

DILLON & NASH, LTD.  
Attorneys at Law

David C. Dillon  
Mary Ellen Nash

111 West Washington  
Chicago, Illinois 60602  
Telephone (312) 782-9025  
Fax (312) 236-0472

234174

May 6, 2013



Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E. Street, N.W., Room 1034  
Washington, D.C. 20423-0001



Re: Finance Docket Number  
Ag Valley Railroad, LLC

FD 35736

Dear Ms. Brown:

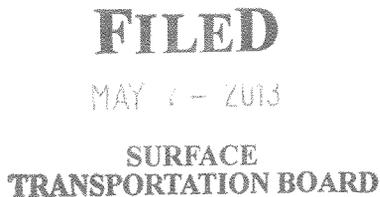
Pursuant to 49 CFR 1150.41 enclosed for filing are the original and 10 copies of the Notice of Exemption I am filing on behalf of Ag Valley Railroad, LLC to acquire and operate a transload facility from Ag Valley Holdings, LLC. Also enclosed is a checks in the amount of \$1800 representing the filing fee.

Ag Valley Railroad, LLC's operation of this property will not result in it generating an annual income of \$5,000,00 or more for the foreseeable future.

Thank you for your assistance in this matter. Please let me know if you have any questions or further information is needed.

Sincerely,

*David C. Dillon*  
David C. Dillon  
KV



BEFORE THE  
SURFACE TRANSPORTATION BOARD



Ag Valley Railroad, LLC )

)

Finance Docket Number: FD 35736

**FILED**

MAY 7 - 2013

SURFACE  
TRANSPORTATION BOARD **VERIFIED NOTICES OF EXEMPTION**  
**UNDER 49 C.F.R. § 1150.31**

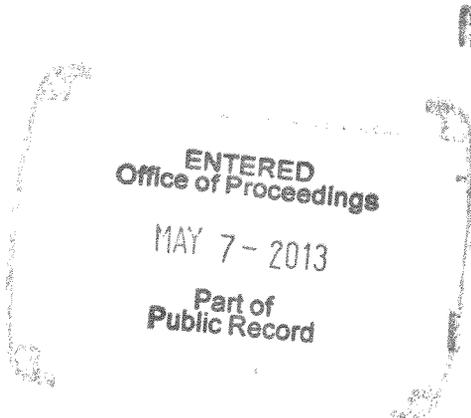
By: David C. Dillon  
Dillon & Nash, Ltd.  
111 West Washington Street  
Suite 1023  
Chicago, Illinois 60602  
(312) 782-9025

Ag Valley Railroad, LLC

*Attorney for Applicant  
in Finance Docket No. 35736*

*Applicant in Finance Docket No. FD 35736*

DATE FILED: May 6, 2013



**FEE RECEIVED**

MAY - 7 2013

SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



\_\_\_\_\_  
Ag Valley Railroad LLC

)  
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Finance Docket Number: FD 35736

**VERIFIED NOTICE OF EXEMPTION  
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et. seq.* and 49 U.S.C. § 10502(a), Ag Valley Railroad, LLC (AVRR), a noncarrier, hereby provides verified notice of exemption from 49 U.S.C. § 10901 for AVRR’s acquisition by Operating Agreement from Ag Valley Holdings, LLC (Ag Valley Holdings), and operation pursuant to operating agreement with AVRR of approximately 3.09 miles (16,304 feet) of existing railroad right-of-way and trackage and transloading facilities owned by Ag Valley Holdings, LLC, in Chicago, Illinois (“Chicago Transload Facility trackage”). The Chicago Transload Facility trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this notice.

**AG VALLEY RAILROAD TRackage IS A LINE OF RAILROAD THAT  
QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901, RATHER  
THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND OPERATION  
AUTHORITY UNDER § 10906**

\_\_\_\_\_  
Ag Valley Holdings, LLC owns the Chicago Transload Facility trackage. The trackage is used in conjunction with interchanging to and from Chicago Rail Link, carloads of inbound vegetable co-products and outbound animal feed ingredients and bio-diesel feed stocks and related products after transloading, and inbound carloads for transloading into trucks for final delivery.

There is currently 16,304 linear feet of track located on the Chicago Transload Facility.

In this circumstances, the Chicago Transload Facility trackage is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transportation Board.*, 183 F.3d 606 (7<sup>th</sup> Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)):

...(I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was by a third-party carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Chicago Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7<sup>th</sup> Cir. 1999).

Inasmuch as the subject transaction will be AVRR's initial railroad acquisition, and the Chicago Transload Facility trackage will constitute the entire line of railroad of AVRR, it follows that the Chicago Transload Facility trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

**INFORMATION REQUIRED BY 49 C.F.R. § 1150.33**

(a) *The full name and address of the applicant;*

The full name and address of the applicant in Finance Docket Number 35736 is Ag Valley Railroad, LLC, 2701 East 100<sup>th</sup> Street, Chicago, Illinois, 60617.

(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

AVRR representative is David C. Dillon, Dillon & Nash, Ltd., 111 West Washington Street, Suite 1023, Chicago, Illinois, 60602, 312-782-9025.

(c) *A statement that an agreement has been reached or details when an agreement will be reached;*

An Operating Agreement was entered between Ag Valley Holdings, LLC and Ag Valley Railroad, LLC on May 1, 2013.

(d) *The operator of the property;*

AVRR will be the operator of the property.

(e) *A brief summary of the proposed transaction, including:*

(1) *The name and address of the railroad transferring the subject property,*

The above entity in Finance Docket Number 35736 is Ag Valley Holdings, LLC, a non-railroad corporation, 2701 East 100<sup>th</sup> Street, Chicago, IL, 60617.

(2) *The proposed time schedule for consummation of the transaction,*

Ag Valley Railroad will enter into an Operating Agreement with Ag Valley Holdings, LLC within the next 30 days. A copy of the draft Operating Agreement is submitted herewith.

(3) *The mile-posts of the subject property, including any branch lines, and*

The Chicago Transload Facility trackage is not described by milepost numbers. That trackage is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(4) *The total route miles being acquired;*

A total of approximately 16,304 feet/3.09 miles of trackage is to be operated by AVRR.

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States;*

The required map is attached to this Notice as Appendix 1-B.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.*

The required certificate is attached to this Notice as Appendix 2.

#### **CAPTION SUMMARY**

A caption summary required by 49 C.F.R. § 1150.34 for Finance Docket Number FD35736 is attached to this Notice as Appendix 3.

#### **ENVIRONMENTAL AND HISTORIC REPORT**

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

#### **LABOR PROTECTION**

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

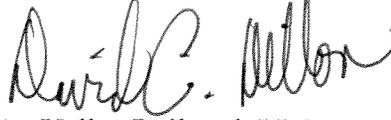
#### **VERIFICATION**

The verification is attached to this Notice as Appendix 4.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket No. 35736. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,



Ag Valley Railroad, LLC

By: David C. Dillon  
Dillon & Nash, Ltd.  
111 West Washington Street  
Suite 1023  
Chicago, Illinois 60602  
(312) 782-9025

*Attorney for Applicant  
in Finance Docket No. FD 35736*

*Applicant in Finance Docket No. FD 35736*

DATE FILED: May 6, 2013

Finance Docket Number: FD 35736

Appendix 1-A

LENGTH OF AG VALLEY RAILROAD, LLC  
CHICAGO TRANSLOAD FACILITY

Total Track: 16,304 linear feet = 3.09 miles of track

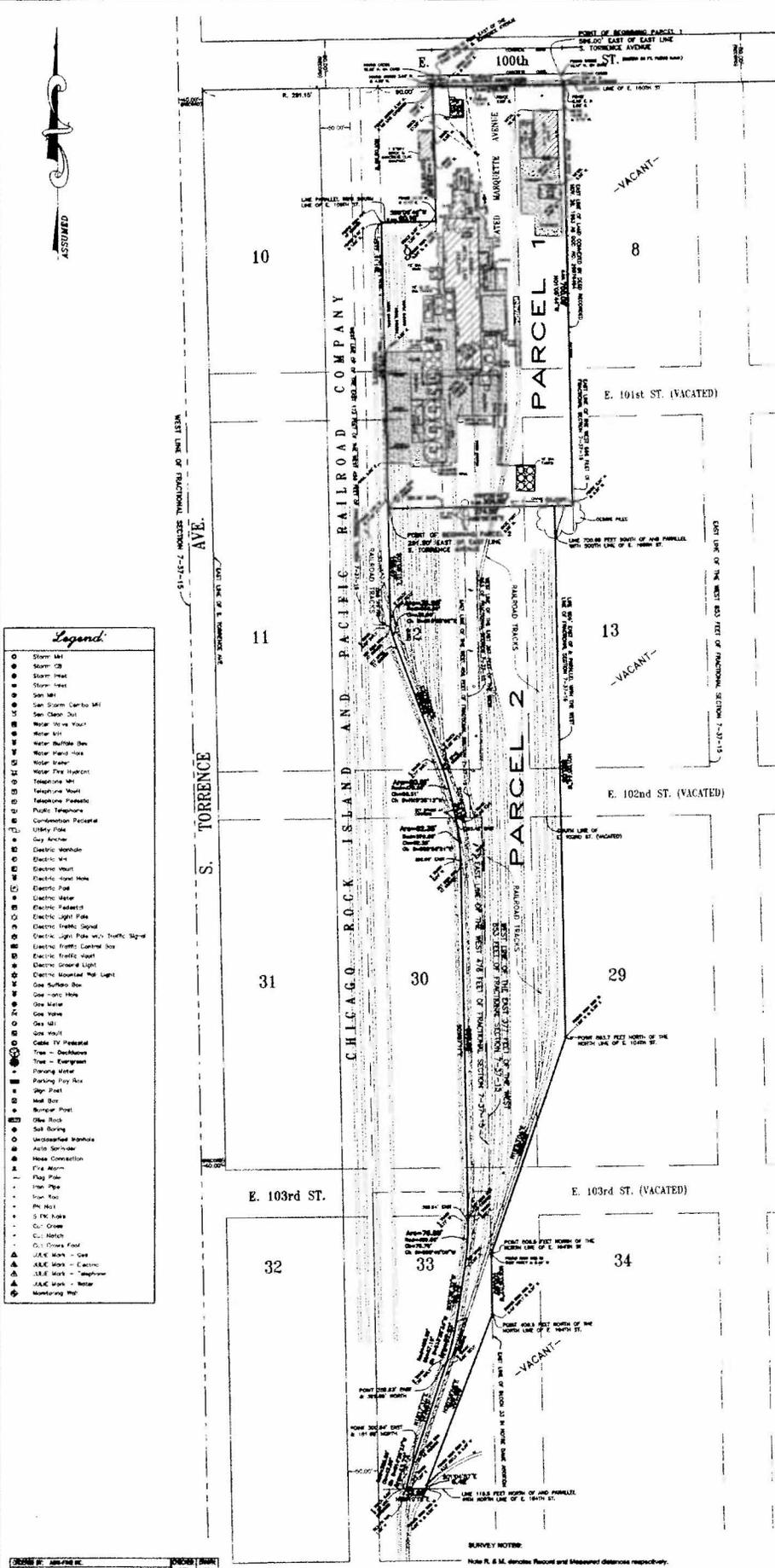
CHICAGO GUARANTEE SURVEY COMPANY

PLCS Corporation

Professional Land Surveyors

1505 NORTH ELSTON AVENUE, CHICAGO, IL 60630  
TELEPHONE (312) 796-9415 FAX (312) 796-9479 EMAIL INFO@PLCS-SURV.COM

Plat of Survey



Legend table listing symbols for various features: Storm Sewer, Storm Pipe, Storm Manhole, San Sew, San Manhole, San Storm Chamber, Water Main, Water Valve, Water Hydrant, Telephone Manhole, Telephone Vault, Telephone Pole, Public Telephone, Communication Facilities, Utility Pole, Gas Appliance, Electric Meter, Electric Panel, Electric Light Pole, Electric Light Fixture, Electric Transformer, Electric Transformer Vault, Electric Transformer Vault Light, Gas Appliance, Gas Meter, Gas Valve, Gas Well, Gas Vent, Cable TV, Tree, Evergreen, Planting Marker, Parking Strip, Sign Post, Mail Box, Dumpster, Oil Tank, Salt Storage, Underground Inhabits, Auto Service, Hose Connection, Fire Alarm, Flag Pole, Iron Pipe, Iron Tee, Iron Valve, C.I. Overhead, C.I. Manhole, C.I. Three Foot, J.L.E. Mark - Gas, J.L.E. Mark - Electric, J.L.E. Mark - Telephone, J.L.E. Mark - Water, Monitoring Well.

PARCEL 1:  
A PARCEL OF LAND COMPRISED OF PARTS OF BLOCKS 8, 9, 12 AND 13, AND CERTAIN STREETS ADJOINING SAID PARTS OF BLOCKS, IN NOTWIE DANE ADDITION TO SOUTH CHICAGO, BEING A SUBDIVISION OF THE SOUTH 3/4 OF THE FRACTIONAL SECTION 27 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDING AS FOLLOWS:  
BEING ON THE NORTH LINE OF SAID BLOCKS 8 AND 9, BEING ALONG THE SOUTH LINE OF E. 101ST STREET, AT A POINT 16.18 FEET EAST OF THE EAST LINE OF S. TORRENCE AVENUE BEING 48 FEET EAST OF THE WEST LINE OF SAID FRACTIONAL SECTION 27, SAID POINT BEING ALSO THE NORTHWEST CORNER OF THAT TRACT OF LAND HERETOFORE CONVEYED TO THE CHICAGO, WEST PULASKI & SOUTH PEARSON COMPANY BY DEED RECORDED NOVEMBER 28, 1983 AS DOCUMENT NO. 1827348;  
THENCE WEST ALONG SAID SOUTH LINE OF E. 101ST STREET, A DISTANCE OF 24.26 FEET, TO A POINT 24.26 FEET EAST OF THE EAST LINE OF S. TORRENCE AVENUE BEING 48 FEET EAST OF THE WEST LINE OF SAID FRACTIONAL SECTION 27;  
THENCE SOUTH ALONG A STRAIGHT LINE, HAVING AS ITS SOUTHWESTLY TERMINUS A POINT WHICH IS 79.26 FEET SOUTH OF SAID SOUTH LINE OF E. 101ST STREET AND 24.26 FEET EAST OF THE EAST LINE OF S. TORRENCE AVENUE, A DISTANCE OF 22.68 FEET;  
THENCE WEST ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF E. 101ST STREET, A DISTANCE OF 16.18 FEET;  
THENCE SOUTH ALONG A LINE 86.16 FEET WEST FROM AND PARALLEL WITH THE ABOVE DESCRIBED STRAIGHT LINE, A DISTANCE OF 47.08 FEET;  
THENCE EAST ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF E. 101ST STREET, A DISTANCE OF 24.26 FEET TO THE EAST LINE OF SAID TRACT OF LAND CONVEYED BY DOCUMENT NO. 1827348, BEING A LINE PARALLEL WITH SAID EAST LINE OF S. TORRENCE AVENUE;  
THENCE NORTH ALONG SAID EAST LINE, A DISTANCE OF 79.26 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.  
CONTAINING 12,847 SQUARE FEET (0.291 ACRES) OF LAND, MORE OR LESS.

PARCEL 2:  
A PARCEL OF LAND COMPRISED OF PARTS OF BLOCKS 12, 13, 15, 18, 28 AND 33, AND CERTAIN STREETS ADJOINING SAID PARTS OF BLOCKS, IN NOTWIE DANE ADDITION TO SOUTH CHICAGO, BEING A SUBDIVISION OF THE SOUTH 3/4 OF THE FRACTIONAL SECTION 27 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDING AS FOLLOWS:  
BEING ON THE NORTH LINE OF SAID BLOCKS 12, 13, 15, 18, 28 AND 33, BEING ALONG THE SOUTH LINE OF E. 102ND STREET WHICH IS 24.26 FEET EAST OF THE EAST LINE OF S. TORRENCE AVENUE (SAID EAST LINE OF S. TORRENCE AVENUE BEING 48 FEET EAST OF THE WEST LINE OF SAID FRACTIONAL SECTION 27);  
THENCE SOUTH 91 DEGREES 38 MINUTES 15 SECONDS EAST ALONG A STRAIGHT LINE, HAVING AS ITS SOUTHWESTLY TERMINUS A POINT WHICH IS 79.26 FEET SOUTH OF SAID SOUTH LINE OF E. 102ND STREET AND 24.26 FEET EAST OF THE EAST LINE OF S. TORRENCE AVENUE, A DISTANCE OF 22.68 FEET;  
THENCE WEST ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF E. 102ND STREET, A DISTANCE OF 16.18 FEET;  
THENCE SOUTH ALONG A LINE 86.16 FEET WEST FROM AND PARALLEL WITH THE ABOVE DESCRIBED STRAIGHT LINE, A DISTANCE OF 47.08 FEET;  
THENCE EAST ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF E. 102ND STREET, A DISTANCE OF 24.26 FEET TO THE EAST LINE OF SAID TRACT OF LAND CONVEYED BY DOCUMENT NO. 1827348, BEING A LINE PARALLEL WITH SAID EAST LINE OF S. TORRENCE AVENUE;  
THENCE NORTH ALONG SAID EAST LINE, A DISTANCE OF 79.26 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.  
CONTAINING 22,822 SQUARE FEET (0.521 ACRES) OF LAND, MORE OR LESS.

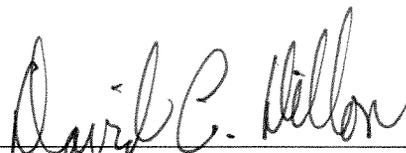
SURVEY NOTES:  
Note R & M denotes Record and Measured distances respectively.  
Distances are marked in feet and decimal parts thereof. Compare all points BEFORE building by owner and at once report any differences BEFORE damage is done.  
No easements, including those and other restrictions not shown on survey past refer to your abstract, deed, contract, city codes and local building regulations.  
NO elevations shall be assumed by scale measurement upon this plat.  
Unless otherwise noted, the Bearing, Distance, Elevation, Datum and Coordinate Datum if used is as indicated.  
COPYRIGHT CHICAGO GUARANTEE SURVEY COMPANY 2010. All Rights Reserved.

State of Illinois  
County of Cook  
We, CHICAGO GUARANTEE SURVEY COMPANY, a limited liability company, do hereby certify that we have prepared this plat in accordance with the laws of the State of Illinois and that the plat herein shown is a correct representation of the survey conducted by a Professional Land Surveyor.  
Field measurements completed on: 12/28/2010  
Signed on: 2/25/2010  
By: [Signature]  
Professional Land Surveyor No. 7526  
My license expires November 30, 2012  
This professional services certificate is the current record which shall be maintained in the public records of Cook County, Illinois.

CHICAGO GUARANTEE SURVEY COMPANY logo and contact information:  
2010-14597-001  
Scale: 1" = 100'  
Date: 2/25/2010

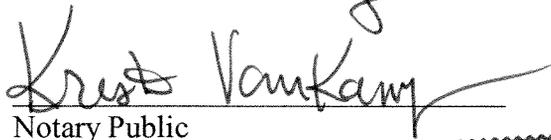
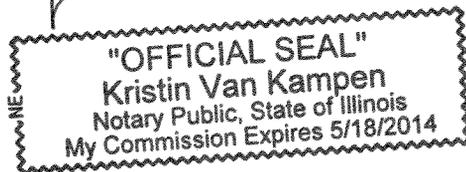
**CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)**

Afton Terminal Railroad hereby certifies under 49 C.F.R. § 1150.33(g), that the projected revenues from the acquisition and operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier.



\_\_\_\_\_  
David C. Dillon  
*Authorized Representative of  
Ag Valley Railroad, LLC*

SUBSCRIBED AND SWORN TO before  
me this 6th of May, 2013.

  
\_\_\_\_\_  
Notary Public

**CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD 35736

AG VALLEY RAILROAD LLC  
- ACQUISITION EXEMPTION -  
RAIL LINE OF AG VALLEY HOLDINGS, LLC  
AT CHICAGO TRANSLOAD FACILITY, CHICAGO, ILLINOIS

Ag Valley Railroad LLC (AVRR), has filed a Notice of Exemption to acquire and operate from Ag Valley Holdings, LLC, a non-carrier, approximately 3.09 miles of right-of-way and trackage at Ag Valley Holdings, LLC's Chicago Transload Facility in Chicago, Illinois. Comments must be filed with the Board and be served on AVRR's representative, David C. Dillon, Dillon & Nash, Ltd., 111 W. Washington Street, Suite 1023, Chicago, IL, 60602, (312) 782-9025.

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Board

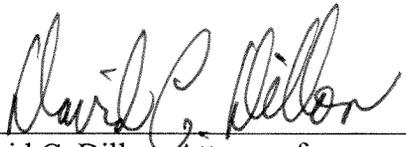
(Seal)

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board

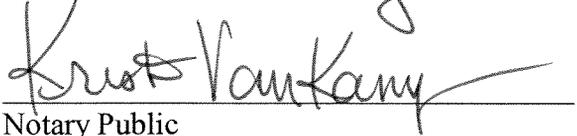
**VERIFICATION**

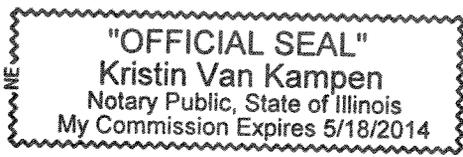
STATE OF ILLINOIS       )  
  )  
COUNTY OF COOK        )

David C. Dillon, being duly sworn, states that he is an attorney for Ag Valley Railroad LLC; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of AVRR; and that such allegations are true as stated.

  
\_\_\_\_\_  
David C. Dillon, Attorney for  
Ag Valley Railroad LLC

SUBSCRIBED AND SWORN to before  
me this 6<sup>th</sup> day of May, 2013.

  
\_\_\_\_\_  
Notary Public



**THIS AGREEMENT CONTAINS AN AUTOMATIC RENEWAL PROVISION**

**OPERATING AGREEMENT**

THIS AGREEMENT, made and entered into as of the 1<sup>st</sup> day of May, 2013, between AG VALLEY HOLDINGS, LLC (Ag Valley Holdings); AND AG VALLEY RAILROAD, LLC (AVRR).

**WITNESSETH:**

WHEREAS, AVRR has acquired by Operating Agreement from Ag Valley Holdings approximately 16,304 feet (3.09 miles) of right-of-way and trackage located at Ag Valley Holdings Chicago Transload Facility, in Chicago, Illinois, more particularly described in Appendix 1-A and depicted on Appendix 1-B attached hereto ("the Chicago Transload Facility trackage"); and

WHEREAS, AVRR desires to operate and maintain the Chicago Transload Facility trackage for the provision of rail service in the name of, and in behalf of, Ag Valley Holding; and

WHEREAS, Ag Valley Holdings is agreeable to such operation and maintenance upon the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein the parties hereto agree as follows:

**ARTICLE ONE**

**GRANT OF RIGHT TO OPERATE AND  
MAINTAIN THE  
CHICAGO TRANSLOAD FACILITY TRACKAGE**

Subject to the terms and conditions provided in the Operating Agreement between Ag Valley Holdings and AVRR, (i) Ag Valley Holdings hereby grants to AVRR the right to operate its trains, locomotives, cars, and equipment with its crews over the Chicago Transload Facility

trackage for the purpose of providing rail service to shippers and receivers located on such lines and to transport shipments by rail over such lines, and to maintain the Chicago Transload Facility trackage, and (ii) AVRR agrees to operate and maintain the Chicago Transload Facility trackage. AVRR reserves the right to operate trains, locomotives, cars, and equipment on an as-needed basis, using a leased locomotive or a substitute, using its own personnel. AVRR will perform all necessary freight car switching at the Chicago Transload Facility and will operate all freight car loading and unloading facilities.

## **ARTICLE TWO**

### **TERM; TERMINATION**

Section 2.01 Term. Subject to earlier termination as provided herein, the term of this Agreement shall be one year from the date of this Agreement shown above; provided, however, that this Agreement will be renewed automatically for additional one year periods unless, no later than 60 days before its expiration, either Ag Valley Holdings or AVRR provides written notice to the other party of its intent not to renew this agreement.

Ag Valley Holdings may terminate this Agreement upon ten (10) calendar days written notice if by any reason most of the circulating shares in AVRR with right to a vote are no longer property of Ag Valley Holdings, or its parent or affiliated companies, or if any shares in AVRR are owned, directly or indirectly, by a competitor of Ag Valley Holdings.

Section 2.02 Termination For Default. Either party may terminate this Agreement by written notice if the other party fails to perform any obligation required of it hereunder and fails to remedy such default within thirty (30) days after receipt of written notice of such default.

Section 2.03 Termination for Bankruptcy, Etc. Either party may immediately terminate this Agreement by written notice if the other party enters into or is placed in bankruptcy or receivership or is nationalized, become insolvent, or makes an assignment for the benefit of its creditors.

### **ARTICLE THREE**

#### **SCOPE OF OPERATIONS AND MAINTENANCE AND COMPENSATION THEREFORE**

The scope of operations and maintenance and the agreed compensation therefore are contained in Appendix 2 attached hereto. The parties may amend Appendix 2 from time to time by executing an amended scope of operations and maintenance and compensation.

### **ARTICLE FOUR**

#### **GOVERNMENT APPROVAL, ETC.**

AVRR at its own expense shall obtain any and all governmental approvals, authorizations, permits, licenses, and exemptions that may be required for its operation and maintenance of the Chicago Transload Facility trackage.

### **ARTICLE FIVE**

#### **INSURANCE**

AVRR shall be required to obtain and keep in force a commercial general liability insurance policy covering AVRR's operation and maintenance of the Chicago Transload Facility trackage, including public liability, personal injury, property damage, and contractual liability with per occurrence and aggregate limits of not less than \$2 million. Ag Valley Holdings shall be named as an additional insured in such policy. Upon reasonable request, AVRR shall make such policy available for inspection and review by Ag Valley Holdings.

### **ARTICLE SIX**

#### **MANAGEMENT AND OPERATIONS**

AVRR shall comply with the provisions of the Federal Safety Appliance Act, as amended, and all other federal, state, and local laws, regulations and rules respecting (i) the operations and maintenance of the Chicago Transload Facility trackage, (ii) the operation, condition, inspection and safety of AVRR's trains, locomotives, cars, and equipment while such

trains, locomotives, cars, and equipment are being operated over the Chicago Transload Facility trackage. AVRR shall indemnify, protect, defend, and save harmless Ag Valley Holdings and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon AVRR or its officers, agents and employees under such laws, rules and regulations by any public authority or court having jurisdiction in the premises, when attributable in any manner to the failure of AVRR to comply with its obligations under this article.

## **ARTICLE SEVEN**

### **LIABILITY AND INDEMNITY**

Whenever any loss of, damage to, or destruction of any property whatsoever, or injury or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of AVRR, AVRR shall assume all liability therefore, and shall forever protect, defend, indemnify and save harmless Ag Valley Holdings and its officers, agents and employees from and against any such liability, cost and expense, except if such loss, damage, injury or death was caused by Ag Valley Holdings.

## **ARTICLE EIGHT**

### **ENVIRONMENTAL CONDITIONS**

Ag Valley Holdings shall indemnify AVRR for any and all Losses resulting from environmental conditions existing on the Chicago Transload Facility trackage as of the commencement of operations by AVRR. AVRR shall indemnify Ag Valley Railroad for any and all Losses resulting from environmental conditions occurring or arising on the Chicago Transload Facility trackage during the term of this Agreement except to the extent caused by the act or omission of Ag Valley Holdings.

## **ARTICLE NINE**

### **THIRD PARTY CLAIMS RELATING TO OWNERSHIP OPERATION**

AVRR shall not cause any lien, claim, or encumbrance to be placed against the Chicago Transload Facility trackage. If any such lien, claim or encumbrance shall be filed or placed against the Chicago Transload Facility trackage or any part thereof, AVRR agrees to discharge the same within 30 days after AVRR has notice thereof. If AVRR fails to do so, Ag Valley Holdings shall have the right (but not the obligation) to pay or discharge any such liens, claims or encumbrances without inquiry as to their validity and any amount so paid, including interest, fees, charges, and expenses, shall be paid by AVRR to Ag Valley Holdings, as applicable.

## **ARTICLE TEN**

### **FINANCIAL STATEMENTS**

If Ag Valley Holdings shall so request, AVRR shall be required on a quarterly basis to provide statements reflecting its financial condition, such as a balance sheet and profit-loss statement.

## **ARTICLE ELEVEN**

### **CONFIDENTIALITY**

AVRR will keep secret and confidential at all times and will not disclose, divulge, or communicate any confidential or proprietary information provided by Ag Valley Holdings hereunder, in any manner, directly or indirectly, to any third party, except as permitted by this Agreement, and except where that information:

- (a) is or later become publicly known under circumstances involving no breach of this Agreement by AVRR; was already known to AVRR at the time it was received from Ag Valley Holdings, not under an obligation of confidentiality, as evidenced by written documents in the possession of AVRR; or
- (b) is made available to AVRR by a third party without secrecy obligations and without breach of an obligation to Ag Valley Holdings.

AVRR may disclose confidential information only to those of its directors, officers, and employees who legitimately require it for the purposes permitted by this Agreement, and will use its best efforts to prevent any unauthorized disclosure by them.

Notwithstanding the termination of this Agreement, the obligations of AVRR under this Section 11 shall continue in force for ten (10) years after termination.

## **ARTICLE TWELVE**

### **REAL PROPERTY TAXATION**

AVRR agrees to file Illinois Department of Revenue Railroad Property Tax Forms (including but not limited to PTAX 500 through 513 and 520A through 523, and 537), listing the Chicago Transload Facility property as “railroad operating property” as defined in the applicable Illinois statutes. AVRR shall pay the resulting property taxes or immediately fully reimburse Ag Valley Holdings if Ag Valley Holdings pays such taxes.

## **ARTICLE THIRTEEN**

### **AMENDMENTS**

This Agreement represents the entire understanding between the parties and supersedes and replaces any and all prior agreements between the parties relating to the subject matter

hereof. This Agreement may not be amended except by a written instrument signed on behalf of each party by its authorized representatives.

#### **ARTICLE FOURTEEN**

##### **ASSIGNMENT**

Neither party may assign this Agreement without the prior written consent of the other, except that Ag Valley Holdings may assign this Agreement to any entity which succeeds, by sale, merger, acquisition, transfer, or otherwise, to all or substantially all of its assets or business at its Chicago Transload Facility.

#### **ARTICLE FIFTEEN**

##### **MISCELLANEOUS**

Section 15.01 Any notices, requests, or other communications hereunder shall be in writing and shall be deemed to have been duly given when made upon a party by personal service at any place where they may be found or by mailing such notices, requests, or communications by certified mail, postage prepaid and return receipt requested, or by nationally recognized courier, or by transmitting such notice by facsimile, in each case to the following addresses or facsimile numbers, as the case may be:

If to Ag Valley Holdings:      Ag Valley Holdings  
2701 East 100<sup>th</sup> Street  
Chicago, Illinois 60617  
Attention: President

If to AVRR:                      Ag Valley Holdings  
2701 East 100<sup>th</sup> Street  
Chicago, Illinois 60617  
Attn: President

Either party may provide changes in the above addresses to the other party by a notice given to the other party in this Section 15.01.

Section 15.02 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

Section 15.03. Severability. If any provision in this Agreement shall for any reason be determined to be invalid or unenforceable, the balance of such provision and the remaining provisions of this Agreement shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provision had not been a part hereof.

Section 15.4 Titles. The title of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

**Ag Valley Holdings, LLC**

By:   
Authorized Representative

**Ag Valley Railroad, LLC**

By:   
Authorized Representative