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July 21, 2004

VIA FEDERAL EXPRESS

Office of the Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423



Re: Springfield Terminal Railway Company – Abandonment Exemption – in  
Hampden County, MA, Docket No. AB-355 (Sub-No. 30X)

Dear Surface Transportation Board:

Enclosed for filing in the above-referenced matter please find one (1) original and ten (10) copies of Westover Metropolitan Development Corporation's Notice of Reversionary Interest And Request To Impose Certain Conditions On The Proposed Abandonment Of The Track.

Please do not hesitate to contact me if you have any questions regarding this filing.  
Thank you for your attention to this matter.

Very truly yours,

  
Christopher J. Scott

Enclosures

cc: Katherine E. Potter, Esq.  
(via Federal Express w/encl.)

ENTERED  
Office of Proceedings

JUL 23 2004

Part of  
Public Record

211639

DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD

Docket No. AB-355 (Sub-No. 30X)

Springfield Terminal Railway Company – )  
Abandonment Exemption – in Hampden County, MA )  
)



Westover Metropolitan Development Corporation's Notice of Reversionary Interest And  
Request To Impose Certain Conditions On The Proposed Abandonment Of The Track

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Springfield, MA 01115-5507

Counsel for:  
WESTOVER METROPOLITAN  
DEVELOPMENT CORPORATION

Dated: July 21, 2004

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DEPARTMENT OF TRANSPORTATION  
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Westover Metropolitan Development Corporation's Notice of Reversionary Interest And  
Request To Impose Certain Conditions On The Proposed Abandonment Of The Track

**INTRODUCTION**

In the above-captioned proceeding, the Springfield Terminal Railway Company ("STRC") seeks the authority to abandon and discontinue service over a railroad line known as the Westover Industrial Track (the "Track"), located in Chicopee, Massachusetts. Westover Metropolitan Development Corporation ("WMDC") hereby gives notice to the Surface Transportation Board (the "Board") of its reversionary interest in the Track upon its abandonment. In addition, WMDC hereby requests the Board to impose certain conditions upon any grant of authority to the STRC to abandon the Track. In particular, WMDC requests that the Board condition the STRC's proposed abandonment upon: 1) the restoration of the entire Track to Federal Railroad Administration Class 1 track; and 2) the restoration of every at-grade railroad crossing on the Track (i.e., where the Track traverses any public roadway) to the specifications determined by the Department of Public Works for the City of Chicopee, Massachusetts. The grounds for this Notice and Request are set forth below:

## **DISCUSSION**

### **I. Notice of WMDC's Reversionary Interest in the Track**

The Track was deeded to WMDC from the United States of America on or about December 13, 1982. (See Deed from United States of America to WMDC, attached hereto as Exhibit A). The United States Government had originally acquired the Track, for use by the United States Air Force stationed at Westover Air Force Base, through a land taking in or about 1940. On or about April 27, 1984, WMDC conveyed the Track, by deed, to the STRC. This conveyance was recorded in the Hampden County Registry of Deeds, Book 5607, at page 370 (the "Deed") (attached hereto as Exhibit B).

Significantly, paragraph gg of Schedule B of the Deed provides for

[a]n immediate reverter to [WMDC] if [STRC] shall ever abandon or fail to operate the granted premises as a short line railroad. In the event of such an abandonment or failure to operate, it is agreed that the trackage and related improvements shall be deemed to be fixtures which revert with the fee.

See Exhibit B. Accordingly, if and when the Board grants the authority to the STRC to abandon the Track, by operation of the Deed, the Track (including the trackage and related improvements) immediately reverts to the possession of WMDC. The STRC does not dispute the effect of this provision. (See the STRC's Verified Notice Of Exemption, dated June 22, 2004, at ¶ 3(e)(4)).

Here, WMDC simply wishes to provide notice of its reversionary interest in the Track to the Board, and to any other interested party, in this abandonment proceeding. To the extent that any public use, rail banking/trail use, or environmental conditions or issues are raised as a result of the STRC's proposed abandonment, WMDC's

reversionary interest in the Track may be implicated. WMDC reserves the right to assert its reversionary interest in the Track as necessary throughout this proceeding.

## **II. Request To Impose Certain Conditions On The Proposed Track Abandonment**

In 1984, the WMDC conveyed the Track to the STRC in an operable condition. Since that conveyance, however, the condition of the Track has fallen into complete disrepair. As a result, in the fall of 1999, the STRC imposed an embargo on the Track and since that time no traffic has run on the Track. In addition, the Track crosses several public roadways in Chicopee, Massachusetts. Those portions of the roadways traversed by the Track (i.e. railroad crossings) have also fallen into disrepair. By operation of the reverter provision in the Deed, and as a result of the STRC's failure to repair and maintain the Track, including the at-grade railroad crossings on the Track<sup>1</sup>, WMDC now stands to inherit an inoperable railroad line along with the liability for the hazardous condition of the railroad crossings on the Track.

The STRC's failure to repair and maintain the Track, and the railroad crossings on the Track, amounts to a prima facie case for waste (i.e., an unreasonable and improper use, abuse, mismanagement or omission of duty touching real estate by one rightfully in possession which results in its substantial injury) under Massachusetts common and statutory law. See e.g., Gade v. National Creamery Co., 324 Mass. 515, 517 (1949) (finding, in favor of a landlord, on a claim of waste warranted where there was evidence

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<sup>1</sup> Massachusetts General Law ch. 160, § 103 provides, in relevant part, that "[a] railroad corporation whose railroad is crossed by a public way at the same level shall, at its own expense, so guard or protect its rails by plank, timber or otherwise as to secure a safe and easy passage across its railroad; and if, in the opinion of the county commissioners, any subsequent alteration of the highway or other way or additional safeguards are required at the crossing, they may make a decree ordering the corporation to establish the same as provided in section one hundred."

that a tenant improperly and unreasonably overloaded the floor of the landlord's building causing it to collapse); see also Mass. Gen. Laws ch. 242, §§ 1-9 (establishing action for waste and trespass). Damages recoverable under a claim for waste include the diminution in the value of the property at issue. See Delano v. Smith, 206 Mass. 365, 372 (1910).

Although a claim for waste, either at common law or pursuant to the statute, is inherently a state law cause of action, WMDC is mindful of the broad jurisdiction granted to the Board under the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") (Public Law 104-88, Title I, § 102(a), Dec. 29, 1995, 109 Stat. 823). ICCTA provides, in relevant part, that the Board's jurisdiction over "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive." See 49 U.S.C. § 10501(b). This statute further provides that "[e]xcept as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." Id. Thus, the Board's authority to regulate railroad line abandonments is exclusive and plenary. See Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 320 (1981) ("Kalo Brick").

Under the doctrine of preemption, courts have struck common law and statutory claims against rail carriers subject to the jurisdiction of the Board that have been found to ultimately concern issues of railroad operations. See e.g., Friberg v. Kansas City S. Ry. Co., 267 F.3d 439, 444 (5<sup>th</sup> Cir. 2001) (ICCTA preempts claims of negligence and negligence per se with respect to railroad's alleged road blockages); Guckenberg v.

Wisconsin Cent. Ltd., 178 F. Supp. 2d 954, 958 (E.D. Wis. 2001) (state law nuisance claim with respect to railway traffic is preempted); Pejepscot Indus. Park, Inc. v. Maine Cent. R.R. Co., 297 F. Supp. 2d 326, 333 (D. Me. 2003) (state law claim for exemplary damages is preempted by ICCTA; but common law breach of contract claim allowed to proceed); South Dakota R.R. Auth. v. Burlington N. & Santa Fe Ry. Co., 280 F. Supp. 2d, 919, 934-35 (D. S.D. 2003) (state law claims for punitive damages and tortious interference are preempted by ICCTA). Compare Hayfield Northern R.R. Co., Inc. v. Chicago & North Western Transp. Co., 467 U.S. 622, 632-34 (1984) (state's power of eminent domain over rail line after abandonment has been granted by the Board is not preempted by ICCTA).

In Kalo Brick, the United States Supreme Court held that, in a state court action by a shipper against a rail carrier, the shipper could not assert common law causes of action for damages stemming from the rail carrier's alleged negligent failure to maintain a rail line, when judgments of fact and of reasonableness necessary to the decision in an underlying abandonment proceeding had already been made by the Interstate Commerce Commission [now known as the Surface Transportation Board]. See 450 U.S. at 327. In addressing the question of whether state law actions may be asserted against a regulated carrier when the Board has already approved the carrier's application for abandonment, the Court noted that "we have in the past concluded that the authority of the [Board] to regulate abandonments is exclusive. Id. at 320 (citing Alabama Public Service Comm'n v. Southern R. Co., 341 U.S. 341, 346, n.7 (1951)). The Court also noted that "[t]he [Board's] authority over abandonments is also plenary. So broad is this power that it extends even to approval of abandonment of purely local lines operated by regulated

carriers when, in the [Board's] judgment, 'the over-riding interests of interstate commerce [require] it.'" 450 U.S. at 320 (citing Palmer v. Massachusetts, 308 U.S. 79, 85 (1939)). The Court further noted that "[t]here is no provision in the [ICCTA] for a civil damages action against a carrier for an abandonment that has been approved by the [Board]. The structure of the [ICCTA] thus makes it plain that Congress intended that an aggrieved shipper should seek relief in the first instance from the [Board]." 450 U.S. at 322-23.

The U.S. Supreme Court further reasoned in Kalo Brick that "to permit the [shipper] to use the threat of damages to require a carrier to do exactly what the [Board] is empowered to excuse" would "vitiating the overarching congressional intent of creating 'an efficient nationally integrated railroad system.'" Id. at 325-26. The Court stated that "whether roadbed maintenance was negligent or reasonable and whether petitioner abandoned its line with some tortuous motive – are precisely the sorts of concerns that Congress intended the [Board] to address in weighing abandonment requests from the carriers subject to its regulation. Id. at 326-27. The Court, however, declined to decide "whether a state-court suit is barred when the [Board] is empowered to rule on the underlying issues, because here the [Board] actually addressed the matters respondent wishes to raise in state court." Id. at 237. In relevant part, the Court noted that "[t]he [Board's] order approving the abandonment application found that . . . the abandonment was not willful, that the respondent had no right to insist that a burdensome line be maintained solely for its own use, and that continued operation of the line would be an unnecessary burden on petitioner and on interstate commerce." Id. (internal citations omitted). Therefore, the Court held that, "on the facts of this case, the [ICCTA] . . . pre-

empts [the shipper's] common-law causes of action for damages stemming from a carrier's negligence and tort when the judgments of fact and reasonableness necessary to the decision have already been made by the [Board]." Id.

Accordingly, in this case, WMDC requests relief from the Board in the first instance. Specifically, the WMDC requests that the Board condition the STRC's proposed abandonment upon: 1) the restoration of the entire Track to Federal Railroad Administration Class 1 track; and 2) the restoration of every at-grade railroad crossing on the Track to the specifications determined by the Department of Public Works for the City of Chicopee, Massachusetts. These conditions are warranted in this case because it is not a typical abandonment proceeding. This is not the case of a railroad company seeking to abandon a rail line so that it may later salvage the line for reasons of public convenience and necessity. Here, by operation of the reverter provision in the Deed, upon abandonment, the STRC has no further legal interest in the Track and, therefore, cannot salvage the track. Here, the STRC, with full knowledge of the reverter provision in the Deed, simply allowed the Track and railroad crossings to fall into disrepair. The STRC should not be allowed to use this abandonment proceeding as an escape hatch from its contractual responsibilities. Without the imposition of these conditions, the consequences and liabilities of the STRC's failure to maintain the Track and railroad crossings will unfairly transfer to the WMDC.

Moreover, the Board may impose conditions, such as those requested by WMDC in this case, upon its grant of authority to a railroad company to abandon a rail line. See 49 U.S.C. § 10903(e)(1)(B) (the Board may "approve the application with modifications and require compliance with conditions that the Board finds are required by public

convenience and necessity"); see also e.g., Fox Valley & Western Ltd. – Abandonment Exemption – In Brown and Outgame Counties, WI, 2001 STB LEXIS 199, STB Docket No. AB-402 (Sub-No. 8X), \*9-11 (Mar. 1, 2001) (requiring railroad company to restore roadways at-grade crossing as a condition for grant of abandonment exemption). In this case, the condition requested by the WMDC requiring the restoration of the Track's deteriorated railroad crossings is, at the very least, required by public convenience and necessity. More importantly, it is also required for reasons of public safety.

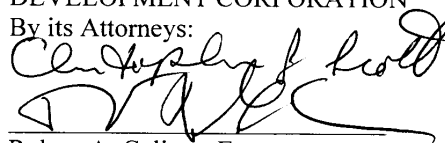
### **CONCLUSION**

For the reasons stated above, WMDC gives notice to the Board of its reversionary interest in the Track and respectfully requests the Board to condition the STRC's proposed abandonment upon: 1) the restoration of the entire Track to Federal Railroad Administration Class 1 track; and 2) the restoration of every at-grade railroad crossing on the Track (i.e., where the Track traverses any public roadway) to the specifications determined by the Department of Public Works for the City of Chicopee, Massachusetts.

Respectfully submitted,

WESTOVER METROPOLITAN  
DEVELOPMENT CORPORATION

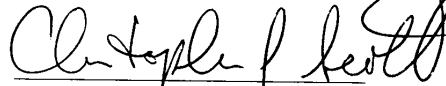
By its Attorneys:



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Certificate of Service

I certify that I have on this 21<sup>st</sup> day of July, 2004, served a copy of the forgoing upon counsel for the Springfield Terminal Railway Company, Katherine E. Potter, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862, via Federal Express.

  
Christopher J. Scott

# EXHIBIT A

13978

KNOW ALL MEN BY THESE PRESENTS: That the UNITED STATES OF AMERICA, acting by and through the ADMINISTRATOR OF GENERAL SERVICES, under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the regulations and orders promulgated thereunder, for and in consideration paid to it in the sum of FIFTY-FIVE THOUSAND DOLLARS (\$55,000),

does hereby grant to WESTOVER METROPOLITAN DEVELOPMENT CORPORATION, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and having an office at Westover Industrial Airpark, Chicopee, Massachusetts

all its right, title and interest in and to the property described in Schedule A, together with all appurtenances and improvements thereto, subject to such conditions as may be set forth in said Schedule A, and Schedule B.

TO HAVE AND TO HOLD the granted premises with all the privileges and appurtenances thereto belonging, to the said grantee(s) and to the heirs or successors and assigns of same, to their own use and behoof forever.

This deed is executed and delivered to the said grantee(s), and to the heirs or successors and assigns of same, without any covenants whatsoever, either express or implied.

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, acting by and through the ADMINISTRATOR OF GENERAL SERVICES, has caused these presents to be executed as a sealed instrument in its name and behalf this 13<sup>th</sup> day of December, 1982.

UNITED STATES OF AMERICA  
Acting By and Through The  
ADMINISTRATOR OF GENERAL SERVICES

By Porter D. Leighton  
Acting Regional Administrator  
General Services Administration  
Region One, Boston, Massachusetts

WITNESSES:

George J. Erdosarian  
Charles F. McNamee

COMMONWEALTH OF MASSACHUSETTS }  
COUNTY OF SUFFOLK } ss.

In Boston, in said County and State, on this 13<sup>th</sup> day of December, 1982 before me personally appeared PORTER D. LEIGHTON, Acting Regional Administrator, General Services Administration, Boston, Massachusetts duly empowered and authorized and delegated by the Administrator of General Services, to me known and known by me to be the party executing the foregoing instrument and acknowledged said instrument by him duly executed, to be the free act and deed of the UNITED STATES OF AMERICA, as his free act and deed individually, and in his capacity as Acting Regional Administrator, General Services Administration, Boston, Massachusetts.

Arthur J. Pitts  
ARTHUR J. PITTS  
Notary Public  
My Commission Expires: May 26, 1989



## SCHEDULE A

A certain parcel of land, together with the improvements located thereon, including track bed and trackage, situated and being in the City of Chicopee, County of Hampden, Commonwealth of Massachusetts, bounded and described as follows:

Beginning at an iron pipe marking the intersection of the southerly line of Montgomery Street (Williamansett) with the easterly right of way line of the Boston and Maine Railroad; and running thence by true bearings:

- (1) Easterly, ten and eight tenths (10.8) feet, along the said southerly line of Montgomery Street, to the easterly right of way line of the spur track; thence:  
Along the said easterly right of way line the following six courses:
  - (2) South twenty-two degrees twenty-seven minutes forty-five seconds west (S. 22° 27' 45" W.), eight hundred seventy and five tenths (870.5) feet, more or less, parallel to and 50 feet from the center line of spur track, crossing Coburn Street (40 feet wide), to a point;
  - (3) South forty-four degrees six minutes east (S. 44° 06' E.), one and nine tenths (1.9) feet, to a point in the westerly line of Orange Street;
  - (4) Southerly, four and two tenths (4.2) feet, along the said westerly line of Orange Street, to a point;
  - (5) South twenty-two degrees twenty-seven minutes forty-five seconds west (S. 22° 27' 45" W.), one hundred nineteen and six tenths (119.6) feet, parallel to and 50 feet from the center line of spur track, crossing Orange Street (50 feet wide), to a point;
  - (6) Southerly, twenty-eight and one tenth (28.1) feet, along the easterly line of Orange Street, to a point;
  - (7) South twenty-one degrees eight minutes fifteen seconds east (S. 21° 08' 15" E.), eighty-six and seventy hundredths (86.70) feet, to a point; thence:  
Continuing along said easterly right of way line, parallel to and 100 feet from the center line of spur track, the following two courses:
    - (8) South twenty-two degrees twenty-seven minutes forty-five seconds west (S. 22° 27' 45" W.), seven hundred forty-three and ninety-two hundredths (743.92) feet, to the point of beginning of a curve to the left;
    - (9) Southerly, four hundred twenty-five and eighty-one hundredths (425.81) feet, along the arc of said curve to the left, with a radius of 781.95 feet and a central angle of 31° 12', to a point; thence:
  - (10) South eighty-one degrees fifteen minutes forty-five seconds west (S. 81° 15' 45" W.), fifty and zero hundredths (50.00) feet, radial to said curve and still along the right of way line of the spur track, to a point in the arc of a curve to the left, to which this course is also radial; thence:

(11) Southeasterly, nine hundred forty-six and zero hundredths (946.00) feet, along the arc of said curve to the left, with a radius of 831.95 feet and a central angle of  $55^{\circ} 09'$ , along the northeasterly right of way line of the spur track, parallel to and 50 feet from the center line of said track, to the point of tangency; thence:

(12) South seventy-three degrees fifty-three minutes fifteen seconds east (S.  $73^{\circ} 53' 15''$  E.), nine hundred forty-seven and sixty-nine hundredths (947.69) feet, along the northerly right of way line of the spur track, parallel to and 50 feet from the center line of said track, to a point; thence:

(13) South sixteen degrees six minutes forty-five seconds west (S.  $16^{\circ} 06' 45''$  W.), twenty-five and zero hundredths (25.00) feet, still along the right of way line of the spur track, to a point; thence:

Continuing along the northerly right of way line of the spur track, parallel to and 25 feet from the centerline of the spur track, the following seven courses:

(14) South seventy-three degrees fifty-three minutes fifteen seconds east (S.  $73^{\circ} 53' 15''$  E.), forty-one and eighteen hundredths (41.18) feet, to the point of beginning of a curve to the left;

(15) Easterly, one thousand seven hundred sixty-three and sixty-eight hundredths (1,763.68) feet, along the arc of said curve to the left, with a radius of 5,704.65 feet and a central angle of  $17^{\circ} 42' 50''$ , crossing Dale Street, to the point of tangency;

(16) North eighty-eight degrees twenty-three minutes fifty-five seconds east (N.  $88^{\circ} 23' 55''$  E.), seven hundred forty-two and seventy-six hundredths (742.76) feet, along the tangent to said curve, crossing Montgomery Street, (50 feet wide), to the point of beginning of a curve to the right;

(17) Easterly, seven hundred sixty-eight and seventy-two hundredths (768.72) feet, along the arc of said curve to the right, with a radius of 1,935.08 feet and a central angle of  $22^{\circ} 45' 40''$ , to the point of tangency;

(18) South sixty-eight degrees fifty minutes twenty-five seconds east (S.  $68^{\circ} 50' 25''$  E.), five hundred twenty-five and ninety-six hundredths (525.96) feet, along the tangent to said curve, to the point of beginning of a curve to the left;

(19) Easterly, one thousand thirty-four and fifty hundredths (1,034.50) feet, along the arc of said curve to the left, with a radius of 1,885.08 feet and a central angle of  $31^{\circ} 26' 35''$ , to the point of tangency;

(20) North seventy-nine degrees forty-three minutes east (N.  $79^{\circ} 43'$  E.), one hundred seventy-four and one hundredth (174.01) feet, along the tangent to said curve, crossing Granby Road, to a point in the southeasterly line thereof; thence:

- (21) Easterly, one thousand eight hundred and eleven (1,811) feet, more or less, along the southerly line of Granby Road, and continuing along the northerly right of way line of the spur track, to a point; thence:
- (22) South eleven degrees ten minutes east (S. 11° 10' E.), thirty-one (31) feet, more or less, still along the right of way line of the spur track, to a point 25 feet northerly of the center line of spur track; thence:

Continuing along the northerly right of way line of the spur track, parallel to and 25 feet from the center line of spur track, the following three courses:

- (23) North seventy-nine degrees forty-three minutes east (N. 79° 43' E.), one hundred eighteen and ninety-seven hundredths (118.97) feet, to the point of beginning of a curve to the left;
- (24) Easterly, one thousand ninety-three and thirty hundredths (1,093.30) feet, along the arc of said curve to the left, with a radius of 2,839.93 feet and a central angle of 22° 03' 27", to the point of tangency;
- (25) North fifty-seven degrees thirty-nine minutes thirty-three seconds east (N. 57° 39' 33" E.), one thousand two hundred ninety-four and eighty-six hundredths (1,294.86) feet, along the tangent to said curve, to a point in the westerly boundary of the Westover Field reservation, from which point the bearing and distance to an angle point in said boundary is N. 36° 42' 07" W., 304.67 feet; thence:
- (26) South thirty-six degrees forty-two minutes seven seconds east (S. 36° 42' 07" E.), fifty and fifteen hundredths (50.15) feet, along said boundary, to the intersection of said boundary with the southerly right of way line of the spur track, center line station 136+36.31 of the spur track right of way being in line 25.07 feet from beginning of course; thence:

Along the said southerly right of way line the following nine courses:

- (27) South fifty-seven degrees thirty-nine minutes thirty-three seconds west (S. 57° 39' 33" W.), one thousand two hundred ninety-eight and sixty-six hundredths (1,298.66) feet, to the point of beginning of a curve to the right;
- (28) Westerly, one thousand one hundred twelve and fifty-five hundredths (1,112.55) feet, along the arc of said curve to the right, with a radius of 2,889.93 feet and a central angle of 22° 03' 27", to the point of tangency;
- (29) South seventy-nine degrees forty-three minutes west (S. 79° 43' W.), two thousand one hundred four and nine hundredths (2,104.09) feet, along the tangent to said curve, partly crossing Granby Road, to the point of beginning of a curve to the right;
- (30) Westerly, one thousand sixty-one and ninety-five hundredths (1,061.95) feet, along the arc of said curve to the right, with a radius of 1,935.08 feet and a central angle of 31° 26' 35", crossing the remainder of Granby Road, to the point of tangency;

- (31) North sixty-eight degrees fifty minutes twenty-five seconds west (N.  $68^{\circ} 50' 25''$  W.), five hundred twenty-five and ninety-six hundredths (525.96) feet, along the tangent to said curve, to the point of beginning of a curve to the left;
- (32) Westerly, seven hundred forty-eight and eighty-six hundredths (748.86) feet, along the arc of said curve to the left, with a radius of 1,885.08 feet and a central angle of  $22^{\circ} 45' 40''$ , to the point of tangency;
- (33) South eighty-eight degrees twenty-three minutes fifty-five seconds west (S.  $88^{\circ} 23' 55''$  W.), seven hundred forty-two and seventy-six hundredths (742.76) feet, along the tangent to said curve, crossing Montgomery Street (50 feet wide), to the point of beginning of a curve to the right;
- (34) Westerly, one thousand seven hundred seventy-nine and fourteen hundredths (1,779.14) feet, along the arc of said curve to the right, with a radius of 5,754.65 feet and a central angle of  $17^{\circ} 42' 50''$ , crossing Dale Street, to the point of tangency;
- (35) North seventy-three degrees fifty-three minutes fifteen seconds west (N.  $73^{\circ} 53' 15''$  W.), forty-one and eighteen hundredths (41.18) feet, to a point; thence:
- (36) South sixteen degrees six minutes forty-five seconds west (S.  $16^{\circ} 06' 45''$  W.), twenty-five and zero hundredths (25.00) feet, still along the right of way line of the spur track, to a point; thence:
- (37) North seventy-three degrees fifty-three minutes fifteen seconds west (N.  $73^{\circ} 53' 15''$  W.), nine hundred forty-seven and sixty-nine hundredths (947.69) feet, along the southerly right of way line of the spur track, to the point of beginning of a curve to the right; thence:
- (38) Northwesterly and northerly, one thousand five hundred sixty-seven and twenty hundredths (1,567.20) feet, along the arc of said curve to the right, with a radius of 931.95 feet and a central angle of  $96^{\circ} 21'$ , along the southwesterly and westerly right of way lines of the spur track, to the point of tangency; thence:

Along the said westerly right of way line the following five courses:

- (39) North twenty-two degrees twenty-seven minutes forty-five seconds east (N.  $22^{\circ} 27' 45''$  E.), eight hundred two and zero hundredths (802.00) feet, along the tangent to said curve, to a point;
- (40) North forty-four degrees fifty-seven minutes west (N.  $44^{\circ} 57'$  W.), ninety-four and seven tenths (94.7) feet, to a point in the easterly line of Coburn Street;
- (41) Northerly, one hundred seventy-six and thirty-three hundredths (176.33) feet, along the said easterly line of Coburn Street, to a point;
- (42) North twenty-two degrees twenty-seven minutes forty five seconds east (N.  $22^{\circ} 27' 45''$  E.), five hundred and forty-nine (549) feet, more or less, crossing Coburn

Street (40 feet wide), to a point in the easterly right of way line of the Boston and Maine Railroad;

- (43) North thirty-eight degrees fifty-six minutes forty-five seconds east (N. 38° 56' 45" E.), three hundred sixteen and six tenths (316.6) feet, along the said easterly right of way line, to the point of beginning.

The parcel as described contains an area of twenty-one and ninety-one hundredths (21.91) acres, more or less, and is shown on drawing No. NEAB 164, entitled "Right of Way Map of Spur Track from Boston and Maine R.R. to Westover Field", dated July 19, 1940, prepared in the Office of Constructing Quartermaster, War Department, Northeast Air Base, Chicopee Falls, Massachusetts.

The United States of America acquired title to the above described property by Declaration of Taking, filed August 27, 1940, Civil No. 6291, United States District Court, District of Massachusetts. For reference to the said map and a designation of the individual parcels comprising the above described property, see said Declaration of Taking, recorded in the Hampden County Registry of Deeds in Book 1755, Page 263.

## SCHEDULE B

The property described in Schedule A is conveyed subject to  
thw following, whether or not the same shall be of record:

- a. Easement No. DA 19-016-ENG-6450, as amended, granted to Ubald O. Boisvert for a right of way to use a private way crossing from old Granby Road.
- b. Easement No. DACA 51-2-77-192, as amended, granted to Mrs. Leone Boisvert for a right of way to operate, maintain, repair and replace a sewer line crossing from Donohue Road.
- c. Easement No. DACA 51-3-78-8, as amended, granted to the City of Chicopee for a right of way to operate and maintain a 20-inch water line crossing.
- d. Easement No. DACA 51-1-79-364, as amended, granted to the City of Chicopee for a right of way to operate and maintain two 3/4-inch water service connections.
- e. Easement No. DA19-016-ENG-5857, granted to the City of Chicopee to widen Dale Street.
- f. Easement No. DA19-016-ENG-5858, granted to the City of Chicopee to construct a 24 foot wide crossing at Bardon Street.
- g. Easement No. DA19-016-ENG-5859, granted to the City of Chicopee for a right of way to install, operate and maintain a water pipe and sewer pipe crossing at Bardon Street and Mathieu Drive.
- h. Easement No DACA 33-2-68-132 granted to the City of Chicopee for a right of way to construct the Woodcrest Drive crossing.
- i. Easement No. DACA 33-2-68-133 granted to the City of Chicopee for a right of way to install, operate, maintain, repair and/or replace a sanitary sewer line, storm drain and water line crossing at Woodcrest Drive.
- j. Easement No. DACA 33-2-70-40, granted to the City of Chicopee for a right of way to extend, construct, operate and maintain a sanitary sewer line crossing at Westover Road.
- k. Easement No. DACA 51-2-77-179, granted to the Commonwealth of Massachusetts, Department of Public Works, for a right of way to install, extend, and maintain the Memorial Drive Crossing.
- l. License No. DACA 51-3-79-175, as amended, granted to Alfred W. McKinistry for use of a water pipe crossing.
- m. License No. DACA 51-3-77-276, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain an aerial telephone line crossing from Donohue Road.
- n. License No. DACA 51-3-77-275, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain an underground conduit crossing near Memorial Drive.
- o. License No. DACA 51-3-77-265, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain an aerial cable crossing at Bardon Street.
- p. License DACA 51-3-79-123, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain a buried cable crossing at Memorial Drive.
- q. Right of Entry DACA 51-9-76-97, as amended, granted to the Bay State Gas Company for a right of way to maintain a gas main crossing at Montgomery Street.
- r. Right of Entry DACA 51-9-76-98, as amended, granted to the New England Telephone and Telegraph Company to maintain an underground conduit at Montgomery Street.

- s. Consent Agreement, dated February 16, 1968, granted to the New England Telephone and Telegraph Company for a right of way to maintain underground cables and wires crossing at Dale Street.
- t. Consent Agreement, dated April 29, 1970, granted to the New England Telephone and Telegraph Company for a right of way to maintain an aerial cable crossing at Montgomery Street.
- u. Easement granted to Ms. Janet R. Draymore and Ms. Sonia D. Kent for a right of way for a private way crossing from Donohue Road.
- v. Lease No. DACA 51-1-79-291, as amended, granted to the Westover Metropolitan Development Corporation to operate and maintain railroad trackage on the above described property.
- w. Right of Entry DACA 51-9-78-81, as amended, granted to the Bay State Gas Company for a right of way to maintain a gas main crossing at Champion Drive.
- x. Right of Entry DACA 51-9-79-36, as amended, granted to Champion International Corporation for a right of way to connect a railroad spurline switch to the Government-owned trackage near Champion Drive.
- y. Right of Entry DACA 51-9-79-54, as amended, granted to the City of Chicopee for a right of way to maintain a water main crossing at Champion Drive.
- z. Right of Entry DACA 51-9-79-186, as amended, granted to the New England Telephone Company for a right of way to maintain a buried cable crossing at Champion Drive.
- aa. Lease No. DACA 51-1-79-467, as amended, granted to City of Chicopee for a right of way to construct a road and utility crossing at Champion Drive.
- bb. Lease No. DACA 51-1-80-617, as amended, granted to the City of Chicopee for a right of way to widen Montgomery Street and install a new waterline.

EXCESS PROFITS CLAUSE

With respect to the real property described in Schedule A (the "subject property") if at any time within a three-year period from the date of transfer of title by the Grantor, the Grantee shall sell or enter into agreements to sell (hereinafter referred to as a "disposition") in one transaction or series of transactions, it is agreed that all proceeds received or to be received from such disposition (whether received during the three-year period or thereafter) in excess of the Grantee's costs will be remitted to the Grantor.

For purposes of this agreement the Grantee's costs shall include, but not be limited to, expenditures made or incurred by Grantee on or with respect to the subject property, or which benefit the subject property, for the following:

- (1) land acquisition;
- (2) property maintenance and insurance;
- (3) financing;
- (4) marketing and promotion;
- (5) project administration;
- (6) physical development, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading and other site or public improvements; and
- (7) planing, design and engineering services; provided, however, that the Grantee's costs will not include expenditures to the extent the same are defrayed by Federal Government grants.

In the event that there shall be a disposition within such three-year period that consists of less than all of the subject property, in determining whether the proceeds received at any time from such disposition are in excess of the Grantee's costs appropriately allocable to the property which is the subject of such disposition, the total Grantee's costs incurred prior to the receipt of such proceeds shall, as may be appropriate and equitable, either be: (a) specifically allocated between the property which is the subject of the disposition and the remainder of the subject property held by the Grantee, or (b) multiplied by a fraction the numerator of which is the area of the property which is the subject of the disposition and the denominator of which is the net developable area of the subject property and the result allocated to the property which is the subject of the disposition.

NON-DISCRIMINATION COVENANT

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

RECEIVED

APR 29 1983

AT 2:31 PM AND  
REC'D FROM THE ORIGINAL

13978

5428  
474

*Donald E. Mc*  
Register of Deeds

BOOK 5428 PAGE 474

Return to  
Donald E. Mc  
15th Main St  
Suite 2700  
Springfield, MA 01115

## EXHIBIT B

17195

PROPERTY ADDRESS: Rail line between Willimansett and Westover Air Force Base, Chicopee, MA

KNOW ALL MEN BY THESE PRESENTS: That WESTOVER METROPOLITAN DEVELOPMENT CORPORATION, a duly established Massachusetts corporation with offices at Pendleton Avenue, Westover Industrial Airpark, Chicopee, Massachusetts, for and in consideration paid to it in the sum of ONE DOLLAR (\$1.00), does hereby grant to SPRINGFIELD TERMINAL RAILWAY COMPANY, a duly established Vermont corporation with a business address at P. O. Box 520, Springfield, Vermont, all its right, title and interest in and to the property described in Schedule A, together with all appurtenances and improvements thereto, subject to such conditions as may be set forth in said Schedule A, and Schedule B.

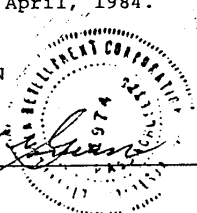
TO HAVE AND TO HOLD the granted premises, with all the privileges and appurtenances thereto belonging, to the said grantee and to the heirs or successors and assigns of same, to their own use and behoof forever.

This deed is executed and delivered to the said grantee, and to the heirs or successors and assigns of same, without any covenants whatsoever, either express or implied.

IN WITNESS WHEREOF, WESTOVER METROPOLITAN DEVELOPMENT CORPORATION has caused these presents to be executed as a sealed instrument in its name and behalf this 27<sup>th</sup> day of April, 1984.

WESTOVER METROPOLITAN  
DEVELOPMENT CORPORATION

By *James H. McLaughlin*  
Its Treasurer



WITNESS:

*Nancy L. Angley*



COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

April 27, 1984

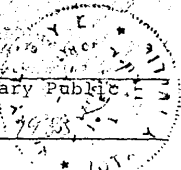
Then personally appeared Vincent H. McGovern, Treasurer  
as aforesaid, and acknowledged the foregoing instrument to be  
his free act and deed and the free act and deed of Westover  
Metropolitan Development Corporation, before me

*Nancy L. [Signature]*

Notary Public

My commission expires:

*June 28, 1988*



Vol. 5807, p. 372

SCHEDULE A

A certain parcel of land, together with the improvements located thereon, including track bed and trackage, situated and being in the City of Chicopee, County of Hampden, Commonwealth of Massachusetts, bounded and described as follows:

Beginning at an iron pipe marking the intersection of the southerly line of Montgomery Street (Williamansett) with the easterly right of way line of the Boston and Maine Railroad; and running thence by true bearings:

- (1) Easterly, ten and eight tenths (10.8) feet, along the said southerly line of Montgomery Street, to the easterly right of way line of the spur track; thence:

Along the said easterly right of way line the following six courses:

- (2) South twenty-two degrees twenty-seven minutes forty-five seconds west (S. 22° 27' 45" W.), eight hundred seventy and five tenths (870.5) feet, more or less, parallel to and 50 feet from the center line of spur track, crossing Coburn Street (40 feet wide), to a point;
- (3) South forty-four degrees six minutes east (S. 44° 06' E.), one and nine tenths (1.9) feet, to a point in the westerly line of Orange Street;
- (4) Southerly, four and two tenths (4.2) feet, along the said westerly line of Orange Street, to a point;
- (5) South twenty-two degrees twenty-seven minutes forty-five seconds west (S. 22° 27' 45" W.), one hundred nineteen and six tenths (119.6) feet, parallel to and 50 feet from the center line of spur track, crossing Orange Street (50 feet wide), to a point;
- (6) Southerly, twenty-eight and one tenth (28.1) feet, along the easterly line of Orange Street, to a point;
- (7) South twenty-one degrees eight minutes fifteen seconds east (S. 21° 08' 15" E.), eighty-six and seventy hundredths (86.70) feet, to a point; thence;

Continuing along said easterly right of way line, parallel to and 100 feet from the center line of spur track, the following two courses;

- (8) South twenty-two degrees twenty-seven minutes forty-five seconds west (S. 22° 27' 45" W.), seven hundred forty-three and ninety-two hundredths (743.92) feet, to the point of beginning of a curve to the left;
- (9) Southerly, four hundred twenty-five and eighty-one hundredths (425.81) feet, along the arc of said curve to the left, with a radius of 781.95 feet and a central angle of 31° 12', to a point; thence:
- (10) South eighty-one degrees fifteen minutes forty-five seconds west (S. 81° 15' 45" W.), fifty and zero hundredths (50.00) feet, radial to said curve and still along the right of way line of the spur track, to a point in the arc of a curve to the left, to which this course is also radial; thence:
- (11) Southeasterly, nine hundred forty-six and zero hundredths (946.00) feet, along the arc of said curve to the left, with a radius of 831.95 feet and a central angle of 55° 09', along the northeasterly right of way line of the spur track, parallel to and 50 feet from the center line of said track, to the point of tangency; thence:
- (12) South seventy-three degrees fifty-three minutes fifteen seconds east (S. 73° 53' 15" E.), nine hundred forty-seven and sixty-nine hundredths (947.69) feet, along the northerly right of way line of the spur track, parallel to and 50 feet from the center line of said track, to a point; thence:
- (13) South sixteen degrees six minutes forty-five seconds west (S. 16° 06' 45" W.), twenty-five and zero hundredths (25.00) feet, still along the right of way line of the spur track, to A point; thence:

Continuing along the northerly right of way line of the spur track, parallel to and 25 feet from the centerline of the spur track, the following seven courses:

- (14) South seventy-three degrees fifty-three minutes fifteen seconds east (S. 73° 53' 15" E.), forty-one and eighteen hundredths (41.18) feet, to the point of beginning of a curve to the left;

- (15) Easterly, one thousand seven hundred sixty-three and sixty-eight hundredths (1,763.68) feet, along the arc of said curve to the left, with a radius of 5,704.65 feet and a central angle of  $17^{\circ} 42' 50''$ , crossing Dale Street, to the point of tangency;
- (16) North eighty-eight degrees twenty-three minutes fifty-five seconds east (N.  $88^{\circ} 23' 55''$  E.), seven hundred forty-two and seventy-six hundredths (742.76) feet, along the tangent to said curve, crossing Montgomery Street, (50 feet wide), to the point of beginning of a curve to the right;
- (17) Easterly, seven hundred sixty-eight and seventy-two hundredths (768.72) feet, along the arc of said curve to the right, with a radius of 1,935.08 feet and a central angle of  $22^{\circ} 45' 40''$ , to the point of tangency;
- (18) South sixty-eight degrees fifty minutes twenty-five seconds east (S.  $68^{\circ} 50' 25''$  E.), five hundred twenty-five and ninety-six hundredths (525.96) feet, along the tangent to said curve, to the point of beginning of a curve to the left;
- (19) Easterly, one thousand thirty-four and fifty hundredths (1,034.50) feet, along the arc of said curve to the left, with a radius of 1,885.08 feet and a central angle of  $31^{\circ} 26' 35''$ , to the point of tangency;
- (20) North seventy-nine degrees forty-three minutes east (N.  $79^{\circ} 43'$  E.), one hundred seventy-four and one hundredth (174.01) feet, along the tangent to said curve, crossing Granby Road, to a point in the southeasterly line thereof; thence:
- (21) Easterly, one thousand eight hundred and eleven (1,811) feet, more or less, along the southerly line of Granby Road, and continuing along the northerly right of way line of the spur track, to a point; thence:
- (22) South eleven degrees ten minutes east (S.  $11^{\circ} 10'$  E.), thirty-one (31) feet, more or less, still along the right of way line of the spur track, to a point 25 feet northerly of the center line of spur track; thence:  
  
Continuing along the northerly right of way line of the spur track, parallel to and 25 feet from the center line of spur track, the following three courses:
- (23) North seventy-nine degrees forty-three minutes east (N.  $79^{\circ} 43'$  E.), one hundred eighteen and ninety-seven hundredths

(118.97) feet, to the point of beginning of a curve to the left;

- (24) Easterly, one thousand ninety-three and thirty hundredths (1,093.30) feet, along the arc of said curve to the left, with a radius of 2,839.93 feet and a central angle of  $22^{\circ} 03' 27''$ , to the point of tangency;
  - (25) North fifty-seven degrees thirty-nine minutes thirty-three seconds east (N.  $57^{\circ} 39' 33''$  E.), one thousand two hundred ninety-four and eighty-six hundredths (1,294.86) feet, along the tangent to said curve, to a point in the westerly boundary of the Westover Field reservation, from which point the bearing and distance to an angle point in said boundary is N.  $36^{\circ} 42' 07''$  W., 304.67 feet; thence:
  - (26) South thirty-six degrees forty-two minutes seven seconds east (S.  $36^{\circ} 42' 07''$  E.), fifty and fifteen hundredths (50.15) feet, along said boundary, to the intersection of said boundary with the southerly right of way line of the spur track, center line station 136+36.31 of the spur track right of way being in line 25.07 feet from beginning of course; thence:
- Along the said southerly right of way line the following nine courses:
- (27) South fifty-seven degrees thirty-nine minutes thirty-three seconds west (S.  $57^{\circ} 39' 33''$  W.), one thousand two hundred ninety-eight and sixty-six hundredths (1,298.66) feet, to the point of beginning of a curve to the right;
  - (28) Westerly, one thousand one hundred twelve and fifty-five hundredths (1,112.55) feet, along the arc of said curve to the right, with a radius of 2,889.93 feet and a central angle of  $22^{\circ} 03' 27''$ , to the point of tangency;
  - (29) South seventy-nine degrees forty-three minutes west (S.  $79^{\circ} 43'$  W.), two thousand one hundred four and nine hundredths (2,104.09) feet, along the tangent to said curve, partly crossing Granby Road, to the point of beginning of a curve to the right;
  - (30) Westerly, one thousand sixty-one and ninety-five hundredths (1,061.95) feet, along the arc of said curve to the right, with a radius of 1,935.08 feet and a central angle of  $31^{\circ} 26' 35''$ , crossing the remainder of Granby Road, to the point of tangency;

- (31) North sixty-eight degrees fifty minutes twenty-five seconds west (N. 68° 50' 25" W.), five hundred twenty-five and ninety-six hundredths (525.96) feet, along the tangent to said curve, to the point of beginning of a curve to the left;
- (32) Westerly, seven hundred forty-eight and eighty-six hundredths (748.86) feet, along the arc of said curve to the left, with a radius of 1,885.08 feet and a central angle of 22° 45' 40", to the point of tangency;
- (33) South eighty-eight degrees twenty-three minutes fifty-five seconds west (S. 88° 23' 55" W.), seven hundred forty-two and seventy-six hundredths (742.76) feet, along the tangent to said curve, crossing Montgomery Street (50 feet wide), to the point of beginning of a curve to the right;
- (34) Westerly, one thousand seven hundred seventy-nine and fourteen hundredths (1,779.14) feet, along the arc of said curve to the right, with a radius of 5,754.65 feet and a central angle of 17P 42' 50", crossing Dale Street, to the point of tangency;
- (35) North seventy-three degrees fifty-three minutes fifteen seconds west (N. 73° 53' 15" W.), forty-one and eighteen hundredths (41.18) feet, to a point; thence:
- (36) South sixteen degrees six minutes forty-five seconds west (S. 16° 06' 45" W.), twenty-five and zero hundredths (25.00) feet, still along the right of way line of the spur track, to a point; thence:
- (37) North seventy-three degrees fifty-three minutes fifteen seconds west (N. 73° 53' 15" W.), nine hundred forty-seven and sixty-nine hundredths (947.69) feet, along the southerly right of way line of the spur track, to the point of beginning of a curve to the right; thence:
- (38) Northwesterly and northerly, one thousand five hundred sixty-seven and twenty hundredths (1,567.20) feet, along the arc of said curve to the right, with a radius of 931.95 feet and a central angle of 96° 21', along the southwesterly and westerly right of way lines of the spur track, to the point of tangency; thence:

Along the said westerly right of way line the following five courses:

- (39) North twenty-two degrees twenty-seven minutes forty-five seconds east (N. 22° 27' 45" E.), eight hundred two and zero

hundredths (802.00) feet, along the tangent to said curve, to a point;

- (40) North forty-four degrees fifty-seven minutes west (N. 44° 57' W.), ninety-four and seven tenths (94.7) feet, to a point in the easterly line of Coburn Street;
- (41) Northerly, one hundred seventy-six and thirty-three hundredths (176.33) feet, along the said easterly line of Coburn Street, to a point;
- (42) North twenty-two degrees twenty-seven minutes forty five seconds east (N. 22° 27' 45" E.), five hundred and forty-nine (549) feet, more or less, crossing Coburn Street (40 feet wide), to a point in the easterly right of way line of the Boston and Maine Railroad;
- (43) North thirty-eight degrees fifty-six minutes forty-five seconds east (N. 38° 56' 45" E.), three hundred sixteen and six tenths (316.6) feet, along the said easterly right of way line, to the point of beginning.

The parcel as described contains an area of twenty-one and ninety-one hundredths (21.91) acres, more or less, and is shown on drawing no. NEAB 164, entitled "Right of Way Map of Spur Track from Boston and Maine R.R. to Westover Field", dated July 19, 1940, prepared in the Office of Constructing Quartermaster, War Department, Northeast Air Base, Chicopee Falls, Massachusetts.

Westover Metropolitan Development Corporation acquired title to the above described property by deed from the United States of America recorded on April 29, 1983 in the Hampden County Registry of Deeds in Book 5428, Page 474. For reference to a map and a designation of the individual parcels comprising the taking of the above-described property by the United States of America, see Declaration of Taking, recorded in the Hampden County Registry of Deeds in Book 1755, Page 263.

SCHEDULE B

The property described in Schedule A is conveyed subject to the following, whether or not the same shall be of record:

- a. Easement No. DA 19-016-ENG-6450, as amended, granted to Ubald O. Boisvert for a right of way to use a private way crossing from Old Granby Road.
- b. Easement No. DACA 51-2-77-192, as amended, granted to Mrs. Leone Boisvert for a right of way to operate, maintain, repair and replace a sewer line crossing from Donohue Road.
- c. Easement No. DACA 51-3-78-8, as amended, granted to the City of Chicopee for a right of way to operate and maintain a 20-inch water line crossing.
- d. Easement No. DACA 51-1-79-364, as amended, granted to the City of Chicopee for a right of way to operate and maintain two 3/4-inch water service connections.
- e. Easement No. DA19-016-ENG-5857, granted to the City of Chicopee to widen Dale Street.
- f. Easement No. DA19-016-ENG-5858, granted to the City of Chicopee to construct a 24 foot wide crossing at Bardon Street.
- g. Easement No. DA19-016-ENG-5859, granted to the City of Chicopee for a right of way to install, operate and maintain a water pipe and sewer pipe crossing at Bardon Street and Mathieu Drive.
- h. Easement No. DACA 33-2-68-132 granted to the City of Chicopee for a right of way to construct the Woodcrest Drive crossing.
- i. Easement No. DACA 33-2-68-133 granted to the City of Chicopee for a right of way to install, operate, maintain, repair and/or replace a sanitary sewer line, storm drain and water line crossing at Woodcrest Drive.
- j. Easement No. DACA 33-2-70-40, granted to the City of Chicopee for a right of way to extend, construct, operate and maintain a sanitary sewer line crossing at Westover Road.

- k. Easement No. DACA 51-2-77-179, granted to the Commonwealth of Massachusetts, Department of Public Works, for a right of way to install, extend, and maintain the Memorial Drive Crossing.
- l. License No. DACA 51-3-79-175, as amended, granted to Alfred W. McKinstry for use of a water pipe crossing.
- m. License No. DACA 51-3-77-276, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain an aerial telephone line crossing from Donohue Road.
- n. License No. DACA 51-3-77-275, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain an underground conduit crossing near Memorial Drive.
- o. License No. DACA 51-3-77-265, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain an aerial cable crossing at Bardon Street.
- p. License DACA 51-3-79-123, as amended, granted to the New England Telephone and Telegraph Company for a right of way to maintain a buried cable crossing at Memorial Drive.
- q. Right of Entry DACA 51-9-76-97, as amended, granted to the Bay State Gas Company for a right of way to maintain a gas main crossing at Montgomery Street.
- r. Right of Entry DACA 51-9-76-98, as amended, granted to the New England Telephone and Telegraph Company to maintain an underground conduit at Montgomery Street.
- s. Consent Agreement, dated February 16, 1968, granted to the New England Telephone and Telegraph Company for a right of way to maintain underground cables and wires crossing at Dale Street.
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- u. Easement granted to Ms. Janet R. Draymore and Ms. Sonia D. Kent for a right of way for a private way crossing from Donohue Road.
- v. Lease No. DACA 51-1-79-291, as amended, granted to the Westover Metropolitan Development Corporation to operate and maintain railroad trackage on the above-described property.

- w. Right of Entry DACA 51-9-78-81, as amended, granted to the Bay State Gas Company for a right of way to maintain a gas main crossing at Champion Drive.
- x. Right of Entry DACA 51-9-79-36, as amended, granted to Champion International Corporation for a right of way to connect a railroad spurline switch to the Government-owned trackage near Champion Drive.
- y. Right of Entry DACA 51-9-79-54, as amended, granted to the City of Chicopee for a right of way to maintain a water main crossing at Champion Drive.
- z. Right of Entry DACA 51-9-79-186, as amended, granted to the New England Telephone Company for a right of way to maintain a buried cable crossing at Champion Drive.
- aa. Lease No. DACA 51-1-79-467, as amended, granted to City of Chicopee for a right of way to construct a road and utility crossing at Champion Drive.
- bb. Lease No. DACA 51-1-80-617, as amended, granted to the City of Chicopee for a right of way to widen Montgomery Street and install a new waterline.
- cc. Provisions of local building, zoning environmental, conservation or historical laws, ordinances, by-laws, regulations or restrictions.
- dd. Liens or possible liens for municipal betterments arising after November 22, 1982.
- ee. Applicable provisions of an agreement dated September 24, 1979 between WMDC and Massachusetts Municipal Wholesale Electric Company.
- ff. Option in Westover Metropolitan Development Corporation to purchase the granted premises for One Dollar (\$1.00) if Springfield Terminal Railway Company should fail within the three-year period prescribed therein to exercise an option to purchase contained in a Lease dated November 22, 1982 between Westover Metropolitan Development Corporation and Springfield Terminal Railway Company covering approximately 1.5 miles of trackage within Airpark West in Chicopee Massachusetts. If Springfield Terminal Railway Company's failure to exercise its option under the aforementioned Lease is due to the inability of Westover Metropolitan Development Corporation to perform,

then Westover Metropolitan Development Corporation's option to purchase shall not be effective.

- gg. An immediate reverter to Westover Metropolitan Development Corporation if Springfield Terminal Railway Company shall ever abandon or fail to operate the granted premises as a short line railroad. In the event of such an abandonment or failure to operate, it is agreed that the trackage and related improvements shall be deemed to be fixtures which revert with the fee.
- hh. Easement in gross to Westover Metropolitan Development Corporation to cross over and below the trackage on the granted premises for any purpose in furtherance of Westover Metropolitan Development Corporation's corporate purposes so long as rail traffic is not unreasonably interrupted.
- ii. Easement granted to the Baystate Gas Company for the location and maintenance of gas mains crossing at Westover Road dated March 16, 1984 and recorded in the Hampden County Registry of Deeds.
- jj. Other restrictions, agreements and easements of record.

EXCESS PROFITS CLAUSE

With respect to the real property described in Schedule A (the "subject property") if at any time within a three-year period from the date of transfer of title by the Grantor, the Grantee shall sell or enter into agreements to sell (hereinafter referred to as a "disposition") in one transaction or series of transactions, it is agreed that all proceeds received or to be received from such disposition (whether received during the three-year period or thereafter) in excess of the Grantee's costs will be remitted to the Grantor.

For purposes of this agreement the Grantee's costs shall include, but not be limited to, expenditures made or incurred by Grantee on or with respect to the subject property, or which benefit the subject property, for the following:

- (1) land acquisition;
- (2) property maintenance and insurance;
- (3) financing;
- (4) marketing and promotion;
- (5) project administration;
- (6) physical development, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading and other site or public improvements; and
- (7) planning, design and engineering services; provided, however, that the Grantee's costs will not include expenditures to the extent the same are defrayed by Federal Government grants.

In the event that there shall be a disposition within such three-year period that consists of less than all of the subject property, in determining whether the proceeds received at any time from such disposition are in excess of the Grantee's costs appropriately allocable to the property which is the subject of such disposition, the total Grantee's costs incurred prior to the receipt of such proceeds shall, as may be appropriate and

equitable, either be: (a) specifically allocated between the property which is the subject of the disposition and the remainder of the subject property held by the Grantee, or (b) multiplied by a fraction the numerator of which is the area of the property which is the subject of the disposition and the denominator of which is the net developable area of the subject property and the result allocated to the property which is the subject of the disposition.

NON-DISCRIMINATION COVENANT

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

RECEIVED

MAY 7 - 1984

AT 3:48 PM AND  
REG'D FROM THE ORIGINAL

A TRUE PHOTOCOPY AS RECORDED IN  
HAMPDEN COUNTY REGISTRY OF DEEDS  
AND IT IS SO CERTIFIED

BOOK 5807 PAGE 370-383

ATTEST:

*Donald E. Ashe*  
REGISTER