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LEASE AGREEMENT BY AND BETWEEN
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY AND
BOROUGH OF WEST CHESTER RELATING TO PART OF THE
WEST CHESTER BRANCH RAILROAD RIGHT-OF-WAY

SEPTA REGISTRY NO. 4649

THIS LEASE AGREEMENT ("Lease") is made and entered into on this 18th day of June, 2008, by and between Southeastern Pennsylvania Transportation Authority ("SEPTA" or "Lessor"), a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, with its headquarters located at 10th Floor, 1234 Market Street, Philadelphia, Pennsylvania 19107-3780, and Borough of West Chester ("Borough" or "Lessee"), a municipality created under the laws of the Commonwealth of Pennsylvania with its principal office located at 401 East Gay Street, West Chester, Pennsylvania 19380.

BACKGROUND

WHEREAS, SEPTA is the owner of a railroad right-of-way known as the West Chester Branch; and

WHEREAS, pursuant to a resolution that the Board of SEPTA adopted on June 17, 1996, SEPTA entered into a lease agreement ("First Lease") with Borough on December 31, 1996 (and made effective July 1, 1996), whereby SEPTA granted to Borough a lease of that part of the railroad right-of-way of the West Chester Branch that is located between West Chester and Glen Mills for the operation of a tourist railroad, subject to SEPTA's reservation of certain rights; and

WHEREAS, the First Lease was for an initial term of ten years that commenced on July 1, 1996, with options for successive one-year renewal terms to be exercised at the direction of Borough subject to SEPTA's consent; and

WHEREAS, Borough subleased, with SEPTA's approval, the First Lease to Four States Railway Service, Inc. ("4 States Railway"); and

WHEREAS, on December 1, 2004 SEPTA and Borough entered into a First Amendment ("First Amendment") to the First Lease whereby SEPTA granted to Borough (and consequently its sublessee) the additional right to operate on the West Chester Branch railroad right-of-way that is located between Glen Mills and Lenni (but not in passenger or revenue service) and also to occupy part of the Lenni Training Facility; and

WHEREAS, the Parties now desire to terminate the First Lease and enter into a

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new long-term lease for Borough's continued right to (i) operate a tourist railroad on the railroad right-of-way between West Chester and Glen Mills; (ii) operate upon the railroad right-of-way between Glen Mills and Lenni but not in passenger or revenue service; and (iii) occupy part of the Lenni Training Facility.

NOW, THEREFORE, for full and valuable consideration, the receipt of which is hereby acknowledged, SEPTA and Borough, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS, BASIC TERMS AND ATTACHMENTS

Section 1.1. Incorporation Of Recitals.

The recitals above are incorporated herein as if set forth in full.

Section 1.2. Certain Defined Terms.

For purposes of the Lease the terms set forth in this section, wherever capitalized in the Lease, shall have the indicated meanings. When used in the Lease the singular shall apply to the plural, the plural to the singular and the use of any gender shall apply to all genders.

a. "Initial Term" of the Lease shall be 15 years and will commence on July 1, 2008 ("Commencement Date"). Borough, subject to the provisions of § 3.4 hereof, has the right to exercise up to five consecutive one-year optional terms beginning at the end of the Initial Term (each one-year option is an "Optional Term").

b. "Party" means either SEPTA or Borough.

c. "Passenger Operator" means any sublessee of Borough that will operate a tourist railroad on the Premises under the terms of the Lease.

d. "Permitted Use" means (i) the operation of a tourist railroad in passenger or revenue service on the West Chester-Glen Mills Subdivision and in non-passenger or non-revenue service on the Glen Mills-Lenni Subdivision and (ii) the occupation of part of the Lenni Training Facility and no other use.

e. "Premises" means that which SEPTA leases to Borough under the Lease and are fully described in § 2.1 hereof.

f. "PUC" means the Public Utility Commission of the Commonwealth of Pennsylvania.

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g. "Rental" (whether for the Initial Term or an Optional Term) is a one-time payment of \$1.00.

Section 1.3. Attachments.

The documents identified below are attached to the Lease and the documents are deemed to be a part hereof:

Attachment 1: United States Railway Association Valuation Map Nos. V-11.2/1 through V-11.2/11 (revised to December 31, 1962).

Attachment 2: The Lenni Training Facility.

ARTICLE II DEMISE OF PREMISES

Section 2.1. Demise Of Premises.

SEPTA hereby leases to Borough and Borough hereby lease from SEPTA the Premises for the permitted use. The Premises are:

a. The railroad right-of-way that is situated between West Chester, Chester County, at Station 1386+06, Mile Post 27.4, as shown on U.S. Railway Association Valuation Map No. V-11.2/11, and a point near Glen Mills Station at Mile Post 20.19, as shown on United States Railway Association Valuation Map No. V-11.2/3, near Glen Mills, Delaware County, Pennsylvania ("West Chester-Glen Mills Subdivision"); and

b. The railroad right-of-way that is situated between Glen Mills Station at Mile Post 20.19, as shown on United States Railway Association Valuation Map No. V-11.2/3, and a point near the former Lenni Station at Mile Post 17.53, as shown on United States Railway Association Valuation Map No. V-11.2/1 ("Glen Mills-Lenni Subdivision"); and

c. The part of the Lenni Training Facility that is shown on Attachment 2 as being enclosed within bold lines and the right to access the Lenni Training Facility from Lenni Road over the driveway located on SEPTA's property. Borough, subject to the terms and conditions of the Lease, may move locomotives and rail cars between Glen Mills and Lenni Training Facility so long as such movements are not in passenger service and not in revenue service.

ARTICLE III TERM

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Section 3.1. Commencement Date.

The Commencement Date is set forth above.

Section 3.2. Termination.

The Lease shall terminate on the last day of the Initial Term or on the last day of any Optional Term that Borough may exercise in accordance with § 3.4 without the necessity of any notice from either SEPTA or Borough to terminate, and Borough hereby waives notice to vacate or quit the Premises and agrees that SEPTA shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of the Premises from Borough holding over to the same extent as if statutory notice had been given. If Borough fails to surrender the Premises at the end of the Initial Term or any Optional Term, Borough will be liable to SEPTA for any and all damages that SEPTA shall suffer by reason thereof and Borough will indemnify SEPTA against all claims and demands made by any succeeding lessees against SEPTA, founded upon delay by SEPTA in delivering possession of the Premises to such succeeding lessee.

Borough may terminate the Lease in the event that (i) it fails to obtain a Passenger Operator or (ii) the Passenger Operator ceases to operate on the Premises and no substitution therefor is made within one year of the cessation or (iii) the Passenger Operator is not acceptable to SEPTA.

Notwithstanding any other provision in the Lease to the contrary, Borough shall have the right to terminate the Lease by giving written notice to SEPTA at least 30 days prior to the proposed termination date, without any further liability or cost being incurred by Borough from the date of said notice, except liability or costs that Borough has incurred under the Lease and those liabilities that survive the expiration of the Lease.

Section 3.3. Holding Over.

If Borough is in possession of the Premises after the expiration of the Initial Term or any Optional Term, in the absence of any agreement extending the term, the tenancy under the Lease shall become on a month-to-month basis, terminable by either party on 30 days' prior written notice and shall be subject to all of the terms and conditions of the Lease as though the term had been extended from month-to-month.

Section 3.4. Option To Extend Term.

Provided Borough is not at the time of the exercise of its rights under this provision in default under any provision of the Lease, nor has committed any act or failure to act which, but for the passage of time or the giving of notice would constitute a default under the Lease, Borough shall have, and is hereby granted, the right to exercise

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an Optional Term as set forth in § 1.2.a. hereof. In order to exercise an Optional Term, Borough must send written notice to SEPTA at least 90 days, but no more than 270 days, prior to the end of the Initial Term or Optional Term. Said notice is the sole responsibility of Borough. Should Additional Rental have been in arrears at anytime during the Initial Term or Optional Term, SEPTA may, at its sole option, cancel the options for extensions.

ARTICLE IV USE, SUBLEASE AND ASSIGNMENT

Section 4.1. Use.

Borough will occupy the Premises only for the Permitted Use and for no other purpose unless SEPTA approves in writing another use.

Borough may not occupy any area outside the Premises that SEPTA owns and/or controls unless SEPTA approves such occupation in writing.

Section 4.2. Sublease.

Borough shall have the right, subject to SEPTA's prior written approval, to sublease the Lease to Borough's selected Passenger Operator, subject to the terms and conditions of the Lease, for the purpose of operating a tourist railroad. SEPTA specifically retains a superior right to operate and maintain the existing electric traction structure and system. Nothing within the Lease is intended to convey to Borough any rights in or to the electrical facilities. Borough may not operate its railroad in a manner that conflicts with the railroad traffic of SEPTA and other railroads to whom SEPTA gives permission to operate on the West Chester Branch.

ARTICLE V ADDITIONAL RENTAL

Section 5.1. Additional Rental.

Borough covenants and agrees to pay to SEPTA all additional sums, charges or amounts of whatever nature that Borough must pay to SEPTA in accordance with the terms of the Lease ("Additional Rental").

Section 5.2. Taxes And Assessments.

a. Borough shall pay in each Tax Year during the Initial Term or Optional Term as Additional Rental its proportionate share of all amounts payable by SEPTA with respect to real estate taxes, ad valorem taxes and assessments, general and special, taxes

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on real estate rental receipts, taxes on SEPTA's gross receipts, or any other tax imposed upon or levied against real estate, or upon owners of real estate as such rather than persons generally, extraordinary as well as ordinary, foreseeable and unforeseeable, including taxes imposed on leasehold improvements that are assessed against SEPTA, payable with respect to or allocable to the common area, including all land, and improvements situated thereon, together with the reasonable cost (including fees of attorneys, consultants and appraisers) of any negotiation, contest or appeal pursued by SEPTA in an effort to reduce any such tax, assessment or charge and all of SEPTA's reasonable administrative costs in relation to the foregoing, all of the above being collectively referred to herein as "Taxes". For the Tax Year in which the Initial Term or Optional Term commences or terminates, the provisions of this section shall apply, but Borough's liability for its proportionate share of any Taxes for such year shall be subject to a pro rata adjustment based upon the number of days of such Tax Year falling within the Initial Term or Optional Term.

b. The term "Tax Year" means each 12-month period (deemed, for the purpose of this article, to have 365 days) established as the real estate tax year by the taxing authorities having lawful jurisdiction over the Premises.

c. In addition to Borough's proportionate share of Taxes, Borough shall pay to the appropriate agency any sales, excise, use and occupancy and other taxes levied, imposed or assessed by the state in which the Premises are located or any political subdivision thereof or other taxing authority upon any Rental payable hereunder or based upon the use, occupancy or leasing of the Premises. Borough shall also pay, prior to the time the same shall become delinquent or payable with penalty, all taxes imposed on its inventory, furniture, trade fixtures, apparatus, equipment, leasehold improvements installed by Borough or by SEPTA on behalf of Borough (except to the extent such leasehold improvements shall be covered by Taxes), and any other property of Borough. SEPTA may require that Borough's leasehold improvements be separately assessed by the taxing authority.

ARTICLE VI IMPROVEMENTS

Section 6.1. Borough's Acceptance As-Is.

Borough accepts the Premises "as is". SEPTA makes no representation or warranty as to the physical condition of the Premises including, but not limited to, the condition of the railroad bridges, highway bridges over the railroad right-of-way, tracks, ties, ballast, signal system, and grade crossing protection devices and any other railroad items, the Lenni Training Facility or of any adjacent properties, including, but not limited to, the condition of any buildings or other structures that are adjacent to or on the railroad

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right-of-way.

Section 6.2. Mechanic's Liens.

No work performed by Borough pursuant to the Lease, whether in the nature of erection, construction, alteration, renovation or repair, shall be deemed to be for the immediate use and benefit of SEPTA. To the maximum extent that the law permits, no mechanic's or other lien shall be allowed against SEPTA or the estate of SEPTA or by reason of any consent given by SEPTA to Borough to improve the Premises. Borough shall require its contractors to post bonds that guarantee payment for all labor and material provided by subcontractors. Borough shall place such contractual provisions as SEPTA may require in all contracts and subcontracts for Borough's improvements assuring SEPTA that, to the maximum extent that the law permits, no mechanic's liens will be asserted against SEPTA's interest in the Premises or the property of which the Premises are a part.

Borough shall pay promptly all persons furnishing labor or materials with respect to any work performed by Borough or its contractors on or about the Premises. If any mechanic's or other liens shall at any time be filed against the Premises or the property of which the Premises are a part by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to Borough and regardless of whether any such lien is asserted against the interest of SEPTA or Borough, Borough shall forthwith cause the same to be discharged of record or bonded to the satisfaction of SEPTA. If Borough shall fail to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of SEPTA, SEPTA may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by SEPTA, including reasonable attorneys' fees incurred by SEPTA either in defending against such lien or in procuring the bonding or discharge of such lien, together with interest thereon at the Default Rate, shall be due and payable by Borough to SEPTA as Additional Rental.

ARTICLE VII RAILROAD OPERATIONS

Section 7.1. Operations By Borough.

Borough will:

a. in the operation of passenger trains and maintenance of the right-of-way comply with all federal, state and local requirements and be responsible for obtaining all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisite to the rendering of such service.

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b. maintain and operate the Premises, including the buildings and railroad facilities (but not electric power facilities), in good operating condition and repair in a manner consistent with sound and accepted engineering principles; maintain the railroad track to a minimum of Class 1 Federal Railroad Administration Track Safety Standards for passenger service.

c. repair or replace any rails, ties and other items of track, signs, signals, traffic protection devices, railroad bridges and at-grade crossings as may be necessary to keep the Premises in good operating condition. In the event of any such replacement the new property shall become the property of SEPTA. The removed property shall become the property of Borough only if Borough paid for the replacement regardless of whether such removed property is sold or retained by Borough as materials and supplies.

d. operate its tourist railroad service so as not to interfere with the existing energized electric traction power catenary and support structures located above and adjacent to the existing railroad track.

e. not occupy the Premises in any way or for any purpose other than as herein provided; nor assign, mortgage, pledge, encumber or lease the Premises, or any part thereof without the prior written consent of SEPTA, which consent may be withheld by SEPTA for any reasons within its sole discretion.

f. at no cost to SEPTA, maintain and operate the part of the Lenni Training Facility that is included in the Premises in good condition and repair in a manner consistent with sound and accepted building maintenance practices. Borough may use the part of the Lenni Training Facility that is included in the Premises only to store, repair and maintain locomotives, railcars, and maintenance equipment.

Section 7.2. Bridge Inspections.

Borough shall continue its program by which it inspects and evaluates all railroad and highway bridges on, over and under the Premises. Borough must give SEPTA copies of the reports on bridge inspections.

Section 7.3. Annual Reports.

Borough shall issue to SEPTA no later than June 30th of each year a written report on the physical condition of the Premises for the prior calendar year and recommendations as to what improvements Borough deems necessary to maintain the Premises.

Section 7.4. Obligations Imposed By PUC.

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In any PUC proceedings Borough will not request that SEPTA be made liable for any bridges or at-grade crossings along the Premises during the term of the Lease.

Section 7.5. Hazardous Substances.

Borough, for itself and its Passenger Operator, contractors, agents, employees, subcontractors and invitees (and for purposes of this section collectively referred to as "Borough") shall not use or allow the Premises to be used for the Release, storage, use, treatment, disposal or other handling of any Hazardous Substance without the prior consent of SEPTA. The word "Release" has the same meaning as is ascribed to it in the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended ("CERCLA"). The term "Hazardous Substance" ("Hazardous Substances" in the plural) means (i) any substance defined as a "hazardous substance" under CERCLA, (ii) petroleum, petroleum products, natural gas, liquefied natural gas, and synthetic gas, and (iii) any other substance or material deemed to be hazardous, dangerous, toxic, or a pollutant under any federal, state or local law, code, ordinance or regulation.

Borough shall: (a) give prior notice to SEPTA of any activity or operation to be conducted by Borough at the Premises that involves the Release, use, handling, generation, treatment, storage, or disposal of any Hazardous Substance ("Borough's Hazardous Substance Activity"), (b) comply with all federal, state, and local laws, codes, ordinances, regulations, permits and licensing conditions governing the Release, discharge, emission, or disposal of any Hazardous Substance and prescribing methods for or other limitations on storing, handling, or otherwise managing any Hazardous Substance, (c) at its own expense promptly contain and remediate any Release of a Hazardous Substance arising from or related to Borough's Hazardous Substance Activity in or near the Premises or the environment and remediate and pay for any resultant damage to property, persons, and/or the environment, (d) give prompt notice to SEPTA and all appropriate regulatory authorities of any Release of any Hazardous Substance in or near the Premises or the environment arising from or related to Borough's Hazardous Substance Activity, which Release is not made pursuant to and in conformance with the terms of any permit or license duly issued by appropriate governmental authorities, any such notice to include a description of measures taken or proposed to be taken by Borough to contain and remediate the Release and any resultant damage to property, persons, or the environment, (e) at SEPTA's request, which shall not be more frequent than once per calendar year, retain an independent engineer or other qualified consultant or expert acceptable to SEPTA, to conduct, at Borough's expense, an environmental audit of the Premises and immediate surrounding areas, and the scope of work to be performed by such engineer, consultant or expert shall be approved in advance by SEPTA, and all of the engineer's, consultant's, or expert's work product shall be made available to SEPTA,

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(f) at SEPTA's request from time to time, execute affidavits, representations and the like concerning Borough's best knowledge and belief regarding the presence of any Hazardous Substance in the Premises, (g) reimburse to SEPTA, upon demand, the reasonable cost of any testing for the purpose of ascertaining if there has been any Release of a Hazardous Substance in the Premises, if such testing is required by any governmental agency, (h) upon expiration or termination of the Lease, surrender the Premises to SEPTA free from the presence and contamination of any Hazardous Substance.

ARTICLE VIII RIGHTS RETAINED BY SEPTA

Section 8.1. Ownership Of The Premises.

SEPTA retains full ownership of the Premises during the term of the Lease. The Premises are subject to a retention by SEPTA of a superior right for public transit purposes, including but not limited to commuter rail, trolley, bus and other public transit services, and for parking on the adjacent properties to support such other public transit purposes.

Section 8.2. Occupations.

a. SEPTA, its successors and assigns, reserves the perpetual, irrevocable, exclusive right and authority at all times to grant easements, licenses, rights, or privileges in, on, over, under, above, across or through the Premises for antennas, electrical wires, pipes, conduits, fiber-optic lines and other communication lines or facilities across or as longitudinal occupancies along the Premises to such persons, corporations, partnerships, and entities ("SEPTA Occupiers") as SEPTA and its successors and assigns may elect so long as such easements, licenses, rights or privileges do not interfere with the Permitted Use. SEPTA further reserves the right to receive any rent, fees or other compensation payable on account of such present and future occupancies. SEPTA must give Borough 30 days' notice before the commencement of work by which a person, corporation, partnership, or entity installs, repairs, or maintains an antenna, electrical wire, pipe, conduit, fiber-optic line or other communication line or facility. Borough shall not assess any fees, charges, or costs upon any person, corporation, partnership or entity for installing, repairing, maintaining, or occupying the Premises or upon any person, corporation, partnership or entity currently occupying or who may in the future occupy the Premises under an agreement with SEPTA.

b. The term "longitudinal occupancy" means an occupancy in the direction of length, running lengthwise, as distinguished from traverse or across.

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c. Borough shall allow SEPTA and SEPTA Occupiers to gain access to the Premises upon notice to Borough so that SEPTA and SEPTA Occupiers can inspect and/or maintain any facilities SEPTA and SEPTA Occupiers have on, above, or under the Premises.

Section 8.3. Electric Traction System.

SEPTA will retain full rights to enter onto the Premises to operate any trains, including a wire train, to perform any repairs required to repair the electric traction system. Nothing contained herein requires SEPTA to perform any maintenance to SEPTA's electric traction system.

ARTICLE IX RECAPTURE

Section 9.1.

SEPTA reserves the right to recapture part or all of the Premises at any time during the Lease if SEPTA needs the Premises or any part thereof for any public transit purpose by giving notice to Borough ("Recapture Notice") not less than 180 days prior to the date SEPTA desires to retake possession of part or all of the Premises ("Recapture Date").

Borough acknowledges that during the Initial Term SEPTA may recapture, at a minimum, the Lenni Training Facility as part of the project by which SEPTA will restore commuter rail service between Elwyn and Wawa, Delaware County.

ARTICLE X RELEASE, INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION

Section 10.1. Release.

Borough, intending to be legally bound, agrees that SEPTA and its respective agents, employees, officers, board members, directors, contractors, subcontractors, consultants, servants, subsidizers, licensees and invitees, and successors and assigns (collectively "SEPTA Indemnitees") shall not be liable to Borough, and Borough hereby releases SEPTA Indemnitees from any liability for any bodily injury, sickness, disease or death, loss of income, destruction of, damage to, or loss of property, or loss of use of any property (whether known or unknown, accrued or unaccrued, or suspected or unsuspected) in or about the Premises from any cause whatsoever unless such damage, loss or injury results solely from the negligence of SEPTA Indemnitees or any one of them. SEPTA Indemnitees, however, shall not be liable to Borough for any such damage, loss or injury, whether or not such damage, loss or injury results from such

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negligence, to the extent Borough is compensated therefor by Borough's insurance. The release contained herein shall apply, by way of example and not limitation, to any damage, loss or injury resulting directly or indirectly from any existing or future condition, matter or thing in or on the Premises, and shall apply equally whether any such damage, loss or injury results from the act or omission of the Passenger Operator on the Premises, or persons occupying space adjoining the Premises, or any other persons, and whether such damage is caused by or resulting from any thing or circumstance, whether of a like or wholly different nature. To the maximum extent permitted by law, Borough agrees to use and occupy the Premises at Borough's own risk.

Section 10.2. Indemnification.

To the fullest extent permitted by law, Borough shall and does hereby fully defend, indemnify and hold harmless SEPTA Indemnitees from and against any and all claims, demands, actions, suits, losses, damages, liabilities, consequential damages, expenses (including, but not limited to, the fees and costs of attorneys and other professionals), judgments, penalties, settlement payments, and/or fines by reason of or in connection with any of the following which may occur during the term of the Lease, during any period of time prior to the Commencement Date when Borough may have been given access to or possession of all or any portion of the Premises or after termination of the Lease:

- a. any occupancy or use by Borough of the Premises or the performance or the breach of the Lease; occasioned wholly or in part by any act or omission of Borough, its agents, sublessees, licensees, officers, contractors, subcontractors, employees, concessionaires or invitees;
- b. any work or act done in, on or about the Premises at the direction of or caused by Borough, its agents, sublessees, contractors, subcontractors, servants, employees, licensees, concessionaires or invitees;
- c. any negligence or other wrongful act or omission on the part of Borough or any of its agents, contractors, subcontractors, servants, employees, sublessees, licensees, concessionaires or invitees;
- d. any accident, injury or damage to any person or property occurring in, on or about the Premises unless caused by the sole negligence of SEPTA Indemnitees;
- e. any conduct, activity, act, omission, or operation involving, directly or indirectly, wholly or in part, the use, handling, generation, treatment, storage, disposal, other management or release of any Hazardous Substance in, from or to

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the Premises, whether or not Borough may have acted negligently with respect to the Hazardous Substance; or

f. any failure on the part of Borough or any employee, agent, contractor, subcontractor, servant, sublessee, licensee, or concessionaire of Borough to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in the Lease.

The obligation of Borough to defend, indemnify, and hold harmless SEPTA Indemnitees herein shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Borough, its agents or contractors under workers' compensation acts, disability benefits acts or other employee benefits acts, or under any other insurance coverage Borough may obtain.

Borough and its attorney and insurer shall keep SEPTA fully informed of all matters involving, concerning or relating to the defense and indemnification of SEPTA. SEPTA shall have the right to review any and all correspondence, pleadings, or filings prior to any such correspondence, pleading, or filing being submitted. Borough and its attorney and insurer shall take no factual or legal position that is contrary to SEPTA's position or rights including, but not limited to, any rights or immunities bestowed upon SEPTA under the Sovereign Immunity Act, 42 Pa.C.S. § 8501 *et seq.* In the event that Borough or its attorney or insurer fails or refuses to defend and indemnify SEPTA or SEPTA reasonably believes that its rights may be adversely affected or prejudiced, SEPTA may select counsel of its own choice and defend against any such claim at Borough's sole cost and expense.

Borough expressly and irrevocably agrees to forego and expressly and irrevocably waives any protection afforded under § 303(b), as amended, of Pennsylvania's Workers' Compensation Act, 77 P.S. § 481(b), and fully to defend, indemnify and hold harmless SEPTA Indemnitees and to assume unlimited liability for harm or injury suffered by any employee, worker, agent, servant, sublessee, licensee, subcontractor, or concessionaire of Borough or any other person. Except if caused by the sole negligence of SEPTA Indemnitees, Borough hereby expressly and irrevocably releases and agrees to be fully liable for and shall fully indemnify, defend and hold harmless SEPTA Indemnitees from and against any and all claims, demands, actions, suits, losses, costs, damages, fines, penalties, settlement payments, liabilities, or expenses (including, but not limited to, the fees and costs of attorneys and other professionals) relating to, in connection with, arising out of, or resulting from the Lease or Borough's or Passenger Operator's occupation or use of the Premises that are made by any employee, worker, agent, servant, contractor, licensee, or concessionaire of Borough or any employee, agent, worker, or servant of any contractor, concessionaire, licensee, sublessee or agent of Borough, including claims for compensation for benefits payable to any extent by or for Borough, contractor, sublessee,

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licensee, concessionaire or agent under any workers' or similar compensation acts or other employee benefits acts.

Section 10.3. Borough's Insurance.

At all times after the execution of the Lease, Borough will carry and maintain, at its expense:

a. non-deductible, comprehensive general liability insurance policy, including (but not limited to) insurance against assumed or contractual liability under the Lease, with respect to liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto, to afford protection with respect to personal injury, death or property damage of not less than \$2,000,000 per occurrence combined single limit for general liability and not less than \$2,000,000 for automobile liability. SEPTA shall be named as an additional insured on Borough's general liability policy. Such policy shall provide for a primary coverage endorsement with respect to such additional insured coverage over the valid and collectible insurance; and

b. non-deductible, comprehensive general liability insurance endorsed to include railroad liability insurance with a minimum limit of liability of \$5,000,000 per occurrence naming SEPTA as an additional insured, to indemnify, defend and hold harmless SEPTA for any judgments which may be entered against SEPTA as a result of a claim for injuries or property damage incurred on SEPTA's property; and

c. if and to the extent required by law, worker's compensation insurance policy, or similar insurance in form and amounts required by law; and

d. whatever insurance requirements that are imposed by the agency or agencies that regulate Borough's railroad operation on the Premises.

Section 10.4. Borough's Sublessee's and Contractor's Insurance.

Borough shall require any contractor of Borough performing work on the Premises and any sublessee, including the Passenger Operator, to carry and maintain, at no expense to SEPTA, the insurance identified in § 10.3.

Section 10.5. Policy Requirements.

The company or companies writing the insurance that Borough, the Passenger Operator and Borough's contractor are required to carry and maintain or cause to be carried or maintained pursuant to §§ 10.3 and 10.4 hereof, as well as the form of such insurance, shall at all times be subject to SEPTA's approval and any such company or

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companies shall be licensed to do business in the state in which the Premises is located, with a financial rating of at least B+ as rated in the most recent edition of *Best Insurance Reports* and in business for at least the past five years. Comprehensive general liability and all-risks property and casualty insurance policies evidencing such insurance shall, with respect to comprehensive commercial liability policies, name SEPTA, and/or its designee as additional insured and, with respect to all-risks property and casualty insurance policies, name SEPTA and/or its designee as loss payee, shall be primary and noncontributory. SEPTA shall be the named insured with respect to any railroad protective liability policy. SEPTA must remain a loss payee on the fire damage liability endorsement, as required under §§ 10.3 and 10.4. All policies shall also contain a provision by which the insurer agrees that such policy shall not be canceled, materially changed or not renewed without at least 30 days' advance notice to SEPTA, by certified mail, return receipt requested. A copy of each policy including its declaration page shall be deposited with SEPTA by Borough promptly upon commencement of the obligation to procure the same. If Borough shall fail to perform any of its obligations under §§ 10.3 or 10.4 hereof, SEPTA may perform the same and the cost of same shall be deemed Additional Rental and shall be payable upon SEPTA's demand and/or declare an Event of Default.

Section 10.6. Increase In Insurance Limits.

SEPTA reserves the right to require that the insurance limits set forth in §§ 10.3 and 10.4 and elsewhere in the Lease be reasonably increased from time to time.

Section 10.7. Increase In Insurance Premiums Incurred By SEPTA.

Borough will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises that will violate SEPTA's policies of hazard or liability insurance or that will prevent SEPTA from procuring such policies in companies acceptable to SEPTA. If anything done, omitted to be done or suffered by Borough to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or on other property of SEPTA to be increased beyond the minimum rate from time to time applicable to the Premises or to any such property for the use or uses made thereof, Borough will pay, as Additional Rental, the amount of any such increase upon SEPTA's demand.

Section 10.8. Waiver Of Subrogation.

Notwithstanding anything to the contrary elsewhere contained in the Lease, Borough intending to be legally bound, hereby waives any and all rights of recovery, claims, actions or causes of action against SEPTA Indemnitees, and Borough hereby releases SEPTA Indemnitees from any and all liability or responsibility to Borough or to

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anyone claiming by, through or under Borough, by way of subrogation or otherwise, for any loss, injury or damage that may occur to the Premises or any improvements thereto, or to any property of Borough, arising from or out of any claim that (i) would be insured against or under the terms of any property insurance required to be carried under the Lease or (ii) is insured against or under the terms of any property insurance actually carried by Borough, regardless of whether such insurance is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of the claim, including, but not limited to, the negligence, in whole or in part, of SEPTA Indemnitees.

ARTICLE XI DAMAGE AND DESTRUCTION

Section 11.1. Borough's Obligation To Repair And Reconstruct.

If the Premises shall be damaged by fire, the elements, accident, or other casualty (any of such causes being referred to herein as a "Casualty"), but the Premises shall not be thereby rendered wholly or materially untenable, Borough shall promptly cause such damage to be repaired.

Section 11.2. SEPTA's Option To Terminate The Lease.

If the Premises or any part thereof are materially damaged, then SEPTA may elect to terminate the Lease, effective upon 15 days' notice to Borough of such election. If such notice is given, the rights and obligations of the parties shall cease as of the effective date of such notice.

Section 11.3. Insurance Proceeds.

If SEPTA does not elect to terminate the Lease pursuant to § 11.2 hereof, SEPTA shall, subject to the prior rights of any mortgagee, disburse and apply any insurance or self-insurance proceeds received by SEPTA to the restoration and rebuilding of the Premises and Borough shall, at Borough's sole cost and expense, repair and restore the Premises to their condition prior to such Casualty and reopen the Premises for business with the public as soon as possible after such Casualty, but in no event later than 60 days after SEPTA completes any necessary repairs that are required to be made before Borough can make Borough's repairs to the Premises.

ARTICLE XII CONDEMNATION

Section 12.1. Effect Of Taking.

If the whole or any part of the Premises shall be taken under the power of eminent

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domain the Lease at the option of SEPTA shall terminate upon 15 days' notice. If any notice of termination is given pursuant to this section, the Lease and the rights and obligations of the parties hereunder shall cease as of the date of such notice.

Section 12.2. Condemnation Awards.

All compensation awarded for any taking of the Premises or any interest in any of the same shall belong to and be the property of SEPTA, Borough hereby assigning to SEPTA all rights with respect thereto; provided, however, nothing contained herein shall prevent Borough from applying for reimbursement from the condemning authority (if permitted by law) for moving expenses, or the expense of removal of Borough's trade fixtures, or loss of Borough's business good will, but only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by SEPTA.

ARTICLE XIII DEFAULT

Section 13.1. Event Of Default Defined.

Any one or more of the following events shall constitute an "Event of Default":

- a. The sale of Borough's interest in the Premises under attachment, execution or similar legal process, or if Borough is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law or an order for relief is entered against Borough under the Federal Bankruptcy Code and such adjudication or order is not vacated within ten days.
- b. The appointment of a receiver or trustee for the business or property of Borough or any such guarantor, unless such appointment shall be vacated within ten days of its entry.
- c. The failure of Borough to pay any Additional Rental or other sum of money within ten days after SEPTA gives written notice to Borough of said failure unless Borough is reasonably contesting such payment.
- d. Default by Borough in the performance or observance of any covenant or agreement of the Lease (other than a default involving the payment of money), which default is not cured within 30 days after the giving of notice thereof by SEPTA, unless such default is of such nature that it cannot be cured within such 30 day period, in which case no Event of Default shall occur so long as Borough shall commence the curing of the default within such 30 day period and shall thereafter diligently prosecute the curing of same; provided, however, if Borough shall default in the performance of any such

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covenant or agreement of the Lease two or more times in any 12-month period, then notwithstanding that each of such defaults shall have been cured by Borough, any further similar default shall be deemed an Event of Default without the ability for cure.

e. The vacation or abandonment of the Premises by Borough at any time following delivery of possession of the Premises to Borough.

f. The finding that Borough is a distressed municipality or other similar finding or adjudication is made against Borough.

g. The occurrence of any other event described as constituting an Event of Default elsewhere in the Lease, in which case no notice or opportunity to cure shall be required.

Section 13.2. Remedies.

Upon the occurrence and during the continuance of an Event of Default that is not cured within an applicable cure period, SEPTA, without notice to Borough in any instance (except where expressly provided for below or by applicable law), may do any one or more of the following:

a. Perform, on behalf and at the expense of Borough, any obligation of Borough under the Lease that Borough has failed to perform and of which SEPTA shall have given Borough notice, the cost of which performance by SEPTA, together with interest thereon at the Default Rate from the date of such expenditure, shall be deemed Additional Rental and shall be payable by Borough to SEPTA upon demand. Notwithstanding the provisions of this clause (a) and regardless of whether an Event of Default shall have occurred, SEPTA may exercise the remedy described in this clause (b) without any notice to Borough if SEPTA, in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of Borough constitutes an emergency;

b. Elect to terminate the Lease and the tenancy created thereby by giving notice of such election to Borough, and reenter the Premises, without the necessity of legal proceedings, and remove Borough and all other persons and property from the Premises, and may store such property in a public warehouse or elsewhere at the cost of and for the account of Borough without resort to legal process and without SEPTA being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby;
or

c. Exercise any other legal or equitable right or remedy that it may have.

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ARTICLE XIV
NOTICES

Section 14.1. Sending Of Notices.

Notice provided for herein shall be sufficient if personally delivered or if sent by certified mail, postage prepaid, as follows:

If to SEPTA: Director of Real Estate
 Southeastern Pennsylvania
 Transportation Authority
 1234 Market Street, 10th Floor
 Philadelphia, PA 19107-3780

With copy to: General Counsel
 Southeastern Pennsylvania
 Transportation Authority
 1234 Market Street, 5th Floor
 Philadelphia, PA 19107-3780

If to Borough: Borough Manager
 Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

Either party may, at any time, change its address or designated individual for the above purposes by sending a notice to the other in writing, stating such change and new address.

ARTICLE XV
MISCELLANEOUS PROVISIONS

Section 15.1. Inspections And Access By SEPTA.

Borough will permit SEPTA, its employees, agents, and contractors to enter all parts of the Premises at any time to inspect the same and to enforce or carry out any provision of the Lease.

Section 15.2. Recording Prohibited.

Neither the Lease nor a short form or memorandum thereof shall be recorded in the public records.

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Section 15.3. Remedies Cumulative.

No reference to any specific right or remedy shall preclude SEPTA from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by SEPTA to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by SEPTA of any breach by Borough under the Lease or of any breach by any other Borough under any other lease shall affect or alter the Lease in any way whatsoever.

Section 15.4. Successors And Assigns.

The Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon SEPTA, its successors and assigns, and shall be binding upon Borough, its successors and assigns and shall inure to the benefit of Borough and only such assigns and sub-boroughs of Borough to whom the assignment of the Lease or subletting of the Premises by Borough has been consented to by SEPTA as provided in the Lease. Upon any sale or other transfer by SEPTA of its interest in the Premises and in the Lease, and the assumption by SEPTA's transferee of the obligations of SEPTA hereunder, SEPTA shall be relieved of any obligations under the Lease accruing thereafter.

Section 15.5. Compliance With Laws And Regulations.

Borough, at its sole cost and expense, shall comply, and shall cause the Premises to comply with (a) all federal, state, regional, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting any part of the Premises, or the use thereof, including, but not limited to, those that require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances that may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (b) all rules, orders and regulations of the National Fire Protection Association, SEPTA's casualty insurers and other applicable insurance rating organizations or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions that apply to the Premises.

Section 15.6. Captions And Headings.

The captions and headings of articles and sections are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in the

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Lease.

Section 15.7. No Discrimination.

All customers, employees, licensees, and invitees of Borough shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Premises without discrimination because of race, creed, color, sex, age, national origin, ancestry, or handicap. Borough shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin, ancestry, or handicap of such person or group of persons.

Section 15.8. SEPTA Is Not Liable For Loss Or Damage.

a. Borough understands and affirms that SEPTA shall not be liable for any loss of business experienced by Borough due to SEPTA's failure or inability to operate all or any part of its transit system for any reason whatsoever including, but not limited to, work stoppages, discontinuation of some or all of SEPTA's transit and/or railroad operations, strikes, picketing on the Premises, mechanical failures, accidents, catastrophes, riots, etc., and that Borough shall not be entitled to any abatement or reduction of Rental or any other allowance as a result thereof.

b. Borough understands and affirms that SEPTA has no duty to provide security in the Premises or surrounding area. Nothing herein shall render SEPTA responsible for property losses or bodily injury including death to Borough, its employees and invitees, caused by or resulting from criminal acts.

Section 15.9. No Joint Venture.

Any intention to create a joint venture or partnership relation between SEPTA and either Borough or Passenger Operator is hereby expressly disclaimed.

Section 15.10. No Modification.

The Parties intend that this writing be the final expression of their agreement and the complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the Parties having been incorporated herein. No course of prior dealings between the Parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of the Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the Parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of the Lease. No representations, understandings or agreements have been made or relied upon in the making of the Lease

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other than those specifically set forth herein. The Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

Section 15.11. Severability.

If any portion of any term or provision of the Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 15.12. Third Party Beneficiary.

Nothing contained in the Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary except rights contained herein for the benefit of a Mortgagee.

Section 15.13. Governing Law, Forum Selection, And Consent To Jurisdiction.

All matters or claims arising out of, related to, or in connection with the Lease or the relationship between the Parties shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflicts of laws of such state. All matters, disputes, claims, litigation, or proceedings of any nature whatsoever based upon, arising out of, under or in connection with the Lease or the relationship between the Parties shall be solely and exclusively brought, maintained, resolved, and enforced in the state or federal courts that are located in the City of Philadelphia, Pennsylvania, irrespective of any procedural rules or laws related to venue and forum non conveniens, including but not limited to any choices, that Borough may have under any such rules or law. Borough hereby expressly consents to the jurisdiction of the state and federal courts that are located in the City of Philadelphia and hereby expressly and irrevocably waives any objection that Borough may have or hereafter may have (i) to jurisdiction or venue in the state and federal courts that are located in the City of Philadelphia and (ii) to any claim that such court is inconvenient or lacks personal jurisdiction over Borough. Borough represents and acknowledges that the choice of jurisdiction and venue described above is reasonable and has been freely and voluntarily made by Borough. Further, the choice of jurisdiction and venue described above shall be mandatory and not permissive in nature, thereby precluding the possibility by Borough of litigation or trial in any other jurisdiction, court or venue other than specified above, except that any final judgment may be enforced in other jurisdictions in any manner provided by law.

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Section 15.14. Waiver Of Certain Rights.

In the event that SEPTA commences any summary proceeding for non-payment of Rental or possession of the Premises, Borough will not interpose and hereby waives all right to interpose any counterclaim of whatever nature in any such proceeding. Borough further waives any right to remove said summary proceeding to any other court or to consolidate said summary proceeding with any other action, whether brought prior or subsequent to the summary proceeding.

Section 15.15. Survival.

All representations, warranties, covenants, conditions and agreements contained herein that either are expressed as surviving the expiration or termination of the Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of the Lease, including (without limitation) the obligations of Borough pursuant to §§ 8.2, 12.1, 12.2 and 13.1, shall survive the termination or expiration of the Lease.

Section 15.16. Rules And Regulations.

SEPTA reserves the right, from time-to-time, to promulgate, cancel, modify and amend rules and regulations that are applicable to the Premises, and upon receipt of a copy thereof, Borough shall comply with same, and shall cause its servants, employees, agents and officers to comply with same, as if set forth in the Lease in full.

Section 15.17. No Discrimination In Use Of Premises.

a. Borough for itself, its successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated in or on the Premises for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Borough shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49 of the Code of Federal Regulations, Transportation, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

b. Borough for itself, its successors in interest, and assigns as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land (1) that no person on the grounds of race, color or national origin shall be excluded from

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participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, and (3) that Borough shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Transportation, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

Section 15.18. Time Allowance For SEPTA's Approvals.

Whenever under any term of the Lease Borough gives SEPTA a written request that SEPTA approve a proposed act or change in the Lease, SEPTA must make its decision on the request within 45 days of SEPTA's receipt of the request.

Section 15.19. Defense Of Title.

SEPTA as owner of the West Chester Branch remains responsible for the defense of the title of the West Chester Branch, including the Premises. Borough recognizes SEPTA's title and ownership of the West Chester Branch, including the Premises, and will not challenge SEPTA's title thereto or support others in a challenge thereto.

Section 15.20. Immunities Of The Parties.

Nothing in the Lease shall be or be deemed to be a waiver of the immunities, limitations on damages, and defenses that SEPTA and Borough enjoy under 42 Pa. C.S. §§ 8501 - 8564 and any other law.

Section 15.21. Rescission Of First Lease.

The parties agree that the First Lease, as amended, is rescinded and rendered null and void as of the Commencement Date without penalty or damages due to either party.

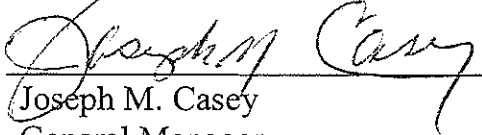
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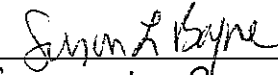
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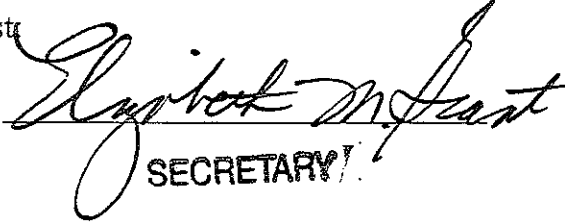
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed the Lease as of the date first above written.

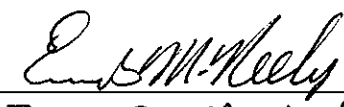
Southeastern Pennsylvania
Transportation Authority, SEPTA

Borough of West Chester, Borough

By: 
Joseph M. Casey
General Manager

By: 
Susan L. Bayne
President of Council
[Print Name and Title]

Attest:
By: 
SECRETARY


Attest:
By: 
Ernie B. McNeely
Borough Manager
[Print Name and Title]

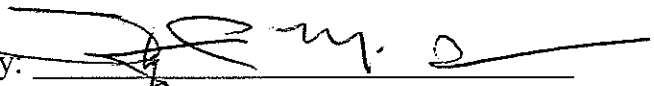
Seal

Seal

Approved as to form:

Approved:

By: 
Office of the General Counsel
of SEPTA
April 25, 2008

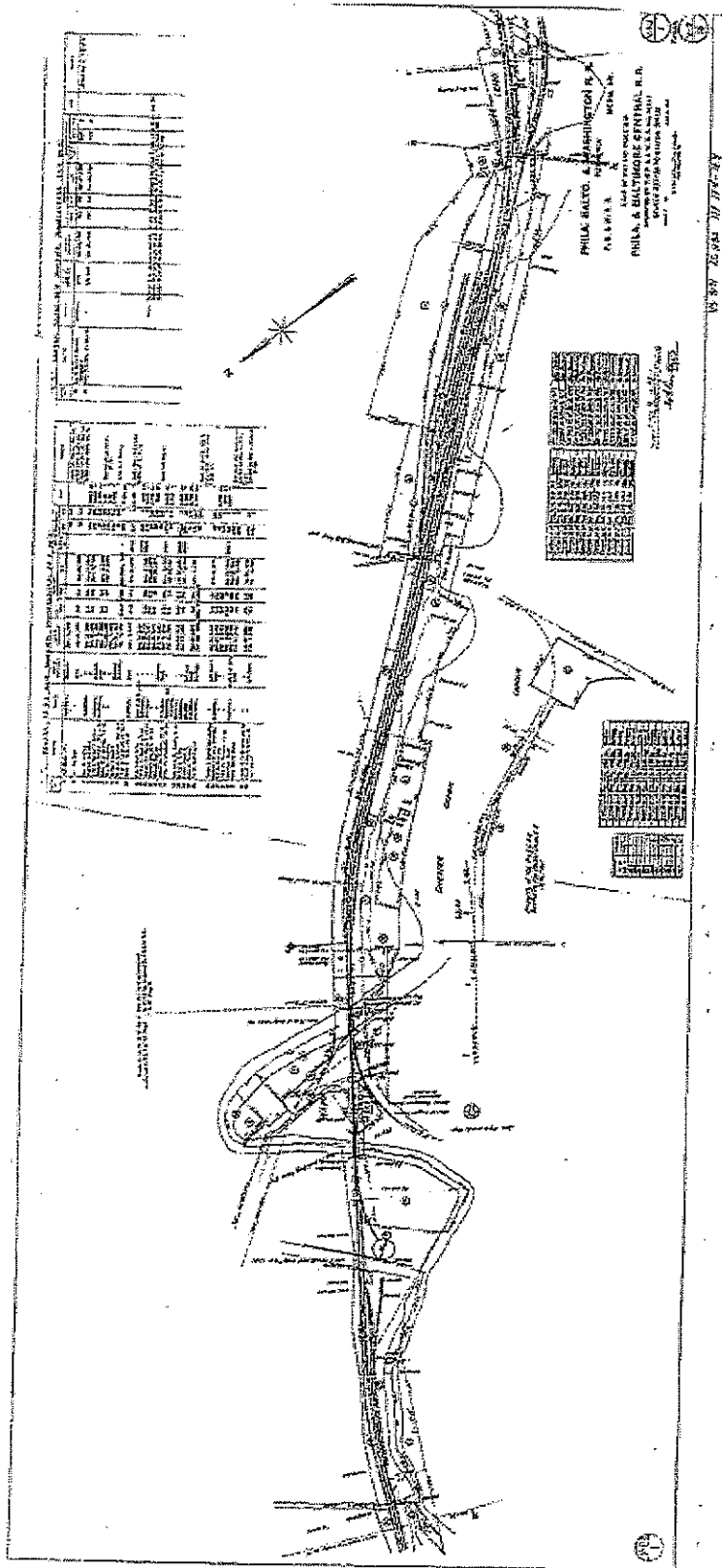
By: 
Solicitor, Borough of West Chester

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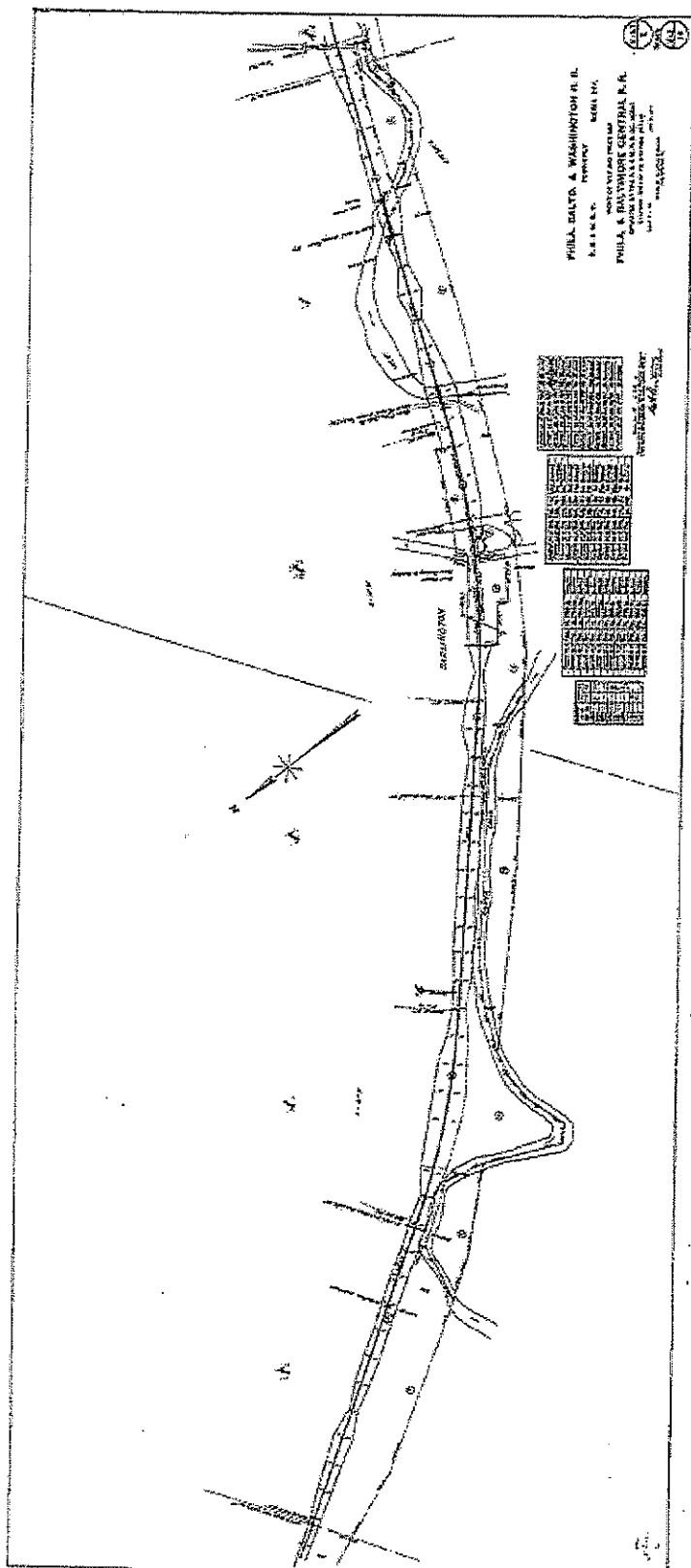
U.S. RAILWAYS ASSOCIATION
VALUATION MAPS OF WEST CHESTER BRANCH

ATTACHMENT 1

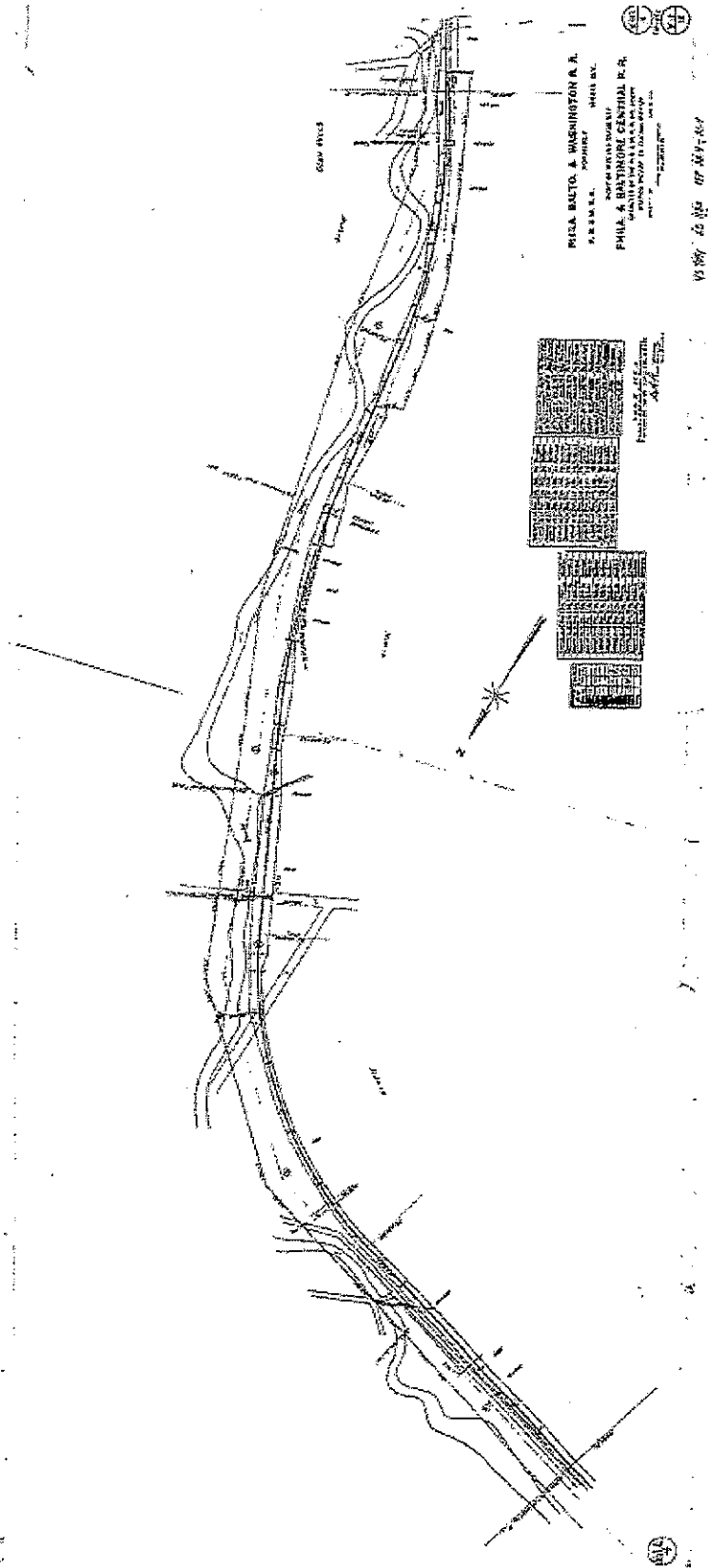
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P. H. B. & WASHINGTON R. R.
P. H. B. & WASHINGTON R. R.
P. H. B. & WASHINGTON R. R.
P. H. B. & WASHINGTON R. R.

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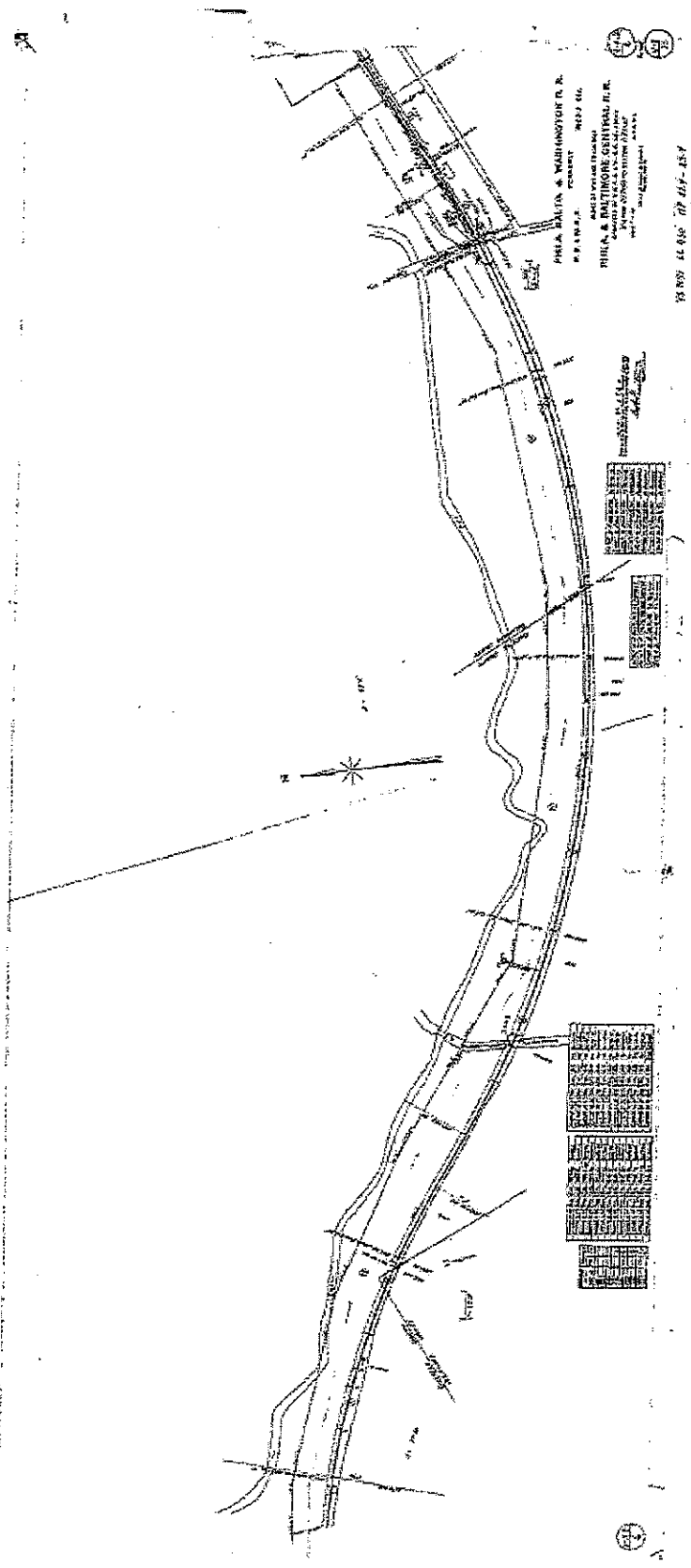
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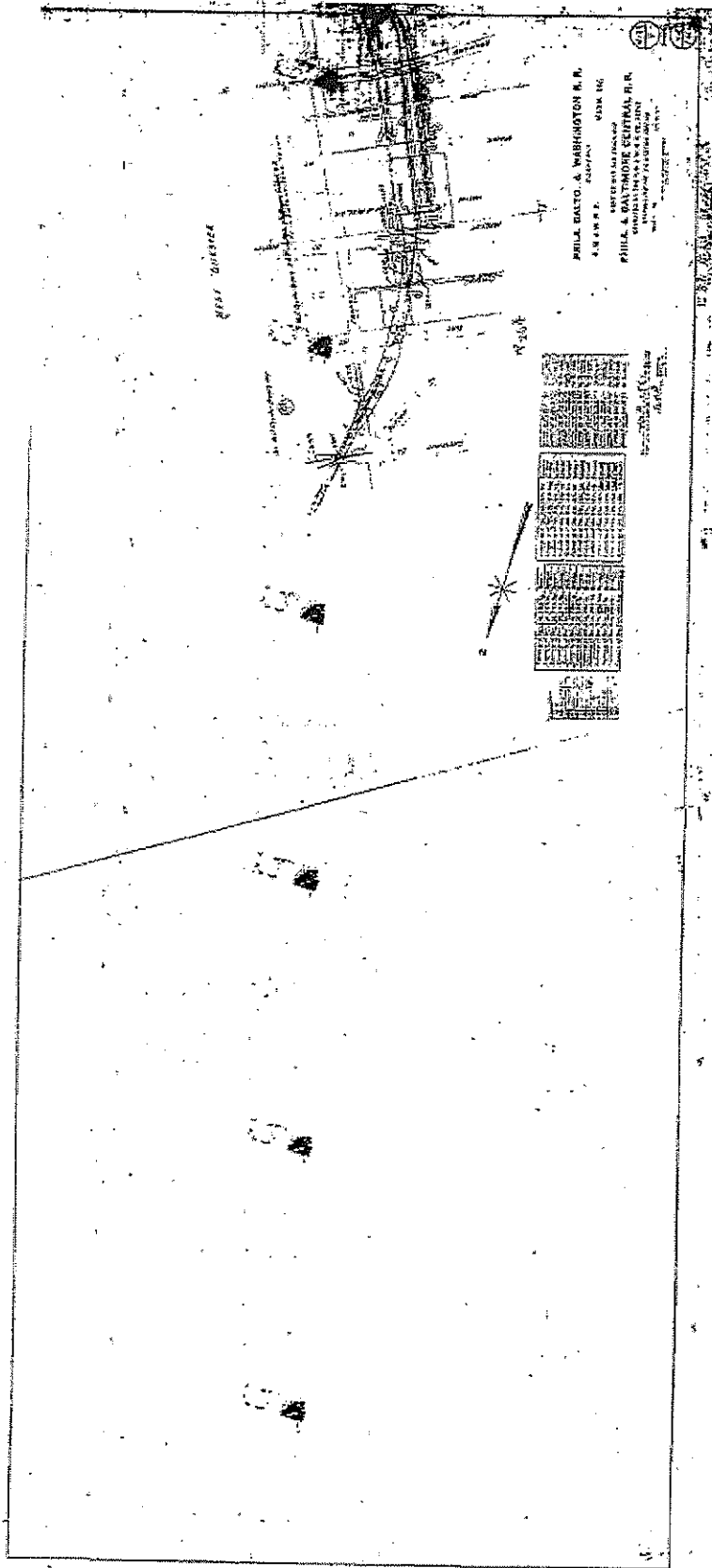
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THE LENNI TRAINING FACILITY

ATTACHMENT 2

