

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. )  
GERALD O.E. NICKOLI, et al., )  
Relators, )  
ERIE METROPARKS, et al., )  
Respondents. )

CASE NO. 2009-0026  
Original Action in Mandamus

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ANSWER OF RESPONDENTS

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Attorneys for Relators



## ANSWER OF RESPONDENTS

For their Answer to Relators' Complaint for a Writ of Mandamus (the "Complaint"), Respondent Erie MetroParks ("Respondent Erie MetroParks") and Respondent Board of Park Commissioners, Erie MetroParks ("Respondent Board"; hereinafter Respondent Erie MetroParks and Respondent Board will be jointly referred to as "Respondents") state as follows:

1. Respondents deny each and every allegation contained in paragraph 1 of the Complaint.

2. Respondents deny each and every allegation contained in paragraph 2 of the Complaint.

3. With respect to the allegations contained in paragraph 3 of the Complaint: Respondents admit that this Court has original jurisdiction over mandamus actions pursuant to Ohio Const. Art. IV, Section 2 and Ohio Rev. Code §2731.01, *et seq.*; Respondents deny that the present action is a proper case for the issuance of a writ of mandamus.

4. Respondents are without knowledge or information sufficient to form a belief as to the truth of any and all of the allegations contained in paragraph 4 of the Complaint, and therefore Respondents deny each and every allegation contained in said paragraph 4.

5. Respondents deny each and every allegation contained in paragraph 5 of the Complaint.

6. Respondents deny each and every allegation contained in paragraph 6 of the Complaint.

7. Respondents admit each and every allegation contained in paragraph 7 of the Complaint.

8. With respect to the allegations contained in paragraph 8 of the Complaint: Respondents deny each and every allegation contained in paragraph 8 of the Complaint, and aver that attached hereto as Exhibit 1 is a true and genuine copy of 25 Ohio Laws 94, which is the legislation that created the Milan Canal Company (the “Canal Company”) referred to in said paragraph 8.

9. Respondents admit each and every allegation contained in paragraph 9 of the Complaint.

10. With respect to the allegations contained in paragraph 10 of the Complaint: Respondents aver that attached hereto as Exhibit 2 is a true and genuine copy of the 1881 Lease (the “1881 Lease”) referred to in said paragraph 10 which was recorded in Lease Records Volume 2, pages 26-28, Recorder’s Office, Erie County, Ohio; Respondents further aver that at the time the 1881 Lease was entered into, the Wheeling and Lake Erie Railway Company (“W&LE-Ohio”) referred to in said paragraph 10 was an Ohio corporation; Respondents admit each and every remaining allegation contained in paragraph 10.

11. Respondents admit each and every allegation contained in paragraph 11 of the Complaint.

12. Respondents admit each and every allegation contained in paragraph 12 of the Complaint, and aver that the dissolution of the Canal Company referred to in said paragraph 12 occurred as a result of the dissolution action docketed as *In re Application for Dissolution of Milan Canal Company*, Erie County, Ohio Court of Common Pleas Case No. 9702 (“Case No. 9702”), that attached hereto as Exhibit 3 is a true and genuine copy of the Petition which instituted Case No. 9702, that attached hereto as Exhibit 4 is a true and genuine copy of the Order of Sale filed in Case No. 9702, and that attached hereto as Exhibit 5 is a true and genuine

copy of the recorded Receiver's Deed evidencing the sale of real estate ordered by such Order of Sale.

13. With respect to the allegations contained in paragraph 13 of the Complaint: Respondents admit that in 1988 Norfolk and Western Railway Company ("Norfolk") filed a notice with the Interstate Commerce Commission ("ICC") for exemption from regulation of a section of a railroad, part or all of which may have been on the same real estate on which part or all of the Milan Canal had previously been located, and Respondents admit that at some point in time some salvageable material was removed from such section of railroad; Respondents deny that Norfolk ever abandoned such section of railroad, but instead aver that in 1990 Norfolk conveyed such section of railroad to Wheeling and Lake Erie Railway Company, a Delaware corporation ("W&LE-Delaware"), pursuant to a recorded Quitclaim Deed, a true and genuine copy of which is attached hereto as Exhibit 6; Respondents further aver on information and believe that W&LE-Delaware indicated to the ICC that W&LE-Delaware would continue to operate such section of railroad; Respondents further aver on information and believe that the Surface Transportation Board, the successor to the ICC, may still retain jurisdiction over such section of railroad; Respondents deny each and every remaining allegation contained in said paragraph 13.

14. With respect to the allegations contained in paragraph 14 of the Complaint: Respondents admit that in 1995, and pursuant to a recorded Quitclaim Deed, a true and genuine copy of which is attached hereto as Exhibit 7, W&LE-Delaware conveyed to Respondent Board W&LE-Delaware's interests in a certain section of a railroad line located in Erie County, Ohio, and that such conveyance included the lessee's rights under the 1881 Lease; Respondents aver that such conveyance was subject to the right of W&LE-Delaware to run and maintain a line of

railway over such section of railroad line; Respondents deny each and every remaining allegation contained in said paragraph 14.

15. With respect to the allegations contained in paragraph 15 of the Complaint: Respondents admit that based in part on the Quitclaim Deed referred to in paragraph 14 of the Complaint, Respondent MetroParks took possession of that section of railroad described in such Deed; Respondent deny each and every remaining allegation contained in said paragraph 15.

16. Respondents admit each and every allegation contained in paragraph 16 of the Complaint, and aver that attached hereto are true and genuine copies of the following pleadings and decisions in the *Key Trust* litigation (the "*Key Trust* litigation") defined in said paragraph 16:

<u>Exhibit</u>	<u>Description</u>
8	Plaintiff's Amended Complaint for Declaratory Relief
9	Defendants' Answer and Counterclaim
10	Plaintiff's Reply to Defendants' Counterclaim
11	First Trial Court Decision
12	Second Trial Court Decision.

17. With respect to the allegations contained in paragraph 17 of the Complaint: Respondents admit that in 2000 Key Trust Company of Ohio, in its capacity as Trustee of the Testamentary Trust of Verna Lockwood Williams ("*Key Trust*"), conveyed its interests in the Canal Company property to Buffalo Prairie, Ltd. ("*Buffalo Prairie*") pursuant to a recorded Quitclaim Deed, a true and genuine copy of which is attached hereto as Exhibit 13, that Buffalo Prairie subsequently purported to convey by quitclaim deeds portions of such property to the Relators herein, other than Relators Richard and Carol Rinella, that attached as Exhibits A-1 through A-11 of Relators' Memorandum in Support of Complaint filed herein are what appears

to be true and genuine copies of such quitclaim deeds, and that in February of 2000 Key Trust purported to convey to Relators Richard and Carol Rinella, pursuant to a recorded Quitclaim Deed, true and genuine copy of which is attached hereto as Exhibit 14, an interest in real estate allegedly previously owned by the Canal Company; Respondents aver that in the above-described Quitclaim Deed to Buffalo Prairie, Key Trust listed as the "Prior Deed Reference" the deed recorded in Deed Volume 78, pages 239-241, Recorder's Office, Erie County, Ohio, which is a reference to the Receiver's Deed attached hereto as Exhibit 5; Respondents further aver that in the above-described Quitclaim Deed to Relators Richard and Carol Rinella, Key Trust claimed title to the real estate be conveyed by such Quitclaim Deed through the deed recorded in Deed Volume 80, page 453, Recorder's Office, Erie County, Ohio, a true and genuine copy of which is attached hereto as Exhibit 15, and through the Assignment of Lease recorded in Lease Records Volume 17, pages 307-310, Recorder's Office, Erie County, Ohio, a true and genuine copy of which is attached hereto as Exhibit 16; Respondents deny that the above-referenced quitclaim deeds from Buffalo Prairie to Relators herein other than Relators Richard and Carol Rinella and the above-described Quitclaim Deed from Key Trust to Relators Richard and Carol Rinella conveyed any interest in any real estate; Respondents deny each and every remaining allegation contained in said paragraph 17.

18. With respect to the allegations contained in paragraph 18 of the Complaint: Respondents deny that Relator Cheryl Lyons was added as a defendant in the *Key Trust* litigation; Respondents admit each and every remaining allegation contained in said paragraph 18.

19. With respect to the allegations contained in paragraph 19 of the Complaint: Respondents admit that it was determined in the *Key Trust* litigation that the 1881 Lease only

covered real estate within the Merry and Townsend Tracts described in said paragraph 19; Respondents deny each and every remaining allegation contained in said paragraph 19.

20. Respondents deny each and every allegation contained in paragraph 20 of the Complaint.

21. With respect to the allegations contained in paragraph 21 of the Complaint: Respondents admit that in the *Key Trust* litigation, the Ohio Court of Appeals for the Sixth Appellate District held that the 1881 Lease only covered real estate within the Merry and Townsend Tracts described in paragraph 19 of the Complaint; Respondents deny each and every remaining allegation contained in said paragraph 21.

22. With respect to the allegations contained in paragraph 22 of the Complaint: Respondents admits that Respondent Board was a Respondent in *State, ex. rel. Coles v. Granville, 2007-Ohio-6057* ("*Coles*"), and that in *Coles* this Court issued a writ of mandamus ordering Respondent Board to commence appropriation proceedings with respect to property allegedly owned by the Relators in *Coles*; Respondents deny each and every remaining allegation contained in said paragraph 22.

23. With respect to the allegations contained in paragraph 23 of the Complaint: Respondents admit that the Relators in this case and the Relators in *Coles* claim to have acquired their interests in the real estate at issue in this case and in *Coles* either directly from Key Trust or from Buffalo Prairie; Respondents deny each and every remaining allegation contained in said paragraph 23.

24. Respondents admit each and every allegation contained in paragraph 24 of the Complaint.

25. Respondents admit each and every allegation contained in paragraph 25 of the Complaint.

26. With respect to the allegations contained in paragraph 26 of the Complaint: Respondents admit the accuracy of the quotation from *Coles* contained in said paragraph 26; Respondents deny each and every remaining allegation contained in said paragraph 26.

27. Respondents deny each and every allegation contained in paragraph 27 of the Complaint.

28. Respondents deny each and every allegation contained in paragraph 28 of the Complaint.

29. Respondents admit each and every allegation contained in paragraph 29 of the Complaint.

30. With respect to the allegations contained in paragraph 30 of the Complaint: Respondents admit that one of the Relators in *Coles* was Buffalo Prairie; Respondents are without knowledge or information sufficient to form a belief as to the truth of each and every remaining allegation contained in said paragraph 30, and therefore Respondents deny each and every remaining allegation contained in said paragraph 30.

31. With respect to the allegations contained in paragraph 31 of the Complaint: Respondents admit that this Court in *Coles* recognized that while the *Key Trust* litigation was pending, Key Trust conveyed property formerly owned by the Canal Company to Buffalo Prairie; Respondents deny each and every remaining allegation contained in paragraph 31.

32. Respondents deny each and every allegation contained in paragraph 32 of the Complaint.

33. With respect to the allegations contained in paragraph 33 of the Complaint: Respondents admit that Relators in this action claim to have received their interests in the real estate at issue herein from Key Trust or from Buffalo Prairie; Respondents deny that the Relators in this action in fact received any interests in such real estate pursuant to conveyances from either Key Trust or Buffalo Prairie; Respondents deny each and every remaining allegation contained in said paragraph 33.

34. Respondents deny each and every allegation contained in paragraph 34 of the Complaint.

35. Respondents are without knowledge or information sufficient to form a belief as to the truth of any and all of the allegations contained in paragraph 35 of the Complaint, and therefore Respondents deny each and every allegation contained in said paragraph 35.

36. Respondents deny each and every allegation contained in paragraph 36 of the Complaint.

37. Respondents deny each and every allegation contained in paragraph 37 of the Complaint.

38. With respect to the allegations contained in paragraph 38 of the Complaint: Respondents admit that they do not believe that the *Key Trust* litigation established that Relators herein are entitled to compensation for anything; Respondents deny each and every remaining allegation contained in said paragraph 38.

39. Respondents deny each and every allegation contained in paragraph 39 of the Complaint.

40. Respondents deny each and every allegation contained in paragraph 40 of the Complaint.

41. Respondents deny each and every allegation contained in paragraph 41 of the Complaint.

42. Respondents deny each and every allegation contained in paragraph 42 of the Complaint.

43. Respondents deny each and every allegation contained in paragraph 43 of the Complaint.

44. Respondents deny each and every allegation contained in paragraph 44 of the Complaint.

45. Respondents deny each and every allegation contained in paragraph 45 of the Complaint.

46. With respect to the allegations contained in paragraph 46 of the Complaint: Respondents admit that attached as Exhibit A to the Complaint herein are affidavits from each of the Relators; Respondents deny each and every remaining allegation contained in said paragraph 46.

47. Respondents deny each and every remaining allegation contained in the Complaint and not expressly pleaded to in paragraphs 1 through 46, inclusive, of this Answer.

#### **First Affirmative Defense**

Relators lack standing to maintain this action, as they are not the owners of and have no interest in the real estate at issue herein.

### **Second Affirmative Defense**

Relators are not the real parties in interest in this action, as they are not the owners of and have no interest in the real estate at issue herein.

### **Third Affirmative Defense**

Pursuant to the Quitclaim Deeds attached hereto as Exhibits 6 and 7, other recorded instruments and the doctrine of adverse possession, Respondents have property rights in the real estate at issue herein which are superior to the rights, if any, of Relators in such real estate.

### **Fourth Affirmative Defense**

The Relators' claims are barred in whole or in part by the doctrine of res judicata.

### **Fifth Affirmative Defense**

The Relators' claims herein are barred in whole or in part by the doctrine of collateral estoppel.

### **Sixth Affirmative Defense**

To the extent Relators' claims herein are based on an alleged abandonment of a railroad, which Respondents deny occurred, this Court lacks subject matter jurisdiction because the federal Surface Transportation Board has exclusive jurisdiction over the abandonment of railroads.

### **Seventh Affirmative Defense**

To the extent Relators' claims herein are based on an alleged abandonment of a railroad, said claims herein are barred in whole or in part by the doctrine of federal preemption.

### **Eighth Affirmative Defense**

Mandamus is inappropriate because there is no clear legal duty on the part of Respondents to initiate the appropriation proceedings sought herein.

**Ninth Affirmative Defense**

Mandamus is inappropriate because Relators do not have a clear legal right to require the institution of the appropriation proceedings sought herein.

**Tenth Affirmative Defense**

Some or all of Relators' claims herein are barred by the doctrine of adverse possession.

**Eleventh Affirmative Defense**

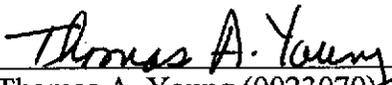
The Complaint fails to state a claim upon which relief can be granted to Relators and against Respondents.

**Twelfth Affirmative Defense**

Relators have failed to join as a party or parties herein one or more persons who should be joined under Civ.R. 19 or Civ. R. 19.1.

WHEREFORE, Respondents respectfully request that the Complaint be dismissed with prejudice, that they be awarded judgment against the Relators for the costs incurred by Respondents herein, and that they be granted such further relief to which they are entitled in law or in equity.

Respectfully submitted,

  
\_\_\_\_\_  
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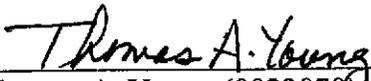
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Attorneys for Respondents Erie MetroParks and  
Board of Park Commissioners, Erie MetroParks

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 10<sup>th</sup> day of February, 2009, he served a copy of the foregoing "Answer of Respondents" on Bruce L. Ingram, Esq., VORYS, SATER, SEYMOUR & PEASE, 52 East Gay Street, Columbus, Ohio 43216-1008, counsel of record for Relators, by mailing said copy to him via ordinary United States mail, postage prepaid.

  
\_\_\_\_\_  
Thomas A. Young (0023070)  
Counsel of Record for Respondents

# Exhibit

1

ACTS

4928

OF A

**GENERAL NATURE,**

PASSED AT THE FIRST SESSION,

OF THE

**Twenty-fifth General Assembly**

OF THE

**STATE OF OHIO,**

BEGUN AND HELD IN THE TOWN OF COLUMBUS,

DECEMBER 4, 1826,

AND THE TWENTY-FIFTH YEAR OF SAID STATE.

SUPREME COURT  
OF OHIO

**VOL. XXV.**

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COLUMBUS, - OHIO

EXHIBIT

tabbles

**To deposit receipts with the Auditor of State by the 1st December annually** Sec. 6. That the Commissioners of the Canal Fund and the Acting Canal Commissioners shall, on or before the first Monday of December, annually, deposit in the office of the Auditor of State, one of their duplicate receipts, or an abstract of all moneys by them paid out for the preceding year, and all other papers and documents relative to the receipts and disbursements of the Canal Fund, and all other papers and documents relative thereto, shall be filed and preserved by the Secretary of the Board of Canal Commissioners; and the reports, accounts and proceedings of the Commissioners of the Canal Fund, the Canal Commissioners, and Acting Canal Commissioners, shall at all times be subject to the inspection of the Governor and Treasurer of State, or of any person or persons who may be appointed by the Governor for that purpose.

**Repealing clause**

Sec. 7. That the act, entitled "An act fixing the compensation of the Acting Canal Commissioners and for other purposes," passed February eighth, eighteen hundred and twenty-six, and so much of the second section of the act, entitled "An act to provide for the preservation of the papers and documents relating to the Ohio Canals," passed February eighth, one thousand eight hundred and twenty-six, as requires the Commissioners of the Canal Fund to report to the Auditor of State quarterly, be, and the same is hereby, repealed.

EDWARD KING,  
*Speaker of the House of Representatives*  
A. SHEPHERD,  
*Speaker of the Senate*

January 30, 1827.

AN ACT to incorporate the Milan Canal Company.

**Corporation created**

**Style thereof**

**Route of the canal**

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That Jabez Wright, Ebenezer Merry, Ralph Lockwood, Timothy Baker, George Lockwood and all other persons, who shall become associated with them, by subscribing to the capital stock of said company, be, and they are hereby, constituted and declared a body corporate and politic, with perpetual succession, by the name and style of the "Milan Canal Company," for the purpose of constructing a navigable canal from Merry's mill pond in Milan, in the county of Huron, to such point of the Huron river as shall be found most eligible, and a tow path on either or both sides of said river, from said point to Lake Erie; and for this purpose the said company is hereby authorized and empowered, to have and receive, purchase, possess, enjoy and retain lands, rents, goods, chattels and effects of any kind, and to any amount,

necessary to carry into effect the object of the incorporation, and the same to use, sell, alien and dispose of at pleasure; to sue and be sued, defend and be defended, in all courts having competent jurisdiction; to have and use a common seal; and the same to break, alter and renew at pleasure; to ordain and establish such rules, regulations and by-laws as may be necessary, for the well being of said corporation, subject, however, to the restrictions and limitations contained in this act.

Powers of the company

Sec. 2. That the capital stock of said company shall consist of thirty-five thousand dollars, which stock shall be divided into shares of fifty dollars each, and shall be transferable in entire shares, in such manner as the rules of the corporation prescribe; *Provided*, That no stockholder, without the consent of the directors, shall be at liberty to transfer his stock after any instalment is ordered, until such stockholder shall have paid the amount due on his stock.

Amount of capital stock and shares thereof

Proviso

Sec. 3. That the persons named in the first section of this act, or in case they should not all choose to serve, then any number of them not less than three shall be commissioners to receive subscriptions; and to do and perform all necessary acts to organize the company, and they are hereby authorized and empowered, to cause books to be opened at such times, and in such places, as a majority of them shall think proper, to receive subscriptions, to constitute the capital stock of said company; the commissioners may, if they think proper, require ten per centum of the amount of each subscription to be paid at the time it is subscribed, and each subscriber shall be bound to pay, from time to time, such instalments on his stock, as the directors may lawfully require.

Books to be opened for subscriptions to the capital stock

Sec. 4. That when three hundred shares are subscribed the commissioners shall call a meeting of the subscribers by causing notice of the time and place of such meeting to be published in some newspaper, in general circulation, in the places in which the books shall have been opened; and the stock subscribed, for thirty days next preceding such time of meeting, and on such notice being given, the stockholders shall meet at the time and place appointed, and when so assembled may proceed to elect directors, and adopt such rules and regulations for the government of the corporation, as are lawful and expedient; the stockholders may vote in person or by proxy, and for each share such stockholder may possess he shall be entitled to one vote.

When 300 shares are subscribed stockholders may be called on Notice to appoint directors

Sec. 5. That the affairs of the company shall be managed by five directors, or a majority of them, who shall be elected by the stockholders, once in three years, unless a shorter period shall be ordained by the rules of the corporation, and each director shall be a stockholder at the time of his election, and shall cease to be a director, if he ceases to be a stockholder.

Five directors to be appointed

Power and duty of directors

President, &c. to take an oath

Treasurer to be appointed

Notice for instalments to be given

Treasurer's duty

Power of directors in appropriating lands, waters, &c.

Common Pleas to appoint freeholders to assess

Sec. 6. That the directors so elected or appointed, shall, at their first meeting, after said election, choose one person from their own number, who shall serve as a president of the board for and during the time for which he has been elected a director; the president and directors, previous to entering on the duties of their office, shall severally take an oath or affirmation, faithfully and impartially to discharge all duties appertaining to the said offices by virtue of the provisions of this act, or the rules of the corporation; they shall appoint a treasurer and cause him to give bond, with security, conditioned for the faithful performance of all duties appertaining to said office; they shall determine the amount of any instalments, and the time when they shall be paid; but no stockholder shall be required to pay any instalment, until after such order has been published in some newspaper, in general circulation in said county of Huron, at least sixty days before the time of payment; neither shall any stockholder be required to pay more than ten per centum on the amount of his stock, at any one time, nor more than fifty per centum, in any one year.

Sec. 7. That it shall be the treasurer's duty to keep the books of the corporation, to receive and collect from subscribers and others all moneys due the corporation, and on proper vouchers being produced to pay out the same; he shall, as often as required, exhibit to the directors an account of all sums of money by him so received and paid out, and also exhibit any amount that may remain in the treasury; and the books, accounts and vouchers kept by the treasurer shall, at all times, be subject to the inspection of the stockholders: *Provided*, The said company shall never use their funds for banking purposes.

Sec. 8. That it shall and may be lawful for said directors, to enter upon, and take possession of any lands, waters and streams necessary to make said canal, or of any of its appendages, such as feeders, dykes, locks, dams and other works, and also stone, timber, gravel and earth, necessary in constructing said canal, for tow path and other works pertaining thereto, doing nevertheless no unnecessary damage; and in case any lands, waters or streams, stone, timber, gravel or earth so wanted to be appropriated for any of the purposes aforesaid, shall not be given or granted to said corporation, and the proprietor or proprietors cannot, or do not agree with the directors, as to the amount of damages of compensation, which ought to be allowed or paid for the same, and shall not mutually agree on some person or persons, to appraise the damages, it shall be lawful for the directors aforesaid, to apply to any judge of the Court of Common Pleas of the county, not a stockholder in said company, who shall appoint three disinterested freeholders, to assess the damages; the directors shall give notice to such persons

of their appointment, and, also to the adverse party, his or her agent, or attorney; or advertise the same in some newspaper in general circulation, in said county of Huron, and it shall be the duty of the persons so appointed, to attend at the time and place so specified in the notice; who after being duly sworn or affirmed, faithfully and impartially to discharge their appointed duties, shall proceed, on actual view, to make estimate and appraisement of any damage such individual owner or owners may sustain; taking into consideration the benefits which such proprietor or proprietors will derive from the location and making of said canal and tow paths; and shall make a certificate of such appraisement or appraisements, with a particular description of the premises, where necessary, to which certificate they or a majority of them, shall sign their names, and deliver to each party a copy, if requested; and immediately thereafter, if no damages are assessed; or on the payment or tender of the money to the amount of damages assessed, to the person or persons injured, his guardian, agent or attorney, the said directors may proceed to enter upon and occupy such lands, streams or waters; and a complete title to the premises, to the extent and for the purposes set forth in or contemplated by this act, shall be thereby vested and forever remain in said company, and their successors; and also full right to enter upon and remove all such stone, timber, gravel and earth: *Provided however*, That if either party shall consider himself or themselves aggrieved by the decision of the appraisers, so as aforesaid made, such party may apply to the Court of Common Pleas, of the proper county, at the succeeding term of said Court, or if there should not be a quorum of said Court disinterested, then to the Supreme Court, at their next session in said county, giving ten days notice of such intention, to the adverse party; and the said Court, upon good cause shewn, shall appoint three disinterested freeholders who shall, after being duly qualified, proceed to view and appraise the damages, and shall certify their proceedings in the same manner, as the former appraisers, and their decision shall be final and determinate; but the pendency of any such application to the court, shall not in the mean time hinder the progress of the work:

estimate and appraisement for lands, &c. so appropriated

Duty of freeholders

Proceedings on payment of fresh offers

Proviso as application to the Court of Common Pleas or Supreme Court

Construction of the canal

Sec. 9. That it shall be the duty of the company hereby incorporated, to cut, make and construct said canal, of such width and depth, with locks of such length and dimensions, and also the tow paths of such width and height, as will be most economical and convenient, for navigation for sloops and steam vessels; and when the said canal and tow paths are so made and completed, said river and canal shall forever thereafter be taken to be, and is hereby, declared to be a public highway, free for the passage of vessels conveying

goods, commodities and produce, on payment of operations to the board of directors may be established from time to time.

The canal and profits thereof vested in the company free of tax

Sec. 10. That for and in consideration for the expenses which said company will necessarily incur in constructing said canal and tow path, with the appurtenances thereof and in improving and keeping the same in repair, the said canal with all the appurtenances thereof, together with all tolls and profits arising therefrom, are hereby vested in the said corporation, and the same shall be forever exempt and free from the payment of any tax, imposition or assessment, whatsoever: *Provided*, That the state shall have power at any time, after the expiration of twenty years from the completion of said canal and tow path, to purchase and hold the same for the use of the state, by paying to the said company therefor, such sum as will be equal to the expenses incurred by said company, in surveying, locating and constructing the same, together with twenty-five per cent thereon: *Provided however*, That the state shall fulfill all leases and contracts entered into, concerning the waters of said canal.

Proviso authorizing the state to purchase the same

Sec. 11. That when the whole or any part of the canal or tow path is completed, according to the true intent and meaning of this act, the president and directors shall have power, and it is hereby made their duty, to ordain and establish a rate of tolls, which shall be paid upon vessels, steam-boats, rafts, and property of every kind and description, passing on and making use of said canal or tow path, and for the collection of said toll, the president and directors shall appoint collectors and establish toll houses at all proper places, and may ask, demand and receive, on all boats, rafts, vessels and other property, passing or navigated on said canal, and using the tow path on said river, such toll as may be established agreeably to the provisions of this act.

Further proviso

Rates of toll to be established

Sec. 12. That the president and directors shall annually, or semi-annually, declare and make a dividend of the net profits accruing from toll or from any other source, reserving such sum or sums as will defray the necessary current and probable contingent expenses; which dividend shall be paid or passed to the credit of the stockholders severally, in proportion to the shares which each may hold in the stock of said company.

Dividends of profits to be declared annually or semi-annually

Sec. 13. That the company shall be entitled to the benefit of all laws which are or shall be in force, for the collection of toll, or for the protection of any canal constructed by this state, so far as such law or laws shall be necessary to ensure the good of the company: *Provided*, That any subsequent Legislature may regulate the rate of tolls which said company may receive, after the expiration of ten years from the completion of said canal.

Sec. 14. That the company shall be entitled to the benefit of all laws which are or shall be in force, for the collection of toll, or for the protection of any canal constructed by this state, so far as such law or laws shall be necessary to ensure the good of the company: *Provided*, That any subsequent Legislature may regulate the rate of tolls which said company may receive, after the expiration of ten years from the completion of said canal.

Sec. 14. That in case said canal shall not be commenced within two years, and finished within five years from the passage of this act, all privileges granted by this act, shall forever be null and void.

EDWARD KING,  
*Speaker of the House of Representatives.*  
A. SHEPHERD,  
*Speaker of the Senate.*  
January 24, 1827.

AN ACT to ascertain the boundaries of the counties of Ashtabula, Geauga, Cuyahoga, and Lorain.

Whereas doubts exist, relative to the boundaries of counties, in that part of the state of Ohio, covered by the waters of Lake Erie, and lying west of the west line of Pennsylvania, south of the northern boundary line of the United States, and east of the east line of the twentieth range of the Connecticut Western Reserve, extended due north, to said boundary line: Therefore,

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the north and south lines of the several counties of Ashtabula, Geauga, Cuyahoga and Lorain, are hereby declared to extend due north, from the shore of Lake Erie, to the northern boundary line of the United States, in Lake Erie aforesaid; and all that part of the state of Ohio, which lies north of the south shore of said Lake, and south of said boundary line, and between the lines of said counties of Ashtabula, Geauga, Cuyahoga and Lorain, extended as aforesaid, is hereby declared to be a part of said counties, respectively.

EDWARD KING,  
*Speaker of the House of Representatives.*  
A. SHEPHERD,  
*Speaker of the Senate.*

January 29, 1827.

AN ACT to establish the line between the counties of Madison and Union.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That Jeremiah M'Lenc, of the county of Franklin be, and he hereby is, appointed to run, survey, mark and establish a line between the counties of Madison and Union; to commence at the south east corner of the county of Union, points of the and running from thence on a direct line, to a point in the line.

# Exhibit

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and enjoy as in his first and former estates and therefore his heirs and assigns shall be deemed to be done and performed shall cease terminate and be utterly void and said lease for his Executors administrators and assigns Covenant and agree with said lessor his heirs and assigns as follows that is to say that said lease will pay said rents in manner aforesaid except said premises shall be destroyed or rendered untenable by fire or unavoidable accident that he will not ~~make or suffer any~~ ~~to~~ ~~be~~ ~~in~~ ~~the~~ ~~premises~~ ~~without~~ ~~the~~ ~~written~~ ~~consent~~ ~~of~~ ~~said~~ ~~lessor~~ and that at the end of said term he will deliver up said premises in as good order and condition as they now are or may be had by said Lessee reasonable use and ordinary wear and tear thereof and damage by fire and unavoidable casualty accepted and said Lessor for himself his Executors administrators and assigns Covenant and agree with the said Lessee his Executors and Administrators that said Lessee paying the rents and observing and keeping the covenants of this lease on his part to be kept shall peacefully peacefully and quietly hold occupy and enjoy said premises during said term without any let hindrance objection or molestation by said lessor or his heirs or any person or persons lawfully claiming under them in witness whereof the said parties have thereto set their hands and seals on the day and year first above written signed sealed and acknowledged in presence of her

*E. M. Colver & J. F. Smith*  
*Geo H Morgan*  
 The State of Ohio Be it Remembered that on the 23<sup>rd</sup> day of August A.D. 1877 in the year of our Lord One thousand eight hundred and eighty seven before me the subscriber a Notary Public personally came *George H. Morgan* the party named in the foregoing lease and acknowledged the signing and sealing thereof to be his voluntary act and deed for the uses and purposes therein mentioned in testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid  
*Geo H Morgan*  
 Received July 30<sup>th</sup> 1881 Re-orded August 5<sup>th</sup> 1881  
*James Olyon Recorder*

The Milan Canal Co  
 The Wheeling and F. O. R. R. Co  
 Whereas in or about the month of April A.D. 1877 the Directors of the Milan Canal Company of Milan Ohio gave the Consent and Authority of said Canal Company to the Wheeling and Lake Erie Rail Road Company to locate its Rail Road upon and to occupy for the purpose of constructing and operating its said Rail Road through the following described Real Estate owned by said Milan Canal Company

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EXHIBIT A

EXHIBIT  
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whereof United Dry and Milling Lumber Company within the bounds of a certain  
 land One Hundred and Fifty feet (150) in width commencing at the south  
 end of the Canal Bank of said Milling Canal Company near the intersec-  
 tion of Quince & Union Streets in the Village of Harrison in said Ohio County  
 and running thence in a southerly direction to the mouth of the Harrison River  
 in the Village of Harrison in said Ohio County and which strip of land is bound-  
 ed on the west by a line distant 150 feet from and running north  
 parallel with the central line of the Rail Road of the Wheeling and Lake Erie  
 Rail Road Company as now surveyed located and being constructed  
 between said Village of Harrison and which said strip of land  
 is bounded on the east by a line distant One Hundred (100) feet from and  
 running north parallel with the said central line of said Rail Road the East  
 and West lines of said strip of land being One Hundred and Fifty (150)  
 feet apart and running north parallel with each other with the central  
 line of said Rail Road from the said place of beginning to the said  
 mouth of Harrison River also all of the so called Dry Docks and all of the  
 said Canal Basin and all of the upper and lower Docks of said Canal  
 with all the grounds and Privileges connected therewith in addition to what  
 is included in the said strip of land above described the said Dry Dock  
 containing about 1/2 acre and the said Canal Basin containing about  
 1/2 acre of land in the same more or less and between the Wheeling  
 and Lake Erie Rail Road Company in or about said month of April 1887  
 did enter upon and occupy said Real Estate and right of way and con-  
 sidered the said line of Rail Road thereunto and since then have deemed  
 now is the exclusive and undisputed possession thereof under license and  
 Authority of said Directors of the Milling Canal Company and under their power  
 and agreement to lease or amuse said right of way and Real Estate  
 to the said Rail Road Company in due form of law now then for the  
 use of the Milling Canal Company by its legally authorized directors in consid-  
 eration of the benefits to said Canal Company from the construction and  
 maintenance of the said line of Rail Road with its appurtenances  
 and other works in prosecuting the project of said Canal Company and  
 the adjacent farms which said Canal Company is under legal obligation  
 to protect against Damages caused by the overflow of the water of said  
 Harrison River and for the further consideration herein stated do hereby  
 lease demise and fully let unto the Wheeling and Lake Erie Rail Road  
 Company its successors and assigns all the Real Estate and right of way  
 herein above described and being &c the same owned by the said  
 Canal Company & have and hold said Real Estate and  
 right of way to said Lease the Wheeling and Lake Erie Rail Road  
 Company its successors and assigns for the term and purchase money  
 of said Rail Road Company and its right of way for its  
 said Rail Road for the term of thirty Nine (39) years commencing  
 on the 12 day of July A.D. 1887 and ending on the 12 day of July  
 1926 with all appurtenances to the said Wheeling and Lake Erie Rail  
 Road Company its successors and assigns of renewal of their lease forever  
 upon the same terms herein expressed with all the Rights and appurtenances



Rail Road Company in consideration of the premises do hereby for it self  
its successors and assigns covenant and agree with the said Lessee of the  
Milan Canal Company that the Rail Road and embankments of said  
Rail Road Company shall be kept in good order and repair during the  
term of this lease inevitable accidents from storm floods and otherwise  
Excepted and that no waite shall be made or suffered on the said property  
herein leased or on any possession of said Lessee the successors and  
assigns and that there shall be paid to the said Lessee the Milan  
Canal Company by the said Lessee the Wheeling and Lake Erie Rail Road  
Company its successors and assigns at the end of each year from and after  
the 12<sup>th</sup> day of July 1881 during the term of this lease the sum of \$50  
fifty Dollars as the annual rental of said property so hereinafter  
demised herein and on the failure of said Lessee its successors and  
assigns to so maintain and operate said Rail Road for public transportation  
and travel and on the abandonment thereof for Rail way purposes or  
on the failure for six months to pay said Annual Rental of \$50  
fifty Dollars to the said Lessee after the same become due and pay  
able these covenants shall become void and the said Real Estate shall  
revert to the said Lessee the Milan Canal Company and the said  
Lessee its successors and assigns shall then peacefully yield to said  
Lessee the premises hereof in witness whereof the said parties have  
hereunto set their hands and seals at Milan Ohio on this 12<sup>th</sup> day  
of July A.D. 1881

The Milan Canal Company  
By John S. Norton  
Francis J. Lookwood  
John Rutman  
David J. Wilcoxson  
Darius Eby President  
Directors  
of said  
Milan Canal  
Company

The Wheeling and Lake Erie Rail Road Company  
By its President W. A. Mack

The foregoing Lease was on this 12<sup>th</sup> day of July 1881 signed sealed  
acknowledged & delivered in presence of  
William C. Lookwood Notary Public

The State of Ohio, Refused a Notary Public within and for said County  
of Erie County, do I personally appeared the above named John S. Norton  
Francis J. Lookwood John Rutman David J. Wilcoxson & Darius  
Eby as Directors of the said Lessee the Milan Canal Company and do  
acknowledge the foregoing Lease to be the deed of said Milan Canal Company  
for the use and purposes therein expressed and that the signing and sealing  
thereof is their official act and deed on said date for and in  
behalf of said Canal Company on this 12<sup>th</sup> day of July A.D. 1881  
Wm C. Lookwood Notary Public

Received Aug 9<sup>th</sup> 1881 Recorded Aug 10<sup>th</sup> 1881

Wm C. Lookwood

# Exhibit

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IN THE COURT OF COMMON PLEAS, OF ERIE COUNTY, OHIO.

In the Matter of the Application  
for the Dissolution of the Milan Canal  
Company, a Corporation.

PETITION.

the petitioners  
Now come, Ralph M. Lockwood, Maltby Smith and H. L. Wilson, a majority  
of the directors of the Milan Canal Company, and allege:

That the Milan Canal Company is a corporation duly organized by an act  
of the general assembly of the State of Ohio, passed January 24th, 1827.

That the petitioners deem it beneficial to the interests of the stock-  
holders that the said corporation be dissolved.

That the original objects of the corporation have been entirely aban-  
doned.

The real and personal estate of said corporation is as follows:

The following described real estate owned by the said Milan Canal  
Company, situate in the Townships of Milan and Huron, in said County of  
Erie and State of Ohio, being all the land with all the rights, and ap-  
ourtenances thereof, owned by said Milan Canal Company, within the bounds  
of a strip of land one hundred and fifty feet in width, commencing at  
the southerly end of the canal basin of said Milan Canal Company, near  
the intersection of Main and Union Streets, in the Village of Milan, in  
said Erie County, Ohio, and running thence in a northerly direction to  
the mouth of the Huron River, in the Village of Huron in said Erie County,  
and which strip of land is bounded on the west by a line distant fifty  
feet from and running north parallel with the central line of the rail-  
road of the Wheeling and Lake Erie Railroad Company, as surveyed, located and  
construction on July 12th, A. D. 1881,  
in the process of being between said Villages of Milan and Huron, and  
which said strip of land is bounded on the East by a line distant One  
Hundred feet from and running north parallel with the said central line  
as surveyed, located and being constructed as aforesaid,  
of said railroad, the east and west lines of said strip of land being  
one hundred and fifty feet apart and running north parallel with each

EXHIBIT  
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as surveyed, located and being constructed as aforesaid other and with the central line of said railroad from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said Canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said dry dock containing about one and 1/2 acres, and the said Canal Basin containing about Five and 45/100 acres of land be the same more or less. ---The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of July, A. D. 1980, at an annual rental of Fifty Dollars per year, renewable forever.

The personal property of said corporation consists of the sum of \$1006 <sup>17</sup>/<sub>100</sub> now in the hands of the treasurer of said corporation, the said Ralph M. Lockwood.

The books of the said corporation are as follows:

One ledger, one stock ledger, one treasurer's account book, one stock book and record of the proceedings of the directors and stockholders.

SCHEDULE B.

The following is a full true and just account of the capital stock:

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
E. Andrews (Estate of)		36.4646	In full.	None.
Simon Ammerman	Unknown	1.50	In full.	None.
Daniel Brightman	Unknown.	1.50	In full.	None.
William Baker.	Unknown.	1.50	In full.	None.
Thos. J. Butman (Estate of)		9.1094	In full.	None.
Evelin Bates.	Unknown	2.5728	In full.	None.
Caroline Butman (Estate of)		10.587	In full.	None.
Myron Butman (Estate of)		.7104	In full.	None.
Caroline Butman, 2d (New Caroline Cromwell, Tacoma, Washington)		4.2348	In full.	None.
George Bridge	Unknown.	4.711	In full.	None.
Charles B. Choate (Estate of).		.5	In full.	None.

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
Lyman Cooke & Co.	Unknown.	1.5168	In full.	None.
Ira Coon	Unknown.	.5666	In full.	None.
David H. Catlin	Unknown.	.8	In full.	None.
Delazon Dimon (Estate of)		.4282	In full.	None.
Sarah Demund (Estate of)		.94	In full.	None.
Alfred Edwards & Co.	Unknown.	4.463	In full.	None.
Frederick W. Fowler (Estate of)		.75	In full.	None.
Lyman Fay, Jr., (Estate of)		1.5	In full.	None.
Lyman Fay (Estate of)		9.326	In full.	None.
R. Fitch & Co.,	Unknown.	6.	In full.	None.
Robert M. Gordon (Estate of)		2.758	In full.	None.
E. H. Gibbs & Co. (Firm dissolved. Gibbs deceased.)		3.	In full.	None.
G. R. Gaston (Estate of)		1.4952	In full.	None.
D. & T. Hamilton (Estate of each)		43.9608	In full.	None.
Warren Hawley (Estate of)		1.5	In full.	None.
Martin Hester (Estate of)		1.5	In full.	None.
Thomas Hamilton (Estate of)		163.0892	In full.	None.
Noah Hill (Estate of)		3.	In full.	None.
Nathan Harris	Unknown.	1.5	In full.	None.
Walter Hoyt	Unknown.	1.5	In full.	None.
Mary E. Hamilton (Estate of)		6.5	In full.	None.
Sarah O. Hamilton (Estate of)		13.5	In full.	None.
Daniel Hamilton (Estate of)		52.5654	In full.	None.
John Hamilton (Estate of)		76.	In full.	None.
Amos B. Harris (Estate of)		6.615	\$290.33.	\$40.42
I. Harmon & Co.	(Formerly Buffalo.)	7.2	In full.	None.
Isaac Hogle	(New unknown) Unknown.	1.5	In full.	None.
Calvin W. Howe & Co.	Unknown.	9.376	In full.	None.
P. R. Hopkins (Estate of)		4.271	In full.	None.
Nathan Jenkins (Estate of)		7.037	In full.	None.
Epaphreditus Isham	Unknown.	1.5	In full.	None.

4.

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
Caleb Keith.	Unknown.	3.	In full.	None.
Mrs. C. Knowlton (Estate of)		3.60	In full.	None.
Benjamin Lee. (Estate of)		1.5	In full.	None.
Henry Lockwood (Estate of)		1.5	\$25.00	\$50.00
George Lockwood (Estate of)		131.6292	\$6546.80	\$40.42
James G. Lockwood (Estate of)		55.5952	In full.	None. x
W. E. Lockwood (Estate of)		1.709	In full.	None.
Francis G. Lockwood (Estate of)		168.1	In full.	None. y
Stephen A. Lockwood (Estate of)		5.25	In full.	None.
Ralph Lockwood (Estate of)		3.	In full.	None.
Sarah Lockwood	Milan, O.	2.6318	In full.	None. z
Amelia Lockwood (Estate of)		4.1874	In full.	None.
Ralph M. Lockwood	Milan, O.	1.	In full.	None.
Benjamin Mingus (Estate of)		1.5	In full.	None.
A. & J.S. McClure (Estate of each)		21.3318	In full.	None.
Ebenezer Merry (Estate of)		1.5	In full.	None.
Charles H. Mitchell	Unknown.	3.4292	In full.	None.
Elizabeth Marvin (Estate of)		3.	In full.	None.
David Mills	Unknown.	1.624	In full.	None.
Charlotte Merry (Executrix)	Deceased.	7.5	In full.	None.
John G. Norton	Toledo, O.	1.	In full.	None.
John G. Palmer	Unknown.	1.5	In full.	None.
Francis Potter (Estate of)		3.3648	In full.	None.
John J. Penfield (Estate of)		1.	In full.	None.
Martin L. Ruggles (Estate of)		1.5	In full.	None.
M. T. Rodman (Estate of)		1.	In full.	None.
Whitney Squier (Estate of)		4.5	In full.	None.
E. B. Simmons	Unknown.	1.5	In full.	None.
Harlow E. Simmons	Unknown.	1.5	In full.	None.
Esther L. Saunders (Estate of)		6.	In full.	None.
John Smith (Estate of)		5.1438	In full.	None.

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
Ezra Smith (Estate of)		3.	In full.	None.
Charles Standart, Agent. (Deceased)		30.7358	In full.	None.
Charles Standart (Estate of)		15.	In full.	None.
D. A. Stevens (Estate of)		.4888	In full.	None.
Mary E. Smith	Beloit, Wis.	.3816	In full.	None.
John W. Sisty	Milan, O.	1.3884	In full.	None.
John Stevens (Estate of)		8.9134	In full.	None.
Leonard Seekinger	Unknown.	.88	In full.	None.
Spang & Co.	Unknown.	5.25	In full.	None.
J. D. Smith (Estate of)		85.8	In full.	None.
Horace Stoddard (Estate of)		5.3282	In full.	None.
Maltby Smith	Beloit, Wis.	1.	In full.	None.
Town of Milan		161.8162	In full.	None.
O. O. Tillinghast	Berlin Heights, O.	1.5.	In full.	None.
Kneeland Townsend (Estate of)		3.6134	In full.	None.
William Tillinghast	Unknown.	1.135	In full.	None.
Daniel W. Warren	Unknown.	1.5	In full.	None.
James R. Wilcoxson	Unknown.	2.2428	In full.	None.
Mrs. C. Wheat	Unknown.	.744	In full.	None.
Wm. A. White	Unknown.	4.7548	In full.	None.
S. I. Worcester	Unknown.	1.6458	In full.	None.
Margaret Watson	Unknown	60.	In full.	None.
Wm. Winslow (Estate of)		1.	In full.	None.
H. L. Wilson	Milan, O.	1.	In full.	None.
David J. Wilcoxson (Estate of)		1.	In full.	None.
Total number of shares,-----		1434.0826		

The foregoing list of stockholders is made up from the books of the said corporation and no assignments of stock have been recognized which do not appear upon said books.

The State of Ohio, Erie County, ss.

Maltby Smith, being first duly sworn, says that he is one of the petitioners herein and that the facts stated in said application, and the accounts, inventories, and statements contained therein, are just and true, so far as he knows, or has the means of knowing.

Maltby Smith

Sworn to before me and subscribed in my presence by the said Maltby Smith this 29<sup>th</sup> day of December, A. D. 1903.

Edgar J. Greene  
NOTARY PUBLIC, ROCK COUNTY, WIS.  
MY COMMISSION EXPIRES NOVEMBER 20, 1904

*Notary fees paid by R M Lockwood*

9202

COMMON WEALS-ADJUDIC

The M. H. ...

Adjudication

solution of the ...

Company & Corporation

Petition for Dissolution



1771

ROBERT H. ...

Attorney for Petitioners

# Exhibit

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IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, OHIO.

In the Matter of the Application } Journal Entry,  
for the dissolution of the Milan } July 27th, 1904.  
Canal Company, a corporation, } Journal 31, Page \_\_\_\_.

The inventory of real and personal property of the Milan Canal Company heretofore dissolved, together with the appraisement thereof by the appraisers heretofore appointed herein, under oath, having been returned, the court being fully advised in the premises, finds said inventory and appraisement in all respects in conformity to law and hereby approves and confirms the same.

And thereupon this cause came on to be heard on the application of the receiver herein for an order to sell the real estate described in the petition, said real estate being described as follows, to wit: Situate in the townships of Milan and Huron, in said County of Erie, and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union Streets, in the Village of Milan, in said Erie County, Ohio, and running thence in a northerly direction to the mouth of the Huron River, in the Village of Huron, in said Erie County, and which strip of land is bounded on the west by a line distant fifty feet from and running north parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad

EXHIBIT

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tabbles

Company, as surveyed, located and in the process of construction on July 12th, <sup>a. D.</sup> 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the east by a line distant one hundred feet from and running north parallel with the said central line of said railroad, as surveyed, located and being constructed as aforesaid, the east and west lines of said strip of land being one hundred and fifty feet apart and running north parallel with each other and with the central line of said railroad, as surveyed, located and being constructed as aforesaid, from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said canal basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in said strip of land above described, the said dry dock containing about one and 1/2 acres, and the said Canal Basin containing about five and 45/100 acres of land be the same more or less. The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of July, A. D. 1980, at an annual rental of fifty dollars per year, renewable forever.

And the Court being fully advised in the premises, finds that it is necessary for the receiver herein to sell said real estate, and it is ordered that said receiver shall advertise and sell said real estate at public sale at the east door of the Court House, in the City of Sandusky, County of Erie and State of Ohio on the nineteenth day of September, A. D. 1904, at two o'clock P. M. for cash and shall give due

notice of the time and place of said sale by advertisement in a newspaper of general circulation in said county for four consecutive weeks and said real estate shall not be sold for less than two-thirds the appraised value, the appraised value being eight hundred dollars.

Said receiver shall make due return of said sale.

# ORDER OF SALE.

Revised Statutes, Secs. 6212-6250 to 6406 inclusive.

THE STATE OF OHIO,  
ERIE COUNTY, ss.

*By T. C. Lamborn, Receiver in Charge*  
To the Sheriff of said County, GREETING:

WHEREAS, at a term of the Common Pleas Court held at Sandusky, in and for said County, on the 11<sup>th</sup> day of April 1904 A. D. 1899, in the case of In the Matter of the Application for the Dis-  
solution of the Milan Canal Company, a corporation Plaintiff, and

Defendant, it was ordered, adjudged and decreed as follows, to wit:

That you proceed to appraise, advertise and sell the following described real estate as per journal entry hereto attached, to wit:

Situate in the Townships of Milan and Huron, in said County of Erie and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union Streets, in the Village of Milan, in said Erie County, Ohio, and running thence in a northerly direction to the mouth of the Huron River, in the Village of Huron in said Erie County, and which strip of land is bounded on the west by a line distant fifty feet from and running north parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad Company, as surveyed, located and in the process of construction on July 12th, A. D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the east by a line distant one hundred feet from and running north parallel with the said central line of said railroad, as surveyed, located and being constructed as aforesaid, the east and west lines of said strip of land being one hundred and fifty feet apart and running north parallel with each other and with the central line of said railroad as surveyed, located and being constructed as aforesaid from the said place of beginning to the <sup>said</sup> mouth of Huron River. Also all of the so-called Dry Dock and all of the said Canal Basin and all of the Upper and Lower Locks of said canal, with all the

grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said dry dock containing about one and  $\frac{1}{8}$  acres, and the said Canal Basin containing about five and  $\frac{45}{100}$  acres of land be the same more or less.

The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 13th day of July, A. D. 1881, and ending on the 13th day of July, A. D. 1980, at an annual rental of fifty dollars per year, renewable forever.

# Exhibit

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(No. 156)

WARRANTY DEED

Know all men by these presents, that E. L. Coen and G. B. McConnelly, Trustees, the grantors, for the consideration of One Hundred (\$100.00) Dollars, received to their full satisfaction of Milton E. Nuhn, the grantee, do give, grant, bargain, sell and convey unto the said grantee, and his heirs and assigns, the following described premises, situate in the Village of Vermillion, County of Erie and State of Ohio, and known as being lot No. 86, Eighty-six in C. C. Baumhart's Black Farm subdivision of Outlot number Twenty-seven (27), Section two (2), in said village, be the same more or less, but subject to all legal highways.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said grantee, his heirs and assigns forever. And the said grantors, do for themselves and their successors and assigns, covenant with said grantee, his heirs and assigns, that at and until the ensembling of these presents, they are well seized of the above described premises, as a good and indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as above written, and that the same are free from all encumbrances whatsoever, and that they will warrant and defend, as such trustees, said premises, with the appurtenances thereunto belonging, to the said grantee, his heirs and assigns, against all lawful claims and demands whatsoever.

In witness whereof, we have hereunto set our hands the 27th day of October, in the year of our Lord one thousand nine hundred and three.

Signed and acknowledged in the presence of-

H. R. Williams

E. L. Coen

) Trustees

M. E. Lawless

G. B. McConnelly

State of Ohio, Erie County, ss.

Before me, a Notary Public in and for said county, personally appeared the above named E. L. Coen and G. B. McConnelly, Trustees, who acknowledged that they did sign the foregoing instrument, and that the same is their free act and deed.

In testimony whereof, I have hereunto set my hand and official seal, at Vermillion, Ohio, this 27th day of October, A. D. 1903.

(Seal)

H. R. Williams, Notary Public

Received February 16th (8 A.M.) 1905

J. P. Messier Recorder

Recorded February 27th, 1905.

By Francis H. Bessier Deputy

Ralph M. Lockwood, Receiver

To

Stephen A. Lockwood

(No. 157)

RECEIVER'S DEED

Know all men by these presents, That whereas, Ralph M. Lockwood, Maltby Smith and H. L. Wilson, a majority of the Board of Directors of the Milan Canal Company, a corporation, on the seventh day of January, A. D. 1904, filed a petition in the Court of Common Pleas of Erie County, Ohio, praying for the dissolution of said corporation, being cause number 9702.

And whereas, on the 28th day of March, A. D. 1904, such proceedings were had by and before said court that the said corporation was dissolved by order of the court and the said Ralph M. Lockwood

EXHIBIT

5

and said receiver thereupon gave bond in accordance with the order of the court.

And whereas, on the 27th day of July, A. D. 1904, such further proceedings were had by and before said court that Ralph M. Lockwood, as receiver as aforesaid, was ordered by said court to sell at public sale to the highest bidder according to law for not less than two-thirds the appraised value thereof, the real estate of said corporation theretofore dissolved, being the real estate described in the petition in said cause, which said real estate is described as follows:-

Situate in the Townships of Milan and Huron, in said County of Erie, and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union streets, in the Village of Milan, in said Erie County, Ohio, and running thence in a northerly direction to the mouth of the Huron River, in the Village of Huron, in said Erie County, and which strip of land is bounded on the west by a line distant fifty feet from and running north parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad and Company, as surveyed, located in the process of construction on July 12th, A. D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the east by a line distant one hundred feet from and running north parallel with the said central line of said railroad, as surveyed, located and being constructed as aforesaid, the east and west lines of said strip of land being one hundred and fifty feet apart and running north parallel with each other and with the central line of said railroad, as surveyed, located and being constructed as aforesaid, from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said Canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said dry dock containing about one and 1/2 acres, and the said Canal Basin containing about five and 45/100 acres of land, be the same more or less. The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of July, A. D., 1980, at an annual rental of Fifty Dollars per year, renewable forever.

And whereas, the said Ralph M. Lockwood as receiver as aforesaid, sold said premises to Stephen A. Lockwood for the sum of Five Hundred and Thirty-four Dollars (\$534.00) (this sum being more than two-thirds of the appraised value thereof), on the 19th day of September, A. D. 1904, and the said Stephen A. Lockwood having complied with the terms of such sale and such sale having been made in all respects according to law, the same was afterwards, to-wit, on the first day of October, A. D. 1904, approved and confirmed by said court and the said Ralph M. Lockwood, as such receiver, was ordered to execute and deliver to said purchaser a proper deed for said real estate according to law, all of which will more fully appear by the records of said court, to which reference is hereby made.

Now, therefore, I, the said Ralph M. Lockwood, as receiver as aforesaid, in consideration of the premises, and by virtue of the powers in me vested by law, and under the order of the court aforesaid, do hereby give, grant, bargain, sell and convey unto the said Stephen A. Lockwood, his heirs and assigns forever, the real estate aforesaid, with all the appurtenances thereunto belonging.

DF 78 PG 22

To have and to hold the said real estate unto the said Stephen A. Lockwood, his heirs and assigns forever.

In testimony whereof, I, as receiver as aforesaid, hereunto set my hand and seal this 24th day of October, A. D. 1904.

Signed, sealed and delivered in

the presence of-

C. E. Gove

F. C. Smith

Ralph M. Lockwood (Seal)

as receiver as aforesaid.

The State of Ohio, Erie County, ss.

Before me, a Justice of the Peace in and for said county, personally appeared the above named Ralph M. Lockwood, who acknowledged that he did sign and seal the foregoing deed as receiver as aforesaid, and that the same was his free act and deed for the purposes aforesaid.

In testimony whereof, I hereunto set my hand and official seal, at Milan, Ohio, this 24th day of October, A. D. 1904.

C. E. Gove

Justice of Peace

Received February 16th (1-15 P.M.) 1905

Recorded February 27th, 1905.

*J. J. Pessier* Recorder  
By *Francis H. Pessier* Deputy

Order Adjudging The National Valve Company to be a Bankrupt.

Case No. 928, File No. 4.

(No. 158)

In the District Court of the United States for the Northern District of Ohio, Western Division. In the Matter of The National Valve Company, a Bankrupt. In Bankruptcy No. 928

At Sandusky, Ohio, in said District of Northern Ohio, on this sixth day of December, A. D. 1904, before Edward S. Stephens, Referee in Bankruptcy in and for the Counties of Erie and Ottawa, in the District Court of the United States for the Northern District of Ohio, Western Division, the above entitled matter came on to be heard upon the petition of The Merrill Manufacturing Company, a corporation, A. Goldman and Company, a partnership, and J. J. Butts and Son, a partnership, praying that the said The National Valve Company be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy; upon the answer of the said The National Valve Company admitting its insolvency; and the said The National Valve Company having waived the issuing and service of a subpoena, and the right of a trial by jury as to the questions at issue in said above described petition, and having entered its appearance herein, and the said petition and answer having been heard and duly considered, the said The National Valve Company is hereby declared and adjudged bankrupt accordingly.

as aforesaid

In witness whereof, I, the said Edward S. Stephens, Referee in Bankruptcy, have hereunto set my hand at Sandusky, Ohio, in said District of Northern Ohio, on this sixth day of December, A.D. 1904

Filed December 6, 1904, at 3 O'clock P.M.  
Edward S. Stephens, Referee in Bankruptcy

Edward S. Stephens, Referee in Bankruptcy.

Filed for record February 16th (2 P.M.) 1905

Recorded February 27th, 1905.

*J. J. Pessier* Recorder  
By *Francis H. Pessier* Deputy

# Exhibit

6

0402761

VOL 564 ME 01

Erie

County Counterpart of 18 Counterparts

QUITCLAIM DEED

NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation, Grantor, for valuable consideration paid, grants to WHEELING & LAKE ERIE RAILWAY COMPANY, a Delaware corporation, Grantee, whose tax-mailing address is 100 First Street, Brewster, Ohio 44613, the REAL PROPERTY, comprising those lines of railway located in Huron County, Lorain County, Medina County, Wayne County, Stark County, Tuscarawas County, Carroll County, Harrison County, Jefferson County, Belmont County, Cuyahoga County, Summit County, Portage County, Wyandot County, Crawford County, Richland County, Erie County, and Geauga County, State of Ohio, more particularly described on Exhibits A through R, attached hereto and made a part hereof, hereinafter "Property."

PRIOR TITLE references for the above-described property are contained within Exhibits A-1 through R-1, attached hereto and made a part hereof.

REFERENCE is also made to those deeds described in Exhibits A-1 through R-1 for the purpose of better determining the location and dimensions of the Property, with the legal descriptions contained in such deeds being incorporated herein by reference.

REFERENCE is also made to those railway valuation maps referred to in Exhibits A through R and in Exhibits A-1 through R-1. Said valuation maps are not required to determine the location of the above-described lines of railway, but may serve the purpose of providing clarification in the future. Prints of said valuation maps shall be kept on file with a copy of this deed in the Archives of Wheeling & Lake Erie Railway Company in Pittsburgh, Pennsylvania.

TOGETHER with, in "as is, where is" condition and without any express or implied representation or warranty as to merchantability, habitability, condition or fitness for any purpose, all of Grantor's right, title, and interest in the road bed, ballast, main track, sidings, connecting and industrial tracks, depots, yards, storage and parking areas, culverts, bridges, tunnels, buildings, structures, communication and signal facilities, fixtures, and all other railway appurtenances located upon or being appurtenant to and extending from the Property.

EXPRESSLY EXCEPTED from the Property conveyed by this deed is any property to which title is vested in Virginia Holding Corporation, a Virginia

EXHIBIT

tabbies

6

corporation; Virginia Holding Corporation being the successor in interest to AC&Y Terminal Properties Company, Handle Company, Nickle Plate Development, Inc., Nickle Plate Properties Company, Inc., and Pocahontas Land Corporation. If any property owned by Virginia Holding Corporation has been erroneously included in this instrument, such inclusion is a nullity and no conveyance of such property shall be considered made.

EXCEPTING any and all track material, track equipment, locomotives and other rolling stock not affixed to the Property.

SUBJECT TO ad valorem taxes for the year 1990.

SUBJECT FURTHER to all laws, ordinances, roads and highways, restrictions, conditions, easements, covenants, agreements, leases, reservations, encroachments, and rights of the public and title defects, whether or not of record.

RESERVING unto Grantor, its successors and assigns, a perpetual easement or right of way to install, construct, operate, maintain, repair, renew, replace, and remove a fiber optical communication system over, under, through, and across the Property; provided, however, that Grantee will have the right to use for its internal railroad communication purposes one hundred (100) voice channels of the portion of any such fiber optical communications system that is placed on the Property, with Grantee to bear the cost of equipment and facilities required to allow its use of such channels and with Grantee's access to such channels to be on reasonable terms, conditions, and notice. Said easement includes among other things the right to install, construct, operate, maintain, repair, renew, replace, and remove fiber optical cable, associated electronics, computer shelters, terminal facilities, connection boxes and pull boxes, and related facilities; the right to install power supply facilities; the right to attach the fiber optical cable and related facilities to existing bridges and to install it in existing tunnels; and the right of ingress and egress for access purposes. Grantor's exercising such easement will not require payments to Grantee and will be exercised in a manner which does not interfere with the rail operations of Grantee or the ability of Grantee to grant other such easements. Grantor shall notify Grantee before entry upon Grantee's property. If said easement is not used within twenty (20) years of the date of this deed, said easement will be deemed abandoned.

IN WITNESS WHEREOF, Norfolk and Western Railway Company has caused its corporate name to be subscribed hereto by R. E. L. deButts, its Vice President, and Dezora M. Martin, its Assistant Secretary, respectively, thereunto duly authorized by resolution of its board of directors, this 8<sup>TH</sup> day of MAY, 1990.

Signed and acknowledged  
in the presence of:

NORFOLK AND WESTERN RAILWAY COMPANY,  
By

H. Burdette  
Witness:

R. E. L. deButts  
Vice President

ATTEST:

J. A. Haynes  
Witness

Dezora M. Martin  
Assistant Secretary



This instrument prepared by:

Bruce A. Dean  
Attorney at Law  
Norfolk Southern Corporation  
185 Spring Street, S.W.  
Atlanta, Georgia 30303

BAD:lbh  
80664-Pt. 2  
5-3-90

COMMONWEALTH OF VIRGINIA  
CITY OF NORFOLK

BE IT REMEMBERED, That on this 8th day of May, 1990,  
before me, the subscriber, a Notary Public in and for said  
Commonwealth, personally came, R. E. L. de Ruth, Vice President,  
and Dezora M. Martin, Assistant Secretary, of the Norfolk and Western  
Railway Company, the Grantor in the foregoing Deed, and acknowledged the  
signing thereof to be their and its voluntary act and deed, pursuant to  
authority of its board of directors.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed  
my seal on this day and year aforesaid.

My Commission Expires December 22, 1991

T. D. Bruce

T. D. BRUCE  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA



## EXHIBIT Q

## ERIE COUNTY

## I

That portion of the Norfolk and Western Railway Company (formerly The Wheeling and Lake Erie Railway Company) line of railway running between Huron Junction, Ohio and Huron, Ohio, also known as the Huron Branch, comprising of railway right of way, main tracks and other appurtenant railway facilities lying and being in Erie County, Ohio and being more particularly described as follows:

Beginning at the common line of Erie and Huron Counties, being the southern lines of Parcels 3 and 4, V9/4, being Valuation Station 176+42 on The Wheeling and Lake Erie Railway Company Valuation Map V9/4 and including only Parcels 3 through 14 on Valuation Map V9/4, and continuing in a northeasterly direction for a distance of 38,299.72 feet to a point being 200 feet southwesterly of the mainline point of switch to the Huron-Shinrock Connector of Norfolk and Western Railway Company (formerly The New York, Chicago and St. Louis Railroad Company, a/k/a Nickle Plate Road), being further identified as Valuation Station 559+41.72 on Valuation Map V9/11 and including only Parcels 1 and 2 and that portion of Parcel 3 lying southwesterly of said Valuation Station 559+41.72 and outside the right of way of the Huron-Shinrock Connection Track (50 feet each side of the centerline of said Track) on Valuation Map V9/11 and including all railway parcels on Valuation Maps V9/5 through V9/10.

JAMES W. McKEEN  
ERIE COUNTY AUDITOR  
COURT HOUSE  
SANDUSKY, OHIO 44870

VOL 564 PAGE 191

MAY 25, 1990

NORFOLK & WESTERN RAILWAY COMPANY

TO

WHEELING & LAKE ERIE RAILWAY COMPANY

DESCRIPTION:

MILAN TOWNSHIP; MILAN VILLAGE; HURON TOWNSHIP, ERIE COUNTY, OHIO.

RIGHT-OF-WAY - HURON/ERIE COUNTY LINE TO RAILROAD INTERSECTING  
POINT SOUTH OF JEFFRIES ROAD.

PAGE 17 - MILAN TWP., SECTION 4, OUTLOT 4	-	1660 FEET
" 17 - " " " 4, " 3	-	1530 "
" 17 - " " " 4, " 2	-	1140 "
PAGE 18 - MILAN VILLAGE, SECTION 4, N.E. PART	-	2140 "
PAGE 19 - MILAN VILLAGE, SECTION 4, N.E. PART	-	2030 "
PAGE 17-B-MILAN TWP., SECTION 4, SUBLOT 36	-	1650 "
" 17-B- " " " 4, " 35	-	249 "
" 17-B- " " " 4, " 34	-	354 "
" 17-B- " " " 4, " 33	-	248 "
PAGE 15 - MILAN TWP., SECTION 4, SUBLOT 6	-	4010 "

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PAGE 3	- MILAN TWP., SECTION 1, SUBLOT 9	1620 FEET
" 3	- " " " 1, " 10	1620 "
" 3	- " " " 1, " 11	1030 "
PAGE 6	- MILAN TWP., SECTION 1, K. TOWNSEND TRACT	5120 "
" 6	- " " " 1, WARD TRACT	2150 "
PAGE 7	- MILAN TWP., SECTION 2, ABBOT TRACT	2380 "
" 8	- " " " 2, " "	3100 "
" 8	- " " " 2, FORBES TRACT	3200 "
PAGE 5	- HURON TWP., SECTION 1, OUTLOTS 4,5,6	<u>3750</u>
GRAND TOTAL LINEAL FEET		38,981 <sup>+</sup>

## EXHIBIT Q-1

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## ERIE COUNTY

## M&amp;LE Valuation Map V9/4

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
3	Apr. 18, 1883	John McCoy	95/356
3	Sep. 24, 1912	L. A. Hoffman	95/548
3	Nov. 5, 1912	C. C. Needham	97/287
4	Sep. 24, 1912	L. A. Hoffman	95/548
5	Apr. 30, 1883	Joseph Breil	95/356
6	Apr. 30, 1883	John Beckley	95/357
7	Apr. 18, 1883	Mary A. Christopher	95/358
8	Mar. 28, 1883	F. G. Lockwood et al.	95/359
8	Apr. 6, 1883	E. S. Marvin	95/355
9	Apr. 18, 1883	Phebe J. Rice	95/360
10	Mar. 28, 1883	F. G. Lockwood et al.	95/359
10	Apr. 6, 1883	E. S. Marvin	95/355
11	None	None	None
12	Jun. 20, 1881	John McCoy	45/126
12	Dec. 14, 1882	C. R. Griggs	45/625
12	Apr. 25, 1883	C. K. Garrison	45/625
13	Jun. 8, 1883	John McCoy	95/361
14	May 24, 1883	Mary A. Tennyson	95/362

## M&amp;LE Valuation Map V9/5

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	May 24, 1883	Mary A. Tennyson	95/362
2	Apr. 18, 1883	Timothy McQuaid	95/363
3	Sep. 25, 1882	Martin Harter	45/127
4	Mar. 11, 1881	Sarah Fowler	None
5	Sep. 7, 1877	Village of Milan	OR 2/22
6	Aug. 6, 1874	Ansel Page	None
7	May 3, 1882	Henry Kelley	45/187
8	None	None	None
9	Jun. 8, 1883	J. C. Lockwood	95/364
10	Mar. 28, 1883	F. G. Lockwood	95/359
10	Apr. 6, 1883	E. S. Marvin	95/355
11	None	None	None
12	Jun. 8, 1883	J. C. Lockwood	95/364
13	None	None	None
14	Jul. 12, 1881	Milan Canal Co.	LR 2/26
15	Jul. 15, 1944	J. O. Guthrie et ux.	178/337
16, 17, 18	May 1, 1957	Frank Bagley	280/30
14	Jan. 8, 1980	Society National	Doc. No. 52300

## M&amp;LE Valuation Map V9/6

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
11	Jul. 12, 1881	Milan Canal Co.	LR2/26

M&LE Valuation Map V9/7

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Jul. 12, 1881	Milan Canal Co.	LR 2/26
2	Apr. 11, 1883	George Edgar	None
3	Jul. 12, 1881	Milan Canal Co.	LR 2/26
1, 3	Jan. 8, 1980	Society Natl Bnk Cleveland	Doc. No. 52300

M&LE Valuation Map V9/8

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Jul. 12, 1881	Milan Canal Co.	LR 2/26
2	None	None	None
3	Mar. 7, 1881	J. G. Balcom	45/126
4,5	Feb. 9, 1881	Wm. Sands	45/118
6	None	None	None

M&LE Valuation Map V9/9

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	None	None	None
2	Dec. 2, 1881	Oscar Meeker	45/130
3	None	None	None
4	Apr. 17, 1877	Samuel Shaffer	45/117
5	Feb. 3, 1881	Wade Wood	45/120

M&LE Valuation Map V9/10

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Feb. 3, 1881	Wade Wood	45/120
2	Feb. 3, 1881	Dewitt Wood	45/119
3	" " "	Wade Dewitt Wood	45/120
4	Jul. 14, 1883	John H. Wickham, Jr.	95/365
5	" " "	Thomas Sprowl	95/366
6	Jun. 8, 1881	Wm. A. Doughty	45/129

M&LE Valuation Map V9/11

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Jun. 8, 1881	Wm. A. Doughty	45/129
2	Jun. 14, 1881	D. B. Smith	45/125
3	Jun. 21, 1881	Sarah Newton	45/122

EXHIBIT R

VOL 584 PAGE 195

GEAUGA COUNTY

I

That portion of the Norfolk and Western Railway Company (formerly The Wheeling and Lake Erie Railway Company) line of railway running between Falls Junction, Ohio and Chagrin Falls, Ohio, also known as the Chagrin Falls Branch, comprising of railway right of way, main tracks and other appurtenant railway facilities lying and being in Geauga County, Ohio and being more particularly described as follows:

Beginning at the common line of Geauga and Cuyahoga Counties, being the western line of Parcel 3, V3/7, being Valuation Station 351+06.3 on The Wheeling and Lake Erie Railway Company Valuation Map V3/7 and including only Parcels 3 and 4 on Valuation Map V3/7, and continuing in a northeasterly direction for a distance of 5,245.2 feet to the common line of Geauga and Cuyahoga Counties, being the northern line of Parcel 2, V3/8, being Valuation Station 403+51.5 on Valuation Map V3/8 and including only Parcels 1 and 2 on Valuation Map V3/8.

564 MAY 196

EXHIBIT R-1

GEAUGA COUNTY

M&LE Valuation Map V3/7

PARCEL	DATE	GRANTOR	DEED BOOK/PAGE
3	May 27, 1882	Almon Holbrook	87/352
4	None	None	None
4	Apr. 13, 1979	Geauga County Brd. Comm.	Resol. # 79-57

M&LE Valuation Map V3/8

PARCEL	DATE	GRANTOR	DEED BOOK/PAGE
1	None	None	None
1	Apr. 13, 1979	Geauga County Brd. Comm.	Resol. # 79-57
2	Oct. 27, 1882	Painesville & Hudson RR	87/586

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the revised code.

FEE \$ 10.00

EXEMPT \_\_\_\_\_

R.E. TRANSFER \$ 10.00

JAMES W. McKEEN  
COUNTY AUDITOR

*Transfer*  
*MAY 29 1990*  
*James W. Schaeffer*  
*FL 960 D*

0102783

FILED

90 MAY 30 48:29

JOHN W. SCHAEFFER  
RECORDER  
ERIE COUNTY, OHIO

\*\*\*\*\*  
Received May 30th, 1990 at  
8:29 A.M. Recorded May 31st,  
1990 in Erie County Deed  
Records, Vol. 564 Page 01-196

incl.  
John W. Schaeffer, Recorder.  
\*\*\*\*\*

*Mobil. Env. 398.06 Paid*  
*State Title Services, Inc.*  
*1327 H Street*  
*Suite 300*  
*Lincoln, Nebraska 68508*

# Exhibit

7

RN : 122128 OR 398/ 51  
ERIE COUNTY OHIO RECORDER  
JOHN W. SCHAEFFER 4P  
RECORDING FEE 22.00  
RTR Rec. Date 06/01/98 Time 14:28

QUIT-CLAIM DEED WITH OPTION

*see*

WHEELING & LAKE ERIE RAILWAY COMPANY, a Delaware corporation, Grantor, for valuable consideration paid, grants to THE BOARD OF PARK COMMISSIONERS OF THE ERIE METROPARKS, whose current address is 3910 East Perkins Avenue, Huron, Ohio 44839, the real property comprising a line of railway located in Erie County, State of Ohio, more particularly described as:

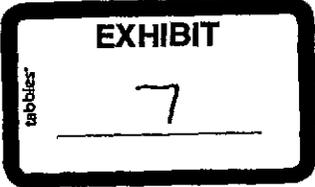
That portion of the Wheeling & Lake Erie Railway Company line of railway in Erie County, Ohio, beginning at a point on said line that is 200 feet southwesterly of the mainline point of switch to the Huron-Shinrock Connector of the Norfolk and Western Railway Company (formerly The New York Chicago and St. Louis Railroad Company, a/k/a Nickel Plate Road) and further identified as Valuation Station 559 + 41.72, Milepost 10.60 on Valuation Map V9/11; thence in a generally southwesterly direction to a point on said railway line that is identified as Valuation Station 232 + 21, Grantor's Milepost 4.40, north of Milan, Ohio.

Excepting therefrom that portion of the said railway line which is situated on property now owned by Howard P. Leber and Sandra J. Leber, more particularly described as follows:

Situated in the 2nd Section of the Township of Milan, commencing in the center of the old State Road on the south line of (what was formerly) Markham's land; running thence N. 35° 50' west. Twelve chains and 55 links to the center of the Milan Canal; thence N. along the center thereof to the center of the Old Huron River bed to the south line of John Curtis' tract; thence S 79° E. 27 chains and 25 links to the center of the highway; thence N. 16-3/4° E. 13 chains and 39 links to the place of beginning, containing 46.75 acres and further described in the Option to Purchase Railway Easement recorded in Book 154, Page 271 of Deeds in the office of the Erie County Recorder.

Said strip of property being approximately 1500 feet in length, more or less.

PRIOR TITLE references for the above-described property recorded in LR2, page 26.



*mail*  
Riv Balm  
502 Broadway  
Lorain, OH 44052

MICROFILMED

51

SUBJECT to all laws, ordinances, roads and highways, restrictions, conditions, easements, covenants, agreements, leases, reservations, encroachments, and rights of the public and title defects, whether or not of record, and taxes and assessments after the date hereof.

AND FURTHER SUBJECT to the perpetual easements and other rights and license of Norfolk and Western Railway Company, its successors and assigns, to maintain, repair, rebuild, replace and use a bridge or bridges and embankments, tracks and appurtenances of its Buffalo-Chicago line at Norfolk and Western Milepost B-233.57 and subject further to an easement reserved by said Norfolk and Western Railway Company for fiber optic purposes.

AND FURTHER SUBJECT to the reservation of the right of Wheeling to run and maintain a line of railway over said property as described in Section 1(c) of the Agreement Between The Board of Park Commissioners of Erie County and The Wheeling & Lake Erie Railway Company, which section 1(c) is fully incorporated herein by reference.

IN WITNESS WHEREOF, Wheeling & Lake Erie Railway Company has caused its corporate name to be subscribed hereto by Reginald M. Thompson, its Vice President Marketing/Real Estate, and William A. Callison, its Vice President - Law / Secretary, as duly authorized by its Board of Directors.

Signed and acknowledged  
in the presence of:

W.A. Callison

WHEELING & LAKE ERIE  
RAILWAY COMPANY

By:

Reginald M. Thompson

ERIE COUNTY OHIO RECORDER  
RN 122128 DR 398/ 53

A handwritten signature in cursive script, appearing to read "Christina", is written over a horizontal line.

Its Vice President Marketing/Real Estate  
this 13th day of October, 1995

STATE OF OHIO

ERIE COUNTY OHIO RECORDER  
RN 122128 OR 398/ 54

COUNTY OF Stark } SS

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, R.M. [unclear], and [unclear], known to me to be the U.P. [unclear] Real Estate and [unclear], respectively, of WHEELING & LAKE ERIE RAILWAY COMPANY, the corporation which executed the foregoing instrument; and acknowledged that they did sign the foregoing instrument for and on behalf of said corporation, being thereunto duly authorized; that the same was their free act and deed as such officers and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Creston, Ohio, this 13<sup>th</sup> day of October, 1995.



Sheryl L. Durant  
NOTARY PUBLIC

Sheryl L. Durant  
Notary Public, State of Ohio  
My Commission Expires August 29, 1999

Transfer  
June 1, 1998  
Paul H. Strickland  
Fee 3.00

APPROVED as per Erie County Requirements  
And Sections 4733-37 thru 4733-37-07 of the Ohio  
Administrative Code only. No Field Verifications  
or Accuracy made.

[Signature]  
Erie County Engineer. 5/29/98  
Date: \_\_\_\_\_

This conveyance has been examined  
and the grantor has complied with  
sections 310-202 and 322.02 of the  
revised code.  
FEE \$ \_\_\_\_\_  
EXEMPT \_\_\_\_\_  
N.E. TRANSFER \$ \_\_\_\_\_  
COUNTY AUDITOR

APPROVED as per Erie County Requirements  
And Sections 4733-37 thru 4733-37-07 of the Ohio  
Administrative Code only. No Field Verifications  
for Accuracy made.

[Signature] 6/1/98  
Erie County Engineer  
Date: \_\_\_\_\_  
- 4 -

1995 OCT 13 11 44 AM '95

# Exhibit

8

IN THE COURT OF COMMON PLEAS  
ERIE COUNTY, OHIO

FILED COURT  
COMMON PLEAS, OHIO  
ERIE COUNTY, OHIO  
00 JUL 14 PM 5:00  
BARBARA J. JOHNSON  
CLERK OF COURTS

BOARD OF PARK COMMISSIONERS, :  
ERIE METROPARKS :  
3910 E. Perkins Avenue :  
Huron, Ohio 44839, :

Plaintiff

-vs-

KEY TRUST COMPANY OF OHIO, N.A., :  
TRUSTEE OF THE TESTAMENTARY :  
TRUST OF VERNA LOCKWOOD :  
WILLIAMS :  
c/o Lee A. Matia, Assistant Vice President :  
& Trust Manager, Trust Real Estate Dept. :  
127 Public Square :  
Cleveland, Ohio 44114-1306 :

and

BUFFALO PRAIRIE, LTD. :  
c/o D. Jeffery Rengel :  
421 Jackson Street :  
Sandusky, Ohio 44870 :

and

Vincent R. Otrusina :  
10719 River Road :  
Huron, Ohio 44839 :

and

Dale A. Hohler :  
10607 River Road :  
Huron, Ohio 44839 :

CASE NO. 99-CV-442

JUDGE ANN B. MASCHARI

AMENDED COMPLAINT FOR  
DECLARATORY RELIEF

EXHIBIT

8

tabbies

and

Ellen H. Hohler  
10607 River Road  
Huron, Ohio 44839

and

Rita M. Beverick  
10619 River Road  
Huron, Ohio 44839

and

Patricia A. Charville, Trustee  
U/A Patricia A. Charville Trust  
Dated September 28, 1994  
11615 River Road  
Milan, Ohio 44846

and

Dorcas P. Gastier  
12015 River Road  
Huron, Ohio 44839

and

Gerald O.E. Nickoli  
Robin L. B. Nickoli, as custodians for  
Autumn M. Nickoli and  
Jared J.B. Nickoli under the  
Ohio Transfers to Minors Act  
12501 River Road  
Milan, Ohio 44846

and

Douglas Hildenbrand  
1610 Campbell Street  
Sandusky, Ohio 44870

and

John F. Landoll and/or  
Virginia A. Landoll U/A  
Co-Trustees Landoll Family Trust  
Dated July 24, 1998  
12515 River Road  
Milan, Ohio 44846

and

Warren R. Jones  
12819 River Road  
Milan, Ohio 44846

and

Robert C. Bickley  
58 Edison Drive  
Milan, Ohio 44846

and

Theresa R. Johnston  
10501 River Road  
Huron, Ohio 44839

and

Eliot F. Fischer  
10405 River Road  
Huron, Ohio 44839

and

Kim Reid-Fischer  
10405 River Road  
Huron, Ohio 44839

and

Gary R. Steiner  
403 Tecumseh Place  
Huron, Ohio 44839

and

Virginia M. Steiner  
403 Tecumseh Place  
Huron, Ohio 44839

and

Michael P. Meyer  
10719 River Road  
Huron, Ohio 44839

and

Alice F. Fowler  
9903-A River Road  
Huron, Ohio 44839

and

Thomas S. Jordan  
17841 S. Avon Belden Road  
Grafton, Ohio 44044

and

Marsha A. Jordan  
17841 S. Avon Belden Road  
Grafton, Ohio 44044

and

John J. Joyce  
2292 Ogontz Avenue  
Lakewood, Ohio 44107

and

Christine Joyce  
2292 Ogontz Avenue  
Lakewood, Ohio 44107

and

Billy R. Rasnick  
9903-D River Road  
Huron, Ohio 44839

and

Donna J. Rasnick  
9903-D River Road  
Huron, Ohio 44839

and

Maria Sperling  
9903-E River Road  
Huron, Ohio 44839

and

Joseph Jirousek  
12700 Reindeer Avenue  
Garfield Heights, Ohio 44125

and

Patricia Jirousek  
12700 Reindeer Avenue  
Garfield Heights, Ohio 44125

and

Richard Rinella  
9903-F River Road  
Huron, Ohio 44839

and

Carol Rinella  
9903-F River Road  
Huron, Ohio 44839

and

Huron Lime Company  
100 Meeker Street  
P.O. Box 451  
Huron, Ohio 44839

and

Edwin Coles  
10709 River Road  
Huron, Ohio 44839

and

Lisa Coles  
10709 River Road  
Huron, Ohio 44839,

Defendants

For its Amended Complaint, Plaintiff, Board of Park Commissioners, Erie MetroParks (the "Park District"), states as follows:

1. Pursuant to a lease dated July 12, 1881, filed for record August 9, 1881, and recorded in Volume 2, Pages 26, 27 & 28 of Erie County Lease Records (the "Lease"), The Milan Canal Company ("Milan Canal") leased to The Wheeling and Lake Erie Railroad Company ("Wheeling Railroad"), certain real property more particularly described in the Lease (the "Property"). The term of the Lease is 99 years, renewable forever. The annual rent under the Lease is \$50.00. A copy of the Lease is attached as Exhibit A hereto and made a part hereof.
2. The Lease was renewed in 1979 by Wheeling Railroad for an additional term of 99 years.

3. Wheeling Railroad was merged into Norfolk and Western Railway Company ("N & W") in 1988.

4. In 1990, N & W quit-claimed its interest as lessee under the Lease to The Wheeling and Lake Erie Railway Company ("Wheeling Railway"), reserving, however, certain fiber optic easements.<sup>1</sup>

5. The rights of Wheeling Railway under the Lease as lessee of the Property and Wheeling Railway's interest in other property were subsequently conveyed to the Park District by a deed filed for record on June 1, 1998 and recorded in Erie Official Records Book 398, Page 51. In the deed, Wheeling Railway reserved the right to run and maintain a railway line over the Property.

6. Since acquiring their leasehold interests in the Property, Wheeling Railway and subsequently the Park District made continuous use of the Property, including the maintenance thereon of ties, bridges, culverts and hundreds of tons of ballast.

7. Until they received an exemption, the Wheeling Railway and subsequently the Park District paid all real estate taxes attributable to the Property.

8. Upon information and belief, certain assets of Milan Canal, including the lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) were acquired by Defendant Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust").

---

<sup>1</sup> Wheeling Railway is not the same entity as Wheeling Railroad.

9. All or a portion of the Lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) may have been transferred by Key Trust to Defendant Buffalo Prairie, Ltd. ("Buffalo Prairie").

10. All or a portion of the Lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) may have been transferred by Buffalo Prairie to one or more of Defendants Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A Patricia A. Charville Trust Dated September 28, 1994, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L. B. Nickoli, as custodians for Autumn M. Nickoli and Jared J.B. Nickoli under the Ohio Transfers to Minors Act, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U/A Co-Trustees Landoll Family Trust Dated July 24, 1998, Warren R. Jones, Robert C. Bickley, Teresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles or Lisa Coles.

11. The Park District is in the process of improving the Property for use as a recreational trail for the transportation of persons and property.

12. When Wheeling Railway acquired its interest in the Lease from N & W, there was confusion as to who was to continue making the rent payments under the Lease, and as a result Wheeling Railway neglected to make the rent payments under the Lease.

13. Wheeling Railway did not receive any notice from the lessor under the Lease that it was in default in its payment of rent.

14. When Wheeling Railway, as transferee of the lessee's rights under the Lease, discovered that rent under the Lease had not been paid, it attempted to determine from Society Bank, predecessor to Key Trust, who was responsible for collecting such rent. However, it received no adequate response. On or about September 29, 1995, Wheeling Railway sent to Society Bank Wheeling Railway's check (the "Wheeling Check") in the amount of \$300.00 for rent for the years 1990 through 1995.

15. The Wheeling Check was not returned to Wheeling Railway by Society Bank.

16. When the Park District purchased the lessee's interest under the Lease from Wheeling Railway, Wheeling Railway neglected to advise the Park District of the tardy rent payments.

17. For over one hundred years prior to 1990, rent under the Lease had been timely paid. The Park District is ready, willing and able to make all payments required under the Lease, including any delinquent rental payments.

18. On September 14, 1999, the Park District mailed to Key Trust a check in the amount of \$550.00, representing the rent payable under the Lease through the year 2000 (the "Park District Check").

19. Disputes have arisen between the Park District and Defendants as to the interpretation of various provisions of the Lease relating to the permitted use of the Property.

20. On September 27, 1999, counsel for Key Trust transmitted to the Park District a letter stating that the Park District Check would be returned and that the Lease had terminated, a copy of which letter is attached as Exhibit B hereto and made a part hereof.

21. Under principals of law and equity the Lease is in full force and effect.

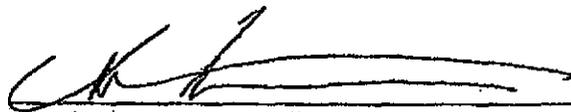
22. Permitting the lessor to terminate the Lease would result in a forfeiture, which the law abhors, and work a substantial injustice upon the Park District.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) That a declaratory judgment be entered in favor of Plaintiff declaring that:
  - (i) The Lease is in full force and effect;
  - (ii) Plaintiff is the holder of all of the lessee's rights under the Lease;
  - (iii) Plaintiff is the lessee of the Property pursuant to the Lease;
  - (iv) Any rights of Defendants in or to the Property are subject to the rights of Plaintiff as lessee of the Property;
  - (v) Plaintiff is entitled to sole and exclusive occupancy of the Property; and
  - (vi) The Lease permits Plaintiff to improve and use the Property as a recreational trail.
- (b) Costs of this action.
- (c) Such further relief to which Plaintiff may be entitled.

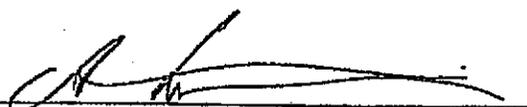
Respectfully submitted,  
BAUMGARTNER & O'TOOLE  
Legal Professional Association

By:

  
Abraham Lieberman (#0014295)  
Dennis M. O'Toole (0003274)  
Attorneys for Plaintiff,  
Board of Park Commissioners, Erie MetroParks  
582 N. Leavitt Road  
Amherst, Ohio 44001-1131  
Phone: (440) 244-1212

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Amended Complaint for Declaratory Relief has been sent by ordinary U.S. mail, postage pre-paid, this 14<sup>th</sup> day of July, 2000, to Randal L. Strickler, Attorney for Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 16 West Church Street, P.O. Box 543, Milan, Ohio 44846; J. Anthony Logan, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., Wright & Logan Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017; and to D. Jeffery Rengel, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 421 Jackson Street, Sandusky, Ohio 44870.

  
Abraham Lieberman  
Attorney for Plaintiff, Board of Park  
Commissioners, Erie MetroParks

TO THE CLERK:

Please serve the summons and a copy of the Amended Complaint for Declaratory Relief upon Defendants Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A Patricia A. Charville Trust Dated September 28, 1994, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L. B. Nickoli, as custodians for Autumn M. Nickoli and Jared J.B. Nickoli under the Ohio Transfers to Minors Act, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U/A Co-Trustees Landoll Family Trust Dated July 24, 1998, Warren R. Jones, Robert C. Bickley, Teresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce,

Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles., by certified mail, return receipt requested, at the addresses shown in the caption.



Abraham Lieberman  
Attorney for Plaintiff, Board of Park  
Commissioners, Erie MetroParks

July 14, 2008  
G:\Wofas17\17064\declearcomplaint2.wpd



others of United States and Milan Canal Company within the bounds of a certain  
 land one hundred and eighty feet (180) in width commencing at the south  
 end of the Canal Basin of said Milan Canal Company near the intersec-  
 tion of Osage & Union Streets in the Village of Harrison in said Ohio County  
 and running thence in a northerly direction to the mouth of the Harrison  
 in the Village of Harrison in said Ohio County and which strip of land is bound-  
 ed on the west by a line distant eighty feet from and running north  
 parallel with the central line of the Rail Road of the Wheeling and Lake Erie  
 Rail Road Company as now surveyed located and being constructed  
 between said Village of Milan and Harrison and which said strip of land  
 is bounded on the east by a line distant one hundred (100) feet from and  
 running north parallel with the said central line of said Rail Road the East  
 and West lines of said strip of land being one hundred and eighty feet  
 feet apart and running north parallel with each other with the central  
 line of said Rail Road from the said place of beginning to the said  
 mouth of Harrison River also all of the so called Dry Dock and all of the  
 said Canal Basin and all of the upper and lower docks of said Canal  
 with all the grounds and privileges bounded thereunto in addition to what  
 is included in the said strip of land above described the said Dry Dock  
 containing about 1/2 acre and the said Canal Basin containing about  
 1/2 acre of land in the same more or less and between the Wheeling  
 and Lake Erie Rail Road Company in or about said month of April 1892  
 which is entered upon and occupy said Real Estate and right of way and con-  
 sidered its said line of Rail Road thereunto and since their time deceased  
 now is the Exclusive and undisturbed possession thereof under license and  
 Authority of said Directors of the Milan Canal Company and under their power  
 and agreement to lease or convey said right of way and Real Estate  
 to the said Rail Road Company in due form of Law now then for and to  
 the Milan Canal Company by its legal Authority in consid-  
 eration of the benefits to said Canal Company from the construction and  
 maintenance of the said line of Rail Road with its embankments  
 and other works in protecting the property of said Canal Company and  
 the adjacent farms which said Canal Company is under legal obligation  
 to protect against Damages caused by the overflow of the waters of said  
 Harrison River and for the further considerations hereinafter stated do hereby  
 lease demise and fully let unto the Wheeling and Lake Erie Rail Road  
 Company its successors and assigns all the Real Estate and right of way  
 herein above described and being as it is the same owned by the said  
 Canal Company and have and to hold said Real Estate and  
 right of way unto the said Wheeling and Lake Erie Rail Road  
 Company its successors and assigns for the term and full term of  
 said Rail Road for the term of thirty (30) years commencing  
 on the 16 day of July A.D. 1891 and ending on the 15 day of July  
 1920 with the usual covenants to the said Wheeling and Lake Erie Rail  
 Road Company its successors and assigns of renewal of their lease from  
 upon the same terms herein expressed with all the covenants and conditions



Rail Road Company in consideration of the premises do hereby for it self  
its successors and assigns Covenant and agree with the said Lessee of the  
Milan Canal Company that the Rail Road and embankments of said  
Rail Road Company shall be kept in good order and repair during the  
term of this lease inevitable accident from storm floods and otherwise  
Excepted and that no waste shall be made or suffered on the said property  
herein leased and that there shall be paid to the said Lessee the Milan  
Canal Company by the said Lessee the Wheeling and Lake Erie Rail Road  
Company its successors and assigns at the end of each year from and after  
the 1st day of July 1881 during the term of this lease the sum of \$50  
fifty Dollars as the annual rental of said property 20 hundred and  
thousand herein and on the failure of said Lessee its successors and  
assigns to maintain and keep said Rail Road for Public transportation  
and travel and on the abandonment thereof for Rail way purposes or  
on the failure for six months to pay said Annual Rental of \$50  
fifty Dollars to the said Lessee after the same become due and pay  
able these hereunto shall become void and the said Real Estate shall  
revert to the said Lessee the Milan Canal Company and the said  
Lessee its successors and assigns shall thereupon quietly yield to said  
Lessee the premises thereof in witness whereof the said parties have  
hereunto set their names and seals at Milan Ohio on this 12 day of  
July A. D. 1881

The Milan Canal Company  
By John J. Norton  
Francis J. Lookwood  
John Putman  
David J. Wilcoxson  
Darius C. Day President  
Directors of said  
Milan Canal  
Company

The Wheeling and Lake Erie Rail Road Company  
By its President W. A. Malt

The foregoing Lease was on this 12th day of July 1881 signed sealed  
acknowledged & delivered in presence of  
William C. Lookwood Notary Public

The State of Ohio Before me a Notary Public within and for said County  
Ohio County cc. I personally appeared the above named John J. Norton  
Francis J. Lookwood John Putman David J. Wilcoxson & Darius  
Day as Directors of the said Lessee the Milan Canal Company and said  
acknowledged the foregoing Lease to be the deed of said Milan Canal Company  
for the use and purposes therein expressed and that the signing and sealing  
thereof is their official act and deed on said the 12th day of July  
in behalf of said Canal Company on this 12th day of July A. D. 1881  
Wm C. Lookwood Notary Public

Received Aug 9th 1881 Recorded Aug 10th 1881

L. C. M. R. R. Co.

# RANDAL L. STRICKLER CO., L.P.A.

16 WEST CHURCH STREET • P.O. Box 543 • MILAN, OHIO 44846-0543  
(419) 499-4605 • FAX: (419) 499-4606

RANDAL L. STRICKLER

September 27, 1999

Mr. Jonathan R. Granville, Director-Secretary  
Erie MetroParks  
3910 East Perkins Avenue  
Huron, OH 44839

Sent via facsimile and Regular U.S. Mail

Dear Mr. Granville:

As you know, the undersigned represents Key Trust Company, N.A. as Trustee of the Verna Lockwood Williams Trust. Please be advised that Key Trust has been made aware that agents, employees, and/or representatives of the Erie County MetroParks have been trespassing on the property known as the Milan Canal. As you also know, as evidenced by your board tendering a check to Key Trust relative to the rent for the lease between the Wheeling and Lake Erie Railroad and the Milan Canal Company, Key Trust is the successor in interest to the assets of the Milan Canal Company, including but not limited to the real estate upon which your agents, employees, and/or representatives have been trespassing on. Therefore, since you recognize the ownership interest of Key Trust, your trespass can only be considered as intentional.

Please be further advised that it is the position of Key Trust that the lease covenants have been broken, and that the lease between the Wheeling and Lake Erie Railroad, and its successors in interest, and the Milan Canal Company and its successors in interest is null and void. As such, Mike Thacker of Key Trust will be returning the above referenced check to you under separate cover.

Furthermore, it is the understanding of Key Trust that the Erie County MetroParks has accepted the bid of Dale Close and Sons to begin construction of a bike path and/or walking path relative to the Huron River Greenway Project, part of which runs along the Milan Canal property. Please allow this letter to serve as notice to the Erie County MetroParks that Key Trust is asserting its ownership interest in the Milan Canal property. Therefore, Key Trust demands that you cease and desist any and all activities on the Milan Canal property immediately. In the event that you fail to cease these activities, Key Trust will have no other option but to pursue each and every legal remedy available to it to eject you from the property and enjoin you from trespassing, constructing, or the making of any improvement upon the Milan Canal property, as well as seeking damages for your unauthorized trespass upon Key Trust's real estate.

EXHIBIT B

If you wish to discuss this matter further, please do not hesitate to contact the undersigned directly. Thank you for your anticipated cooperation in this matter.

Sincerely,

RANDAL L. STRICKLER CO., L.P.A.

A handwritten signature in black ink, appearing to read 'RLS' followed by a stylized flourish.

Randal L. Strickler  
Attorney and Counselor at Law

RLS/dc

cc: Kevin J. Zeher, Member, Erie County MetroParks Board  
Frederick H. Deering, Member, Erie County MetroParks Board  
Starr Truscott, Member, Erie County MetroParks Board  
The Honorable Judge Beverly McGookey, Erie County Probate Court  
Dennis O'Toole, Esq.  
Abraham Lieberman, Esq.  
Dale Close And Sons  
Michael J. Thacker, Esq.

# Exhibit

9

IN THE COMMON PLEAS COURT  
OF ERIE COUNTY, OHIO

Board of Park Commissioners,  
Erie Metroparks,

Plaintiff

-v-

Key Trust Company of Ohio, NA  
Trustee of the Testamentary  
Trust of Verna Lockwood  
Williams, et al.,

Defendants

Case#99-V-442

Judge J. Cirigliano

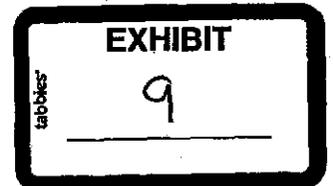
ANSWER TO AMENDED COMPLAINT  
AND COUNTERCLAIM

(Jury Demand Endorsed Hereon)

D. Jeffery Rengel (#0029069)  
Thomas R. Lucas (#0071916)  
421 Jackson Street  
Sandusky, Ohio 44870  
419-627-0400

J. Anthony Logan  
Peggy Kirk Hall  
WRIGHT & LOGAN CO., L.P.A.  
4266 Tuller Road, Suite 101  
Dublin, Ohio 43017  
(614) 791-9112

Now come Defendants, Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams (hereinafter "Key Trust"), Buffalo Prairie, Ltd., Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A/ Patricia A. Charville Trust, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L.B. Nickoli as custodians for Autumn M. Nickoli and Jared J.B. Nickoli, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U.A. Co-trustees of Landoll Family Trust, Warren R. Jones, Robert C. Bickley, Theresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles by and through counsel, and make this their Answer to the Amended Complaint of Plaintiff and Counterclaim against Plaintiff.



1. Defendants admit the allegations contained in Paragraphs 1, 2, 9, 10 and 19 of Plaintiff's Amended Complaint.

2. Defendants deny the allegations contained in Paragraphs 3, 4, 5, 7, 14, 15, 16, 17, 18, 20 and 22 of Plaintiff's Amended Complaint for want of knowledge sufficient to form a belief as to the truth or falsity thereof

3. Defendants deny the allegations contained in Paragraphs 6, 11 and 21 of Plaintiff's Amended Complaint.

4. Defendants specifically deny the allegation in Paragraph 8 of Plaintiff's Amended Complaint that their title to the real property at issue is subject to the Lease between the Wheeling and Lake Erie Railroad and the Milan Canal Company and to the lessee's rights thereunder, since by virtue of the express language of the lease, the lease is null and void. However, Defendants admit that they are the successor in interest to the assets of the Milan Canal Company and as such, they hold fee simple title to the subject real property. Furthermore, Defendants deny the remaining allegations contained in Paragraph 8 of Plaintiff's Amended Complaint.

5. Defendants deny for want of knowledge sufficient to form a belief as to the truth or falsity thereof the allegations contained in Paragraph 10 of Plaintiff's Amended Complaint except as to admit that they have not received timely rent payments under the terms of the lease from either N&W or Wheeling Railway for many years.

6. Defendants deny for want of knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint. Furthermore, Defendants states that the express terms of the lease do not require that any notice be given to lessee in the event of default, the lease merely states:

... that there shall be paid to the said Lessor the Milan Canal Company by the said Lessee the Wheeling and Lake Erie Railroad Company, its successors and assigns

at the end of each year from and after the said 12th day of July 1881, during the term of this lease the sum of (\$50) Fifty Dollars as the annual rental of said Property so leased and demised herein and on the failure of said Lessee it successors and assigns to so maintain and operate said railroad for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for six months to pay said annual rental of (\$50) Fifty Dollars to the said Lessor after the same became due and payable these presents shall become Void and the Said Real Estate shall revert to the said Lessor the Milan Canal Company and the said lessee its successors and assigns shall thereupon quietly yeild (sic) to said lessor the premises thereof..

Wherefore, defendants pray for judgment in their favor and against plaintiffs finding the lease is null and void and that defendants are entitled to present possession of said subject real property.

#### FIRST DEFENSE

7. Plaintiff's Amended Complaint is barred by the doctrine of *res judicata*, these issues and matters having been raised, or having a right to be raised, in the cases of *Buffalo Prairie, Ltd, et. al. v. Erie Metroparks, et. al.*, Huron Municipal Court, case#00-CVG-119-A-L and Erie County Court, case#00-CVF-00041 A-S and the validity of the subject lease having already been decided by a court of competent jurisdiction.

#### SECOND DEFENSE

8. Plaintiff's Amended Complaint for declaration of lease validity is barred by the applicable statute of limitations.

#### THIRD DEFENSE

9. Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

#### FOURTH DEFENSE

10. The Plaintiff's claims are barred by the doctrine of bar, laches, estoppel and waiver. Therefore, Plaintiff's Amended Complaint should be dismissed.

**FIFTH DEFENSE**

11. There has been a mis-joinder or non-joinder of parties in this action. Therefore, Plaintiff's Amended Complaint should be dismissed.

**SIXTH DEFENSE**

12. Plaintiff has failed to join indispensable parties pursuant to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure and has further failed to plead his responses for nonjoinder, and therefore, Plaintiff's Amended Complaint should be dismissed.

**SEVENTH DEFENSE**

13. Plaintiff has failed to join parties needed for just adjudication and in whose absence complete relief cannot be accorded among the parties hereto. Therefore, Plaintiff's Amended Complaint should be dismissed.

**EIGHTH DEFENSE**

14. Plaintiff's action is barred by operation of the doctrine of unclean hands. Therefore, Plaintiff's Amended Complaint should be dismissed.

**NINETH DEFENSE**

15. Plaintiff's claims must fail for lack of contractual agreement between the parties. Therefore, Plaintiff's Amended Complaint should be dismissed.

**TENTH DEFENSE**

16. Plaintiff has no standing by virtue of its status as "trespasser" since Plaintiff's grantor, Whceling and Lake Erie Railway Co., had a mere license which terminated upon said grantor's failure to use said subject real property for railroad purposes. Therefore, Plaintiff's Amended Complaint should be dismissed.

**ELEVENTH DEFENSE**

17. Plaintiff is barred from the relief it seeks herein because the events necessary to extinguish Plaintiff's interest in the real property at issue have occurred, to wit, the failure to make timely rent payments under the lease; failure to maintain in good order and repair the said Railroad with its embankments and other works in protecting the property of said Canal Company and the adjacent farm against damages caused by the overflow of waters; failure to utilize the property for the uses and purposes of said Railroad; commission of waste; and, abandonment for railway purposes. Therefore, Plaintiff's Amended Complaint should be dismissed.

**TWELVETH DEFENSE**

18. Plaintiff is barred from the relief it seeks herein by the provisions of the Ohio Marketable Title Act. Therefore, Plaintiff's Amended Complaint should be dismissed.

**THIRTEENTH DEFENSE**

19. Plaintiff is barred from the relief it seeks herein by the acts of Plaintiff and its predecessors in title to the real property at issue. Therefore, Plaintiff's Amended Complaint should be dismissed.

**FOURTEENTH DEFENSE**

20. Plaintiff is barred from the relief it seeks herein by the express language contained in the lease which has caused the lease to be terminated. Therefore, Plaintiff's Amended Complaint should be dismissed.

**FIFTEENTH DEFENSE**

21. Plaintiff's Complaint violates the provisions and requirements of Ohio Civil Rule 11 entitling defendant to sanctions against plaintiff's attorney.

**SIXTEENTH DEFENSE**

22. Plaintiff's Complaint represents frivolous conduct pursuant to the provisions of Ohio Revised Code §2323.51

### SEVENTEENTH DEFENSE

23. This answering defendant further reserves the right to later assert additional affirmative defenses which discovery undertaken in the case deem to be appropriate herein.

### COUNTERCLAIM

#### FIRST CAUSE OF ACTION

24. Defendant-Counterclaimants incorporate all of the allegations, averments, admissions and denials as set forth in the Amended Answer of Defendant-Counterclaimants as a factual basis for the within Counterclaim as if fully rewritten herein.

25. The July 12, 1881, Lease which is the subject of this action contains the following provisions:

In consideration of the benefits to said Canal Company from the construction and maintenance of the said line of Rail Road with its embankments and other works in protecting the property of said Canal Company and the adjacent farm which said Canal Company is under legal obligations to protect against damages caused by the overflow of the waters of said Huron River.

The Wheeling and Lake Erie Railroad Company its successors and assigns for the uses and purposes of said Rail Road Company and its rights of way for its said Rail Road.

Second, and the said Lessee the Wheeling and Lake Erie Rail Road Company in consideration of the premises does hereby for itself its successors and assigns covenant and agree with the said Lessor The Milan Canal Company that the Rail Road and embankments of said Rail Road Company shall be kept in good order and repair during the term of this lease...

... that there shall be paid to the said Lessor the Milan Canal Company by the said Lessee the Wheeling and Lake Erie Railroad Company, its successors and assigns at the end of each year from and after the said 12th day of July 1881, during the term of this lease the sum of (50) Fifty Dollars as the annual rental of said Property so leased and demised herein and on the failure of said Lessee its successors and assigns to so maintain and operate said railroad for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for six months to pay said annual rental of (\$50) Fifty Dollars to the said Lessor after the same became due and payable these presents shall become Void and the Said Real Estate shall revert to the said Lessor the Milan Canal Company and the said lessee its successors and assigns shall thereupon quietly yeild (sic) to said lessor the premises thereof. (emphasis added.)

26. The railroad tracks, ties and portions of the ballast along the aforementioned railroad line located upon Defendant-Counterclaimant's property were removed sometime between 1992 and 1994.

27. The above terms and conditions of license under Lease of 1881 have been breached causing the lease/license to terminate and the property at issue to revert back to the fee simple owner, Defendant-Counterclaimants, by its express terms: "on the failure of said Lessee its successors and assigns to so maintain and operate said railroad for public transportation and travel and on the abandonment thereof for railway purposes ... these presents shall become Void and the Said Real Estate shall revert to the said Lessor the Milan Canal Company and the said lessee its successors and assigns shall thereupon quietly yeild (sic) to said lessor the premises thereof (emphasis added.)

28. Defendant-Counterclaimants suffered damages by plaintiff's breach of the lease agreement, including but not limited to suffering waste upon and alteration of said property.

29. Said acts and omissions of plaintiff, by and through its agents and employees, were undertaken with such an element of intentionalness and/or conscious disregard for the rights and safety of defendants such that punitive damages are awardable.

**WHEREFORE**, Defendant-Counterclaimants respectfully pray that they be granted the following relief by judgment:

A. Compensation for the waste to defendants property caused by the actions of plaintiff and its agents and employees acting on its behalf and/or at its direction and/or while such property was under plaintiff's actual or constructive control. Such waste includes both diminution and alteration of said property. Defendants seek recovery for the costs of repair and replacement of original condition including removal of railroad remnants; and

B. Damages for the fair market value of the loss of use of said property by defendants from 1990 to the present; and,

C. A declaration that the subject 1881 Lease has been terminated by breach of the following conditions of lease as expressly set forth in said Lease: (1) the failure of Plaintiff to pay the annual rent in a timely manner; (2) the failure of Plaintiff to construct and maintain embankments and other works in protecting the property; (3) failure to utilize the property for "the uses and purposes of said Rail Road Company and its rights of way for its said Rail Road"; (4) failure to keep "the Rail Road and embankments of said Rail Road Company ... in good order and repair during the term of this lease"; (5) "that no waiste [sic] shall be made or suffered on the said property herein leased while in possession of said Lessee"; and (6) "abandonment thereof for railway purposes".

D. Alternatively, should this Court decide that prior court decisions have not resolved the issue, a declaration that any and all rights of plaintiff to present possession of the real property at issue have been terminated by the expiration of the Lease;

E. An Order requiring plaintiff to cease and desist any and all activities upon defendants' real estate;

F. An Order stating that defendants are entitled to the sole and exclusive occupancy of the real estate at issue;

G. An Order requiring plaintiff to repair and/or replace the property into its original condition prior to the use of plaintiff and its predecessors-in-interest including removal of remnants of railroad and plaintiff's operations;

H. An award of punitive damages as well as defendants's attorneys fees;

I. Costs of the within cause of action; and

J. Such other and further relief which this Honorable Court deems fair and equitable to which defendants may be entitled.

Respectfully submitted:

---

D. Jeffery Rengel (#0029069)  
Thomas R. Lucas (#0071916)  
421 Jackson Street  
Sandusky, Ohio 44870  
419-627-0400

-and-

J. Anthony Logan  
Peggy Kirk Hall  
WRIGHT & LOGAN CO., L.P.A.  
4266 Tuller Road, Suite 101  
Dublin, Ohio 43017  
(614) 791-9112

Attorneys for Defendants

**JURY DEMAND**

Defendants hereby request a trial by jury on all issues triable to a jury.

---

D. Jeffery Rengel (#0029069)  
Thomas R. Lucas (#0071916)

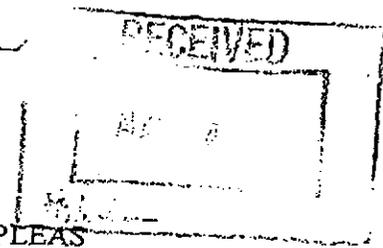
-and-

J. Anthony Logan  
Peggy Kirk Hall

Attorneys for Defendants

# Exhibit

10



IN THE COURT OF COMMON PLEAS  
ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS, :  
ERIE METROPARKS :

Plaintiff :

-vs- :

KEY TRUST COMPANY OF OHIO, N.A., :  
TRUSTEE OF THE TESTAMENTARY :  
TRUST OF VERNA LOCKWOOD :  
WILLIAMS, ET AL. :

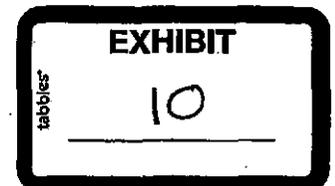
Defendants :

CASE NO. 99-CV-442

JUDGE JOSEPH E. CIRIGLIANO

PLAINTIFF'S REPLY TO  
DEFENDANTS' COUNTERCLAIM

Plaintiff, Board of Park Commissioners, Erie MetroParks, for its Reply to the Counterclaim of Defendants. Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust"), Buffalo Prairie, Ltd. ("Buffalo"), Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A/Patricia A. Charville Trust, Dorcas P. Gastier, Gerald O. E. Nickoli and Robin L. B. Nickoli as custodians for Autumn M. Nickoli and Jared J. B. Nickoli, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U.A. Co-trustees of Landoll Family Trust, Warren R. Jones, Robert C. Bickley, Theresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles, states as follows:



24. In response to Paragraph 24 of the Counterclaim, Plaintiff incorporates all of the allegations, averments, and denials contained in Plaintiff's Amended Complaint, and further states that no additional response is required. To the extent an additional response to Paragraph 24 is required, Plaintiff denies the allegations of Paragraph 24 of the Counterclaim.

25. Plaintiff denies the allegations of Paragraph 25 of the Counterclaim. Replying further, Plaintiff states that the Lease speaks for itself, and that Defendants have misquoted the provisions of the Lease.

26. Plaintiff denies the allegations of Paragraph 26 of the Counterclaim. Replying further, Plaintiff states that it is unclear from Defendants' allegation what portion of the railroad line Defendant-Counterclaimant claims title to and which Defendant-Counterclaimant is making such claim.

27. Plaintiff denies the allegations of Paragraph 27 of the Counterclaim.

28. Plaintiff denies the allegations of Paragraph 28 of the Counterclaim.

29. Plaintiff denies the allegations of Paragraph 29 of the Counterclaim.

30. Plaintiff denies all other allegations of the Counterclaim not specifically admitted herein.

#### FIRST AFFIRMATIVE DEFENSE

31. The Lease is still in full force and effect and, by the terms thereof, Plaintiff, as the lessee thereunder, has the sole and exclusive right to possession and use of the property covered by the Lease.

SECOND AFFIRMATIVE DEFENSE

32. Defendants are not entitled to terminate the Lease or Plaintiff's rights thereunder, because Defendants failed to demand payment of the rent and performance of the Lease obligations. *Eichenlaub v. Neil* (1895), 10 OCC 427, 6 OCD 567, 3 O Dec 365, *aff'd* 56 OS 782; *Smith v. Whitbeck* (1862), 13 Ohio st. 471; *Hulett v. Fairbanks* (1883), 40 Ohio St. 233.

THIRD AFFIRMATIVE DEFENSE

33. Defendants' Counterclaim fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

34. Defendants are barred from the relief they seek by the doctrines of waiver, estoppel and laches.

FIFTH AFFIRMATIVE DEFENSE

35. Defendants are barred from the relief they seek by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

36. Plaintiff has the right to possess substantial portions of the land formerly actively used by The Wheeling and Lake Erie Railway Company for train traffic, not through the Lease, but through title that Erie MetroParks acquired by way of a deed from The Wheeling and Lake Erie Railway Company filed for record on June 1, 1998 and recorded in Erie Official Records Book 398, Page 51 (the "Deed").

SEVENTH AFFIRMATIVE DEFENSE

37. Plaintiff has the right to possess substantial portions of the land formerly actively used by The Wheeling and Lake Erie Railway Company for train traffic, not through the Lease, but through easements acquired by way of the Deed.

EIGHTH AFFIRMATIVE DEFENSE

38. Plaintiff has the right to possess substantial portions of the land formerly actively used by The Wheeling and Lake Erie Railway Company for train traffic, not through the Lease, but as the result of the initiation by Erie MetroParks of a "quick take" action in the Erie County Court of Common Pleas styled Board of Park Commissioners, *Erie MetroParks v. Wikel Farms Ltd., et al.*, Erie County Court of Common Pleas Case No. 99CV140.

NINTH AFFIRMATIVE DEFENSE

39. Plaintiff remains ready, willing and able to pay all rent that may be due and owing, and in fact has tendered such rent.

TENTH AFFIRMATIVE DEFENSE

40. Equitable principles preclude Defendants from obtaining the relief requested.

ELEVENTH AFFIRMATIVE DEFENSE

41. Plaintiff reserves the right to later assert additional affirmative defenses to the Counterclaim should it be discovered that such defenses are appropriate.

Respectfully submitted,

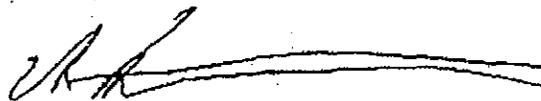
BAUMGARTNER & O'TOOLE  
LEGAL PROFESSIONAL ASSOCIATION

By: 

Abraham Lieberman (0014295)  
Dennis M. O'Toole (0003274)  
Attorneys for Plaintiff, Board of Park  
Commissioners, Erie MetroParks  
502 Broadway  
Lorain, Ohio 44052  
Ph. (440) 244-1212

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Plaintiff's Reply to Defendants' Counterclaim has been sent by ordinary U.S. mail, postage pre-paid, this 11th day of August, 2000, to D. Jeffery Rengel and Thomas R. Lucas, Attorneys for Defendants, 421 Jackson Street, Sandusky, Ohio 44870; and to J. Anthony Logan and Peggy Kirk Hall at Wright & Logan Co., L.P.A., Attorneys for Defendants, 4266 Tuller Road, Suite 101, Dublin, Ohio 43017.



Abraham Lieberman  
Attorney for Plaintiff, Board of Park  
Commissioners, Erie MetroParks

August 10, 2000  
G:\Wojas17\17064\reply2-countclaim.wpd

# Exhibit

11

# ORIGINAL

## IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

**Board of Park Commissioners,  
Erie Metroparks,**

**Plaintiff,**

**-vs-**

**Key Trust Company of Ohio, NA  
Trustee of the Testamentary  
Trust of Verna Lockwood  
Williams, et. al.,**

**Defendants.**

**Case No. 99CV442**

**Judge Joseph Cirigliano**

**Judgment Entry**

FILED COURT  
ERIE COUNTY, OHIO  
NOV 10 2000 7 51 PM  
BARBARA J. JOHNSON  
CLERK OF COURTS

—oOo—

This case was tried to the Court on August 23 and 24, 2000. One issue before the Court is the validity of a lease ("Lease") originally entered into by the predecessors-in-interest to the parties herein, the owner/lessor, Milan Canal Company and the lessee Wheeling & Lake Erie Railroad Company ("Wheeling Railroad"). The second issue before the Court is whether Plaintiff has acquired any ownership interest in the property at issue by virtue of a quitclaim deed from the Wheeling Railroad. The third issue the Court has been asked to decide is whether Plaintiff has gained any interest in the property at issue by adverse possession. The fourth issue the Court has been asked to decide is the extent of the property covered by the Lease.



### Findings of Fact

The Lease was originally signed on July 12, 1881, and is recorded with the Erie County Recorder's Office, and entered into evidence by stipulation. Pursuant to the Lease, the Milan Canal Company leased to the Wheeling Railroad certain land (the "Leased Property"), which is described in the attached Exhibit A. The term of the Lease is 99 years, renewable forever, and the annual rent is Fifty Dollars (\$50.00). The Lease further requires that the lessee, its successors, and assigns, maintain and operate a railroad for public transportation and travel. Upon the abandonment of the Leased Property for railway purposes, or upon the failure for six months to pay the stated annual rental of fifty dollars (\$50.00) to the lessor after the same became due and payable, the Lease becomes void and the real estate reverts to the lessor. The Lease was renewed for its second 99-year term in 1980.

The Leased Property was ultimately conveyed to Key Trust Company of Ohio, NA, Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust"). It is undisputed that the Railroad failed to pay annual rental for the Leased Property after 1989 until a check for \$300.00 was transmitted to Key Trust, Trustee for Verna Lockwood Trust, in September 1995. The payment was rejected.

By 1988, the Norfolk and Southern Railway Company, predecessor in interest to the Wheeling Railroad, filed an abandonment of service application before the Interstate Commerce Commission with respect to the Leased Property, which was granted. Thereafter, the Railroad

removed railroad tracks and ballast from the Leased Premises, making the property unfit for the purpose of operating a railway. In October 1995, the Wheeling Railroad transferred its interest in the Leased Property to Plaintiff by quitclaim deed, which was recorded on June 1, 1998.

In the year 2000, Defendant Key Trust, transferred all of its right, title, and interest as successor-in-interest to the original lessor, to the remaining Defendants.

Having assessed the credibility of the witnesses who testified at trial and the reliability of the documents submitted into evidence, the Court finds that the Milan Canal Company, the predecessor in title to Defendant Key Trust Company of Ohio, NA, Trustee ("Key Trust"), acquired its real property interests to construct the canal (the "Milan Canal Property") solely by way of two instruments and no others:

(a) A conveyance from Kneeland Townsend dated May 10, 1838, recorded May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records (the "Townsend Conveyance"); and

(b) A conveyance from Ebeneser Merry dated April 21, 1838, recorded October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records (the "Merry Conveyance").

The Milan Canal Property consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel Farms, Ltd., just north of Mason Road, in

Section 2, Milan Township, Erie County, Ohio. Neither Kneeland Townsend nor Ebeneser Merry conveyed to the Milan Canal Company any interest in real property north of Lock No. 1.

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1.

#### Conclusions of Law

It is axiomatic that a seller cannot transfer any greater interest in land than that which the seller possesses. In the instant case, the Wheeling Railroad had a leasehold interest in the property at issue, which is evidenced by Exhibit A. The Court hereby finds the lease, which was entered into by Wheeling Railroad and Key Trust, was a valid lease. The Court finds that the Lease was materially breached by the Wheeling Railroad for the nonpayment of rent for a period of more than six months, and because the property was abandoned for the purpose of operating a railroad. The lease, thereby, became void by its clear terms. The Court finds that there was no evidence presented by either party to show that the parties to the Lease did not intend an ordinary and common meaning to be given to the words contained therein, or that there was any mistake by either party in entering into the Lease. See Hinman v. Barnes 146 Ohio St. 497 (1946); and Greenfield v. Aetna Cas. Co., 75 Ohio App. 122 (1944).

Further, the Court finds that the Lease, which was for a term of 99 years and renewable forever, did not confer a fee simple estate under Ohio law to the Wheeling Railroad because it was aware that its interest could be forfeited to the lessor upon its breach of the lease covenants.

Therefore, the fee simple remains in the lessor, its heirs, devisees, or assigns. See Rawson v. Brown 104 Ohio State 548 (1922); and Quill v. R.A. Investment Corporation 124 Ohio App.3d 653 (1997).

Finally, the Court finds that the Plaintiff has not met its burden to establish any interest in the property at issue by adverse possession. To prevail on a claim for adverse possession a claimant must establish by a preponderance of the evidence that his possession of the land was open, notorious, exclusive, adverse, hostile, and continuous for more than twenty-one years. See Coleman v. Pennel Co. 123 Ohio App.3d 125 (1997); Demmitt v. McMillan (1984), 16 Ohio App.3d 138. The use is not adverse if it is either by permission, or accommodation for the owner Hindall v. Martinez (1990), 69 Ohio App.3d 580.

In the instant case, it is undisputed that the lessee and its successors maintained railroad operations and train traffic and paid rent while maintaining the Leased Property from the inception of the Lease until sometime in the 1980's, and then filed for abandonment of service in 1988. The Railroad and its predecessors-in-interest did not hold the Leased Property adverse to the lessor's interests until, at the latest, 1989, when it stopped paying rent.

The Court finds that it was not until sometime after the Plaintiff acquired its quitclaim deed from the Wheeling Railroad in October 1999, that Plaintiff entered the Leased Premises adversely to the lessor, its successors, and assigns-in-interest. The Court finds that the Railroad

was in active operations, paying rent, and otherwise complying with the Lease terms as late as 1986, or later, which was well within the last twenty-one years.

The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands then owned by the Milan Canal Company within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1. Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms, Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County.

Judgment in favor of Defendants and against Plaintiff, except as to the issue of the extent of the property covered by the Lease.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge Joseph Cigliano

cc: Abraham Lieberman  
Dennis O'Toole      Peggy Kirk  
Randall Strickler      Anthony Logan  
Darrel Bilancini      Jeffrey Rengel

**EXHIBIT A**

All those lands within a one hundred fifty (150) foot wide corridor conveyed to the Milan Canal Company by Kneeland Townsend and Ebeneser Merry by instruments dated May 10, 1838 and April 21, 1838, respectively, and recorded, respectively on May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records and October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records, which lands have a northerly boundary at Lock No. 1 of the old Milan Canal, which lock was located immediately north of Mason Road on lands now owned by Wikel Farms, Ltd. at or near the intersection of the Milan Canal with the Huron River, and extending southerly to the Canal's turning basin in the City of Milan, Ohio.

# Exhibit

12

**COPY**

MAR 05 2002

**ORIGINAL**

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,  
ERIE METROPARKS,

Plaintiff

-vs-

KEY TRUST COMPANY OF OHIO, NA  
TRUSTEE OF THE TESTAMENTARY  
TRUST OF VERNA LOCKWOOD  
WILLIAMS, et. al.,

Defendants

CASE NO. 99 CV 442

Judge Joseph E. Cirigliano

**JUDGMENT ENTRY**

FILED  
COMMON PLEAS COURT  
ERIE COUNTY, OHIO  
2002 FEB 22 PM 1 42  
BARBARA J. JOHNSON  
CLERK OF COURTS

This matter is before the Court on remand by the Erie County Court of Appeals (Court of Appeals Case No. E-00-068), a discretionary appeal to the Ohio Supreme Court not having been allowed (Supreme Court Case No. 01-1927).

Two issues were presented for decision. The first issue was the continuing validity of a lease (the "Lease") originally entered into between the predecessors-in-interest to the parties herein, the Milan Canal Company, as lessor, and the Wheeling & Lake Erie Railroad Company ("Wheeling Railroad"), as lessee. The second issue was the extent of the property covered by the Lease.

J433/941

3/01/02

EXHIBIT	12
	_____

### Findings of Fact

The Lease, originally signed on July 12, 1881, and recorded in Volume 2, Pages 26, 27 and 18 of Erie County Lease Records, was entered into evidence by stipulation. Pursuant to the Lease, the Milan Canal Company leased to Wheeling Railroad certain land (the "Leased Property"), which is described in the attached Exhibit A. The term of the Lease is 99 years, renewable forever, and the annual rent is Fifty Dollars (\$50.00). The Lease requires the Leased Property to be used "for public transportation and travel." The Lease further provides that the Leased Property is to revert to the lessor "on the failure of said lessees to so maintain and operate said Railroad for public transportation and travel and on the abandonment thereof for railway purposes, or on the failure of for six months to pay said annual rent . . . ." However, the Lease does not contain an express waiver of the common law requirement that the lessor demand payment of rent before declaring a forfeiture of the Lease. The Lease was renewed for its second 99-year term in 1979.

In 1904, the Milan Canal Company was dissolved and its assets purchased by Stephen Lockwood. Stephen Lockwood's interest in the Lease and the Leased Property eventually devolved to Key Trust Company of Ohio, NA, Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust").

Wheeling and Lake Erie Railway Company ("Wheeling Railway") acquired Norfolk Southern's interest in the rail corridor, and, in October, 1995, Wheeling Railway transferred its interest in the Leased Property to Plaintiff by quit-claim deed, which was recorded on June 1, 1998.

In the year 2000, during the pendency of this case, Defendant Key Trust, transferred all of its right, title, and interest as successor-in-interest to the original lessor, to the remaining Defendants.

Train service on the Leased Property was discontinued not later than 1986 and perhaps as early as 1982. In 1988, Norfolk and Western Railway Company ("N&W"), predecessor to Norfolk Southern Corporation ("Norfolk Southern"), filed a Notice of Exemption with the Interstate Commerce Commission for permission to discontinue train service along an 8.3 mile corridor including the Leased Property. Such permission was granted.

It is undisputed that the lessee failed to pay annual rental for the Leased Property after 1989, until a check for \$300.00 was transmitted to Key Trust in September 1995. The payment was rejected. It is also undisputed that no demand for rent was ever made by the lessor.

Having assessed the credibility of the witnesses who testified at trial and the reliability of the documents submitted into evidence, the Court finds that the Milan Canal Company, the predecessor in title to Defendant Key Trust, acquired its real property interests to construct the canal (the "Milan Canal Property") solely by way of two instruments and no others:

- (a) A conveyance from Kneeland Townsend dated May 10, 1838, recorded May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records (the "Townsend Conveyance"); and

(b) A conveyance from Ebeneser Merry dated April 21, 1838, recorded October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records (the "Merry Conveyance").

The Milan Canal Property consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel Farms, Ltd., just north of Mason Road, in Section 2, Milan Township, Erie County, Ohio. Neither Kneeland Townsend nor Ebeneser Merry conveyed to the Milan Canal Company any interest in real property north of Lock No. 1.

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1.

#### **Conclusions of Law**

It is axiomatic that a seller cannot transfer any greater interest in land than that which the seller possesses. In the instant case, Wheeling Railroad had a leasehold interest in the Leased Property, which is evidenced by Exhibit A. The Court hereby finds the Lease was a valid lease. Further, the Court finds that the Lease, which was for a term of 99 years and renewable forever, did not confer a fee simple estate under Ohio law to the Wheeling Railroad, because it was aware that its interest could be forfeited to the lessor upon its breach of the lease covenants. Therefore, the fee

simple remains in the lessor, its heirs, devisees, or assigns. See Rawson v. Brown (1922), 104 Ohio St. 548; and Quill v. R.A. Investment Corporation (1997), 124 Ohio App.3d 653.

The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands then owned by the Milan Canal Company within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1. Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms, Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County.

It is axiomatic in Ohio jurisprudence that the law abhors a forfeiture. Wheatstone Ceramics Corp. v. Turner (1986), 32 Ohio App.3d 21, 23, citing Ensel v. Lumber Ins. Co. of New York (1913), 88 Ohio St. 269, 281.

Contracts incorporate the law applicable at the time of their creation. 11 Williston on Contracts (1999), 203, Section 30.19. The common law of Ohio at the time the Lease was executed required that, in order to show a forfeiture of a leasehold estate, the lessor had to prove that a demand for payment of rent had been made when due. Smith v. Whitbeck (1862), 13 Ohio St. 471. The

Lease contained no express waiver of this common law requirement, and the evidence was unrefuted that no demand for payment of rent had been made. Since no forfeiture may be had absent demand, the lapse in annual rent payments does not constitute an irreparable breach of the Lease.

The Lease requires the Leased property to be used "for public transportation and travel," and further provides that the Leased Property is to revert to the lessor "on the failure of said lessees to so maintain and operate said Railroad for public transportation and travel and on the abandonment thereof for railway purposes." The transformation of a railroad right-of-way to a recreational trail is a permissible use of such property. Rieger v. Penn Central Corp. (May 21, 1985), Greene App. No. 85-CA-11, unreported. Both serve a public purpose related to public transportation and travel. Id., citing Minnesota Dept. of Wildlife v. State of Minnesota (Minn. 1983), 329 N.W.2d 543, 546-547, certiorari denied (1983), 463 U.S. 1209. Consequently, the proposed use of the Leased Property is consistent with the requirements of the Lease. Furthermore, the transitional period between the uses is not so great as to constitute a failure to "maintain and operate" the Leased Property for such uses so as to constitute a breach of the Lease. This is especially so absent a demand from the lessor for performance.

To constitute abandonment of a railroad right-of-way, there must be a "nonuser together with an intention to abandon." Rieger, supra, citing Schenck v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co. (1919), 11 Ohio App. 164, 167. The intention must be shown by unequivocal and decisive acts indicative of abandonment. Id.; see, also, Roby v. New York Central (1984), 142 N.Y. 176, 181. The filing of a Notice of Exemption with the Interstate Commerce Commission for

permission to discontinue train service was evidence, but not conclusive. Contradictory to the filing was undisputed evidence that when Norfolk Southern transferred this spur to Wheeling Railway, Norfolk Southern reserved a portion of the corridor for the future installation of fiber-optic cable. Moreover, Wheeling Railway's grant to Plaintiff reserves a future right to construct and operate another rail line in the corridor. Both of these acts constitute "railway purposes," and both indicate an intention to pursue future use of the property for such purposes. Far from the "unequivocal and decisive" acts indicative of abandonment necessary to prove an intent to abandon, these reservations are antithetical to such an intent.

The Court therefore rules that:

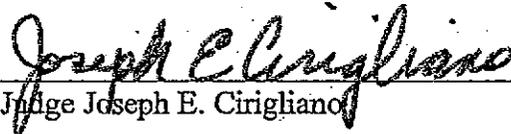
1. The extent of the Leased Property is as set forth in Exhibit A hereto.
2. The lessees have not abandoned the Leased Property.
3. The Lease is still in full force and effect and encumbers the Leased Property.
4. Plaintiff is the current lessee and the holder of the lessee's rights under the Lease.
5. Plaintiff is entitled to the sole occupancy and use of the Leased Property.
6. Any rights of Defendants in the Leased Property are subject to the rights of Plaintiff as lessee of the Leased Property.
7. The Lease permits the Plaintiff to improve and use the Leased Property as a parkway and/or recreational trail and purposes incidental and/or related thereto.

8. There is currently outstanding the sum of Six Hundred Fifty Dollars (\$650.00) as delinquent rent under the Lease. Plaintiff has deposited with the clerk of courts the sum of One Thousand Dollars (\$1,000.00), representing thirteen years' past due rent and future rent for seven years. Such deposit shall be released to Defendants upon motion of Defendants advising the Court to whom such rent is to be paid. Defendants shall keep Plaintiff advised in writing as to where future installments of rent are to be directed. If Defendants do not timely notify Plaintiff to whom future rent is to be paid and the address at which rent is to be paid, then Plaintiff may deposit future rent with the Clerk of Courts, until further notice.
9. Only those Defendants who hold an interest in the Leased Property are entitled to any portion of the rent under the Lease or to the benefit of any of the rights of the lessor under the Lease.

Judgment on Plaintiff's Complaint and on Defendants' Counterclaim is rendered in favor of Plaintiff and against Defendants.

Costs to Defendants.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge Joseph E. Cirigliano

cc: Abraham Lieberman  
Dennis O'Toole      Peggy Kirk  
Randall Strickler    Anthony Logan  
Darrel Bilancini     Jeffrey Rengel

## EXHIBIT A

All those lands within a one hundred fifty (150) foot wide corridor conveyed to the Milan Canal Company by Kneeland Townsend and Ebeneser Merry by instruments dated May 10, 1838 and April 21, 1838, respectively, and recorded, respectively on May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records and October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records, which lands have a northerly boundary at Lock No. 1 of the old Milan Canal, which lock was located immediately north of Mason Road on lands now owned by Wikel Farms, Ltd. at or near the intersection of the Milan Canal with the Huron River, and extending southerly to the Canal's turning basin in the City of Milan, Ohio.

# Exhibit

13

# QUIT CLAIM DEED

Key Trust Company of Ohio, National Association, a national banking organization formed under the laws of the United States, as Trustee of the Verna Lockwood Williams Trust, for valuable consideration paid, the receipt of which is hereby acknowledged, grants to Buffalo Prairie, Ltd., an Ohio limited liability company, whose tax mailing address is P.O. Box 449, Milan, Ohio 44846, the following REAL PROPERTY: Situated in the County of Erie, in the State of Ohio, and in the Townships of Milan and Huron:

All of the right, title and interest Grantor holds in the property of the former Milan Canal Company, including but not limited to the canal basin, locks, dry dock and tow path, and further described in the attached Exhibit A, which is incorporated as part of this deed.

Subject to easements, conditions, legal highways, restrictions of record and the lien of unpaid real estate taxes.

Prior Deed Reference: Vol. 78 Page 239

Signed and acknowledged as to grantor's signature in the presence of:

[Signature]  
Witness

William M. Wright  
Please print name legibly

[Signature]  
Witness

Michael J. Thacker  
Please print name legibly

Lee A. Matia MR

Key Trust Company of Ohio, National Association

By: Lee A. Matia  
Its: Asst Vice President

RN 200005173      Page 1 of 5  
ERIE COUNTY OHIO RECORDER  
John W. Schaeffer      5P  
RECORDING FEE:      26.00  
TLF Date 04/27/2000      Time 10:40:29

STATE OF OHIO,  
COUNTY OF CUYAHOGA, ss:

On April 11, 2000, before me, the undersigned, a Notary Public in and for the said state, personally appeared Lee A. Matia, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Assistant Vice President of Key Trust Company of Ohio, National Association, a national

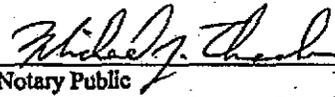
*woc*  
D. Jeffery Rengel, Atty

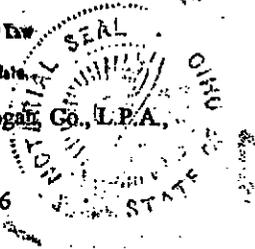
MICROFILMED ✓

EXHIBIT  
13

banking organization formed under the laws of the United States, and acknowledged to me that he is authorized to execute this instrument on behalf of said corporation.

Witness my hand and official seal.

  
Notary Public  
MICHAEL J. THACKER, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date.  
Section 147.03 ORC



This instrument was prepared by Peggy Kirk Hall, Attorney at Law, Wright & Logan Co., L.P.A.,  
4266 Tuller Road, Suite 101, Dublin, Ohio 43017.

After recording, return to: Buffalo Prairie, Ltd., P.O. Box 449, Milan, OH 44846

EXHIBIT A

Situate in the Townships of Milan and Huron, in said County of Erie and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the Southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union Street, in the Village of Milan, in said Erie County, Ohio, and running thence in a Northerly direction to the mouth of the Huron River, in the Village of Huron in said Erie County, and which strip of land is bounded on the West by a line distance fifty feet from and running North parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad Company, as surveyed, located and in the process of construction on July 12th, A.D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the East by a line distant One Hundred feet from and running North parallel with the said central line of said railroad as surveyed, located and being constructed as aforesaid, the East and West lines of said strip of land being one hundred and fifty feet apart and running North parallel with each other and with the central line of said railroad as surveyed, located and being constructed as aforesaid from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said Dry dock containing about one and 1/2 acres, and the Canal Basin containing about Five and 45/100 acres of land be the same more or less.

TRANSFER NOT NECESSARY

*April 27, 2000*  
*Jude T. Hammond*  
*J*

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.  
FEE: \$ 185.70  
EXEMPT: \$ \_\_\_\_\_  
R.E. TRANSFER: \$ 557.10  
JUDE T. HAMMOND  
Erie County Auditor  
by \_\_\_\_\_

ERIE COUNTY OHIO RECORDER  
RN 20005173  
Page 4 of 5

Ralph M. Lockwood, Receiver

To

Stephen A. Lock

(No. 157)

ERIE COUNTY OHIO RECORDER of  
RN 20005173  
Page 4 of 5

RECEIVER'S DEED

Know all men by these presents, That whereas, Ralph M. Lockwood, Maltby Smith and H. L. W. a majority of the Board of Directors of the Milan Canal Company, a corporation; on the seventh of January, A. D. 1904, filed a petition in the Court of Common Pleas of Erie County, Ohio, pr for the dissolution of said corporation, being cause number 9702.

And whereas, on the 23th day of March, A. D. 1904, such proceedings were had by and befor court that the said corporation was dissolved by order of the court and the said Ralph M. Lock was appointed by said court receiver of the estate and effects of the corporation, so dissolve

and said receiver thereupon gave bond in accordance with the order of the court.

And whereas, on the 27th day of July, A. D. 1904, such further proceedings were had by and before said court that Ralph M. Lockwood, as receiver as aforesaid, was ordered by said court to sell at public sale to the highest bidder according to law for not less than two-thirds the appraised value thereof, the real estate of said corporation theretofore dissolved, being the real estate described in the petition in said cause, which said real estate is described as follows:

Situate in the Townships of Milan and Huron, in said County of Erie, and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union streets, in the Village of Milan, in said Erie County, Ohio, and running thence in a northerly direction to the mouth of the Huron River, in the Village of Huron, in said Erie County, and which strip of land is bounded on the west by a line distant fifty feet from and running north parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad Company, as surveyed, located in the process of construction on July 12th, A. D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the east by a line distant one hundred feet from and running north parallel with the said central line of said railroad, as surveyed, located and being constructed as aforesaid, the east and west lines of said strip of land being one hundred and fifty feet apart and running north parallel with each other and with the central line of said railroad, as surveyed, located and being constructed as aforesaid, from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said Canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said dry dock containing about one and 1/2 acres, and the said Canal Basin containing about five and 45/100 acres of land, be the same more or less. The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of July, A. D. 1980, at an annual rental of Fifty Dollars per year.

Legibility Poor On  
Original Instrument  
Erie County Recorder

ERIE COUNTY OHIO RECORDS

July, A. D., 1900, at an annual rental of Fifty Dollars per year, renewable forever.

And whereas, the said Ralph M. Lockwood as receiver as aforesaid, sold said premises to Stephen A. Lockwood for the sum of Five Hundred and Thirty-four Dollars. (\$534.00) (this sum being more than two-thirds of the appraised value thereof), on the 19th day of September, A. D. 1904, and the said Stephen A. Lockwood having complied with the terms of such sale and such sale having been made in all respects according to law, the same was, afterwards, to-wit, on the first day of October, A. D. 1904, approved and confirmed by said court and the said Ralph M. Lockwood, as such receiver, was ordered to execute and deliver to said purchaser a proper deed for said real estate according to law, all of which will more fully appear by the records of said court, to which reference is hereby made.

Now, therefore, I, the said Ralph M. Lockwood, as receiver as aforesaid, in consideration of the premises, and by virtue of the powers in me vested by law, and under the order of the court aforesaid, do hereby give, grant, bargain, sell and convey unto the said Stephen A. Lockwood, his heirs and assigns forever, the real estate aforesaid, with all the appurtenances thereto belonging.

Deed Vol 78 2

To have and to hold the said real estate unto the said Stephen A. Lockwood, his heirs and assigns forever.

In testimony whereof, I, as receiver as aforesaid, hereunto set my hand and seal this 24th day of October, A. D. 1904.

Signed, sealed and delivered in

the presence of-

C. E. Gove

F. C. Smith

Ralph M. Lockwood (Seal)

as receiver as aforesaid.

The State of Ohio, Erie County, ss.

Before me, a Justice of the Peace in and for said county, personally appeared the above named Ralph M. Lockwood, who acknowledged that he did sign and seal the foregoing deed as receiver as aforesaid, and that the same was his free act and deed for the purposes aforesaid.

In testimony whereof, I hereunto set my hand and official seal, at Milan, Ohio, this 24th day of October, A. D. 1904.

C. E. Gove

Justice of Peace

Received February 16th (1-15 P.M.) 1905

Recorded February 27th, 1905.

*J. P. Pessier* Recorder.  
By *Francis H. Pessier* Deputy

Legibility Poor On Original Instrument  
Erie County Recorder

# Exhibit

14

# KNOW ALL PERSONS BY THESE PRESENTS

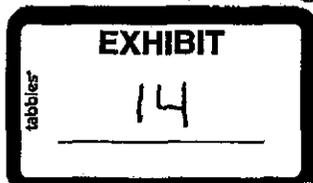
**THAT** Key Trust Company of Ohio, N.A. Trustee of the Testamentary Trust of Verna Lockwood Williams, the grantor, who claims title by or through instrument, recorded in Volume 80 , Page 453 , County Recorder's Office, Erie County Probate Court Nos. 3147 and 8504 and Leases Volume 17 Page 307 for the consideration of ten dollars (\$10.00) received to full satisfaction of the Grantees, Richard Rinella and Carol Rinella, husband and wife , whose TAX MAILING ADDRESS will be 9903 F River Road, Huron OH 44839

has **GIVEN, GRANTED, REMISED, RELEASED AND FOREVER QUIT-CLAIMED** and does by these presents absolutely give, grant, remise, release and forever quit-claim unto the said grantees Richard Rinella and Carol Rinella, husband and wife, their heirs and assigns forever, all such right and title as Key Trust Company of Ohio, N.A. Trustee of the Testamentary Trust of Verna Lockwood Williams, the said grantor, has or ought to have in and to the following described piece or parcel of land, situated in the Township of Milan, County of Erie and State of Ohio:

Section 2; J. Forbes Tract and being more definitely described as follows:

Commencing at a railroad spike, set, marking the intersection of the centerline of Franklin Flats Road 30ft (Riverview Drive) with the centerline of the Wheeling & Lake Erie Railroad (100ft); Thence South  $08^{\circ} 02' 58''$  West along the centerline of said railroad a distance of 325.65 feet to a point of curve; Thence southwesterly continuing along the centerline of said railroad, along an arc of a curve to the right, having a radius of 1772.04 feet, a delta of  $02^{\circ} 25' 3 5''$ , a chord bearing South  $09^{\circ} 15' 46''$  West, a chord distance of 75.04 feet, an arc length of 75.05 feet to its intersection with the westerly extension of the northerly line of a parcel owned by Richard and Carol Rinella (DV 536 PG 97), and the point of beginning;

- (1) Thence South  $54^{\circ} 28' 00''$  East along said extension a distance of 109.75 feet to a point on the easterly line of the Old Milan Canal;
- (2) Thence southwesterly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of  $03^{\circ} 29' 02''$ , a chord bearing South  $13^{\circ} 38' 26''$  West, a chord distance of 113.81 feet, an arc length of 113.83 feet to a point on the southerly line of said Rinella parcel;
- (3) Thence North  $60^{\circ} 48' 00''$  West along the westerly extension of the South line of Rinella a distance of 154.88 feet to a point on the westerly line of the Old Milan Canal;
- (4) Thence northeasterly along said westerly right-of-way line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of  $04^{\circ} 27' 02''$ , a chord bearing North  $11^{\circ} 55' 25''$  East, a chord distance of 133.90 feet, an arc length of 133.93 feet to its intersection with the westerly extension of the northerly line of said Rinella parcel;
- (5) Thence South  $54^{\circ} 28' 00''$  East along said extension a distance of 55.37 feet to the point of beginning, containing 0.4262 acre, more or less, but being subject to all legal highways, easements and restrictions of record.



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RN 200004166 Page 1 of 4  
ERIE COUNTY OHIO RECORDER  
JOHN W. Schaeffer  
RECORDING FEE: 40 00



MILAN CANAL ACROSS RINELLA PARCEL

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at a railroad spike, set, marking the intersection of the centerline of Franklin Flats Road 30ft (Riverview Drive) with the centerline of the Wheeling & Lake Erie Railroad (100ft); Thence South 08°02'58" West along the centerline of said railroad a distance of 325.65 feet to a point of curve; Thence southwesterly continuing along the centerline of said railroad, along an arc of a curve to the right, having a radius of 1772.04 feet, a delta of 02°25'35", a chord bearing South 09°15'46" West, a chord distance of 75.04 feet, an arc length of 75.05 feet to its intersection with the westerly extension of the northerly line of a parcel owned by Richard & Carol Rinella (DV 536 PG 97), and the point of beginning;

(1) Thence South 54°28'00" East along said extension a distance of 109.75 feet to a point on the easterly line the Old Milan Canal;

(2) Thence southwesterly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 03°29'02", a chord bearing South 13°38'26" West, a chord distance of 113.81 feet, an arc length of 113.83 feet to a point on the southerly line of said Rinella parcel;

(3) Thence North 60°48'00" West along the westerly extension of the South line of Rinella a distance of 154.88 feet to a point on the westerly line of the Old Milan Canal;

(4) Thence northeasterly along said westerly right-of-way line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 04°27'22", a chord bearing North 11°55'25" East, a chord distance of 133.90 feet, an arc length of 133.93 feet to its intersection with the westerly extension of the northerly line of said Rinella parcel;

(5) Thence South 54°28'00" East along said extension a distance of 55.37 feet to the point of beginning, containing 0.4262 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in July 1999. The bearings were assumed only for the purpose of indicating angles.



*Daniel E. Hartung Jr.*  
Daniel E. Hartung Jr., P.E., P.S.  
APPROVED as per Erie County Ordinance  
And Sections 4733-37 thru 4733-37-07 of the Ohio  
Administrative Code only, No Field Verifications  
for Accuracy made.  
*David Williams*  
Eric County Engineer 3/19/00



# Exhibit

15

Stephen and Libby Lockwood to Emma C. Lockwood

WARRANTY DEED.

Know all Men by these Presents: that Stephen A. Lockwood of Milan, Erie County, Ohio, the grantor

in consideration of ... hereby Grant, Bargain, Sell and Convey to the said ...

The following described real estate, to-wit: The townships of Milan and Hammon and corner of Erie State of Ohio being ...

and all the Estate, Title and Interest of the said Stephen A. Lockwood ...

And the said Stephen A. Lockwood ... hereby Covenant with the said ...

In Witness Whereof, the said Stephen A. Lockwood and Libby C. Lockwood his wife ...

Witness my hand and seal of said Erie County, Ohio, this 25th day of Oct. 1907 ...

THE STATE OF OHIO, COUNTY OF ERIE, ss. Be it Remembered, That on the 25th day of Oct. 1907 ...



# Exhibit

16

131596

ASSIGNMENT OF LEASE

Vol. 017 PAGE 30

KUCW ALL MEN BY THESE PRESENTS, that whereas, on the 21st day of August, 1950, Julius B. Amber was duly appointed and qualified as Executor of the Estate of Verna Lockwood Williams, deceased, late of Erie County, Ohio, by the Probate Court of said County in Case No. 8501 and afterwards, to-wit, on the 24th day of May, 1951, said Julius B. Amber was duly appointed and qualified as Testamentary Trustee under the Will of Verna Lockwood Williams, deceased, by the Probate Court of said County in Case No. C 3662; and that said Julius B. Amber, as Executor, filed his application on the 19th day of March, 1951, in the Probate Court of said County, praying the court for an order distributing in kind the assets of the Estate of said Verna Lockwood Williams, deceased, among which assets is a 32 year lease more fully described hereinafter.

And, whereas, afterwards on the 19th day of March, 1951, said application for distribution in kind was taken up for hearing and the court ordered that said Julius B. Amber, Executor, transfer in kind unto Julius B. Amber, as Testamentary Trustee,

therefore, it Julius B. Amber, Executor of the Estate of Verna Lockwood Williams, deceased, do hereby sell, assign, transfer and set over unto the said Julius B. Amber, Testamentary Trustee under the Will of Verna Lockwood Williams, deceased, the following certain instrument of lease bearing date of the 12th day of July, 1919, and recorded in volume 2, pages 26-28 inclusive of land records of Erie County, Ohio, executed and delivered by The Milan Canal Company, as Lessor, to the Wheeling and Lake Erie Railroad Company, as Lessee, and all the estate, title and interest in and to the same.

THE MILAN CANAL COMPANY TO  
THE WHEELING AND LAKE ERIE RAILROAD COMPANY

Whereas in or about the month of April A.D. 1877 the Directors of the Milan Canal Company of Milan, Erie County, Ohio, gave the consent and authority of said Canal Company, as the Wheeling and Lake Erie Rail Road Company to locate its Rail Road track and to occupy for the purpose of construction and operating the said Rail Road through the following described real estate owned by said Milan Canal Company situated in the townships of Milan and Huron in said County of Erie and State of Ohio being all the land

EXHIBIT  
16  
tabbles

with all the rights and appurtenances thereof owned by said Milan Canal Company within the bounds of a strip of land One Hundred and Fifty feet (150) in width commencing at the Southernly end of the Canal Basin of said Milan Canal Company near the intersection of Main and Union Streets in the Village of Milan in said Erie County Ohio and running thence in a Northernly direction to the north of the Huron River in the Village of Huron in said Erie County and which strip of land is bounded on the west by a line distant fifty (50) feet from and running North parallel with the Central line of the Rail Road of the Waukegan and Lake Erie Rail Road Company as now surveyed located and being constructed between said Villages of Milan and Huron and which said strip of land is bounded on the East by a line distant One hundred (100) feet from and running North parallel with the said Central line of said Rail Road; the East and West lines of said strip of land being One Hundred and Fifty (150) feet apart and running North parallel with each other and with the Central line of said Rail Road from the said place of beginning to the said mouth of Huron River also all of the so called Dry Dock and all of the said Canal Basin and all of the upper and lower Docks of said Canal with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described the said Dry Dock containing about 1 1/2 acres and the said Canal Basin containing about 5 1/2 100 acres of land to the same more or less and whereas the Waukegan and Lake Erie Rail Road Company in or about said month of April 1877 did so enter upon and occupy said real estate and right of way and constructed its said line of Rail Road thereon and ever since then has been and now is the exclusive and undisputed possession thereof under license and authority of said Directors of the Milan Canal Company and under their promise and agreement to lease or convey said right of way and real estate to the said Rail Road Company in due form of law now therefore First The Milan Canal Company by its legally authorized Directors in consideration of the benefits to said Canal Company from the construction and maintenance of the said line of Rail Road with its embankments and other works in protecting the property of said Canal Company and the adjacent lands which said Canal Company is under legal obligations to protect against damages caused by the overflow of the waters of said Huron River and for the further considerations hereinafter dated does hereby lease demise and fully let unto the Waukegan and Lake Erie Rail Road Company its successors and assigns all the real estate and right of way herein above described and being all the same owned by the said Canal Company to have and to hold said real estate and right of way to the said Lessee. The Waukegan and Lake Erie Railroad Company its successors and assigns for the uses and purposes of said Rail Road Company and its rights of way for its said Rail Road for the term of Ninety Nine (99) years commencing on the 12th day of July A.D. 1881 and ending on the 12th day of July A.D. 1980 with the right and privilege to the said Waukegan and Lake Erie Rail Road Company its successors and assigns or renewal of their lease forever upon the same terms herein expressed with all the privileges and appurtenances thereof. Second and the said Lessee the Waukegan and Lake Erie Rail Road Company in consideration of the premises done hereby for itself its successors and assigns covenant and agree with the said Lessor The Milan Canal Company that the Rail Road and embankments of said Rail Road Company shall be kept in good order and repair during the term of this lease inevitable accident from storm floods and otherwise excepted and that no waste shall be made or suffered on the said property herein leased while in possession of said Lessee its successors and assigns and that there shall be paid to the said Lessor the Milan Canal Company by the said Lessee the Waukegan and Lake Erie Rail Road Company its successors and assigns at the end of each year from and after the said 12th day of July 1881 during the term of this lease the sum of (\$50) fifty Dollars as the annual rental of said property so leased and demised herein and on the failure of said Lessee its successors and assigns to so maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for six months to pay said annual rental of (\$50) Fifty Dollars to the said Lessor after the same become due and payable these presents shall become

void and the said real estate shall revert to the said Lessor the Milan Canal Company and the said Lessee its successors and assigns shall thereupon quietly yield to said lessor the premises thereof in Witness Whereof the said parties have hereunto set their names and seals at Milan Ohio on this 12th day of July A.D. 1881.

The Milan Canal Company (Seal)
By John O. Norton (Seal)
Francis O. Lockwood (Seal)
John Butman (Seal)
David J. Wilcoxson (Seal)
Durwin Fay, President (Seal)
Directors of said Milan Canal Company

The Waukegan and Lake Erie Hull Road Company

By its President W. A. Mack

The foregoing Lease was on this 12th day of July 1881 signed Sealed acknowledged and delivered in presence of

William B. Lockwood, Martin Harter (Seal)
The State of Ohio) Before me a Notary Public within and for said County
Eric County ss) personally appeared, the above named John O. Norton,
Francis O. Lockwood, John Butman, David J. Wilcoxson and Durwin Fay as
Directors of the said Lessor The Milan Canal Company and as such acknowledged
the foregoing Lease to be the deed of said Milan Canal Company for the uses
and purposes therein expressed and that the signing and Sealing thereof is
their official act and deed as said Directors for and in behalf of said Canal
Company on this 12th day of July A.D. 1881.
(Seal) Martin Harter, Notary Public

Received Aug. 9th 1881. Recorded Aug. 10th 1881.

Joe Flynn Notary

TO HAVE AND TO HOLD THE SAME from the 21st day of October, 1953, for
and during the residue of the term of said lease, subject however, to all the
conditions, covenants, agreements, provisions, terms and rents in said lease
contained; that by virtue of the order of the Probate Court of Erie County,
Ohio, made on the 19th day of March, 1953, said Julius B. Amber, Executor, has
good right to assign the same, and that Julius B. Amber, the Testamentary
Trustee, accepts the assignment of this lease and agrees to keep and perform
all the covenants, terms, and agreements of said lease on the part of said
Trustee, to be kept and performed after said date.

IN WITNESS WHEREOF, the said Julius B. Amber, Executor of the Estate
of Verma Lockwood Williams, deceased, and Julius B. Amber, Testamentary Trustee
under the Will of Verma Lockwood Williams, deceased, have hereunto set their
hands this 21st day of October, 1953.

Signed and acknowledged
in the presence of

Spencer Clark
Alice Moody

Julius B. Amber, Executor
Julius B. Amber, Trustee

STATE OF OHIO }  
COUNTY OF CUYAHOGA } SS.

BEFORE ME a Notary Public in and for said County, personally appeared the above named Julian H. Adams, Executor of the Last Will and Testament of Verne Lockwood Williams, deceased, and Testamentary Trustee, under the Will of Verne Lockwood Williams, deceased, in both capacities, who acknowledged that he did sign the foregoing instrument; that the same is his free act and deed as such Executor and Trustee, and for the uses and purposes therein set forth;

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Cuyahoga, Ohio, this first day of October, 1953.

*James Clark*  
Notary Public - CUYAHOGA COUNTY



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OCT 22 PM 1 04  
Cuyahoga County  
22nd, 12th & 14th Sts.  
& Belmont  
Rm 307-310 Int'l  
Cuyahoga  
CLERK OF COURTS  
J. E. Adams, Executor  
Clear, Hotel Alertem  
Room 14, Ohio  
Cuyahoga County, Ohio