

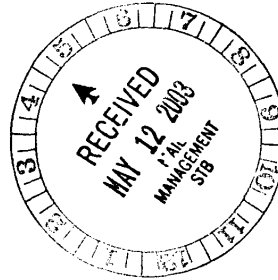
Kirkpatrick & Lockhart LLP

207801

May 12, 2003

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



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**Re: Finance Docket No. 34346, Dallas Area Rapid Transit – Acquisition
Exemption – Certain Assets Of Regional Rail Right Of Way Company**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Dallas Area Rapid Transit Motion to Dismiss Notice of Exemption**.

Pursuant to 49 C.F.R. § 1002.2(e)(1), Dallas Area Rapid Transit ("DART") respectfully requests a waiver of the \$1,300 filing fee submitted by DART in connection with the Verified Notice of Exemption filed in the above-captioned proceeding. As explained in the Motion to Dismiss, DART is a state entity dedicated to providing mass transportation service. DART filed the Notice of Exemption at issue in furtherance of this public purpose and is filing the Motion to Dismiss in order to obtain a jurisdictional determination that it is not subject to Board jurisdiction. The benefits from participation in this proceeding will flow to the general public. Therefore, DART believes that it is entitled to a waiver and refund of the filing fee pursuant to 49 C.F.R. § 1002.2(e)(1).

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Edward J. Fishman".

Edward J. Fishman
Attorney for Dallas Area Rapid Transit

ENTERED
Office of Proceedings

MAY 12 2003

Enclosures

Part of
Public Record

DC-574105 v1 0306336-0105

BOSTON ■ DALLAS ■ HARRISBURG ■ LOS ANGELES ■ MIAMI ■ NEWARK ■ NEW YORK ■ PITTSBURGH ■ SAN FRANCISCO ■ WASHINGTON

207801

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34346

DALLAS AREA RAPID TRANSIT
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF REGIONAL RAIL RIGHT OF WAY COMPANY

DALLAS AREA RAPID TRANSIT
MOTION TO DISMISS NOTICE OF EXEMPTION

ENTERED
Office of Proceedings

MAY 12 2003

Part of
Public Record

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**ATTORNEYS FOR DALLAS AREA RAPID
TRANSIT**

Dated: May 12, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34346

DALLAS AREA RAPID TRANSIT
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF REGIONAL RAIL RIGHT OF WAY COMPANY

DALLAS AREA RAPID TRANSIT
MOTION TO DISMISS NOTICE OF EXEMPTION

I. INTRODUCTION

Pursuant to a Transfer Agreement to be entered into by and between Dallas Area Rapid Transit ("DART") and Regional Rail Right of Way Company ("RRROW") ("Transfer Agreement"),¹ DART will acquire RRROW's right, title and interest in the right-of-way, trackage and other physical assets of approximately 56 route miles of railroad line and related trackage located in Dallas, Tarrant and Collin Counties within the State of Texas (the "Subject Lines"). Pursuant to the terms of the Transfer Agreement, RRROW will retain an exclusive, perpetual freight rail operations easement and any attendant freight rail common carrier obligations on the Subject Lines (the "Freight Easement"). DART will not acquire the right or obligation to conduct any freight rail operations of any kind on the Subject Lines.

DART has filed a Verified Notice of Exemption (the "Notice") pursuant to 49 C.F.R. § 1150.41, et. seq. to acquire the underlying physical assets that constitute the Subject Lines from RRROW. See Finance Docket No. 34346, Dallas Area Rapid

¹ A copy of the Transfer Agreement is attached hereto as Exhibit A. If there are any material changes to the Transfer Agreement prior to execution, DART will so advise the Board in writing.

Transit – Acquisition Exemption – Certain Assets of Regional Rail Right of Way Company (STB filed May 5, 2003). DART hereby moves the Board to dismiss the Notice. DART submits that, because of the nature and terms of the proposed transaction as described in the Notice and as set forth in the Transfer Agreement, this transaction is not subject to Board jurisdiction and consummation of this transaction will not make DART a rail carrier as a result of its ownership of the underlying physical assets that constitute the Subject Lines. The parties do not anticipate that this transaction will have any effect on current or future freight rail operations on the Subject Lines.

II. STATEMENT OF FACTS

DART is a political subdivision of the State of Texas organized and existing under Chapter 452 of the Texas Transportation Code. DART is responsible for providing mass transportation service in the Dallas area. RRROW is a Texas non-profit, non-stock corporation that was formed by DART in order to retain and manage any common carrier freight rail obligations on the railroad corridors that DART uses or plans to use in the future for passenger rail operations. RRROW was formerly known as the Dallas Area Rapid Transit Property Acquisition Corporation (a/k/a DARTPAC).²

DART does not conduct and has no plans to conduct freight rail operations. RRROW does not conduct and has no plans to conduct freight rail operations, but as the owner of the Subject Lines and the holder of the common carrier obligation thereon has entered into trackage rights agreements that enable third party freight railroads to provide common carrier freight rail service on the Subject Lines. The purpose of this

² See Finance Docket No. 31786, Dallas Area Rapid Transit Property Acquisition Corporation – Acquisition and Operation Exemption – Rail Lines of Southern Pacific Transportation Company et al. (ICC served Dec. 9, 1990).

transaction is to convey ownership of the underlying physical assets that constitute the Subject Lines to DART subject to RRROW's retention of an exclusive and perpetual freight rail operating easement that will enable RRROW to continue allowing third party operators to provide common carrier freight rail service on the Subject Lines pursuant to the terms of those trackage rights agreements.

Under the Transfer Agreement to be entered into by and between DART and RRROW, DART will acquire RRROW's right, title and interest in the right-of-way, trackage and other physical assets associated with the line of railroad extending between approximately milepost 632.27 near Ft. Worth and approximately milepost 578.20 near Wylie, Texas. DART also will acquire RRROW's right, title and interest in the existing trackage between Tower 19 and Oakland Avenue in East Dallas. The total distance of the Subject Lines is approximately 56 route miles in Dallas, Tarrant and Collin Counties, Texas. See Schedule 1 to the Transfer Agreement. Pursuant to the Transfer Agreement, RRROW will retain an exclusive and perpetual easement to conduct, or contract with third parties to conduct, common carrier freight rail service on the Subject Lines. See Transfer Agreement, Section 2.2.

The terms of the Transfer Agreement and the Deed³ and Freight Easement⁴ attached thereto ensure that the transfer of ownership of the underlying physical assets of the Subject Lines from RRROW to DART will not materially interfere with freight rail

³ The Deed is attached as Exhibit A to the Transfer Agreement.

⁴ The Freight Easement on the Subject Lines is set forth as an exception and reservation within the Deed, and incorporates by reference the same terms and conditions as the freight rail operating easement that is being conveyed to RRROW on property that DART currently owns and that is attached as Exhibit B to the Transfer Agreement. Any references herein to the terms and conditions of the Freight Easement are to those provisions of Exhibit B.

operations thereon. The parties do not anticipate that this transaction will have any effect on those freight railroad operations, which are conducted by third party operators pursuant to existing trackage rights agreements with RRROW. The Transfer Agreement and Freight Easement stipulate that DART will not acquire the right or obligation to conduct freight rail service of any kind on the Subject Lines. See Transfer Agreement, Section 2.5; see also Freight Easement, paragraph 4. DART will have the right to use the Subject Lines for any reasonable purposes, including passenger rail purposes, provided that such uses do not materially interfere with common carrier freight rail service on the Subject Lines. See Transfer Agreement, Section 2.5; see also Freight Easement, paragraph 4.

Pursuant to the Freight Easement, RRROW will retain exclusive control and management of third party common carrier freight rail operations on the Subject Lines. RRROW will retain "the exclusive and perpetual right to use (or authorize a third party contractor to use) the [Subject Lines] in connection with common carrier freight railroad operations and any related activities (including but not limited to dispatching, maintenance, repair and reconstruction reasonably related to such freight railroad operations)." See Transfer Agreement, Section 2.5; see also Freight Easement, paragraph 3.⁵ Although DART will obtain the right to "lease, license or convey additional easements [on the Subject Lines] to other persons or entities," such leases, licenses or additional easements may not materially interfere with RRROW's rights under the Freight Easement (or any other railroad easement or trackage rights currently

⁵ In the event that DART elects to operate passenger rail service on the Subject Lines or portions thereof in the future, DART may decide to exercise its existing contract rights under the applicable trackage rights agreements to dispatch and maintain the Subject Lines or portions thereof.

held or subsequently acquired by other railroads on the Subject Lines). See Freight Easement, paragraph 4.

The Transfer Agreement, Deed and Freight Easement will give DART the property and contract rights it requires to operate passenger rail service on the Subject Lines in the future if it elects to do so. However, RRROW will retain the property and contract rights necessary to conduct (or to authorize third parties to conduct) common carrier freight rail operations on the Subject Lines. RRROW will retain the exclusive right and obligation to provide common carrier freight rail service, by itself or through third party operators, on the Subject Lines. DART will not acquire sufficient property or contract rights to provide such common carrier freight rail service or to materially interfere with freight rail operations on the Subject Lines. DART will not conduct freight rail operations on the Subject Lines and will not hold itself out as willing or able to do so.

In conjunction with RRROW's transfer of the Subject Lines to DART subject to its retention of the Freight Easement, RRROW also will acquire from DART an exclusive, perpetual freight rail operating easement on approximately 92.2 route miles of railroad owned by DART in Collin, Dallas, Denton, Grayson and Rockwall Counties, Texas (the "DART Lines"). See Finance Docket No. 34347, Regional Rail Right of Way Company – Acquisition and Operation Exemption – Lines of Dallas Area Rapid Transit (STB filed May 5, 2003). RRROW will allow the Dallas, Garland & Northeastern Railroad, Inc. to continue providing common carrier freight rail operations on the DART Lines pursuant to an existing trackage rights agreement with DART and RRROW. This Motion to Dismiss does not apply to the transaction covered by Finance Docket No. 34347 because

RRROW will become the common carrier on the DART Lines by virtue of its acquisition of the freight rail operating easement thereon.⁶

III. ARGUMENT

Under 49 U.S.C. Section 10901, the Board has exclusive jurisdiction over the acquisition of a railroad line by a non-carrier (including a public entity such as DART), where common carrier rights and obligations also are being transferred. Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Whether a particular transaction is an acquisition of a railroad line depends on whether the acquiring company is holding itself out to provide common carrier rail service and has the ability to provide common carrier rail service. Status of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973). This is an objective test; the Board (like the former Interstate Commerce Commission ("ICC")) looks at what the acquiring entity will do as opposed to how it labels itself. Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374 (STB served July 23, 1996); see United States v. California, 297 U.S. 175, 181 (1936).

Subtitle IV of Title 49 defines "railroad" to include "the road used by a rail carrier and owned by it or operated under an agreement" 49 U.S.C. § 10102(6)(B). It defines "rail carrier" as a "person providing common carrier railroad transportation for compensation" 49 U.S.C. § 10102(5). The typical acquisition of a railroad line includes the conveyance of a property interest sufficient to permit the buyer to provide

⁶ Upon consummation of RRROW's acquisition of the freight rail operating easement on the DART Lines, DART's common carrier status on such lines as a result of its ownership thereof will be transferred to RRROW.

(or at least control) railroad transportation for compensation, and that interest forms the basis of the Board's jurisdiction over the transaction and the buyer. However, the Board (like the former ICC) has consistently recognized that under certain circumstances the acquisition of the physical assets of a rail line is not subject to its jurisdiction and does not make the buyer a rail carrier. Such precedent is applicable to and should govern this transaction.

In State of Maine, Department of Transportation -- Acquisition and Operation Exemption -- Maine Central Railroad Company, 8 I.C.C.2d 835 (1991) ("State of Maine"), the State of Maine, acting by and through its Department of Transportation ("MDOT"), sought an exemption to acquire certain railroad right-of-way and trackage from Maine Central Railroad Company ("MEC"), subject to MEC's retained easement for common carrier railroad operations. MDOT acquired the line for possible establishment of a public transit system using the acquired assets. MEC's retained easement included access rights for maintenance and renewal of the line and was permanent. As a result, MDOT's acquisition of the line's underlying physical assets did not impair freight railroad operations. The ICC found that no common carrier rights or obligations were transferred to MDOT, because nothing in the transaction disabled MEC's affiliate and lessee, Springfield Terminal Railroad ("STR"), from meeting its common carrier obligations, and STR could not cease to offer service on the line without ICC approval. For these reasons, the ICC saw "no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation." State of Maine, 8 I.C.C.2d at 837.

In State of Georgia, Department of Transportation – Acquisition Exemption – Georgia Southwestern Railroad, Inc., Finance Docket No. 33876 (STB served July 7, 2000), the State of Georgia, acting by and through its Department of Transportation (“GDOT”), filed a motion to dismiss its notice of exemption for the acquisition of certain railroad assets, including rail line owned by Georgia Southwestern Railroad, Inc. (“GSWR”). Pursuant to an agreement with GSWR, GDOT acquired the rail line, but not the right or obligation to conduct common carrier freight operations on the line. Instead, pursuant to a separate easement agreement, Heart of Georgia Railroad, Inc. (“HOG”) acquired an exclusive rail freight service easement over the line from GSWR.

The Board specifically noted that “under the easement agreement, HOG has the ability to provide unrestricted freight service as a railroad common carrier over the line.” The Board also noted that “HOG’s easement agreement enables it to carry out its common carrier obligation and gives it more than sufficient power over the operation and maintenance of the line to avoid any undue interference by GDOT.” The Board acknowledged that based upon the representations made by the parties, GDOT would not conduct any freight rail operations over the line or hold itself out to do so. Accordingly, the Board held that the proposed transaction did not require Board approval and granted GDOT’s motion to dismiss the notice of exemption.⁷

In State of Wisconsin Department of Transportation – Petition for Declaratory Order, Finance Docket No. 34181 (STB served August 1, 2002), the State of Wisconsin Department of Transportation (“WisDOT”) requested a declaratory order to determine

⁷ See also State of Georgia, Department of Transportation – Acquisition Exemption – South Carolina Central Railroad, Inc., Finance Docket No. 34057 (STB served April 30, 2002).

whether the Board had jurisdiction over its acquisition of certain specified railroad right-of-way and improvements from the Wisconsin and Southern Railroad Company ("WSOR"). Pursuant to the acquisition transaction, WisDOT would exercise an option to acquire the real estate and improvements on a line of railroad operated by WSOR, but would not assume the common carrier obligation to operate the rail line. Instead, WSOR would retain a perpetual easement to operate freight rail service on the rail line.⁸

The STB noted that pursuant to the acquisition transaction, no common carrier obligations were being transferred and that WisDOT would not hold itself out as a common carrier performing rail freight service. The STB acknowledged that WSOR would retain all common carrier rights and obligations by virtue of its perpetual easement for freight rail operations. Therefore, the STB concluded that as a result of the acquisition transaction, there would be no alteration of any common carriers rights or obligations, and therefore STB approval was not required.

Taken together, State of Maine and subsequent cases establish that an entity may acquire the physical assets of a rail line without becoming a carrier, provided that another entity retains sufficient interest to operate as a rail carrier on the line and has autonomy to conduct common carrier freight rail operations. Stated somewhat differently, if an acquisition of a rail line is subject to the existing operating interests of a common carrier and the acquiring entity does not have the ability to materially interfere with the carrier's operations, the acquiring company is not a common carrier subject to Board jurisdiction.

⁸ The option was included in an operating agreement between WSOR and Wisconsin River Rail Transit Commission ("WRRTC") that gave WRRTC the right to contract for commuter rail service on the line.

Like the transaction in the State of Maine case and the other cases discussed above, where the ICC or the Board found that the transaction in question was not subject to its jurisdiction, the transaction between DART and RRROW includes several distinguishing and important features. While DART will acquire certain real property and related improvements for RRROW, DART will not acquire the property and contractual rights necessary to conduct or control common carrier freight rail operations on the Subject Lines.

Pursuant to the instant transaction, DART will not obtain any rail carrier rights or obligations. DART will acquire the underlying physical assets of the Subject Lines, but RRROW will retain an exclusive, perpetual easement for purposes of providing, or allowing third parties to provide, common carrier freight rail service on the Subject Lines. The Transfer Agreement, the Deed and the Freight Easement provide that RRROW will have exclusive control and management of third party common carrier freight railroad operations on the Subject Lines. Although DART will have the right to use the Subjects Lines for any reasonable purposes, including passenger rail purposes, such use must not materially interfere with common carrier freight rail service on the Subject Lines.

In summary, DART's acquisition of the underlying physical assets of the Subject Lines will not constitute an acquisition of lines of railroad subject to the Board's jurisdiction. DART's ownership interests in those assets will not make DART a common carrier subject to STB jurisdiction. RRROW will retain an exclusive, perpetual easement for purposes of providing, or allowing third parties to provide, common carrier freight rail

service on the Subject Lines. DART will not conduct freight rail operations on the Subject Lines and will not hold itself out as willing or able to do so.

IV. CONCLUSION

For the reasons set forth above, DART respectfully requests that the Board dismiss its Verified Notice of Exemption for lack of jurisdiction.

Respectfully submitted,

By: 
Edward J. Fishman
Tracie D. Spear
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue – 2nd Floor
Washington, DC 20036
(202) 778-9000

Dated: May 12, 2003

**ATTORNEYS FOR DALLAS AREA RAPID
TRANSIT**

EXHIBIT A – TRANSFER AGREEMENT

**TRANSFER AGREEMENT BETWEEN REGIONAL RAIL RIGHT-OF-WAY COMPANY AND
DALLAS AREA RAPID TRANSIT**

THIS TRANSFER AGREEMENT ("Agreement") is dated as of May 12, 2003 (the "Effective Date"), by and between REGIONAL RAIL RIGHT-OF-WAY COMPANY, a Texas non-profit, non-stock corporation ("Grantor"), and DALLAS AREA RAPID TRANSIT, a political subdivision of the State of Texas organized and existing under Chapter 452 of the Texas Transportation Code ("Grantee").

RECITALS:

A. Grantor owns the rights, title and interest in certain lines of railroad and related trackage described on **Schedule 1** attached hereto and incorporated by reference herein (the "RRROW Rail Lines").

B. Grantor desires to transfer its rights, title and interest in and to those RRROW Rail Lines and Grantee desires to acquire such rights, title and interest on the terms and conditions set forth in this Agreement, including but not limited to, the reservation by Grantor of an exclusive and perpetual easement to conduct, or authorize a third party operator to conduct, common carrier freight railroad operations on the RRROW Rail Lines.

C. Grantee owns the rights, title and interest in certain lines of railroad and related trackage described on **Schedule 2** attached hereto and incorporated by reference herein (the "DART Rail Lines").

D. Grantee desires to grant to Grantor and Grantor desires to acquire from Grantee an exclusive and perpetual easement to conduct, or authorize a third party operator to conduct, common carrier freight railroad operations on the DART Rail Lines.

E. Grantor and Grantee are agreeable to the transactions outlined in the above Recitals and further described in this Agreement, subject to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor and Grantee agree as follows:

Section 1. DEFINITIONS

The following capitalized terms shall have the meanings specified below whenever used in this Agreement:

"Assigned Leases and Other Agreements" shall refer collectively to the Leases and Other Agreements to be listed in **Schedule 3** attached hereto and incorporated by reference herein.

"Closing" shall have the meaning set forth in Section 8.1.

"Closing Date" shall mean the date on which Closing occurs.

"DART Rail Lines" shall mean the lines of railroad and related trackage described in Recital C, as more particularly set forth in **Schedule 2** attached hereto and incorporated by reference herein.

"Effective Date" shall mean the date of execution of the Agreement, as indicated on the first page hereof.

"Freight Railroad Operating Agreements" shall refer collectively to all existing and effective freight trackage rights agreements, freight railroad operating agreements and other leases, licenses, easements or agreements (including all amendments and/or supplements

thereto) entered into by Grantee, Grantor or their predecessors in interest that relate directly to common carrier freight railroad service on the RRROW Rail Lines or DART Rail Lines.

"Freight Railroad Operating Easement" shall refer to the exclusive and perpetual freight railroad operating easement that Grantor will retain on the RRROW Rail Lines and acquire from Grantee on the DART Rail Lines in accordance with Section 2.

"Leases and Other Agreements" shall refer collectively to all leases, licenses, easements and agreements entered into by Grantor or predecessors in interest of Grantor that cover the RRROW Rail Lines or any portion thereof, including all amendments and/or supplements thereto, but excluding Grantor's interest in any Freight Railroad Operating Agreements.

"Grantee" shall mean Dallas Area Rapid Transit, a political subdivision of the State of Texas organized and existing under Chapter 452 of the Texas Transportation Code, and confirmed by a vote of the people, with the right of eminent domain under Texas law.

"RRROW Rail Lines" shall refer collectively to the rights, title and interest that Grantor will transfer to Grantee and that Grantee will acquire from Grantor in the lines of railroad and related trackage described in Recital A, as more particularly set forth in **Schedule 1** attached hereto and incorporated by reference herein.

"Grantor" shall mean the Regional Rail Right-Of-Way Company, a Texas non-profit, non-stock corporation that was formerly known as the Dallas Area Rapid Transit Property Acquisition Corporation (a/k/a DARTPAC) and that was established by Grantee in order to acquire, hold and manage railroad right-of-way and related improvements on Grantee's behalf for possible future use for passenger transportation purposes.

Section 2. PROPERTY AND OTHER ASSETS TO BE CONVEYED

2.1 RRROW Rail Lines. Subject to the terms and conditions of this Agreement, Grantor agrees to transfer, and Grantee agrees to acquire, all of Grantor's rights, title and interest in and to the RRROW Rail Lines, as more particularly described in the Deed Without Warranty attached hereto as **Exhibit A** and incorporated by reference herein.

2.2 Exceptions and Reservations - Easement. Grantor excepts from the transfer of the RRROW Rail Lines, and reserves unto itself, its successors and assigns, an exclusive and perpetual easement upon, over, under and across the RRROW Rail Lines as reasonably necessary to conduct, or authorize a third party operator to conduct, common carrier freight railroad services on the RRROW Rail Lines. The easement shall be in the form of the Freight Railroad Operating Easement attached hereto as **Exhibit B** and incorporated by reference herein.

2.3 Certain Agreements and Improvements. The RRROW Rail Lines include any and all interests and rights of Grantor appurtenant to the RRROW Rail Lines that are not reserved hereunder, including without limitation:

(a) the assignment and assumption of Grantor's interests and obligations in and under the Assigned Leases and Other Agreements listed on **Schedule 3** attached hereto and incorporated by reference herein, to the extent such Assigned Leases and Other Agreements cover the RRROW Rail Lines (but excluding Grantor's interest in the Freight Railroad Operating Agreements listed on **Schedule 4** attached hereto and incorporated by reference herein, to the extent such Freight Railroad Operating Agreements cover the RRROW Rail Lines); and

(b) all improvements, fixtures, trackage and structures owned by Grantor located on the RRROW Rail Lines, including, without limitation, all tracks, rails, ties, signals,

bridges, tunnels, culverts, trestles, switches, grade crossing materials, warning devices, ballast, subgrade, buildings, facilities, railroad communication and signal systems, wires, pipes, poles and all other trackage appurtenances.

2.4 Easement on DART Rail Lines. Subject to the terms and conditions of this Agreement, Grantee agrees to transfer, and Grantor agrees to acquire, for itself and its successors and assigns, an exclusive and perpetual easement upon, over, under and across the DART Rail Lines as reasonably necessary to conduct, or authorize a third party operator to conduct, common carrier freight railroad services on the DART Rail Lines. The easement shall be in the form of the Freight Railroad Operating Easement attached hereto as **Exhibit B** and incorporated by reference herein. In conjunction with the conveyance of the easement, Grantee shall assign and Grantor shall assume all of Grantee's interests and obligations in and under the Freight Railroad Operating Agreements listed on **Schedule 5** attached hereto and incorporated by reference herein, to the extent such Freight Railroad Operating Agreements cover the DART Rail Lines and relate to common carrier obligations on the DART Rail Lines.

2.5 Freight Railroad Operating Easement Parameters. The Freight Railroad Operating Easement that Grantor will retain on the RRROW Rail Lines and acquire from Grantee on the DART Rail Lines shall grant Grantor the exclusive and perpetual right to use (or authorize a third party contractor to use) the applicable property in connection with common carrier freight railroad operations and any related activities (including but not limited to dispatching, maintenance, repair and reconstruction reasonably related to such freight railroad operations). The plans and specifications for any repair or reconstruction of the applicable property shall be subject to the review and approval rights of Grantee, which review and approval shall not be unreasonably withheld, conditioned or delayed. Grantor shall have exclusive control and management of its common carrier freight railroad activities on the applicable property (or those of the third party operators) and shall ensure compliance with all

applicable laws, rules, regulations and orders. Grantee shall have and/or retain the right to use (or authorize third parties to use) the applicable property for any reasonable purposes (including without limitation passenger rail and fiber optic communication purposes), provided that such uses shall not unreasonably and materially interfere with common carrier freight railroad operations on the applicable property. Grantee shall not acquire or retain any right to conduct, or authorize third parties to conduct, freight rail operations of any kind on the RRROW Rail Lines or DART Rail Lines.

Section 3. [RESERVED]

Section 4. TITLE TO RRROW RAIL LINES

Except for the rights expressly reserved by Grantor in this Agreement, Grantor shall transfer and quit claim to Grantee all of Grantor's rights, title and interest in and to the RRROW Rail Lines, as more particularly described in the Deed Without Warranty. Grantee shall obtain possession of the RRROW Rail Lines at Closing.

Section 5. REPRESENTATIONS AND WARRANTIES

5.1 Grantor's Representations and Warranties. Grantor represents and warrants as of the date hereof and as of the Closing that:

(a) Corporate Good Standing. It is a non-profit, non-stock corporation duly organized, validly existing, and in good standing under the laws of the State of Texas.

(b) Authority. It has full statutory power and authority to enter into this Agreement and, subject to any necessary regulatory authority, to carry out the obligations of Grantor under this Agreement.

5.2 Grantee's Representations and Warranties. Grantee represents and warrants as of the date hereof and as of the Closing that:

(a) Good Standing. It is a political subdivision of the State of Texas duly organized, validly existing, and in good standing under the laws of the State of Texas.

(b) Authority. It has full power and authority to enter into this Agreement and, subject to necessary regulatory authority, to carry out the obligations of Grantee under this Agreement.

Section 6. DISCLAIMERS

Grantee acknowledges and agrees that:

(a) Grantee is acquiring the RRROW Rail Lines in "AS-IS, WHERE-IS" CONDITION, WITH ALL FAULTS, and accepts the RRROW Rail Lines in their current physical and environmental condition.

(b) Grantee is acquiring the RRROW Rail Lines subject to all existing laws, statutes, ordinances, codes, rules and regulations.

(c) Grantee is acquiring the RRROW Rail Lines subject to all outstanding rights of record and all existing encumbrances of any kind or nature.

(d) EXCEPT AS MAY BE EXPRESSLY SET FORTH IN WRITING HEREIN, NEITHER GRANTOR NOR ANY PARTY REPRESENTING GRANTOR HAS MADE ANY WARRANTY OR REPRESENTATION TO GRANTEE, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PROPERTY, RAILROAD FACILITIES OR RAILROAD STRUCTURES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS CONCERNING TITLE, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, MERCHANTABILITY, QUALITY OF WORK, STRUCTURAL INTEGRITY, COMPLIANCE WITH FEDERAL RAILROAD ADMINISTRATION REGULATIONS, ENVIRONMENTAL CONDITIONS, EXPENSES TO BE INCURRED IN CONNECTION WITH

THE PROPERTY, ZONING, BUILDING CODE, PLATTING, SUBDIVISION, ACCESS, AVAILABILITY OF UTILITIES OR COMPLIANCE WITH ANY LAWS, STATUTES, ORDINANCES, CODES, RULES OR REGULATIONS.

(e) Except for any express written warranty or representation contained herein, Grantee will not rely on any warranty or representation, express or implied, oral or written, of Grantor or any party representing Grantor, but instead will rely solely upon the Grantee's and any consultant(s) inspections, tests, surveys, studies, procedures and investigations of the RRROW Rail Lines. Grantee assumes the risk that adverse physical and environmental conditions may not be revealed by any such inspections.

(f) This Section 6 shall survive the Closing of the transactions contemplated herein.

Section 7. CONDITIONS PRECEDENT TO CLOSING AND TERMINATION RIGHTS

Notwithstanding the execution of this Agreement by the parties, the performances by Grantor and Grantee of the Closing are subject to fulfillment of the following conditions on or prior to the Closing (or as otherwise specifically stated):

7.1 No Legislative, Judicial or Administrative Action. Neither Grantor nor Grantee shall be prevented from fulfilling their respective obligations under this Agreement as a result of legislative, judicial or administrative action.

7.2 Grantor's Board Approval. Grantor shall have received all necessary approvals from its Board of Directors to enter into this Agreement and consummate the transactions contemplated by this Agreement under all of the terms and conditions hereof.

7.3 Grantee's Board Approval. Grantee shall have received all necessary approvals from its Board of Directors to enter into this Agreement and consummate the transactions contemplated by this Agreement under all of the terms and conditions hereof.

7.4 Representations of Grantor. All representations and warranties made by Grantor under this Agreement shall be true and correct and all covenants of Grantor to be performed before Closing shall have been performed, as of the Closing Date.

7.5 Representations of Grantee. All representations and warranties made by Grantee under this Agreement shall be true and correct and all covenants of Grantee to be performed before Closing shall have been performed, as of the Closing Date.

Section 8. CLOSING

8.1 Closing Date. The consummation of the transactions contemplated by this Agreement (the "Closing") shall occur on May 12, 2003 ("Closing Date") unless the parties agree to a later date. The Closing shall be held at the offices of Grantee at a time mutually agreed upon by Grantee and Grantor.

8.2 Grantor's Deliveries to Grantee. At the Closing, Grantor shall deliver to Grantee: (i) the Deed Without Warranty as duly executed and acknowledged by Grantor, (ii) the Freight Railroad Operating Easements(s) as duly executed and acknowledged by Grantor; (iii) originals (to the extent available from Grantor's Real Estate Department) or copies (to the extent available from Grantor's Real Estate Department) of the Assigned Leases and Other Agreements, and (iv) a resolution authorizing Grantor to consummate the transactions contemplated hereby.

8.3 Grantee's Deliveries to Grantor. At the Closing, Grantee shall deliver to Grantor: (i) the Freight Railroad Operating Easement as duly executed and acknowledged by Grantee; (ii) originals (to the extent available from Grantor's Real Estate Department) or copies (to the extent available from Grantor's Real Estate Department) of the Freight Railroad Operating Agreements listed on **Schedule 5**; and (iii) a resolution authorizing Grantee to consummate the transactions contemplated hereby.

8.4 Further Assurances. In addition, at the Closing, each of Grantor and Grantee shall deliver to the other any and all other documents reasonably necessary and appropriate for the consummation of the transactions contemplated by this Agreement (including such documents as Grantee or Grantor may reasonably request to support any submissions by Grantee or Grantor with tax authorities); provided that neither party's delivery of any such documents shall create or expand any obligations under this Agreement.

8.5 Termination of Lease Agreement. As of Closing, the Lease Agreement between Grantee and Grantor applicable to the RRROW Rail Lines shall terminate and have no further force or effect.

Section 9. ADJUSTMENTS

9.1 Proration. The real property taxes and special assessments, rents, insurance, utilities, and other expenses attributable to the RRROW Rail Lines shall be prorated between Grantor and Grantee in such manner as to allocate to Grantor all such expenses attributable to its interests on or prior to Closing, and to allocate to Grantee all such expenses attributable to its interests after 12:01 a.m. on the day following the Closing. Grantee shall assume responsibility for any assessments of record that are not yet due and payable as of the Closing.

9.2 Closing Costs. Unless otherwise agreed by the parties, all recording, filing, documentary and similar fees and taxes payable in connection with the transactions contemplated by the Agreement shall be allocated between the parties on an equitable basis.

Section 10. MISCELLANEOUS

10.1 Government Approvals. Grantor and Grantee will cooperate to file the necessary exemption notices with the Surface Transportation Board for Grantee's acquisition of the RRROW Rail Lines and Grantor's acquisition of the Freight Railroad Operating Easement on

the DART Rail Lines and reservation of the Freight Railroad Operating Easement on the RRROW Rail Lines.

10.2 Binding Successors. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

10.3 Time of the Essence. Time is important to both Grantor and Grantee in the performance of this Agreement, and they have agreed that strict compliance is required as to any date set forth herein. If the final date of any period which is set forth in any term or condition of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the state in which the RRROW Rail Lines are located, then, and in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

10.4 Notices. Any notice required or desired to be given to either party hereto shall be deemed to be delivered, if delivered to the addresses and the parties specified below (i) on the date of delivery, if hand delivered, (ii) one day after sending, if sent by overnight courier, or (iii) if sent by registered or certified mail, three (3) days after the same is posted by registered or certified mail, postage prepaid, to the address of the applicable party set out below. Either party hereto may change such party's address for notice, but until written notice of such change of address is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

(a) If intended for Grantor:

Regional Rail Right-of-Way Company
P.O. Box 660163
Dallas, TX 75266-7255
ATTN: President
TELEPHONE: (214) 749-3071
FACSIMILE: (214) 749-3660

(b) If intended for Grantee:

Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, TX 75202
ATTN: General Counsel
TELEPHONE: (214) 749-3071
FACSIMILE: (214) 749-3660

10.5 Entire Agreement; Severability. This Agreement (together with the Exhibits, and Schedules, which are hereby incorporated by reference as if fully set forth herein) contains the entire agreement between Grantor and Grantee with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between Grantor and Grantee with respect thereto. If any term, covenant or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be illegal, invalid or unenforceable, then, in such event, the remainder of this Agreement or the application of such terms, covenants and provisions hereof shall remain valid and enforceable to the fullest extent permitted by law. Furthermore, any such invalidity or unenforceability of a term, covenant or provision of this Agreement shall not be deemed to affect the validity or effectiveness of the remaining terms and provisions of this Agreement.

10.6 Amendments in Writing. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by both Grantor and Grantee.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of Texas.

10.8 Dissolution. In the event of the dissolution of the Grantor, all remaining assets of the Grantor (including without limitation any remaining interests of Grantor in the Freight Railroad Operating Easements), after payment in full of its debts, obligations and necessary final expenses, or after the making of adequate provision therefore, shall be distributed to Grantee.

10.9 Headings. The Section headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

10.10 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.11 No Third Party Beneficiary. No provision of this Agreement shall be construed as intended for the benefit of any third party.

EXECUTED by Grantor and Grantee as of the date first written above.

GRANTOR:

Regional Rail Right-of-Way Company

By: _____

Name: _____

Title: _____

GRANTEE:

Dallas Area Rapid Transit

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

EXHIBIT A

Form of Deed Without Warranty

DEED
(Without Warranty)

STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE
	§	PRESENTS
COUNTIES OF TARRANT,	§	
DALLAS AND COLLIN	§	

That Regional Rail Right of Way Company, formerly known as "Dallas Area Rapid Transit Property Acquisition Corporation," a Texas non-profit corporation, ("Grantor") for and in consideration for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, in hand paid by Dallas Area Rapid Transit, a Texas regional transportation authority created under Chapter 452 of the Texas Transportation Code, ("Grantee"), with a principal place of business at 1401 Pacific Avenue, Dallas, Texas 75202, the sufficiency and receipt of which consideration are hereby acknowledged, subject to the reservations and exceptions below stated, has granted, transferred, bargained, delivered and conveyed, and by these presents does grant, transfer, bargain, deliver, and convey unto Grantee, all of Grantor's rights, title and interest in and to all of Grantor's railroad right-of-way property lying and being situated in the Counties of Dallas, Tarrant and Collin, State of Texas; said railroad right-of-way property being more particularly described in those certain deeds listed in Exhibit "A" attached hereto and incorporated herein for all purposes; said railroad right-of-way property being hereinafter referred to in the aggregate as "the ROW Property".

The transfer and conveyance described herein shall include all of Grantor's rights, title and interest in all improvements, fixtures, trackage and structures, including, but not limited to, any leads, spurs, turnouts, tails, sidings, tracks, team tracks, rails, ties, bridges, tunnels, culverts, trestles, switches, grade crossing materials, warning devices, ballast, subgrade, buildings, wires, pipes, poles, fixed equipment, signal and communication facilities and all other operating and non-operating appurtenances owned by Grantor relating to the ROW Property.

It is the intent of the Grantor, subject to the reservations herein- below stated, to grant, transfer and convey unto Grantee without warranty of any kind, whether express or implied, and expressly excluding all warranties that

might arise by common law and the warranties in Subsection 5.023 of the Texas Property Code and its successor provisions, except as herein expressly stated, and, subject to the reservations and exceptions herein set forth, all of the rights, title and interest of Grantor in and to the ROW Property, including, but not limited to, all of Grantor's rights, title and interest in all air rights, if any, over the ROW Property.

Except as expressly stated below, the rights, title and interest granted and conveyed herein specifically include:

- (a) all of Grantor's rights, title and interest in that certain Easement for Railroad Purposes (North Easement Tract) granted by the St. Louis Southwestern Railway Company, Dallas Terminal Railway & Union Depot Company and Southern Pacific Transportation Company, as grantor, to Dallas Area Rapid Transit Property Acquisition Company, as grantee, dated December 27, 1990 and filed on January 11, 1991 in Vol. 3424, Page 175 in the Real Property Records of Collin County, Texas.
- (b) all of Grantor's rights, title and interest in that certain Easement for Railroad Purposes (South Easement Tract) granted by St. Louis Southwestern Railway Company, Dallas Terminal Railway and Union Depot Company and Southern Pacific Transportation Company, as grantor, to Dallas Area Rapid Transit Property Acquisition Company, as grantee, dated December 27, 1990 and filed on January 11, 1999 in Vol. 91009, Page 1423 in the Real Property Records of Dallas County, Texas.

Grantor EXCEPTS AND RESERVES from the transfer and conveyance of the ROW Property, an exclusive right and easement to conduct or authorize third parties to conduct freight operations on the ROW Property. It is the intention of Grantor that Grantor shall retain and except any and all freight operating easements obtained by Grantor arising under that certain Railroads-DARTPAC Purchase Agreement dated December 27, 1990 by and between Grantor and the St. Louis Southwestern Railway Company, Dallas Terminal Railway and Union Depot Company and Southern Pacific Transportation Company (said railroads hereinafter called "the Railroads" and said purchase agreement hereinafter called "the Railroads-DARTPAC Agreement"). It is Grantor's further intent that, except as to the freight

operating easement retained herein, Grantee shall have all of the rights, title and interest in the ROW Property that Grantor obtained from the Railroads in the Railroads-DARTPAC Agreement. The terms and conditions of this retained freight operating easement shall be governed by the terms and conditions of that certain Easement for Freight Railroad Purposes dated of even date herewith between Grantor and Grantee, except to the extent that such terms and conditions are not applicable to the rights, title and interest of Grantor in the ROW Property.

Grantee accepts the Property in an "as is", "where is" condition as of the date hereof, with all faults, and without warranty of any kind.

This conveyance is made by Grantor and accepted by Grantee, subject to:

- (a) all laws, ordinances and other governmental regulations, including but not limited to, building and zoning ordinances;
- (b) all rights, titles, benefits and burdens arising under that certain Easement Agreement dated November 17, 1987, between St. Louis Southwestern Railway Company and U.S. Sprint Communications Company ("Sprint") (St. Louis Southwestern Lease Audit No. 9304) the ("Sprint Easement"); provided, however, that any reversion of rights, title or interests to the real property affected by the Sprint Easement arising from any termination of the Sprint Easement shall accrue to the then fee owner of such affected real property.
- (c) any and all licenses, easements or similar interests evidenced on the ground or of record as of the date hereof, to the extent that any of same are still in effect, whether for roadways, crossings, utility poles, signs, billboards, sewer pipes, water lines, gas lines, cables or otherwise, including in particular, but without limitation, the Sprint Easement;
- (d) those certain leases, licenses and other contract rights and interests assigned by Grantor to Grantee in accordance with that certain Assignment of Leases, Licenses, Franchises or Other Interests in Real Property executed by and between Grantor and Grantee and dated of even date herewith.

TO HAVE AND TO HOLD the ROW Property, subject as aforesaid, together with: (a) all and singular the rights and appurtenances thereto in anywise belonging to Grantor; (b) all rights, title and interest of Grantor in strips and gores, if any, between the ROW Property and any properties, whether owned or claimed by deed, limitations, or otherwise; (c) except as otherwise provided herein, all rights, title and interest of Grantor in or lying in or under the bed of any creek, stream, waterway or water course or any highway, avenue, street, road, alley, easement, or right-of-way, open or proposed, in, on, or across the ROW Property; and (d) except as above set forth, all leases, licenses, easements, contracts, and agreements affecting the ROW Property, whether said rights, easements and interests are owned or claimed by deed, limitations, prescription, or otherwise, and Grantor does hereby grant, transfer and convey all of Grantor's right, title and interest in the herein described ROW Property unto Grantee, its successors and assigns forever.

This Deed is made pursuant to the provisions of that certain Transfer Agreement by and between Grantor and Grantee dated of even date with this Deed, and this Deed shall not be construed to merge herein any covenants, representations, obligations, warranties or limitations therein agreed to by the parties, except as same have been fully performed by, or contemplated in this Deed, but such obligations to the extent not fully herein contemplated or performed shall survive delivery hereof.

IN WITNESS WHEREOF, Grantor and Grantee have caused these presents to be executed as of the 12th day of May, 2003, through their respective duly authorized officials.

REGIONAL RAIL RIGHT-OF-WAY COMPANY

By: _____
Name: Kathryn D. Waters
Its: President

Approved As To Form:

DALLAS AREA RAPID TRANSIT

By: _____
Name: Gary C. Thomas
Its: President/Executive Director

By: _____
Name: Swanson W. Angle
Its: Interim General Counsel

ACKNOWLEDGMENTS

[illegible]

This instrument was acknowledged before me on the 12th day of May, 2003, by KATHRYN D. WATERS, President, Regional Rail Right-of-Way Company, a Texas non-profit corporation, on behalf of said non-profit corporation.

NOTARY PUBLIC in and for the
State of Texas

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 12th day of _____, 2003, by GARY C. THOMAS, President/Executive Director of Dallas Area Rapid Transit, a Texas regional transportation authority, on behalf of said authority.

NOTARY PUBLIC in and for the
State of Texas

EXHIBIT "A"

- 1.) Deed from ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, to DALLAS AREA RAPID TRANSIT PROPERTY ACQUISITION CORPORATION dated December 27, 1990 and filed on January 11, 1991 in Vol. 91008, Page 1341 in the Real Property Records of Dallas County, Texas
- 2.) Deed from SOUTHERN PACIFIC TRANSPORTATION COMPANY to DALLAS AREA RAPID TRANSIT PROPERTY ACQUISITION CORPORATION dated December 27, 1990 and filed on January 11, 1991 in Vol. 91008, Page 1390 in the Real Property Records of Dallas County, Texas
- 3.) Deed from DALLAS TERMINAL RAILWAY AND UNION DEPOT COMPANY to DALLAS AREA RAPID TRANSIT PROPERTY ACQUISITION CORPORATION dated December 27, 1990 and filed on January 11, 1991 in Vol. 91008, Page 1407 in the Real Property Records of Dallas County, Texas

EXHIBIT B

Form of Freight Railroad Operating Easement

EASEMENT FOR FREIGHT RAILROAD PURPOSES

STATE OF TEXAS	§
	§
	§
COUNTIES OF DALLAS,	§
DENTON, COLLIN,	§
GRAYSON and ROCKWALL	§

THAT DALLAS AREA RAPID TRANSIT ("DART"), a political subdivision of the State of Texas, organized and existing as a Texas regional transportation authority under Chapter 452 of the Texas Transportation Code, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, has GRANTED, TRANSFERRED and CONVEYED and by these presents does GRANT, TRANSFER and CONVEY unto REGIONAL RAIL RIGHT-OF-WAY COMPANY, formerly known as "Dallas Area Rapid Transit Property Acquisition Corporation" ("RRROWC"), a Texas non-profit, non-stock corporation, whose address is P.O. Box 660163, Dallas, Texas 75266-7255, including its successors and assigns, an exclusive and perpetual common carrier freight railroad operating easement on, over and across that certain railroad right-of-way real property in Dallas, Denton, Collin, Grayson and Rockwall Counties, Texas described in Exhibit "A" attached hereto and incorporated herein for all purposes (said railroad right-of-way property being hereinafter called the "ROW Property") upon the following terms and conditions:

1. The easement rights granted herein are expressly subject to all easements, restrictions and reservations, whether of public record or not, affecting the ROW Property.
2. The easement rights granted herein are acquired for and shall be used by RRROWC for the purpose of enabling RRROWC, its successor and assigns, agents, servants or any other third-party operator designated by RRROWC to perform common carrier freight railroad operations; such freight railroad operations to include, but not be limited to, the use and movement on or across the ROW Property of freight trains, locomotives, cabooses, railroad freight cars, business cars, "hi-rail" vehicles, track and maintenance equipment and all other

rail-related machines and equipment used in connection with such freight railroad operations.

3. The common carrier freight railroad operating easement rights granted herein shall further include, but not be limited to, the right of RRROWC to use, construct, maintain, operate, control, inspect, repair, replace, renew, modify, rehabilitate and remove any trackage, structures or signals on the ROW Property.
4. DART hereby reserves unto itself and specifically reserves from the easement rights granted herein the right of DART or its successors or assigns to use the ROW Property for any purpose other than the right to perform, conduct or grant others the right to perform or conduct common carrier freight railroad operations. Specifically excluded from the easement rights granted herein is the right of DART to lease, license, or convey additional easement rights or concessions to other persons or entities, so long as such leases, licenses, rights, additional easements or concessions do not unreasonably and materially interfere with the freight railroad operating easement rights granted herein or any other railroad easement or trackage rights either currently held or subsequently acquired by a railroad company as to the ROW Property. Additionally, DART specifically reserves unto itself the right to perform or conduct passenger rail operations on the ROW Property or to allow third-parties to conduct such operations on DART's behalf, provided that such operations do not unreasonably and materially interfere with the common carrier freight railroad operating easement rights granted herein.
5. In the event that RRROWC, at some time in the future, consummates the abandonment of its common carrier freight railroad operating rights on the ROW Property, RRROWC shall immediately quitclaim its common carrier freight railroad operating easement interest in and to the ROW Property to DART or to the then current fee holder of the ROW Property for \$1.00 consideration.
6. The easement rights granted herein run with the land. In the event that RRROWC, or RRROWC's successor-in-interest with respect to the easement rights and interests conveyed herein, is either dissolved, merged, liquidated or otherwise no longer ceases to exist as a corporate entity, the easement rights granted herein shall immediately

revert to DART or to DART's successors or assigns without further notice or further action required by either party hereto.

7. DART and RRROWC, or their respective successors and assigns, may terminate the easement rights granted herein by written mutual agreement executed by an authorized representative of each party.
8. The terms and conditions set forth herein shall be binding on the parties hereto and their respective successors and assigns.

DART:
DALLAS AREA RAPID TRANSIT

Approved as to Form:

By: _____
Name: Gary C. Thomas
Its: President/Executive Director

By: _____
Name: Swanson W. Angle
Its: Interim General Counsel

RRROWC:
REGIONAL RAIL RIGHT-OF-WAY COMPANY

By: _____
Name: Kathryn D. Waters
Its: President

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 12th day of May, 2003 by Gary C. Thomas, President/Executive Director, Dallas Area Rapid Transit, a Texas regional transportation authority, on behalf of said authority.

Name: _____
NOTARY PUBLIC in and for the
State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 12th day of May, 2003 by Kathryn D. Waters, President, Regional Rail Right-of-Way Company, a non-profit corporation, on behalf of said non-profit corporation.

Name: _____
NOTARY PUBLIC in and for the
State of Texas

EXHIBIT "A"

Description of the DART Lines of Railroad and Related Trackage On Which RRROWC Will Acquire Freight Railroad Operating Easement

- (1) the Athens Branch East Line (a/k/a Elam Branch) between approximately milepost 314.84 (Briggs Jct.) and approximately milepost 308.80 (Pleasant Drive);
- (2) the Garland Line between approximately D-755.27 and approximately milepost D-745.5;
- (3) the Rowlett Extension between approximately milepost 745.5 and approximately milepost 741.3;
- (4) the Carrollton Line between approximately milepost K-758.04 and approximately milepost K-741.3;
- (5) the Fair Park East Line between approximately milepost 210.704 (East Dallas Yard) and approximately milepost 210.078 (MP Junction);
- (6) the Denton Subdivision between approximately milepost K-741.3 (Carrollton) and approximately milepost K-729.5 (Lake Dallas);
- (7) the Sherman Subdivision between approximately milepost 290.5 (Allen) and approximately milepost 324.84 (South Sherman Jct.);
- (8) the White Rock/Fair Park Connector between approximately milepost 6.93 (Tenison Park) and approximately milepost 5.60 (MP Jct.);
- (9) the Brookhollow Branch Line between approximately milepost 0.0 (DFW Main) and approximately milepost 3.31 (Denton Subdivision).

SCHEDULE 1

**Lines Of Railroad And Related Trackage To Be Conveyed From RRROW To DART
Subject To Retention Of Freight Railroad Operating Easement**

(1) former SPT and DTR trackage and associated real estate between Tower 19 and Oakland Avenue, as more particularly described in the Deed Without Warranty attached hereto as Exhibit A

(2) former SSW line of railroad between approximately milepost 632.27 (Ft. Worth) and approximately milepost 578.2 (Wylie), as more particularly described in the Deed Without Warranty attached hereto as Exhibit A

SCHEDULE 2

DART Lines of Railroad and Related Trackage On Which RRROW Will Acquire Freight Railroad Operating Easement

(1) the Athens Branch East Line (a/k/a Elam Branch) between approximately milepost 314.84 (Briggs Jct.) and approximately milepost 308.80 (Pleasant Drive); (2) the Garland Line between approximately D-755.27 and approximately milepost D-745.5; (3) the Rowlett Extension between approximately milepost 745.5 and approximately milepost 741.3; (4) the Carrollton Line between approximately milepost K-758.04 and approximately milepost K-741.3; (5) the Fair Park East Line between approximately milepost 210.704 (East Dallas Yard) and approximately milepost 210.078 (MP Junction); (6) the Denton Subdivision between approximately milepost K-741.3 (Carrollton) and approximately milepost K-729.5 (Lake Dallas); (7) the Sherman Subdivision between approximately milepost 290.5 (Allen) and approximately 324.84 (South Sherman Jct.); (8) the White Rock/Fair Park Connector between approximately milepost 6.93 (Tenison Park) and approximately milepost 5.06 (MP Jct.); and (9) the Brookhollow Branch Line between approximately milepost 0.9 (DFW Main) and approximately milepost 3.31 (Denton Subdivision).

SCHEDULE 3

Leases and Other Agreements To Be Assigned To DART

[To Be Listed]

SCHEDULE 4

Freight Railroad Operating Agreement Interests To Be Retained By RRROW

- (1) 1990 Trackage Rights Agreement Between DARTPAC and St. Louis
Southwestern Railroad Corporation (as amended)
- (2) 1995 Trackage Rights Agreement between Santa Fe Railway Company, Kansas
City Southern Railway Company and DARTPAC
- (3) 1999 Trackage Rights Agreement between Union Pacific Railroad Company,
Dallas Garland & Northeastern Railroad Company, DART and DARTPAC (to the extent of
DARTPAC's interest therein)

SCHEDULE 5

Freight Railroad Operating Agreement Interests To Be Assigned To RRROW

[To Be Listed]