCR, BTO shall initiate the renewal, repair, or replacement of the Trail within a reasonable time in accordance with the approved plan and shall continue renewal, repair or replacement without interruption to completion. For the purposes of this Section 7.3, a "reasonable time" will be determined by reference to the imminence of harm, damage or destruction to health or property; likely magnitude of the harm, damage or destruction, and the disruption of DCR's activities which may be caused by the defective or dangerous condition. However, the cost or expense involved in remedying the defective or dangerous condition shall not be a factor in determining "reasonable time." DCR shall have the right to terminate this Agreement if a dangerous condition has not been remedied in a reasonable time.

7.4 Any exercise by DCR of its rights hereunder is not intended to, nor does it, create any duty on the part of DCR hereunder or serve as grounds for a cause of action hereunder for breach of contract, negligence or liability.

SECTION 8. INSPECTION, MAINTENANCE, SERVICING AND REPLACEMENT OF TRAIL

8.1 Any and all inspection, maintenance, repair, or replacement of the Trail shall be the sole responsibility of BTO and at its sole expense. Except in the event of an emergency, BTO shall comply with the ADVANCE NOTIFICATION provisions of Section 13 herein before entering upon CANONIE's property or the Right-of-Way. Maintenance and repair must be performed by BTO so as to keep the Trail in a safe, functional condition, and in a good state of repair in accordance with the requirements of applicable Federal, State and Local laws, regulatory standards and utility codes, as well as any requirements of CANONIE and DCR.

8.2 BTO shall keep and maintain the Leased Premises in good repair and in safe, neat, clean and respectable condition, and will properly dispose of all refuse therefrom and observe and comply with all statutes, ordinances, government regulations, and policies of CANONIE and DCR applicable thereto. BTO shall cause or suffer no waste of the Leased Premises and shall permit thereon no conduct which would be illegal or immoral or constitute a nuisance.

8.3 BTO shall be responsible at its sole cost and expense to replace and stabilize all earth cover and vegetation if and when it has eroded over the Trail area where such erosion is due to, or caused by, the placement or existence of the Trail. BTO is also responsible for the repair of damage to ballast or sub ballast as well as any settlement of backfills, fills and embankments which may occur due to the placement or existence of the Trail.

8.4 BTO shall submit to CANONIE and DCR for its prior approval, which approval shall be in the sole and absolute discretion of DCR and shall be final and conclusive, all plans and specifications concerning maintenance or repair work to be performed by BTO in regard to the Trail, other than routine, day-to-day inspection and maintenance.

8.5 BTO accepts the Trail Lease granted hereunder with the full understanding and awareness that DCR's maintenance activities may result in damage to BTO's improvements and may impede access to the Trail from time to time.

DCR agrees to take reasonable measures to prevent damage to Trail improvements, but BTO agrees to assume full responsibility to repair and maintain its improvements even if damaged by DCR's railroad activities or maintenance activities, and BTO shall not in any event claim against CANONIE or DCR for damage to its improvements or damages due to impeded access to the Trail.

8.6 BTO ACKNOWLEDGES THAT THE RIGHT-OF-WAY DESCRIBED HEREIN CONTAINS ACTIVE RAILROAD LINE USED FOR RAILROAD OPERATIONS. RAILROAD OPERATIONS ENTAIL OR CAUSE LOUD NOISES, SMOKE, EMISSIONS, DUST, STEAM, ODORS, VIBRATIONS, BRIGHT LIGHTS AND OTHER CONDITIONS. RAILROAD OPERATIONS ARE CONDUCTED AT ALL TIMES OF THE DAY AND NIGHT. THE INTENSITY, CHARACTERISTICS AND DURATION OF RAILROAD OPERATIONS ON THE RAILROAD LINE CAN INCREASE AT ANY TIME WITHOUT WARNING TO BTO, INCLUDING, BUT NOT LIMITED TO, AN INCREASE IN THE NUMBER OF TRAINS OPERATED, AN INCREASE IN OPERATING SPEEDS, THE STORAGE OF RAILCARS, RENEWAL OR REPAIR OF THE RAILROAD LINE AND OTHER RAILROAD OPERATIONS. ACCORDINGLY, BTO TAKES THIS TRAIL LEASE WITH THE UNDERSTANDING AND AWARENESS THAT BTO'S USE OF THE TRAIL MAY BE INTERFERED WITH BY RAILROAD OPERATIONS AND BTO SHALL HAVE NO RIGHT OR RECOURSE TO DEMAND ANY CHANGE OR CESSATION TO THE CHARACTER, CONDUCT OR CONDITIONS OF RAILROAD OPERATIONS DESCRIBED HEREIN OR FUTURE RAILROAD OPERATIONS OF ANY SORT OR NATURE WHATSOEVER.

SECTION 9. RELOCATION CHANGES AND ALTERATIONS

9.1 When and as often as CANONIE or DCR shall require to have the location and/or elevation of the Trail, or any portion thereof, change for the purposes of making improvements to the facilities of CANONIE or DCR, or to add, remove, or realign tracks to protect railroad common carrier obligations or conduct railroad common carrier operations or to minimize any hazards presented by the Trail or the contents thereof, all as determined in CANONIE's and DCR's sole discretion, BTO shall, at its own cost and expense, with due diligence and within a reasonable period of time after receipt of written notice from CANONIE or DCR, change the location and/or elevation of the Trail, or any portion thereof, to such a location and/or elevation as shall be reasonably designated by the Chief Engineer of DCR, or his duly authorized representative.

9.2 In the event BTO submits in writing a request to CANONIE or DCR to extend the relocation period, CANONIE or DCR shall respond within five (5) business days.

9.3 BTO agrees that upon request from CANONIE or DCR, it will, at its own cost and expense, make changes or alterations to the Trail when, in DCR's sole opinion, DCR's operations require modification to the Trail, or to minimize hazards presented by the Trail.

9.4 In the event BTO shall fail to change the location or elevation of, renew, repair or replace, alter, maintain, service, or make any changes requested by CANONIE or DCR, to the Trail, or any portion thereof, or to correct any dangerous or defective condition, or fails to perform any other matter required of BTO hereunder, after mailing of written notice from CANONIE or DCR as hereinbefore provided and within the time stipulated, then CANONIE or DCR may, without further notice to BTO, perform said work, all at the sole risk, cost and expense of BTO, or at CANONIE's option, declare this Trail Lease terminated and require BTO to remove the Trail and restore the premises to its original condition.

SECTION 10. INSURANCE

10.1 Prior to use of the Right-of-Way and/or exercise of any of the privileges and activities provided by this Agreement, BTO, at its sole cost and expense, shall procure and maintain, or require the procurement and maintenance

during the term of this Agreement insurance adequate to cover all liability and to protect CANONIE and DCR, its parents, officers, directors, employees, agents, contractors, subcontractors and suppliers with respect to losses arising out of any use of the Trail or Right-of-Way, whether authorized or unauthorized, and/or any upgrade, improvement, repair or maintenance of the Trail by BTO, its officers, employees, agents, contractors, subcontractors and suppliers.

10.2 Insurance coverage shall be placed with an insurance carrier with a minimum AM Best rating of A- VII and shall include but not be limited to:

10.2.1 Statutory Workers' Compensation in the State of Virginia including Employers Liability Limit of not less than \$1,000,000 Each Accident, \$1,000,000 for Occupational Disease, and \$1,000,000 aggregate.

10.2.2 Commercial General Liability Insurance Coverage, including railroad contractual coverage, with a limit of not less than \$1,000,000 Each Occurrence/ \$2,000,000 Aggregate. The railroad contractual coverage may be fulfilled by deleting the exclusion for railroad contractual liability or through endorsement CG 2017. This endorsement or deletion of exclusion will need to be evidenced on any certificate of insurance. The policy shall ensure that this Trail Lease Agreement is a covered contract under the policy and shall provide coverage for property damage or personal injury or death to Trail users related in any way to the negligence, strict liability or other acts of any of the parties hereto.

10.2.3 Commercial Automobile Liability Insurance Coverage with a limit of not less than \$1,000,000 Combined Single Limit (CSL).

10.2.4 Commercial Umbrella or Excess Insurance Coverage with a limit of not less than \$10,000,000 Each Occurrence/\$10,000,000 Aggregate. The umbrella or excess policy should follow form of all underlying coverage and include Commercial General Liability, Commercial Auto Liability and Employers Liability.

10.2.5 The coverage provided by this policy shall be at least as broad in scope as the underlying liability coverage's specified above.

10.2.6 Railroad Protective Liability Insurance in the amount of \$2,000,000 for Each Occurrence and \$6,000,000 in the Aggregate naming CANONIE, DCR and Carload Express, Inc. as named insureds. BTO shall provide CANONIE and DCR with an original of said policy evidencing coverage for the full term of this Agreement.

10.2.7 All Risk Property Insurance including Flood and Earthquake in an amount of \$10,000,000 to provide protection for loss or damage to any, property of CANONIE or DCR, or the property of others in the care, custody or control of BTO, its, officers, employees, agents, contractors, subcontractors and suppliers. Such policy is to include CANONIE and DCR as a Loss Payee as applicable

10.3 All of the above policies, except Workers Compensation, shall name CANONIE, DCR, Carload Express, Inc. (DCR Parent), Accomack-Northampton Transportation District Commission, Accomack County, Northampton County, their officers, directors, employees, and agents as additional insured and shall be endorsed to provide coverage to these additional insured on a primary basis without seeking contribution from any other insurance or self-insurance available to CANONIE, DCR, Carload Express, Inc., Accomack-Northampton Transportation District Commission, Accomack County or Northampton County. In addition, the policy shall contain Severability of Interest Clauses and Waivers of Subrogation in favor of CANONIE, DCR, Carload Express, Inc., Accomack-Northampton Transportation District Commission, Accomack County, Northampton County, its officers, directors, employees, and agents.

10.4 BTO shall furnish to CANONIE and DCR insurance certificates in a form acceptable to CANONIE and DCR, evidencing compliance with the foregoing requirements and stating that the insurers will provide thirty (30) calendar days' advance written notice to CANONIE and DCR of the cancellation or material alteration in any of the required policies of

insurance.

10.5 All coverages are to be written on occurrence-based policy forms with insurers acceptable to CANONIE and DCR. Claims made policy forms are subject to prior review and written approval by CANONIE and DCR.

10.6 BTO shall also require its contractors, suppliers, sub lessees, etc., to carry and furnish evidence of the above coverage's.

10.7 The providing of the above required insurance coverages shall not be deemed a limitation on the liability of BTO as provided in this Agreement, but shall be additional security therefore.

10.8 Failure of BTO to comply with any one of the above described certificate of insurance requirements within thirty (30) calendar days of written notice by CANONIE or DCR to BTO of any such default may result in delay, and/or, at CANONIE's option, termination of this Agreement.

10.9 All insurance required to be carried by BTO shall be with insurance companies subject to CANONIE's and DCR's approval.

10.10 Renewal certificates shall be furnished to CANONIE and DCR not less than thirty (30) calendar days prior to the expiration of the coverage's required by this Section 10. The insurances required hereunder shall be maintained in full force and effect until CANONIE and DCR finally releases in writing BTO from all obligations under the terms of this Agreement.

10.11 Any and all insurance required by this Section 10 shall provide full and complete coverage in accordance with the terms of this Section and regardless of whether or not any party, at any time, is protected by, or not protected by, immunity under any state, federal or local recreational use immunity law (whether statutory or common).

SECTION 11. INDEMNITY AND LIABILITY

11.1 BTO, its successors and any permitted assigns, shall assume all risk and liability for accidents, injuries and damages that may occur to any person or properties on account of or in any way related to the use, existence, upgrade, improvement, maintenance or operation of the Trail, and the BTO does hereby indemnify and hold harmless CANONIE and DCR, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, employees and agents, from any and all costs, liabilities, expenses, suits, judgments or damages to any person or property or claims of any nature whatsoever arising out of or in any way related to the use (authorized or unauthorized), existence, construction, upgrade, improvement, maintenance, or operation of the Trail, or performance by BTO, its agents, servants, employees, officers, directors, contractors, subcontractors or suppliers of any of the obligations or privileges provided under this Agreement.

11.2 BTO, for itself, its successors and any permitted assigns, does agree to indemnify, protect, release, and save harmless CANONIE and DCR, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents and employees from any and all claims, demands, awards and actions made, brought or obtained against CANONIE or DCR, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents or employees, by anyone, including but not limited to claims brought by any and all users of the Trail, whether that use is authorized or unauthorized, any individual engaged in ingress or egress to or from the Trail, any individual who accesses the Rail Line and/or the associated right-of-way, by, through, over or across the Trail, BTO, its agents, servants, directors, officers, contractors, subcontractors, suppliers, employees, for any and all injuries to any person, including death arising there from, and damages to property due to, caused by or growing out of any accident or occurrence which but for this Agreement or

the presence of any Trail user, BTO's employees, agents, servants, contractors, subcontractors, or suppliers pursuant to this Agreement would not have occurred or been incurred, except when such damages and injuries are attributable to the willful misconduct or gross negligence of CANONIE, DCR, its officers, directors, agents, servants, employees, contractors, subcontractors or suppliers. BTO agrees to defend, at its own expense, any suit or action brought against CANONIE, DCR, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents or employees, by reason of any matter referred to herein, and pay any judgment recovered or rendered in any such suit or suits. Notwithstanding anything in this Section 11.2 to the contrary, the foregoing release and waiver shall not apply to damage or injury caused by the willful misconduct or gross negligence of CANONIE or DCR.

11.3 The parties agree and understand that any individual injured, harmed or killed on the Rail Line and associated right-of-way are and were presumptively users of the Trail at the time of their injury or death.

11.4 BTO agrees to protect the property of CANONIE, DCR, their successors, assigns, affiliates, subsidiaries, parent company, officers, directors, agents, servants, employees, contractors, subcontractors, customers and suppliers (including rolling stock as well as stationary facilities) from damage on account of any accident or occurrence which *but for* this Agreement and privileges herein granted would not have occurred or been incurred except as provided above, and to promptly reimburse CANONIE, DCR, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, agents, servants, employees, contractors, subcontractors and suppliers for any and all such loss or damage.

SECTION 12. TERMINATION, DEFAULT

12.1 Unless cancelled at any time upon mutual agreement of BTO, CANONIE and DCR, upon thirty (30) days written notice, or as otherwise provided for herein, this Agreement and the privileges granted hereunder shall be and continue in full force and effect for 25 years from the date of this Agreement, except for BTO's continuing obligations to remove the Trail and restore the Right-of-Way and CANONIE's other property and its other obligations specifically provided in this Agreement.

12.2 This Agreement shall terminate prior to 25 years from the date of this Agreement in the event that for twelve (12) consecutive months BTO shall cease to use the Trail or any replacement of the Trail for the purpose herein stated, at which time the rights granted herein shall cease and terminate absolutely and this Agreement shall be null and void, except for BTO's continuing obligations to remove the Trail and restore the Right-of-Way and CANONIE's other property and its other obligations specifically provided in this Agreement.

12.3 This Agreement may be modified or terminated prior to 25 years from the date of this Agreement by CANONIE and DCR upon six (6) month's advance written notice to BTO in the event that CANONIE or DCR determines that the Leased Premises are needed by DCR for railroad-related purposes.

12.4 Upon termination of this Agreement, BTO shall remove the Trail and all of its property, if any, within the time specified in any notice of termination. In effecting such removal, the premises and property of CANONIE shall be restored by BTO to a condition satisfactory to CANONIE and DCR's Chief Engineer, or his duly authorized representative. If BTO shall fail to make the removal in the manner and time set forth herein, CANONIE or DCR may perform the removal and make said restoration, all at the sole risk, cost and expense of BTO, and may also dispose of any removed items without the necessity to account for the same or to give further notice to BTO.

12.5 If BTO shall fail to make the required removal, CANONIE shall have the further option to elect and notify BTO that all right, title and interest of BTO in any of its property shall be forfeited and shall vest absolutely in CANONIE as of the date of notice of such election.

12.6 In the event of BTO's breach of any covenant, condition, payment or other obligation under this

Agreement, CANONIE, DCR, its successors and assigns, shall provide BTO with written notice of breach and thirty (30) calendar days in which to cure such breach, except that, if the nature of the breach is such that it cannot be reasonably cured within said thirty (30) day period, BTO shall commence cure within said thirty (30) day period and complete said cure as soon as is reasonably possible, subject to legal requirements imposed on the BTO by law. Any breach by the BTO which is not cured within the time provided shall entitle CANONIE and DCR to injunctive relief, specific performance and damages, together with such attorney's fees and costs as CANONIE or DCR may incur as a result of such breach or the enforcement of CANONIE's and DCR's rights pursuant to this Agreement. Any uncured breach of this Agreement by BTO, shall constitute cause for termination of this Agreement by CANONIE, and BTO shall immediately discontinue any upgrades or improvements and/or operation of the Trail upon such termination. CANONIE's exercise of its right to terminate this Agreement shall not excuse BTO from the fulfillment or satisfaction of any obligation under this Agreement which has accrued prior to CANONIE's termination of the Agreement or of any obligations which this Agreement provides shall survive or be performed upon, termination.

12.7 In the event that BTO shall be guilty of any act or omission in violation of its obligations under this Agreement and such violation constitutes an imminent hazard to the health or safety of persons or property, or an imminent hazard to DCR's ability to use the railroad facilities located on the Right-of-Way when it has need therefore, such condition shall be deemed an Emergency Default. In such case, CANONIE or DCR shall notify BTO by telephone using the telephone number listed in Appendix B or to other number as BTO shall designate to CANONIE and DCR in writing from time to time and shall promptly follow up such telephonic notification with written confirmation thereof at the address provided for in Paragraph 27 below; such notifications shall set forth the nature of the Emergency Default and shall demand that BTO proceed to cure said Emergency Default condition immediately, subject to limits imposed on it by law. DCR, at its sole discretion, shall have the right (but not the duty) to bar use of the BTO until the Emergency Default is corrected. If BTO fails or refuses to proceed to immediately cure such Emergency Default condition, CANONIE or DCR shall be entitled to itself proceed to cure such Emergency Default condition and to collect the reasonable costs thereof from BTO or terminate this Agreement immediately.

SECTION 13. ENTRY PERMITS AND ADVANCE NOTIFICATION

13.1 Prior to BTO or any of BTO's officers, directors, agents, affiliates, servants, employees, contractors, subcontractors, and/or suppliers entering the Leased Premises to perform upgrades, improvements, inspections, maintenance or repairs, an Entry Permit must be obtained for each entity. Entry Permits will be issued and renewed on an annual basis and the Entry Permit fee will be waived for BTO and any municipality, agent, agency, contractor, or subcontractor providing upgrades, maintenance, repairs or improvements to the Trail on behalf of BTO. BTO shall contact DCR's Manager of Right-of-Way to initiate the issuance of an Entry Permit and DCR will coordinate such issuance with CANONIE.

13.2 BTO shall notify DCR, in writing, three (3) business days (Monday-Friday) prior to starting any upgrades, improvements, maintenance or repairs to the Trail that will come within 18 feet from the edge of tie of the nearest railroad track. In addition, prior to any vehicle or machinery entering onto the Leased Premises, BTO or any of its agents (including municipalities), contractors or subcontractors, must contact the DCR Manager of Construction by telephone at least twenty-four (24) hours before any work herein provided is to be undertaken or before any vehicles or equipment enter onto the Leased Premises. In the event of an emergency, the 24 hours notification requirement will be waived. However, under no circumstances shall any vehicle or equipment enter onto the Lease Premises without first receiving permission from DCR. Any repeated violations of this provision shall result in the Trail Lease Agreement being immediately terminated with no right of cure.

SECTION 14. ORDINANCES, REGULATIONS, RULES AND APPLICABLE LAWS

14.1 BTO, at BTO's sole cost and expense, shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority, federal, state or local, having jurisdiction over the upgrade or improvement of the Trail and/or BTO's use, maintenance, repair and occupation under this Agreement, including but not limited to zoning, health, safety, building and/or environmental matters.

14.2 BTO shall further defend, indemnify and hold CANONIE and DCR harmless from any violations of such laws, ordinances, rules, regulations and/or requirements, any penalty, levy, fine or assessments there from, and all costs of defense of or compliance with any citation, order or violation notice(s), including but not limited to any such penalties, levies, fines, assessments, compliance or remedial charge(s) arising after termination of this Agreement. For the purposes of this Section 14.2, the term CANONIE and DCR, shall include not only the CANONIE and DCR named herein but also any parent companies, subsidiaries, affiliates, successors, or assigns of CANONIE and DCR, or its or their agents, servants, employees, directors, officers, contractors, subcontractors or suppliers.

14.3 It is BTO's sole duty, responsibility and obligation to determine and obtain any permit, license or other permission required by law in order for BTO to perform its obligations provided in this Agreement including, but not limited to, the upgrades, improvements, maintenance, repair, relocation or replacement of the Trail. BTO shall provide CANONIE and DCR with a copy of any required permits, licenses, or other permission or documentation prescribed by law prior to commencing or engaging in the regulated activity.

SECTION 15. CLAIM OF TITLE

15.1 BTO shall not at any time own or claim any right, title or interest in or to the lands of CANONIE, the Rail Line, the Right-of-Way of CANONIE nor shall the continued existence of this Agreement for any length of time give rise to any right, title or interest in and to the lands, Rail Line or Right-of-Way of CANONIE, or its successors or assigns other than as specifically provided in this Agreement.

SECTION 16. RECORDING

16.1 Upon the request of any party, the other parties shall join in the execution of a memorandum or so-called "short form" of this Agreement for the purpose of the recordation. Said memorandum or short form of this Agreement shall describe the parties, the termination provisions of this Agreement and shall incorporate this Agreement by reference. The party requesting the recording shall pay the recording costs and any legal fees.

SECTION 17. LIMITATIONS, RESERVATIONS AND RESTRICTIONS

17.1 This Agreement is made on an AS IS BASIS without warranties or representations of any nature or kind by CANONIE or DCR, its officers, directors, agents, servants, employees, contractors, subcontractors and suppliers of CANONIE or DCR and subject to all of the limitations, reservations and restrictions upon the title of CANONIE and DCR's right to use the Right-of-Way or other property. CANONIE does not warrant or represent the extent or duration of its interest, if any, in such property.

17.2 Other Agreements: The rights and privileges granted to BTO pursuant to this Agreement are subject to and subordinate to the agreements between CANONIE and DCR.

SECTION 18. INSPECTION

18.1 Notwithstanding any other provision of this Agreement, nothing contained herein shall relieve BTO from its obligation to inspect and at all times maintain in good condition and repair the Trail and facilities located under, along and across the land and Right-of-Way of CANONIE, or impose any obligation upon CANONIE or DCR in respect to such inspection and maintenance.

18.2 CANONIE and DCR shall have no responsibility or liability for any condition of the Trail or for policing the safe and proper use thereof.

SECTION 19. SUCCESSORS AND ASSIGN

19.1 The terms, conditions, covenants and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of CANONIE, DCR and the successors and permitted assigns of BTO, provided, however, BTO may not assign, convey or encumber its rights under this Agreement except as set forth in Section 20 below.

SECTION 20. TRANSFER, ASSIGNMENT OR SUBLICENSE

20.1 BTO shall not voluntarily transfer, encumber or assign this Agreement or any of its rights and privileges herein granted, except with the prior written consent of CANONIE and DCR, which consent may be granted or withheld in the sole discretion of CANONIE and DCR. In the event of any such unauthorized transfer, encumbrance, or assignment of this Agreement, or any of the rights and privileges of BTO hereunder, this Trail Lease Agreement will immediately terminate by giving BTO or any transferee or assignee written notice of such termination.

20.2 BTO shall not conduct, promote, or permit any races or competitive events within the Trail Lease Premises without the prior written authorization of CANONIE and DCR.

SECTION 21. TRACKS

21.1 It is understood and agreed that the permission herein granted to BTO does not include the right to move heavy equipment or vehicles over any unprotected tracks or within the dynamic envelop of any unprotected track of CANONIE and DCR.

21.2 It is understood and agreed that the permission herein granted to BTO does not include the right of any person or individual to enter onto the Rail Line or into the dynamic envelope of any unprotected track of CANONIE and DCR.

21.2 If, during any upgrades, improvements, maintenance or relocation, in the judgment of the Chief Engineer of DCR, or his designated representative, it shall be necessary to protect the property of CANONIE or DCR, or property in its care and custody by use of flagmen, or other protective measures which are required because of the Trail or BTO's operations, it is understood and agreed that BTO shall promptly reimburse DCR for the entire cost and expense thereof if DCR undertakes to provide or obtain such services.

SECTION 22. ENTIRE AGREEMENT

22.1 This Agreement and the Exhibits, Appendices, and Riders, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between CANONIE, DCR and BTO concerning the subject matter of this Agreement and there are no other covenants, promises, agreements, conditions or understandings, either oral or written between the parties hereto.

22.2 Except as herein otherwise specifically provided, no alteration, amendment, change or addition to this Agreement shall be binding upon CANONIE, DCR or BTO unless reduced to writing and signed by all parties.

SECTION 23. GOVERNMENTAL APPROVAL

23.1 To the extent required by law, this Agreement shall be subject to the approval, if necessary, of any State or Federal Commerce Commission, Board of Public Utility Commissioners, Public Service Commission, United States Surface Transportation Board, or any other such Federal, State or local governmental body as may have jurisdiction.

SECTION 24. INTERPRETATION

24.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia, and all terms of this Agreement shall be interpreted in accordance therewith.

SECTION 25. PARTIAL INVALIDITY

25.1 The invalidity, unenforceability or unconstitutionality of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid, unconstitutional or unenforceable provision or provisions were limited in scope and effect to the extent necessary to render such provision or provisions valid, enforceable and constitutional, and if such a limiting construction is not possible, such provision or provisions shall be omitted.

SECTION 26. NON-WAIVER OF COVENANTS

26.1 The failure of any party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a waiver of such provisions in the future nor in any way affect the validity of this Agreement, or any part thereof, nor the right of any party thereafter to enforce each and every such provision.

SECTION 28. RELATIONSHIP OF THE PARTIES

28.1 The relationship of the parties is that of independent entities and in no way establishes a partnership, agency or joint venture relationship.

SECTION 29. SURVIVAL OF COVENANTS

29.1 Notwithstanding any other provision of this Agreement, the rights and obligations of the parties expressed in this Agreement, including but not limited to, any provisions concerning indemnity and liability, shall remain in effect for any legal proceeding brought against CANONIE, DCR, or its agents, servants, employees, directors, officers, parent company, successors or assigns, which was commenced after the termination of this Agreement, for whatever reason, but was caused by, alleged to be caused by, or grew out of any accident or occurrence which but for this Agreement, the BTO or the presence of BTO's officers, agents, employees, servants, contractors, subcontractors or suppliers pursuant to this Agreement, would not have occurred or been incurred, even when such proceeding is attributable to the sole or concurrent fault, failure or negligence of CANONIE, DCR, its officers, agents, employees, servants, contractors, subcontractors or suppliers.

IN WITNESS WHEREOF, the parties have mutually executed this Agreement, induplicate, as of the day and year first above written.

BTO, a _____ [Non-Profit] Corporation

By: _____

Printed Name: _____

Title: _____

Delmarva Central Railroad Company, a Delaware Corporation

By: _____

Printed Name: _____

Title: _____

Canonie Atlantic Corporation, a Virginia Corporation

By: _____

Printed Name: _____

Title: _____

APPENDIX A

RAIL LINE MAP

APPENDIX B

LISTING OF CONTACTS AND TELEPHONE NUMBERS