

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET No. FD35496

**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION'S**

PETITION FOR DECLARATORY ORDER

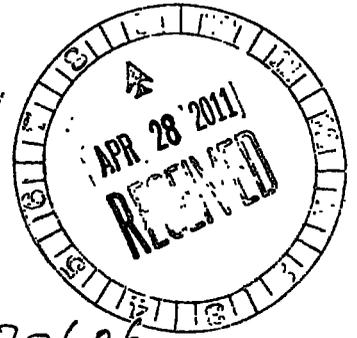
The Denver & Rio Grande Railway Historical Foundation, Inc., a Colorado not-for-profit corporation, d.b.a. Denver & Rio Grande Railroad, L.L.C., by its President and Executive Director, Donald H. Shank, submits the following Petition for Declaratory Order addressing the questions and issues surrounding federal pre-emption of land utilized for rail-related purposes.

A. IDENTITY AND ADDRESS OF THE PETITIONER

The Denver & Rio Grande Railway Historical Foundation, Inc. (DRGHF) is a Colorado not-for-profit corporation. DRGHF acquired the "Creede Branch" of the former Denver & Rio Grande Western Railroad from the Union Pacific Railroad pursuant to an Offer of Financial Assistance in STB Docket No. AB-33 (Sub No. 132X) Union Pacific Railroad Company Abandonment Exemption in Rio Grande and Mineral Counties, Colorado. The address of DRGHF is 20 North Broadway Street, Monte Vista, CO 81144.

B. FACTUAL BACKGROUND

DRGHF acquired the Creede Branch during an OFA consummated on May 24, 2000. The Creede Branch consisted of 21.7 miles of trackage, laid in the 1880's and 1890's. DRGHF immediately began rehabilitation of the track and roadbed that had been dormant and maintenance deferred since 1985. To date, more than two thousand ties,



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thousands of spikes and track bolts and dozens of rails have been replaced with several thousand more ties scheduled for replacement. The Creede Branch represents a current work in progress and the 2011 tie program is in full swing.

Commencing in 2009, DRGHF began operating a tourist based passenger operation on the Creede Branch that has been very well received. Even in a down economy, 2010 ridership increased 30% over 2009 and we anticipate an even better 2011. DRGHF continues to upgrade the quality and utility of the track in preparation for requested freight movement on the Branch. With the price of Silver approaching \$45 per ounce, the potential for ore shipments on the Creede Branch is looking better and better.

DRGHF currently leases (please refer to accompanying Lease 200501) a parcel of land from Rio Grande Southern Railroad Company (RGSRR), a Colorado Limited Liability Company that purchased the 1.84 acre parcel from San Luis & Rio Grande Railroad (SLRG) during early 2005. At that time SLRG was a wholly owned subsidiary of RailAmerica Corporation. DRGHF interchanges with SLRG at South Fork, CO, (MP 299.3). The subject parcel had always been a portion of the railroad's right-of-way dating back to 1881, which predates the City of Monte Vista by five years. This was originally Denver & Rio Grande Railway (1881-1885), then D&RG Railroad (1885-1921), then Denver & Rio Grande Western Railroad (1921-1987), then Southern Pacific Transportation (1987-1996), then Union Pacific Railroad (1996-2003), then SLRG/RailAmerica (2003-2005). The northern boundary of this parcel begins twenty feet to the south as measured from the centerline of SLRG's mainline and parallels the main for 681.63'. The parcels southern boundary parallels the mainline approximately 200' to the south and is the same as the historic southern edge of railroad right-of-way.

The Lease reflects a single purpose use, that being as a railcar rehabilitation and restoration facility and has only been used for that purpose since RGSRR purchased it and leased it to DRGHF. The parcel is served by a rail spur connected to the SLRG's mainline and is designated as ICC Track 15. To date, several railcars have been rebuilt on this property and have been utilized in general commerce on both the SLRG and DRGHF/DRGR. Several more are currently under rehabilitation for use on DRGHF/DRGR. Some cars reside on Track 15, some on panel track built to accommodate railcars and some temporarily on blocks awaiting trucks and rehabilitation. No other business is being conducted on this railroad property.

This parcel had never been platted by the City of Monte Vista, therefore no lot numbers currently or historically exist anywhere within its boundaries. It has always been railroad property and currently is used by an active railroad (DRGHF/DRGR) for railroad purposes. The City of Monte Vista has since re-zoned the Town and now includes this parcel within the area referred to as "Central Business" and therefore believes it's subject to all Zoning Ordinances. Their re-zoning took place after acquisition by RGSRR and after leasing to DRGHF/DRGR.

C. REQUEST FOR RELIEF

DRGHF seeks a Board decision addressing the following questions:

1. Is the land that is within the City Limits of Monte Vista, Colorado, currently served by and adjacent to a common carrier railroad, that had been the outer portions of the railroad's 400' wide right-of-way for 124 years, not platted nor reflecting any lot numbers, that is currently leased to a federally recognized railroad and being utilized for rail-related purposes only and contains only railcars

in varying stages of rehabilitation, subject to city zoning ordinances?

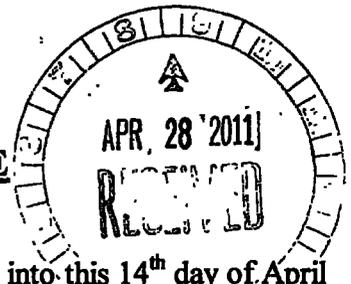
2. If the answer to question 1 is negative, is this parcel of land then subject to these municipal ordinances and zoning regimen, or is it: i) federally preempted by 49 U.S.C. Para. 10501(b); and/or ii) invalidated because these municipal ordinances and zoning regimen conflict with the Commerce Clause of the United States Constitution?

Respectfully submitted in behalf of Denver & Rio Grande Railway Historical Foundation, Inc., d.b.a. Denver & Rio Grande Railroad L.L.C., by its President and Executive Director,

A handwritten signature in black ink, appearing to read "Donald H. Shank", written over a horizontal line.

Donald H. Shank

COMMERCIAL RIGHT-OF-WAY LEASE



THIS COMMERCIAL RIGHT-OF-WAY LEASE (“Lease”) is entered into this 14th day of April 2005 between the RIO GRANDE SOUTHERN RAILROAD COMPANY, L.L.C., a Colorado Limited Liability Company (“Lessor”) and the DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION, a Colorado not-for-profit corporation d.b.a. the DENVER & RIO GRANDE RAILROAD COMPANY, L.L.C. (“Lessee”).

Lease No. 200501

PART 1
BASIC LEASE TERMS

A. **PREMISES**

The term “Premises” shall refer to the land at or near Monte Vista, County of Rio Grande, State of Colorado, as shown on Drawing No. CL-501, dated April 5th, 2005, containing site description and location, attached hereto as Exhibit “A” and made a part hereof.

B. **EFFECTIVE DATE**

This Lease shall take effect on January 1, 2005, (“Effective Date”).

C. **TERM**

This Lease shall be for a term of Ten (10) years (“Lease Term”) from Effective Date hereon and shall continue after the Lease Term on a year-to-year tenancy basis, unless earlier terminated in accordance with the terms stated herein.

D. **TERMINATION**

This Lease shall be terminable by Lessee at any time without cause upon twelve (12) months advance written notice to Lessor. Lessor’s termination rights shall be limited to “cause” as defined in paragraph 21(Default) in Part 2, General Lease Terms, attached hereto and made a part hereof. Upon termination of the Lease under either of these circumstances, Lessee shall have the right, but not the obligation, to remove all improvements located on the Premises so long as the improvements are removed to the satisfaction of Lessor by the date of termination.

E. **USE**

Lessee may use the Premises as a railcar restoration and/or rehabilitation facility and the storage of operational, non-operational and historic railcars, parts and assemblies.

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F. RENT

Commencing as of the Effective Date hereof, Lessee shall pay to Lessor, its successors and assigns, as rent for the Premises ("Rent") the sum of ONE DOLLAR (\$1.00) per annum payable annually, with the first year's rent to be paid concurrently upon execution hereof.

G. RENT ADJUSTMENT

Base Rent shall be adjusted on an annual basis based upon the CPI factor (defined in Section 5 of the General Lease Terms) as indicated on the Consumer Price Index, not to exceed a 5.0% adjustment from the previous year, but only upon mutual agreement of the parties.

H. SECURITY DEPOSIT

N/A, none required.

I. PROOF OF INSURANCE

On or before execution of this Lease, Lessee shall furnish to Lessor proof of insurance as required under Section 14 of the General Lease Terms, and the effective date of insurance coverage shall be no later than the Effective Date of this Lease.

J. ADDRESSES FOR NOTICES

All notices to either Lessor or Lessee shall be addressed as follows:

To Lessor: Rio Grande Southern Railroad Company, L.L.C.
20 N. Broadway St.
Monte Vista, CO 81144

To Lessee: Denver & Rio Grande Railway Historical Foundation
d.b.a. Denver & Rio Grande Railroad Company
20 N. Broadway St.
Monte Vista, CO 81144

K. PAYMENTS TO LESSOR

Cash or check shall be made payable to Lessor as follows:

Via U. S. Mail: as above in Section J.

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The foregoing Basic Lease Terms and the General Lease Terms set forth in attached Part 2 are incorporated into and made parts of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease in duplicate the day and year first above written.

THE RIO GRANDE SOUTHERN RAILROAD COMPANY, L.L.C., as LESSOR

By: *David A. Shank* 4/15/05

Title: REGISTERED AGENT + PRESIDENT

THE DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION,
d.b.a. DENVER & RIO GRANDE RAILROAD COMPANY, L.L.C., as LESSEE

By: *Robert W. Shank* MAY 2, 2005

Title: EXEC VICE PRESIDENT D&RGHF

By: *Robert W. Shank* MAY 2, 2005

Title: GEN SUPERINTENDANT D&RG RR

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PART 2
GENERAL LEASE TERMS

1. PREMISES AND TERM

Lessor hereby leases to Lessee the Premises for the tenancy shown in the Basic Lease Terms, subject to the terms and conditions as set forth in this Lease.

2. USE

Lessee shall not use, nor allow to be used, the Premises for any use other than that stated in the Basic Lease Terms.

Lessee shall not permit to be placed on the Premises or improvements any signs or notices not solely related to the business of Lessee conducted on the Premises.

Lessee shall not permit any damage, nuisance or waste on the Premises; nor permit to be stored on the Premises any gasoline, diesel fuel, oil, and other petroleum products, or any flammable, hazardous or explosive material, waste or substance, the storage of which would be subject to state or federal regulation, or impede the safe and efficient rail operations of Lessor.

Lessee, at Lessee's expense, and only with respect to a condition of the Premises that is caused by Lessee, shall arrange for the filing of any map, drawing, diagram or environmental impact report as may be required by any governmental agency having jurisdiction in the matter.

3. CONDITION OF PREMISES and WARRANTIES

Lessee warrants that it has examined the Premises and accepts the Premises in an "AS-IS, WHERE-IS" condition, with all faults and with full knowledge of the physical condition of the Premises.

Lessor covenants and warrants to Lessee that Lessor holds title to the Premises (referred to herein as "ROW") that encompasses the Premises and that the ROW was authorized and provided for by the General Railroad Right-of-Way Act of March 3, 1875, a98 Stat. 482, 43 U.S.C. paragraph 934 *et seq.* Lessor further covenants and warrants that it has good right, full power and lawful authority to make this Lease and charge Rent for the full term and any extensions thereof, subject the potential circumstances referred to in Part 1, Basic Lease Terms, section D, paragraph(s) 1 and 2 ("Automatic Termination").

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Lessor covenants that so long as Lessee fulfills the terms, conditions and covenants required of it to be performed, it will have peaceful and quiet possession of the Premises.

4. **PAYMENT / REFUND OF RENT**

Lessee shall pay to Lessor as Rent for the Premises the amount set forth in Section F of the Basic Lease Terms, payable at the times set forth therein, without deduction, setoff, prior notice or demand. Upon termination of this Lease, unless Lessee is then in default, any unearned portion of any Rent paid in advance shall be refunded to Lessee upon Lessee's written demand therefore if made within thirty (30) days after termination.

5. **RENTAL REVISION**

The Rent shall automatically and without notice to Lessee be adjusted, upwards only, on each anniversary of the effective date, by the CPI Factor. The "CPI Factor" is the percentage of adjustment stated in the Consumer Price Index established during the last twelve-month period immediately preceding each anniversary of the Effective Date, adjusted to the nearest one-tenth of one percent. Lessor hereby agrees that it shall not increase the Rent more than five percent (5.0%) on an annual basis.

6. **SECURITY DEPOSIT**

N/A, none required

7. **TAXES AND ASSESSMENTS**

Lessee shall pay, before they become delinquent, all taxes, charges, and assessments, which are levied upon, or which may be locally assessed against, any improvement or personal property placed upon the Premises by the Lessee.

8. **UTILITIES**

Lessee shall arrange and pay all utilities, including without limitation, water, power, heat, garbage, communication and sewer services, to be used by Lessee for the Premises.

9. **MAINTENANCE AND REPAIR**

Lessee, at Lessee's expense, shall keep and maintain the Premises and all improvements thereon in good repair and in a neat and safe condition.

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10. ALTERATIONS

During the term of this Lease, Lessee shall have the right to construct a building and other improvements on the Premises and to make such alterations, improvements, and changes to any building and improvements that may from time to time be on the Premises as Lessee may deem necessary, or to replace any building or improvement with a new one of substantial value. Subject to the Lessee's right to remove that portion of a building and improvements located, or hereinafter placed, on the Premises as stated in the Basic Lease Terms, all repairs, alterations and improvements to or on the Premises shall become the property of Lessor, without payment by Lessor of any compensation therefore, after termination of the Lease. The Premises and all improvements located or placed thereon, shall be deemed the unencumbered property of the Lessor, without payment by Lessor of any compensation to Lessee.

11. LIENS AND CLAIMS

Lessor may post and maintain upon the Premises notices of non-responsibility as provided by law.

12. INDEMNIFICATION

Lessee shall furnish, defend (with counsel satisfactory to Lessor) and indemnify Lessor from and against all liability, cost and expense for loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party hereto) when arising or resulting from use of the Premises by Lessee, its agents, employees, or invitees, or from breach of this Lease by Lessee.

The term "Lessor," as used in this Section 12 and Sections 13, 14 and 15, shall include the successors, assigns and affiliated companies of Lessor, and, if applicable, any other railroad company that may be lawfully operating on Lessor's tracks.

13. LESSEE'S LEASEHOLD INTEREST

Lessee may encumber, by mortgage, deed of trust, or other appropriate instrument, (hereinafter "encumbrance instrument") its leasehold interest and estate on the Premises, together with all buildings and improvements placed by Lessee on the Premises, as security for any indebtedness or obligation of Lessee. The execution of any such encumbrance instrument or the foreclosure thereof or the exercising of any right, power or privilege reserved in such encumbrance instrument shall not be deemed a violation of any terms or conditions of this Lease or an assumption of this Lease by the holder of such encumbrance instrument. The Lessee shall not be released from its liability under this Lease by such encumbrance instrument or the foreclosure, conveyance, or exercise of any rights there under.

If Lessor receives notice from the holder of an encumbrance instrument or from Lessee that the leasehold interest has been encumbered, Lessor shall mail or deliver to the holder, at the address specified in the notice of the encumbrance, duplicate copies of all notices in writing which Lessor may give to Lessee under the provisions of this Lease Agreement. The holder of the encumbrance instrument may cure any default under the Lease by making payments on behalf of Lessee at any time before the rights of Lessee are terminated hereunder. All such payments made or acts performed by such holder shall be as effective as if done and performed by Lessee.

14. COMPLIANCE WITH LAW

Lessee, at Lessee's expense, shall comply with all applicable laws, regulations, rules and orders with respect to the use of the Premises, without limitation, those relating to construction, grading, signage, health, safety, noise, environmental protection, waste disposal, and water and air quality, and shall furnish satisfactory evidence of such compliance upon request of Lessor.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Premises due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean all property affected thereby, to the satisfaction of any governmental body having jurisdiction there over.

Lessee shall indemnify, hold harmless, and defend Lessor from and against all liability, claim, cost or expense (including, without limitation, any fines, penalties, judgments, litigation costs, attorney's fees, and consulting, engineering and construction costs) incurred by Lessor as a result of Lessee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution on or from the Premises caused by Lessee or Lessee's agent, employees or those acting on Lessee's behalf and which occurs during the Lease Term.

15. INSURANCE

While this Lease is in effect, Lessee, at Lessee's expense, shall maintain and furnish Lessor evidence of insurance set forth in Lessor's "General Insurance Requirements" attached hereto as Exhibit "B" and made a part hereof.

16. NOISE AND VIBRATION

Lessee hereby recognizes and acknowledges that railroad tracks are, or shall be, located on, near, behind, or adjacent to the Premises.

Lessee recognizes that the operation of trains over the tracks does and shall produce noise levels, which may be considered objectionable by the employees, agents, tenants, customers, or invitees of Lessee. Therefore, Lessee agrees that no legal action or complaint of any kind whatsoever shall be instituted against Lessor on Lessee's behalf as a result of such noise levels.

17. RESERVATIONS

Lessor hereby excepts and reserves the right, to be exercised by Lessor and by any other who has obtained or may obtain permission or authority from Lessor so to do, to

- (A) operate, maintain, review and, reinstall any and all existing pipe, track (if any), power and communication (including without limitation fiber optic) lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises; and
- (B) construct, operate, maintain, review and relocate such additional facilities of the same character as shall not unreasonably interfere with the Lessee's use of the Premises as specified in section E of the Basic Lease Terms.

Any such construction, operation, reinstallation, relocation or maintenance shall not be done at Lessee's expense unless such work is requested by Lessee or done solely for the benefit of Lessee.

18. MINERAL RIGHTS

None exist in Lessor.

19. SURRENDER OF PREMISES

Upon termination of this Lease, and subject to the terms of Paragraph D of the Basic Lease Terms, Lessee shall leave the Premises in a neat and clean condition satisfactory to Lessor and free of all personal property of Lessee.

20. TERMINATION OF LEASE

Except as otherwise stated herein, termination of this Lease for any reason whatsoever shall not release either party from any liability or obligation hereunder resulting from an event that occurred before termination.

21. DEFAULT

The following events constitute an event of default by Lessee under the terms of this Lease, and establish "cause" sufficient for Lessor to terminate this Lease:

- A. If the Lessee shall fail to pay any installment of the Rent set forth in the Lease when the same shall become due and payable, and such failure shall continue for thirty (30) days after mailing notice thereof by the Lessor to the Lessee; or

- B. If Lessee fails to perform any other term or condition of this Lease on the part of Lessee to be performed, and such failure shall continue for forty-five (45) days after mailing written notice thereof by Lessor; provided, however if any such default is of such nature that it cannot, with due diligence, be cured within a period of forty-five (45) days, the Lessor shall not be entitled to declare the Lease in default, as provided herein, if the Lessee shall have commenced the curing of such default within the period of forty-five (45) days, and so long as the Lessee shall thereafter proceed with all due diligence to complete the curing of such default; or
- C. If Lessee abandons or removes all of its improvements from the Premises. Lessor's right to terminate the Lease may, in addition to other remedies Lessor may have at law or equity.

22. ASSIGNMENT AND SUBLETTING

Lessee shall have the right to assign or encumber Lessee's interest in this Lease or in the Premises, or sublease all or any part of the Premises, under the following terms and conditions;

- A. Lessee may sublet part or all of the Premises. Lessee shall remain liable to Lessor for all payments due hereunder if a sublet shall occur, and
- B. Lessee shall not assign or transfer this Lease or any interest in this Lease without the prior written consent of Lessor and an assignment shall not be deemed consent to any subsequent assignment. Any assignment without consent shall be void and shall, at the option of Lessor, constitute an event of default by Lessee. Lessor's consent to an assignment shall not be unreasonably withheld provided the new lessee provides sufficient financial information and such other information as Lessor may request to demonstrate sufficient financial stability and reliability to perform all Lessee's obligations under the Lease.

23. DISPOSSESSION

If Lessee is lawfully deprived of the possession of all or any part of the Premises by a party other than Lessor, Lessor shall, upon receipt of notice from Lessee setting forth the circumstances, either install Lessee in possession of the Premises or terminate this Lease and refund to Lessee the pro rata amount of any prepaid but unearned rent after receipt of such notice. In addition, Lessor shall be liable to Lessee for any loss, damage or claim resulting from such deprivation of possession.

24. NOTICES

All notices shall be in writing and, shall be deemed to have been given when delivered personally or deposited in the United States Mail, registered and certified, postage prepaid, and

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addressed to the party to whom notice is directed at the address set forth in the Basic Lease Terms. Payments to Lessor shall be made at the address for payments or by electronic transfer to the coordinated provided in the Basic Lease Terms. Either party may change the address for notices or Lessor may change the address or routing instructions for payments by giving the other party notice to that effect.

25. ATTORNEY'S FEES

If either party brings any action against the other to enforce or collect any sum due under this Lease or if Lessor brings an action for unlawful detainer of the Premises, the losing party shall pay the reasonable attorney's fees of the prevailing party in addition to the judgment and court costs.

26. LESSOR'S RIGHT-OF-ENTRY

Lessor shall have the right-of-entry to the Premises at any time it deems appropriate and/or necessary. Lessor shall reserve the right to inspect and identify the Premises.

27. NON-WAIVER

Lessor's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision. Acceptance of Rent or any other sum shall not be a waiver of any preceding breach by Lessee of any provision hereof, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Rent; nor shall such acceptance be a waiver in any way of Lessor's right to terminate this Lease in accordance with Section 19 herein.

28. JOINT AND SEVERAL LIABILITY

If Lessee is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations or Lessee hereunder. If Lessee is a husband and wife, the obligations hereunder shall extend to their sole and separate property as well as their community property.

29. TIME OF ESSENCE

Time is of the essence of each provision of this Lease.

30. ENTIRE AGREEMENT

This Lease sets forth the entire agreement between the parties with respect to the leasing of the Premises and supersedes all prior agreements, communications, and representations, oral and written, express or implied, since the parties intend that this be an integrated agreement. This agreement shall not be modified except by written agreement of the parties. Nothing contained within the text, parts, sections or exhibits of this Lease shall be construed to provide Lessee with any form of right, interest, or title to or in the Premises other than a leasehold interest.

EXHIBIT B

GENERAL INSURANCE REQUIREMENTS ("GIR")

Company shall be furnished evidence of insurance in connection with the foregoing Agreement. Such insurance shall be written by an insurance company having a Best's rating of B+13 or better and licensed to do business in the state where the Premises are located, meeting the requirements stated below in a form satisfactory to Company, for each of the following types of insurance in amounts not less than the amounts herein specified.

The terms "Agreement" as herein used shall refer to the Lease, License, or permit, including supplemental agreements thereto, to which this Exhibit "B" is attached and made a part of; "Company" shall refer to the Lessor, Licensor, or Permitter named in the Agreement; "Lessee," "Licensee," or "Permittee" shall refer to the Lessee, Licensee, or Permittee, (whichever is applicable), named in the Agreement; and "Premises" shall refer to the property described in the Agreement and as shown on the attached print.

Liability Insurance Requirements

1. Comprehensive General Liability Insurance or General Liability Insurance on an occurrence basis shall have a combined single limit of not less than \$1,000,000 per occurrence and shall provide for the following:
 - (a) Such insurance is primary, without right of contribution from other insurance, which may be in effect.
 - (b) Such insurance shall not be invalidated by the acts or omissions of other insureds.
 - (c) Such insurance shall not be materially modifiable or cancelable without thirty (30) days' prior written notice to Company (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to Company). This provision is referred to below as "Notice of Modification or Cancellation."
 - (d) Company shall be named as additional insured.
 - (e) Contractual liability with the deletion of the exclusion for operations within fifty (50) feet of railroad track and deletion of the exclusion of explosion, collapse, or underground hazard, if applicable. (NOTE: For any license or permit involving property within fifty (50) feet of track, the exclusion for operations within fifty (50) feet of track will apply unless eliminated by endorsement).
 - (f) Premises, products/completed operations, and personal injury coverage.
 - (g) Severability-of-interest clause.
 - (h) In the case of commercial general liability insurance, the policy must also provide for aggregate coverage at each location and for the reinstatement of the aggregate in the event the limits of the policy are exhausted.
 - (i) If the proposed use of the Premises involves a hazard, which poses particular risk to the environment, the policy must cover sudden and accidental pollution on a named-peril basis to address the hazard.

2. **Workers Compensation Insurance shall have limits not less than those required by statute, shall cover all persons employed by Lessee, Licensee, or Permittee, as the case may be, in the conduct of its operations on the Premises and shall provide for the following:**
 - (a) **Waiver of subrogation against Company**
 - (b) **Notice of Modification or cancellation**
 - (c) **All states endorsements**
 - (d) **Coverage for Longshore and Harbor Workers Act, if applicable**
3. **Employers Liability Insurance shall have a limit of not less than \$1,000,000 and shall be endorsed to provide for (a) Notice of Modification or Cancellation, and (b) waiver of subrogation against Company.**
4. **Umbrella or Excess Liability Insurance shall provide that if the underlying aggregate is exhausted, the excess coverage shall drop down as primary insurance, and shall provide for Notice of Modification or Cancellation.**

A properly completed certificate of insurance shall be furnished to Company for approval.

EXHIBIT A

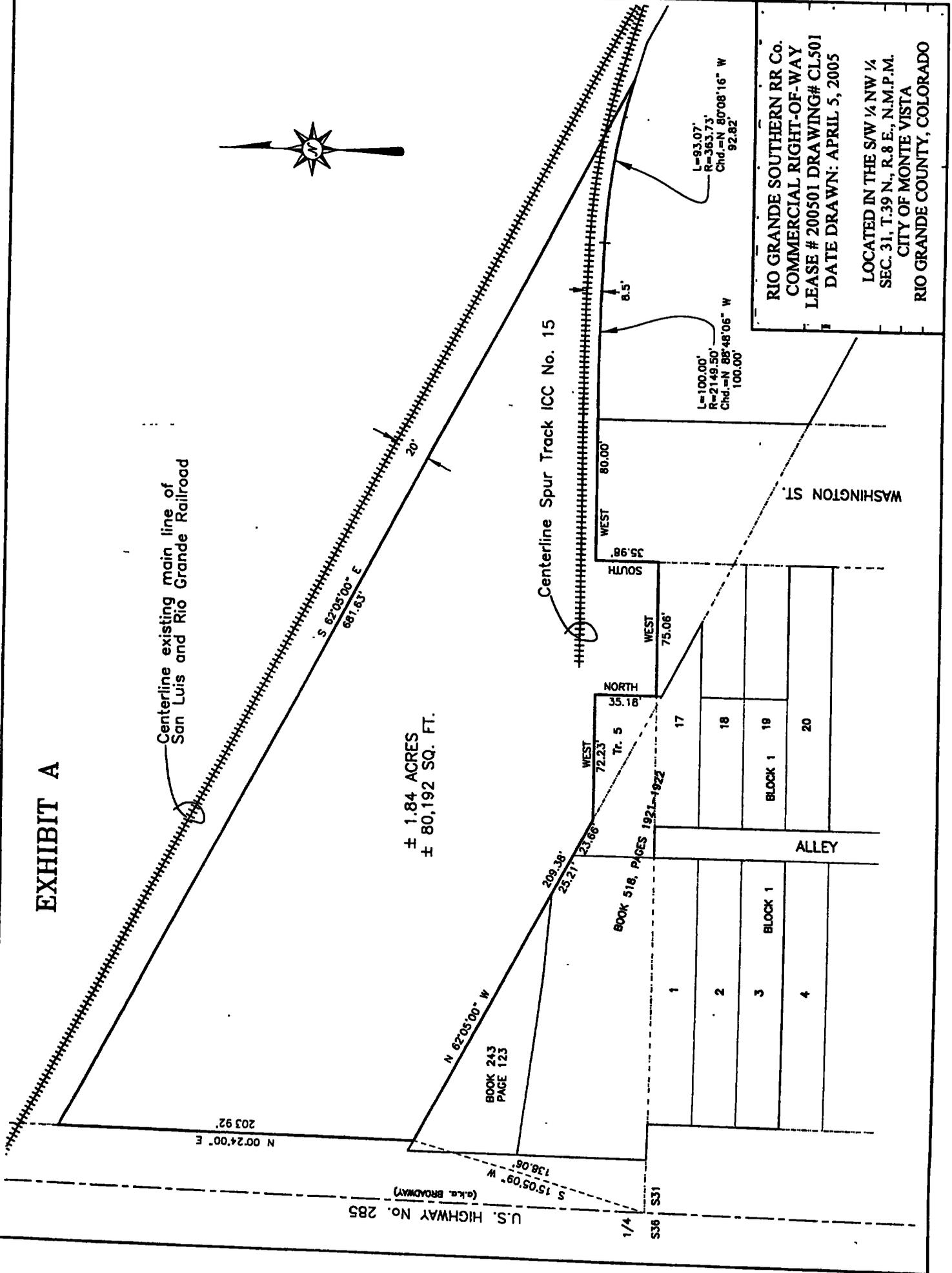
Centerline existing main line of San Luis and Rio Grande Railroad

± 1.84 ACRES
± 80,192 SQ. FT.

Centerline Spur Track ICC No. 15

RIO GRANDE SOUTHERN RR Co.
COMMERCIAL RIGHT-OF-WAY
LEASE # 200501 DRAWING# CL501
DATE DRAWN: APRIL 5, 2005

LOCATED IN THE S/W ¼ NW ¼
SEC. 31, T.39 N., R.8 E., N.M.P.M.
CITY OF MONTE VISTA
RIO GRANDE COUNTY, COLORADO



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203.92

N 82°05'00" W
BOOK 243
PAGE 123

U.S. HIGHWAY No. 285
(a.k.a. BROADWAY)
S 15°05'09" W
138.06'

209.38'
25.27' 23.66'

WEST 72.23'
NORTH 35.18'
WEST 75.06'

BOOK 518, PAGES 1921-1922
Tr. 5

1	17
2	18
3	19
4	20

BLOCK 1

WEST 80.00'
SOUTH 35.98'

L=100.00'
R=2149.50'
Chd.=N 88°48'06" W
100.00'

L=93.07'
R=363.73'
Chd.=N 80°08'16" W
92.82'

8.5'

WASHINGTON ST.

ALLEY

1/4
S36 S31