



KAPLAN KIRSCH ROCKWELL

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October 19, 2016

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *The Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc. –
Verified Petition for a Declaratory Order*, Finance Docket No. 35991

Dear Ms. Brown:

I am enclosing for filing in the above-captioned proceeding (a) the Motion of the Atlanta Development Authority and Atlanta BeltLine, Inc. to Strike the First Supplement to the Response of Interested Parties or in the Alternative for Leave to File a Reply to Interested Parties First Supplement and (b) the Reply of the Atlanta Development Authority and Atlanta BeltLine, Inc. to Interested Parties First Supplement.

Please do not hesitate to contact me if you have any questions. Thank you very much for your assistance in this matter.

Sincerely,

Charles A. Spitulnik

Counsel for The Atlanta Development Authority and Atlanta BeltLine, Inc.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35991

**THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.**

**MOTION OF THE ATLANTA DEVELOPMENT AUTHORITY
AND ATLANTA BELTLINE, INC. TO STRIKE THE
FIRST SUPPLEMENT TO THE RESPONSE OF INTERESTED PARTIES OR
IN THE ALTERNATIVE FOR LEAVE TO FILE A REPLY TO
INTERESTED PARTIES FIRST SUPPLEMENT**

Communications with respect to this document should be addressed to:

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Counsel for The Atlanta Development
Authority d/b/a Invest Atlanta and Atlanta
BeltLine, Inc.

Dated: October 19, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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INTERESTED PARTIES FIRST SUPPLEMENT**

The Atlanta Development Authority (the “Authority”) d/b/a Invest Atlanta and Atlanta BeltLine, Inc. (“ABI”), hereby move the Board pursuant to 49 C.F.R. § 1104.8 to strike the *First Supplement to the Response of Interested Parties to File New Evidence Obtained from Norfolk Southern in Opposition to Verified Petition for a Declaratory Order and Request for Expedited Consideration* (“Interested Parties’ First Supplement”), filed in this proceeding on October 14, 2016, or in the alternative for leave to file a reply thereto pursuant to 49 C.F.R. § 1117.1.

Interested Parties’ seek to supplement their Response in Opposition to the Verified Petition for a Declaratory Order (“Response”) and renew their request for discovery based on Interested Parties’ receipt of a “previously unseen document” that is, in fact, anything but “previously unseen.” The Authority and ABI attached the Supplemental Agreement dated June 22, 2007, between the Norfolk Southern Railway Company (“NSR”) and six non-carrier entities (collectively, the “Mason Entities”), to their initial Verified Petition for Declaratory Order (“Petition”) as Exhibit C, which initiated this proceeding on January 8, 2016. The Authority and

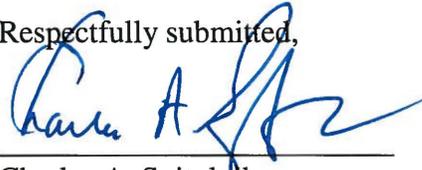
ABI referred repeatedly to the Supplemental Agreement in its Petition. *See* Petition at 3 n.4, 11 n.6, & 12. Interested Parties also referred to the Supplemental Agreement in their Response. *See* Response at 13 n.8. Interested Parties' claim that the Supplemental Agreement "is likely not the only document governing the issues presented herein that has yet not been brought before this Board for its consideration," is therefore not only flagrantly disingenuous, but also flatly incorrect.

Interested Parties' First Supplement is a thinly veiled attempt to re-litigate its request for discovery, which the Board has already determined is unnecessary in this case. As the Board recognized, the Authority and ABI have already provided the controlling deeds, including the Supplemental Agreement thereto, *see Atlanta Dev. Auth.*, STB Finance Docket No. 35991, at 4 (Service Date June 8, 2016), and has filed additional documents pertaining to the subject transaction pursuant to the Board's Order. Interested Parties' First Supplement fails to "demonstrate[] why discovery or an oral hearing and cross examination are necessary for the Board's consideration of the terms of the sales," and merely repeats arguments that the Board has already rejected. Accordingly, Interested Parties' First Supplement should be stricken.

Should the Board deny the Authority's and ABI's motion to strike Interested Parties' First Supplement, the Authority and ABI respectfully move the Board for leave to file a reply thereto. Although the rules governing this proceeding generally prohibit the filing of a reply to a reply, *see* 49 C.F.R. § 1104.13(c), the Board has permitted parties to file a reply to a reply when that submission "provides a more complete record, clarifies the arguments, will not prejudice any party, and does not unduly prolong the proceeding." *BNSF Railway Co. – Abandonment Exemption – In Kootenai County, Id.*, STB Docket No. AB-6 (Sub. No. 468X), slip op. at 1–2 (Service Date Nov. 27, 2009). Granting the Authority's and ABI's motion to reply to Interested

Parties' First Supplement will not broaden the issues raised in this proceeding, because the Authority and ABI seek only to address misstatements of both law and fact by the Interested Parties and to respond to the Interested Parties' request for discovery and oral argument. Granting this motion will not extend the time required for the Board to address the issues raised in this proceeding and will not otherwise prejudice any party hereto or prolong this proceeding.

Respectfully submitted,



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Atlanta BeltLine, Inc.

Dated: October 19, 2016

**Before the
Surface Transportation Board
Washington, D.C.**

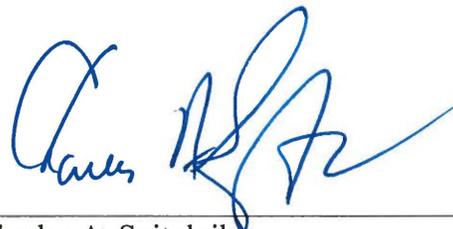
Finance Docket No. 35991

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October 2016, I have caused a copy of the foregoing Motion of The Atlanta Development Authority and Atlanta Beltline, Inc. to Strike the First Supplement to the Response of Interested Parties or in the Alternative for Leave to File a Reply to Interested Parties' First Supplement to be served upon the following individuals via first class mail, postage prepaid:

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Dated: October 19, 2016