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**234202**

May 9, 2013

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

**ENTERED**  
**Office of Proceedings**  
**May 9, 2013**  
**Part of Public**  
**Record**

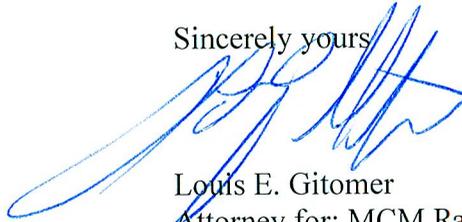
RE: Docket No. FD 35725, *MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad—Operation Exemption—HRE Sparrows Point, LLC*

Dear Ms. Brown:

Pursuant to a request from staff, MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad is submitting a redacted version of the Railroad Services Agreement.

If you have any questions, please call or email me.

Sincerely yours



Louis E. Gitomer  
Attorney for: MCM Rail Services LLC, d/b/a  
Baltimore Industrial Railroad

Enclosure

## RAILROAD SERVICES AGREEMENT

This Railroad Services Agreement (this "Agreement") is entered into as of the date of execution below, and shall be effective as of the 14th day of September, 2012 ("Effective Date"), by and between Hilco SP Rail, LLC, a Delaware limited liability company (hereinafter referred to as "Hilco") and MCM Rail Services, LLC, a Michigan limited liability company (hereinafter referred to as "MCM"), with respect to a short line railroad named Baltimore Industrial Railroad (the "Railroad") being operated at 1430 Sparrows Point Boulevard and 5111 North Point Boulevard, Sparrows Point, MD 21219 (the "Sparrow's Point Property").

### RECITALS

A. WHEREAS, Sparrows Point, LLC ("SP"), acquired certain assets located at Sparrow's Point Property under that certain Asset Purchase Agreement (the "APA") dated as of August 7, 2012, by and among RG Steel Sparrows Point, LLC ("RGSSP") and RG Steel Railroad Holding, LLC ("RGSRH"), as sellers, and Environmental Liability Transfer, Inc., Commercial Development Company, Inc. and SPL, as purchasers, which APA was approved by that certain Order Authorizing and Approving (I) Sale of Sparrows Point Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; and (II) Granting Related Relief [Docket No. 909] entered in the jointly administered bankruptcy case, Case No. 12-11661 (KJC), *In re WP Steel Venture LLC, et. al*, in the United States Bankruptcy Court for the District of Delaware;

B. WHEREAS, pursuant to Section 1.8 of the APA and under the Designation of Purchased Assets, dated as of August 7, 2012, SP designated HRE Sparrows Point, LLC ("HRE") as the acquirer of certain of the purchased assets;

C. WHEREAS, HRE acquired and is the sole owner of the improvements, PP&E and other designated assets at the Sparrow's Point Property under the Bill of Sale and Assignment Agreement dated September 14, 2012, by and among RGSSP, RGSRH, collectively as seller, and HRE, as purchaser;

D. WHEREAS, HRE holds a license to exclusively operate the Railroad and by designation certain other assets located at Sparrow's Point Property for forty-two (42) months beginning on September 14, 2012 ("License") under that Memorandum of Agreement dated as of September 14, 2012 by and between SP and HRE and that certain joint venture letter agreement dated August 11, 2012 among SP and certain of its affiliates and HRE and certain of its affiliates;

E. WHEREAS, HRE assigned its License to Hilco, effective as of September 14, 2012; and

F. WHEREAS, Hilco and MCM desire to contract for MCM to operate the Railroad at Sparrow's Point Property subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Hilco and MCM hereby agree as follows:

**SECTION 1**  
**SERVICES; COSTS**

1.1 Services. During the Term (defined below) of this Agreement, MCM is solely responsible for providing all operations and services in connection with operating the Railroad at Sparrow's Point Property ("Services") including, but not limited to: (a) procuring and maintaining any and all notifications, licenses and permits associated with operating the Railroad; (b) properly maintaining and repairing the Railroad and all related machinery and equipment, including, without limitation, locomotives, tracks, switches and railcars owned by Hilco, as set forth in Exhibit A (the "RR Assets"); (c) arranging for loading, shipment and delivery of materials from the wharf and any other designated positions on the Sparrow's Point Property via the Railroad to national railroad networks or to Sparrow's Point Property and vice versa; (d) providing administrative services in connection with operating the Railroad, including, without limitation, the giving of notices to and filing of claims with carriers, payment of invoices, and managing the railcar fleet; (e) collecting all wharf fees, railway fees and tariffs ("Fees") on the Sparrows Point Property; (f) maintaining all documentation associated with performing the Services and operating the Railroad; and (g) providing any and all other services as may be reasonably required for operating the Railroad. All communications and payment to carriers shall be in the name of MCM. The Services shall include, without limitation, all labor, supervision, materials, fixtures, special facilities, equipment, tools, supplies, taxes, permits and related inspections, and other property and services necessary to timely and properly perform the Services. The parties agree that the RR Assets were purchased from the Estate in generally fair to poor operating condition, that MCM took possession of the RR Assets in AS IS condition and agreed to those repairs required for the safe performance of the work. At the end of this agreement, Hilco will take possession of the RR Assets in AS IS condition. Infrastructure or equipment repairs that are not necessary for the safe operation of the Railroad will not be performed.

**SECTION 2**  
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**SECTION 3**  
**TERM**

3.1 The term ("Term") of this Agreement shall commence on the Effective Date and continue until March 13, 2016 unless terminated earlier in accordance with its provisions.

**SECTION 4**  
**REPRESENTATIONS AND WARRANTIES**

4.1 MCM represents and warrants that: (i) it has been duly organized and is validly existing under the laws of the state of its formation; (ii) this Agreement is executed by a duly authorized representative of the MCM; (iii) it has complied with and shall comply with all applicable laws, rules and regulations in its performance under this Agreement; (iv) it has the full authority and right to perform all acts contemplated under this Agreement; (v) there are no actions, suits or proceedings or regulatory investigations pending or threatened against or affecting MCM before any court or administrative body or arbitration tribunal that might affect the ability of MCM to meet and carry out its obligations under this Agreement; (vi) it is and will continue to be familiar with and experienced in the nature and type of Services required for operation of the Railroad and that it is able to discern the Services that are reasonably necessary to satisfy the requirements set forth in this Agreement, and to conform with the applicable laws and regulations of any governmental authorities with jurisdiction over the Services and operation of the Railroad; (vii) it will operate the Railroad and perform the Services in a safe, proper and complete manner, in accordance with applicable law and regulation; (viii) it will ensure that the

Services are of good quality, free from faults and defects and in conformance with the requirements of this Agreement; and (ix) the Services are and will be performed by qualified workmen.

## SECTION 5

## SECTION 6 SAFETY AND SECURITY

6.1 The safety of all persons and property (including realty and improvements located thereon) on and near the Railroad are of prime concern, and MCM shall employ all necessary measures to prevent any damage to persons or property on and in the vicinity of the Railroad. Specifically, MCM will ensure that each employee who performs Services in connection with the Railroad shall be licensed, trained and certified as required by all applicable laws and regulations. In addition, in performing any Services pursuant to this Agreement, MCM shall become familiar with and conform to all applicable laws and regulations. MCM shall take all necessary precautions to properly protect, and prevent damage or injury to, the Railroad and persons or property (real or personal) on and near the Railroad and the surrounding areas, from damages caused by the actions of MCM, its employees or any of its subcontractors.

## SECTION 7 INSURANCE AND INDEMNIFICATION

### 7.1 Insurance.

MCM shall procure and maintain, during this Agreement, Commercial General Liability Insurance, Property Damage Insurance, Worker's Compensation, Employer's Liability and Umbrella Liability in not less than the following limits: . General Aggregate and Aggregate/Occurrence for a total of 'in coverage, with each such policy of insurance naming Hilco as an additional insured.

No policy required by this Agreement shall contain any provision for exclusions of coverage expressly required in this Agreement, and, in addition, no policy shall contain any exclusion for bodily injury to or sickness, disease, or death of any employee of MCM which would conflict with or in any way impair coverage under the contractual liability endorsement of the general liability insurance of MCM under this Agreement.

**SECTION 8**  
**DISPUTES, TERMINATION AND SUSPENSION**

8.1 Disputes. In the event of a dispute or disagreement between the parties, MCM shall continue providing Services and operating the Railroad during all disputes or disagreements with Hilco, including, but not limited to, any disputes or claims by MCM that Hilco has materially breached or defaulted under this Agreement. No Services shall be delayed or postponed pending resolution of any disputes or disagreements. MCM expressly agrees that Hilco has no adequate remedy at law in the event that MCM stops providing Services, and that Hilco may obtain an injunction in a court of competent jurisdiction enforcing this provision requiring MCM to continue to perform under this Agreement pending resolution of any dispute or disagreement. The parties agree that they shall endeavor in good faith to resolve all claims between them by negotiation. In the event that any claim involving an amount less than is not able to be resolved in such a fashion, the parties agree that it shall be decided by a neutral third-party mutually agreed upon and selected by the parties. All other claims or disputes between the parties to this Agreement, which are not resolved by negotiation, shall be decided by resort to litigation in any court of competent jurisdiction in the State of Illinois.

8.2 Termination. Hilco may terminate this Agreement, with cause, upon thirty (30) days written notice to MCM. As used herein the term "cause" shall mean any material failure by MCM to perform the Services in accordance with the terms of this Agreement and to commence, continue and make reasonable progress towards the correction of such nonperformance or breach within seven (7) days after receipt of Hilco's notice of intent to terminate and to cure such nonperformance or breach within thirty (30) days following such written notice. In the event Hilco terminates this Agreement for cause, MCM shall be liable to Hilco for all costs and damages incurred by Hilco as a result of MCM's acts, omissions, fault, negligence, errors or breach of contract (including attorney's fees and court costs, the costs of completing MCM's performance of the Services, and the cost of any additional services required as a result of MCM's fault or breach).

**SECTION 9**  
**MISCELLANEOUS**

9.1 Incorporation. The Recitals to this Agreement are true and correct in all material respects and are incorporated herein as if fully restated herein.

9.2 Independent Contractors. MCM's relationship to Hilco under this Agreement, and at all times relevant hereto, will be that of an independent contractor. MCM will use its own methods in performing the Services, free from any supervision or direction by Hilco. Personnel retained or assigned by MCM to perform Services covered by this Agreement will at all times hereunder be considered as agents or employees of MCM and not of Hilco.

9.3 Definitions. All terms defined herein are used in conformance with such definitions. All other terms and phrases that have well-known technical or railroad industry meanings are used in accordance with those meanings, unless otherwise defined herein or other context clearly indicates a different meaning.

9.4 Integration, Modification, Governing Law. This Agreement constitutes the complete and integrated agreement between Hilco and MCM and supersedes all prior agreements or understandings, whether written or oral. This Agreement may be amended or modified only by a written document signed by both parties. This Agreement, all business transacted hereunder, and the legal relations between the parties shall be governed and construed solely in accordance with the laws of the State of Illinois, without reference to its conflict of laws principles.

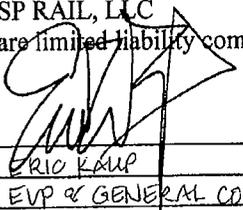
9.5 Confidentiality. Except with regard to the existence of this Agreement and the identity of the parties hereto, MCM and its respective affiliates acknowledge and understand that the terms and conditions of this Agreement, and all of the matters related hereto, are confidential and proprietary in nature and that MCM and its respective affiliates therefore covenant and agree, except as and to the extent permitted by this Agreement or as otherwise required by law, to maintain strict confidentiality with respect to its Services hereunder, as well as all information made available to MCM by Hilco, and with respect to the existence and substance of negotiations with respect to the transactions contemplated herein and that it will not disclose such information to any person other than its respective directors, officers, employees, agents, advisors, attorneys, accountants, consultants or representatives who need to know such information and are subject to a non-disclosure agreement satisfactory to Hilco, without the express consent of Hilco.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have hereunto set their hand on this 10<sup>th</sup> of April, 2013, effective retroactively as of September 14, 2012.

**HILCO:**

HILCO SP RAIL, LLC  
a Delaware limited liability company

By:   
Name: ERIC RAUP  
Title: EVP & GENERAL COUNSEL,  
MANAGING MEMBER

**MCM:**

MCM RAIL SERVICES, LLC  
a Michigan limited liability company

By:   
Name: David Mardigian  
Title: Manager

**EXHIBIT A**  
**RAILROAD ASSETS**

## Baltimore Industrial RR Asset List