

240718

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 19, 2016
Part of
Public Record

FINANCE DOCKET NO. 36014
INGREDION INCORPORATED - PETITION FOR DECLARATORY ORDER

**REPLY COMMENTS OF BELT RAILWAY COMPANY OF CHICAGO IN
OPPOSITION TO COULAS VIKING PARTNERS' MOTION TO DENY INGREDION'S
PETITION, OR, IN THE ALTERNATIVE, STAY PROCEEDINGS**

Thomas I. Matyas
Rebecca Dircks
Locke Lord LLP
111 South Wacker Drive
Chicago, Illinois 60606
(312) 443-0700

*Attorneys for Belt Railway Company of
Chicago*

Dated: May 19, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36014
INGREDION INCORPORATED - PETITION FOR DECLARATORY ORDER

**REPLY COMMENTS OF BELT RAILWAY COMPANY OF CHICAGO IN
OPPOSITION TO COULAS VIKING PARTNERS' MOTION TO DENY INGREDION'S
PETITION, OR, IN THE ALTERNATIVE, STAY PROCEEDINGS**

Pursuant to 49 C.F.R. § 1114.3(a), Belt Railway Company of Chicago (“**Belt**”) submits these reply comments in opposition to the Motion to Deny Ingedion’s Petition, or, in the Alternative, Stay Proceedings (“**Motion**”) filed by Coulas Viking Partners (“**Coulas Viking**”) on April 29, 2016. Belt fully joins and supports the reply comments submitted by Ingedion Incorporated (“**Ingedion**”) in opposition to Coulas Viking’s Motion. As such, Belt will only address a limited number of issues in these reply comments.

ARGUMENT

I. Belt Supports And Incorporates Ingedion’s Reply Comments.

As an initial matter, Belt adopts and incorporates all of Ingedion’s reply comments made in opposition to Coulas Viking’s Motion.

II. Coulas Viking’s Requests For Money Damages Are Preempted.

A. Money damages are a form of state regulation.

In its pending lawsuit, the Second Amended Complaint For Declaratory, Injunctive and Other Relief (“**SAC**”), Coulas Viking has requested compensatory and punitive damages in connection with its Count II trespass claim and compensatory damages in connection with its Count III ejectment claim. (Ex. 1 to the Motion, pp. 10–12.) As such, Coulas Viking is expected

to seek a multi-million dollar payday from Belt. Of course, Belt maintains that it has had, and continues to have, every right to the subject railroad tracks and railroad operations and denies that Belt has caused, or is liable for, any damages. The defense of Coulas Viking's suit has already caused and will continue to cause substantial expenditures of money, well in to six figures.

Just like injunctions, money damages can be a form of impermissible state regulation. *See Kurns v. R.R. Friction Products Corp.*, 132 S. Ct. 1261, 1269 (2012) (“state regulation can be effectively exerted through an award of damages and the obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct”). And state regulation can unreasonably burden transportation. *See A & W Properties, Inc. v. Kansas City S. Ry. Co.*, 200 S.W.3d 342, 349 (Tex. App. 2006) (“awards of damages pursuant to state tort claims may qualify as state ‘regulation’ when applied to restrict or burden a rail carrier’s operations”). If transportation is unreasonably burdened, then money damages are preempted. *See* 49 U.S.C. § 10501(b) (“the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law”).

Coulas Viking has unsurprisingly ignored this controlling law in its Motion. The compensatory and punitive damage relief requested by Coulas Viking in the SAC *cannot* be granted by a court because such money judgments would be tantamount to impermissible “state regulation.”

The monetary damages requested on an adjudication of the state law claims are preempted according to this Board. For example, in *A & W Properties*, the court held that when a railroad is required “to pay damages to a civil litigant for a claim related to the railroad's operations, that claim is the equivalent of state regulation of the railroad.” 200 S.W.3d at 349.

There, the plaintiffs argued that the estimated \$500,000 in costs that would result from a judgment in its favor were “hardly [] significant” due to it being only “0.0095%” of the railroad’s revenue and “0.019%” of its income. *Id.* The court expressly disagreed, holding that “the economic impact of allowing this state-law remedy *would not be insignificant*,” and questioning “whether the loss of a half million dollars could be insignificant to any business enterprise, *regardless* of the size of that enterprise. In any event, we can say without hesitation that it is decidedly *unreasonable* to assume that a railroad would not be significantly impacted by a ruling” to pay \$500,000 to an unknown amount of effected landowners. *Id.* at 350 (emphasis added).

Additionally, in *Suchon v. Wis. Cent. Ltd.*, the court found that by “[a]llowing plaintiff to obtain a monetary or injunctive remedy by application of the state's nuisance law to defendant's actions *is not significantly different* from allowing the state to impose restrictions on defendant through laws and regulations. *In either case, the effect would be the same.* Defendant would be restricted in the use of its property.” 2005 WL 568057, at *4 (W.D. Wis. Feb. 23, 2005) (emphasis added). Simply put, regardless of any court decision on the underlying property claims of Coulas Viking in the SAC, a court *cannot* fashion or enforce a remedy that forecloses or unduly restricts any part of rail operations, including through money damages.

B. Coulas Viking is expected to seek millions of dollars in relief.

By ignoring its compensatory and punitive money damage requests for relief in the SAC in its Motion, Coulas Viking is hoping that the Board will not see how burdensome its requested relief is or how greatly it will unduly restrict Belt’s rail operations. Coulas Viking is, in fact, expected to seek an extremely large sum of money for compensatory and punitive damages. While the exact damage model has not been submitted by Coulas Viking, the below discussion

focuses on the likely components of a damage model in connection with the compensatory and punitive damage claims in the SAC.

First, Coulas Viking has stated that it pays approximately \$40,000 per year in real estate taxes for the entire real estate parcel, including the developed portion, the undeveloped portion, and the railroad track easement area. (Ex. 5 to the Motion, pp. 21, 37.) Thus, since 2009 when Coulas Viking allegedly revoked permission for Belt to use the railroad track, it has paid approximately \$280,000 in real estate taxes (\$40,000 per year for 7 years). At a minimum, Coulas Viking is expected to seek recovery for a portion of those real estate tax expenditures and all annual real estate expenditures for the time period Coulas Viking tried to sell this real estate.

Second, the real estate is a large multi-acre property near Chicago, which Coulas Viking may claim is worth millions of dollars, which the Spur Line bisects into the large developed parcel and the small undeveloped parcel. (Ex. 1 to the Motion, ¶¶ 11, 16.) Coulas Viking has asserted that it is unable to use the small undeveloped parcel and it has been unable to sell the entire property because of Belt's railroad tracks. (Ex. 5 to the Motion, pp. 21, 37.) Belt anticipates that Coulas Viking will seek damages for the lost rents and profits and a separate amount for the delay of the sale of the property. As far as lost rents, in 2008 Coulas Viking sought to enter into a proposed easement agreement under which Belt would be responsible for the real estate taxes on the property, would obtain insurance on the property as its expense, and would pay Coulas Viking \$80,000 per year for the use of the Spur Line as well as \$1,000 per hour for parking privileges. *See Track Easement Agreement, attached hereto as Exhibit A, ¶¶ 3–4, 7, 9.* Thus, while the parking and insurance expenses are not easily calculable, at a minimum, Coulas Viking would likely seek \$640,000 in damages (\$80,000 per year for 8 years) as its

perceived value of lost rents and profits. As such, Coulas Viking will surely seek \$640,000 without including any amount for the lost use of the sale proceeds or real estate tax payments.

Third, Coulas Viking seeks *punitive damages*. (Ex. 1 to the Motion, pp. 11.) Punitive damages can be as much as 10 times more than compensatory damages. *See TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 472 (1993) (“a 10-to-1 ratio between punitive damages and the potential harm of petitioner’s conduct passes muster”). As such, should it prevail, Coulas Viking’s expected request for relief of \$640,000 plus compensatory damages for real estate taxes and lost use of sale proceeds could be multiplied by a factor of ten, increasing its desired money judgment into the millions of dollars, all against Belt.

In short, Coulas Viking is expected to seek a multi-million dollar payday against a railroad company. It cannot, in good faith, argue that this payday would not unduly burden rail transportation. Because of this burden and interference with rail operations, Coulas Viking’s Motion should be denied, and the Board should grant Ingredion’s Petition. However, once again, Belt denies any liability for any monetary, compensatory, or punitive damages and once again asserts its total right to Belt’s railroad tracks and operations.

III. Development Of A Factual Record Is Not Necessary.

The ICCTA can preempt state action in two ways: “(1) categorical, or per se, preemption,” and (2) “as applied” preemption. *Union Pac. R.R. Co. v. Chicago Transit Auth.*, 647 F.3d 675, 679 (7th Cir. 2011). “[S]tate or local regulation of matters directly regulated by the Board -- such as the construction, operation, and abandonment of rail lines,” are categorically preempted. *CSX Transportation, Inc.--Petition for Declaratory Order*, 2005 WL 1024490, at *2 (S.T.B. May 3, 2005); *see also Pinelawn Cemetery – Petition for Declaratory Order*, 2015 WL 1813674, *8 (S.T.B. Apr. 20, 2015). If an action is not categorically preempted, it may be

preempted “as applied” when the facts show that the action “would have the effect of foreclosing or unduly restricting a railroad’s ability to conduct *any* part of its operations or otherwise unreasonably burdening interstate commerce.” *City of Milwaukie - Petition for Declaratory Order*, 2013 WL 1221975, at *4 (S.T.B. Mar. 20, 2013) (emphasis added).

In the SAC, Coulas Viking seeks a declaration that Belt has no interest in the real estate containing the Spur Line railroad track , an injunction forbidding Belt’s use of the Spur Line and requiring Belt to remove the Spur Line from the property, and a substantial damages award including punitive damages. (Ex. 1 to the Motion, pp. 10–12.) Those requests, on their face, if awarded, operate as regulation of the abandonment of a rail line, which is exclusively within the jurisdiction of this Board. No development of a factual record is necessary to a determination that categorical preemption exists.

Further, even if the Board were to move on to consider “as applied” preemption, the factual record needed to determine that type of preemption is the record of the effect and burden the requested relief would place on Belt’s railroad operations. No need exists to develop facts regarding the validity of the easement agreements to determine whether the *relief* Coulas Viking seeks is preempted. As such, Coulas Viking’s argument that a court should develop the factual record is without merit.

IV. Coulas Viking’s Standing Claim Is Moot.

Coulas Viking attempts to have Ingredion’s Petition be denied due to a lack of standing. While wasting pages discussing Article III standing, Coulas Viking once again ignores another obvious fact: Belt has expressly joined Ingredion’s Petition,¹ an action this Board allows. *See* 49 C.F.R. § 1111.1(d) (“Two or more complainants may join in one complaint against one or more

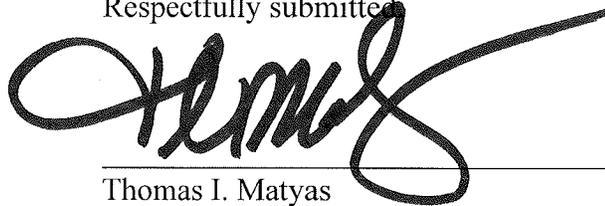
¹ *See* Belt’s Reply Comments in Support of Ingredion Incorporated’s Petition for Declaratory Order, filed April 29, 2016, filed stamped number 240578.

defendants if their respective causes of action concern substantially the same alleged violations and like facts”). Thus, Ingredion’s Petition cannot be dismissed for a lack of standing.

CONCLUSION

For the foregoing reasons, Belt respectfully requests the Board to issue an order against Coulas Viking and fully deny its Motion, while granting Ingredion’s Petition and issuing a declaratory order for all relief it requests.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Matyas', written over a horizontal line.

Thomas I. Matyas
Rebecca Dircks
Locke Lord LLP
111 South Wacker Drive
Chicago, Illinois 60606
(312) 443-0700

*Counsel for Belt Railway Company of
Chicago*

CERTIFICATE OF SERVICE

I, Rebecca Dircks, hereby certify that on this 19th day of May, 2016, a copy of the foregoing **Reply Comments Of Belt Railway Company Of Chicago In Opposition To Coulas Viking Partners' Motion To Deny Ingredion's Petition, Or, In The Alternative, Stay Proceedings** was served FedEx Overnight, upon the following:

David E. Benz
Karyn A. Booth
Thompson Hine, LLP
1919 M Street N.W., Suite 700
Washington, D.C. 20036

John M. Touhy
John C. McIlwee
Baker & Hostetler LLP
191 North Wacker Drive, Suite 3100
Chicago, Illinois 60606

Rodney Perry
Bryan Cave LLP
161 North Clark Street, Suite 4300
Chicago, Illinois 60601

Katharine E. Heitman
Baker & Hostetler LLP
Washington Square Suite 1100
1050 Connecticut Ave N.W.
Washington, DC 20036



Rebecca Dircks

Thomas I. Matyas
Rebecca Dircks
Locke Lord LLP
111 South Wacker Drive
Chicago, Illinois 60606
(312) 443-0700

*Counsel for Belt Railway Company
of Chicago*

Kriesberg, Simeon M.

From: Palmer, Rex A.
Sent: Wednesday, March 12, 2008 4:02 PM
o: tcoffey@beltrailway.com
Cc: Householder, Benjamin A.; Kriesberg, Simeon M.
Subject: Weldbend/Belt Railway Track Easement

Attachments: 9161282_7.DOC



9161282_7.DOC
(77 KB)

Tim,

When we last spoke I volunteered to prepare an agreement providing an easement to Belt Railway to operate its tracks over Weldbend's property. A draft of that agreement is attached. Please call when you have had a chance to review it.

Rex A. Palmer
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 701-7247
Fax: (312) 706-8718
E-mail: rpalmer@mayerbrown.com

TRACK EASEMENT AGREEMENT

THIS TRACK EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2008 ("Effective Date") by and between Weldbend Corporation, a Delaware corporation ("Grantor") and The Belt Railway Company of Chicago, a ____ corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantor owns fee simple title to a certain real property lying, being and situate in the village of Bedford Park, County of Cook, State of Illinois and legally described in Exhibit A attached hereto (the "Weldbend Property"); and

WHEREAS, the Weldbend Property consists of two adjacent parcels (individually, "Parcel A" and "Parcel B" as more particularly described in Exhibit A attached hereto) separated by a railroad spur track (the spur track and ____ feet along each side of the spur track, the "BRC Track") owned by Grantee for the purpose of operating an intermediate switching terminal railroad business (the "Railway Business"); and

WHEREAS, Grantor and Grantee are desirous of entering into this Agreement to provide and reflect certain agreements to allow Grantee to maintain and operate the BRC Track across Parcel A of the Weldbend Property for the purpose of operating its Railway Business, and to reserve to Grantor the right to cross the BRC Track for the purpose of preserving convenient access to Parcel A from Parcel B;

NOW, THEREFORE, for and in consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. RECITALS: The foregoing recitals are true and correct, and are incorporated herein by this reference.

2. TRACK EASEMENT: Grantor does hereby establish for the benefit of, and grants and conveys to Grantee, its successors, assigns, tenants, subtenants and invitees a non-exclusive private easement across Parcel A for the purpose of operating the BRC Track (the "BRC Easement") (as more particularly described in Exhibit B attached hereto). Notwithstanding anything to the contrary in this Agreement, Grantor does hereby reserve to itself the right to walk upon and drive vehicles upon, over and across a portion of the BRC Track ("Weldbend Access") (as more particularly described in Exhibit B attached hereto).

3. ANNUAL FEE: Grantee agrees that in exchange for the granting of the BRC Easement, Grantee shall pay to Grantor a sum (the "Annual Fee") of eighty thousand dollars (\$80,000) per annum during the term of this Agreement. The Annual Fee will be due and payable on the Effective Date and on each annual anniversary date thereof. The Annual Fee will be paid to Grantor at the address then current pursuant to Section 15 or at such other address as Grantor designates by written notice to Grantee.

4. SCOPE OF TRACK EASEMENT USE: So as not to interfere with the reserved rights of Grantor under Section 2, Grantee agrees that it shall use the BRC Track only to the extent it is conducting its Railway Business. Grantee shall not park any trains or other vehicles on the BRC Track for more than one (1) hour between the hours of six o'clock before noon (6:00 a.m.) and nine o'clock after noon (9:00 p.m.) (the "Primary Hours"). In the event Grantee causes or permits a train or other vehicle to be parked or remain stationary on the BRC Track for more than one (1) hour during the Primary Hours, Grantee shall pay to Grantor a fee (the "Parking Fee") of one thousand dollars (\$1,000) per hour for every hour beyond the one (1) hour allowed pursuant to this Section 4. Notwithstanding anything in Section 14 to the contrary, in the event Grantee does not comply with this Section 4, the Parking Fee shall become immediately due and payable to Grantor upon notice from the same. If, in the ordinary course of Grantee's Railway Business, a train derails or otherwise malfunctions, thereby causing Grantee not to comply with this Section 4, then the Parking Fee will not be assessed against Grantee so long as Grantee exercises reasonable due diligence to comply with this Section 4 and substantiates such due diligence in writing to the Grantor.

5. SIGNS: Grantee agrees to maintain at least two signs ("Signs"), facing in opposite directions at each end of the Weldbend Access, which read "SPOT CARS CLEAR OF CROSSING." In the event either or both Signs become unreadable or unusable, Grantee shall be responsible for replacing such Signs at its own expense.

6. MAINTENANCE: Grantee shall be solely responsible for maintaining the BRC Track. Grantee shall also maintain those portions of the Weldbend Property surrounding the BRC Track to insure the operations and safety of Grantor and its employees, officers, agents, and invitees. Should any of the Weldbend Property surrounding the BRC Track require repair, the lack of which shall affect the safety and operations of the business of Grantor, then upon notice thereof from Grantor to Grantee, Grantee shall promptly make such repair as shall be necessary at its own expense. If Grantee does not make such repair within a reasonable amount of time, then Grantor shall have the right to make such repair necessary to protect the safety and operations of the business of Grantor, at Grantee's sole cost and expense.

7. INSURANCE: Grantee shall, at its sole cost and expense, procure and maintain in effect comprehensive general liability insurance covering property damage and bodily injury with a minimum limit of ten million dollars (\$10,000,000). Grantee shall furnish to Grantor a certificate of the existence of the respective liability insurance policy, which certificate shall contain a contractual liability coverage endorsement referring to this Agreement and shall include Grantor as an additional insured. Each policy shall also be endorsed to provide for thirty (30) days notice to Grantor prior to termination of or change in the coverage provided by the policy.

8. PERMITS: Grantee shall, at its sole cost and expense, secure and maintain in effect all federal, state, and local permits and licenses for the use, operation, maintenance, repair, replacement, and/or removal of the BRC Track and shall indemnify and hold harmless Grantor, its successors and assigns, against payment of such costs and expenses, including reasonable attorneys' fees, and against any fines or penalties that may be levied for failure by Grantee to procure any such permits or licenses or to comply with any applicable statutes, laws, ordinances,

regulations, rules, codes, orders, or specifications of any public body or authority having jurisdiction over the BRC Track (including all federal, state and local agencies or bodies).

9. TAXES: Grantee shall pay all taxes of whatever kind, if any, whether general or special, now or hereafter levied, assessed, or expended against that portion of Parcel A subject to the Track Easement. If such taxes shall be assessed against Grantor and paid by Grantor, Grantee shall reimburse Grantor any sums so paid with interest at the rate of 10% from the date of payment. Upon Grantor's request, Grantee shall submit written evidence of payment of the governmental obligations described in this Section 9. Grantee shall have the right to protest by appropriate proceedings the imposition of any such taxes, and Grantor shall take such actions as shall be reasonably necessary to cooperate with and assist Grantee in any such protest proceedings, all at Grantee's sole cost and expense.

10. STATUS OF PARTIES: It is the intention of the parties hereto that Grantee and Grantor shall be and remain as independent parties and nothing in this Agreement shall be construed as inconsistent with that status or as creating or implying any partnership or joint venture between Grantee and Grantor. Employees or agents of Grantor shall not be considered employees or agents of Grantee, and employees or agents of Grantee shall not be considered employees or agents of Grantor.

11. TERM: The easement granted herein shall commence as of the Effective Date and shall terminate at the earlier of such time as: (a) Grantee ceases operation of its Railway Business, (b) Grantee discontinues its use, whether voluntarily or involuntarily, of the easement and submits written notice of the same to Grantor, (c) Grantor and Grantee mutually consent to the termination of this Agreement, or (d) the fifty (50) year anniversary of the Effective Date.

12. DAMAGE TO PROPERTY FROM GRANTEE OPERATIONS: Grantee agrees that Grantor shall not be responsible, in the absence of Grantor's negligence, in any way for any damage including, without limitation, damage to the BRC Track or the Weldbend Property by any casualty whatever, resulting directly or indirectly from Grantee's operations.

13. GRANTOR REPRESENTATIONS: Grantor hereby warrants and covenants unto Grantee (a) that it has full right and authority to grant the BRC Easement, and (b) that, subject to the provisions of this Agreement, Grantee may quietly enjoy the BRC Easement for the purposes herein contained.

14. DEFAULT. In the event Grantee or Grantor shall default (the "Defaulting Party") in the performance of or violate or breach any of the covenants, promises, limitations, terms or condition hereof and such failure continues for thirty (30) days after written notice from the party not in default (the "Non-Defaulting Party") advising the Defaulting Party of such failure, the Non-Defaulting Party shall have the right to perform the work required or may employ other persons to do so, and the Defaulting Party hereby agrees to pay, reimburse, and compensate the Non-Defaulting Party for whatever costs or expenses are thereby incurred as a result of such default, or the Non-Defaulting Party, at its election, may terminate this Agreement and all interest of the Defaulting Party hereunder upon thirty (30) days written notice to the Defaulting Party to such effect, and unless the Defaulting Party shall have cured the default complained of within said thirty (30) day period, this Agreement and all interest of the Defaulting Party

hereunder shall be deemed terminated upon the expiration of said thirty (30) day period; provided, however, that there shall be no termination hereof if the Defaulting Party is in good faith attempting to remedy the default complained of and, in the exercise of due diligence by the Defaulting Party, such default cannot be remedied by the Defaulting Party within the period referred to in the notice. In the case of a non-monetary default, under the foregoing circumstances, the time within which the Defaulting Party may remedy the non-monetary default complained of shall be extended for such period as may be reasonably necessary to do so, but in no event may it be extended for a period beyond ninety (90) days. In the case of a monetary default under Section 3, there shall be no extension beyond the said thirty (30) day period to remedy the monetary default complained of regardless of good faith and the exercise of due diligence. If the Defaulting Party shall neglect to proceed in good faith and as speedily as is reasonably possible to remedy the aforesaid default, the Non-Defaulting Party may give the Defaulting Party another notice of at least thirty (30) days of its election to terminate this Agreement, and thereupon, at the expiration of said thirty (30) days, if the said default not be remedied by the Defaulting Party, this Agreement shall cease and terminate. Any delay on the part of the Non-Defaulting Party in enforcing any of the provisions of this Agreement shall not be considered a waiver of any subsequent default of the Defaulting Party.

15. **NOTICES:** All notices and other communications hereunder shall be made by hand delivery, by registered or certified mail, or by electronic mail. Notice shall be deemed given if delivered by hand or mailed by registered or certified mail (return receipt requested) to the receiving party at the addresses set forth below (or at such other address for a party as shall be specified by like notice) and shall be deemed given on the date on which so hand-delivered or on the third business day following the date on which so mailed. If such notice is given by electronic mail, it shall be deemed given if sent to the receiving party at the electronic mail addresses set forth below (or at such other electronic mail address for a party as shall be specified by like notice) and shall be deemed given on the date on which such electronic message is sent.

If to Grantor:

Weldbend Corporation
c/o James J. Coulas Jr.
6600 South Harlem Ave.
Argo, IL 60501-1930
Fax: (773) 582-7621
Telephone: (708) 458-8203
Email: info@weldbend.com

With a copy to:

Mayer Brown LLP
c/o Rex Palmer
71 South Wacker Drive, 32nd Floor
Chicago, IL 60606
Email: rpalmer@mayerbrown.com

If to Grantee:

The Belt Railway Company of Chicago

Email:

16. MISCELLANEOUS:

(A) ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and the same may not be altered or amended in the absence of a written instrument executed and delivered by and to both parties.

(B) COMPLIANCE WITH LAWS: Grantee agrees to comply with all applicable laws, ordinances, regulations and requirements of all municipal, country, state and federal authorities, including Environmental Laws, now in force or which may hereafter be in force pertaining to Grantee's use of the BRC Track. For purposes of this Section 16(B), "Environmental Laws" shall mean all federal, state or local laws, ordinances, rules, orders, statutes, decrees, judgments, injunctions, codes, regulations and common law (a) relating to the environment, human health or natural resources; (b) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Materials; (c) relating to the remediation of the Property, including investigation, response, clean-up, remediation, prevention, mitigation or removal of Hazardous Materials; or (d) requiring notification or disclosure of Releases of Hazardous Materials or any other environmental conditions on the mortgaged property, as any of the foregoing may have been or may be amended, supplemented or supplanted from time to time, including the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. ("CERCLA"), the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7041 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq., as any of the foregoing may have been or may be amended, supplemented or supplanted from time to time; "Hazardous Materials" means any substance (whether solid, liquid or gas), pollutant, contaminant, waste or material (including those that are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or considered pollutants, including petroleum, its derivatives, by-products and other hydrocarbons and asbestos), in each case that is or becomes regulated by any governmental authority or that may form the basis of liability under any Environmental Law, and "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, dumping, or disposing into the indoor or outdoor environment, including the abandonment or discarding of barrels, drums, containers, tanks, and other receptacles containing or previously containing any Hazardous Materials, or the threat of any of the foregoing.

(C) INDEMNITY. Grantee shall at all times indemnify, defend and hold harmless Grantor against and from any and all claims, suits, actions, debts, damages, losses, obligations, judgments, charges, and fees and expenses, of any nature whatsoever with respect to any Release of Hazardous Materials by the undersigned or any other party using the BRC Easement with the consent of the Grantee or resulting from any violation of Environmental Law by Grantee or any party using the BRC Easement with the consent of Grantee.

(D) GOVERNING LAW/VENUE: This Agreement is governed by the internal laws of the State of Illinois, and venue shall lie in Cook County, Illinois.

(E) SUCCESSORS AND ASSIGNS: Subject to the provisions set forth herein, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

(F) COVENANTS TO RUN WITH THE LAND: The easement set forth in this Agreement and the rights, duties and obligations of the parties with respect thereto are not personal but shall be deemed covenants running with the land in favor of, or as a burden upon the Weldbend Property (as more particularly described in Exhibit A attached hereto).

(G) WAIVER/MODIFICATION: No waiver or modification of any provision of this Agreement shall be effective unless it is in writing, signed by all the parties against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

(H) PARTIAL INVALIDITY: If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(I) CAPTIONS: The paragraph captions are inserted for convenience of reference and are in no way to be construed as a part of this Agreement or as a limitation on the scope of the paragraphs to which they refer.

(J) COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

WELDBEND CORPORATION,
a Delaware corporation

By: _____
Name: James J. Coulas, Jr.
Title: President

THE BELT RAILWAY COMPANY OF
CHICAGO, a _____ corporation

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008, by James J. Coulas, Jr., as President of Weldbend Corporation, a Delaware corporation, on behalf of the corporation. He is personally known to me or provided _____ as identification

Notary Public, State of Illinois

(Print Name)
Serial No. _____

My Commission Expires:

STATE OF) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008, by _____, as _____ of The Belt Railway Company of Chicago, a _____ corporation, on behalf of the corporation. He/she is personally known to me or provided _____ as identification.

Notary Public

(Print Name)
Serial No. _____

My Commission Expires:

EXHIBIT A

WELDBEND PROPERTY

Parcel A

Parcel B

EXHIBIT B
ACCESS AND EASEMENT

Weldbend Access

BRC Easement