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June 26, 2014

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

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ENTERED
Office of Proceedings
June 26, 2014
Part of
Public Record

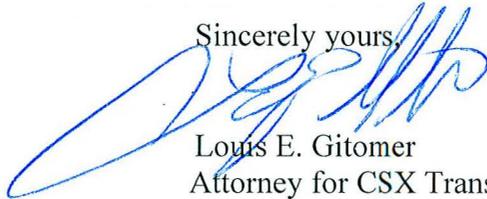
**Re: Docket No. FD 35817, JGB Properties, LLC-Petition for Declaratory
Order**

Dear Ms. Brown:

CSX Transportation, Inc. is efileing a Response to the filing made by JGB
Properties, LLC on June 17, 2014.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35817

JGB PROPERTIES, LLC—PETITION FOR DECLARATORY ORDER

CSX TRANSPORTATION, INC. RESPONSE TO JGB PROPERTIES, LLC REPLY

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Attorneys for: CSX TRANSPORTATION, INC.

Dated: June 26, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35817

JGB PROPERTIES, LLC—PETITION FOR DECLARATORY ORDER

CSX TRANSPORTATION, INC. RESPONSE TO JGB PROPERTIES, LLC REPLY

CSX Transportation, Inc. (“CSXT”) responds to the filing made by JGB Properties, LLC (“JGB”) on June 17, 2014 (“Reply-to-Reply”). CSXT is responding in order to provide the Surface Transportation Board (the “Board”) with a more complete record on which to deny JGB’s request for a declaratory order. The misstatements and misreading of Board precedent in the Reply-to-Reply also provide the Board with a proper basis to deny JGB’s request to open a declaratory order proceeding.

JGB continues to ignore the facts underlying this proceeding, where tracks were properly built over a parcel pursuant to an easement, JGB bought the parcel, then without any permission removed the tracks, and now JGB contends that reinstating rail service is improper. Ignoring these basic facts, JGB asserts that “it is entirely appropriate for the Board to consider and determine the status of the trackage that **crossed** JGB’s property using the easement for purposes of determining whether the state action mandating such construction (or, as here, reconstruction) and/or related monetary damages, or declaring the rights to use and operate a rail line, is permissible.” Reply to Reply at 5 (emphasis added). JGB is wrong. But for JGB’s illegal actions in removing the track, this issue would not have been before the state court.

BACKGROUND

As more fully discussed in CSXT's Reply dated May 30, 2014,¹ Woodard Industrial Corporation ("Woodard") and D. H. Overmyer Company, Inc. ("Overmyer") entered into two agreements whereby Woodard granted Overmyer easements for railroad rights-of-way (collectively "Easements") over Woodard's property at 4560 Steelway Boulevard in order to provide access for railroad service to two other parcels of land owned by Overmyer, the Northern Parcel and the Southern Parcel. The Easements are the dominant estate over Woodard's servient estate. To the best of CSXT's knowledge, the tracks were put in place in 1966 and over the years, service over the tracks was provided by the New York Central Railroad ("NYC"), the Penn Central, Conrail, and CSXT.

JGB acquired the servient estate in 2005. At the time JGB purchased the Property, there were two sets of tracks on the Property, one serving the Southern Parcel/Ironwood's property and one serving the Northern Parcel/Steelway's property. Both sets of tracks connected with CSXT's St. Lawrence Subdivision.² Both sets of tracks were part of the dominant estates, granted by the Easements. JGB, without the approval or consent of Ironwood or CSXT, removed the track that served the Southern Parcel from the Property. While JGB asserts that the track is a line of railroad, it did not seek Board authority in order to lawfully remove the track from its Property, the servient estate. Ironwood wants to replace the track connecting the Southern Parcel to CSXT so that CSXT can provide rail service. JGB continues to resist Ironwood's efforts to use the dominant estate created by the Easement for the purpose intended by the Easement – construction of an active spur track.

¹ See pages 4-8.

² The St. Lawrence Subdivision runs between Syracuse, NY and Montreal, Quebec.

To the best of CSXT's knowledge, Overmyer and Ironwood never held themselves out, or intended to hold themselves out, to provide common carrier service, they owned no equipment, published no tariffs, and did not pick up rail traffic from shippers or deliver rail traffic to shippers. They were only a landlord providing track for their customers to use with an existing carrier. These facts distinguish this proceeding from *Effingham R.R.—Petition for Declaratory Order—Const. at Effingham, IL*, 2 S.T.B. 606.

ARGUMENT

The Board does not need to determine the status of the track to determine that the state court action requiring replacement of the track or monetary damages for the track's removal is permissible. All of the parties agree that the track falls within the Board's jurisdiction. And all of the parties agree that JGB removed the track from the easement, without the permission of Ironwood, LLC the owner of the easement and dominant estate. Therefore, JGB's removal of the track is a violation of the law.³

Regardless of the classification of the track, Board authority is not required to replace it. Railroads and private track owners replace lines of railroad and excepted track all of the time without seeking Board authority. Ironwood simply wants to replace track that has been removed through no fault of its own, similar to a railroad replacing track that has been removed by a natural disaster like Hurricane Sandy or Katrina.

JGB is asking the Board to approve of its unlawful removal of track from the Easement by granting an adverse abandonment in this proceeding. As CSXT has stated in its initial Reply,

³ If the track is part of a line of railroad, and CSXT contends that it is not, JGB unlawfully removed the track without seeking authority from the Board under 49 U.S.C. 10903. "Neither a public nor a private entity may interfere with a carrier's ability to fulfill its common carrier obligation by severing a carrier's line without Board authorization." *Maumee & Western Railroad Company and RMW Ventures LLC—Petition for Declaratory Order—CSX Transportation, Inc. Crossing Rights at Defiance, OH*, STB Finance Docket No. 34527 (STB served May 2007) slip op at 6.

an adverse abandonment is inappropriate in a declaratory order proceeding.

In its attempt to clarify the record, JGB has muddled the law. JGB wrongly contorts the decision in *Modern Handcraft, Inc.—Abandonment*, 363 I.C.C. 969 (1981) (“*Modern Handcraft*”), to support its position that the Board should grant an adverse abandonment in this declaratory order proceeding, when in reality *Modern Handcraft* specifically supports the opposite finding. The request for an adverse abandonment in *Modern Handcraft* was filed in accord with the abandonment statute and states in the first sentence of the decision that “[t]his decision deals with two related applications filed by noncarriers seeking a Commission determination that the public convenience and necessity permits or requires abandonment of a rail line despite the opposition of the rail carrier owning the line.” (emphasis added). *Id.* The Commission addressed the adverse abandonment request because it was filed as an application for abandonment, not a declaratory order.

In abandonment proceedings,⁴ there are procedural requirements that are in place to protect shippers, employees, and railroads. See 49 U.S.C. §§10903-10905. The Board has enumerated and detailed these requirements in its Abandonment Regulations at 49 CFR Part 1152. These requirements include: providing advanced notice of intent to abandon (49 C.F. R. 1152.20); filing environmental and historic reports (49 C.F.R. 1152.22(f), 49 C.F.R. 1105.7, 49 C.F.R. 1105.8); and identifying the rural and community impact (49 C.F.R. 1122 (e)), among others. While these rules may be modified, they are not ignored in adverse abandonment proceedings.⁵ Under longstanding Board and Commission precedent, like that in *Modern*

⁴ In this proceeding, the track at issue is not a line of railroad, it is excepted track under Section 10906. Therefore, the Board is explicitly prohibited from acting on an abandonment request by Section 10906. Even if the Board finds that the track at issue is a line of railroad, and CSXT argues that it is not, a declaratory order proceeding does not provide the same protections or opportunities to comment that are provided by an abandonment proceeding.

⁵ See *Canadian National Railway Company—Adverse Discontinuance—Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME*, STB Docket No. AB-297 (Sub-No. 3) (STB served Sept. 25, 2002), *New York City Economic Development Corporation—Adverse Abandonment—New York*

Handcraft which JGB relies on for the wrong conclusion, the Board should not grant an adverse abandonment here, because JGB has not complied with any of the statutory requirements or rules. In addition, JGB should not be rewarded for its unlawful behavior.

The standard governing the Board's decision on an adverse abandonment is whether the present or future public convenience and necessity ("PN&C") require or permit the proposed abandonment. *See Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment—in Mineral County, CO*, STB Docket No. AB-1014 (STB served April 27, 2009). In the adverse abandonment context, the Board considers whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.

CSXT has an agreement in place with Ironwood to provide Ironwood with rail service once the tracks removed by JBG have been replaced (See Exhibit A). Ironwood wants to replace the track wrongfully removed by JGB. JGB does not want Ironwood to do so. While JGB has stated "here...the underlying property is poised to be utilized and developed for productive (non-rail) use," it does not state what that non-rail use might be. Without knowledge of what that use may be there is no way to balance it against the present and future public need for rail service. Ironwood, representing shippers and CSXT as the carrier, agree that there is a potential need for rail service. JBG has provided no evidence of any interest to be weighed against continued rail service, which the Board consistently supports. *See Western Stock Show Assn.—Aban. Exemption-in Denver Co.*, 1 S.T.B. 113, 131 (1996) (there is a statutory duty to preserve and promote continued rail service"). Despite JGB's assertion to the contrary, the Board's policy is to retain rail service where there is a need.

In addition, in footnote 23, JGB misconstrues CSXT's argument regarding expansion of service. CSXT merely explained that the Board recognizes that track constructed as excepted

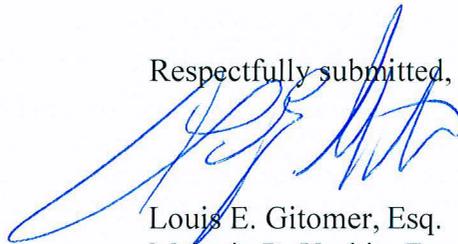
Cross Harbor Railroad, Inc. STB Docket No. AB-596 (STB served Dec. 3, 2001)

track may evolve into a line of railroad over time through use. *See Texas & Pac. Ry. V. Gulf, Etc., Ry*, 270 U.S. 266 (1926). Although CSXT does not believe that the track was at any time or has evolved into a line of railroad, such an evolution makes JGB's argument that the track was unlawfully constructed without Commission authority moot. The same analysis applies to CSXT's continued operation of the track.

CONCLUSION

CSXT respectfully requests that the Board deny JGB's request for a declaratory order and find that a certificate of public convenience and necessity or exemption is not required to operate over the tracks, civil penalties are not appropriate, and the state law actions are not preempted under ICCTA. CSXT also requests that the Board deny the requests for a cease and desist order and for an adverse abandonment.

Respectfully submitted,



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(202) 466-6532

Attorneys for: CSX TRANSPORTATION, INC.

Dated: June 26, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Response in Docket No. FD 35817, *JGB*

Properties, LLC-Petition for Declaratory Order to be served electronically on:

Peter A. Pohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036-3003

Karen A. Booth
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, DC 20036



Louis E. Gitomer
June 26, 2014

EXHIBIT A – SIDETRACK AGREEMENT

PRIVATE SIDETRACK AGREEMENT

THIS AGREEMENT, Made and effective as of February 29, 2012, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Railroad," and IRONWOOD, L.L.C., a limited liability company of the State of New York, whose mailing address is 4851 Keller Springs Road, Suite 222, Addison, Texas 75001, hereinafter called "Industry," WITNESSETH:

1. PURPOSE:

1.1 The purpose of this Agreement is to detail the provisions of the maintenance and use of Private Sidetrack Nos. 232, 766 and a portion of Track 764 for the tender and receipt of rail freight traffic for the account of Industry. The private sidetracks, which consist of the track structure (rails, ties and fastenings), ballast, grading, drainage structure, turnout, bumping post and other appurtenances (hereinafter, collectively, the "Sidetrack"), are located at or near Liverpool, in the County of Onondaga, State of New York, as shown on attached Drawing No. C120001, dated January 24, 2012 (hereinafter the "Plan").

2. OWNERSHIP AND CONSTRUCTION:

2.1 The Sidetrack, as shown on the Plan, have been constructed, excepting that portion passing over property known to be owned by JGB Property, LLC (hereinafter "JGB") which shall be constructed in accordance with the Stipulation and Order known as Index No. 2009-5776, RJI No. 33-09-3858, marked as Exhibit A and attached hereto. Railroad owns that portion of Track No. 230 from Point of Switch (hereinafter "P.S.") in Railroad's connecting track No. 228 at Milepost QM-6.58, Track Station 347+21 = 0+00, to Track Station 1+70 (hereinafter called "Railroad's Segment"). Industry owns Track No. 232 from Track Station 1+21 to Track Station 12+90, the first 120 feet of Track 764 and all of Track No. 766 (hereinafter, collectively, called "Industry's Segment").

3. GOVERNMENTAL REQUIREMENT(S):

3.1 Industry agrees, at its sole expense, to comply with all applicable laws and regulations and to obtain all necessary governmental permits, authorizations, orders and approvals (hereinafter collectively "Governmental Requirement(s)") necessary for the maintenance and use of the Sidetrack. Industry agrees to assume the cost of Railroad's defense and to otherwise indemnify and hold Railroad harmless from Industry's failure to comply with or to obtain the Governmental Requirement(s).

4. MAINTENANCE:

4.1 Railroad and Industry, at their own expense, shall inspect, maintain and renew their respective Segments of the Sidetrack: (A) in accordance with the Federal Railroad Administration's Track Safety Standards, (49 C.F.R. Part 213); (B) Railroad Worker Safety Regulations (49 C.F.R. Part 214); and (C) in a safe condition, consistent with the operating circumstances and amount of use. Prior to each entry of Industry upon Industry's Segment of the

Sidetrack for maintenance or renew purposes, Industry shall contact local representatives of Railroad's Operating and Engineering Departments and obtain the agreement from those representatives for the dates and amount of time that Industry's Segment will be out of service for such maintenance or renewal purposes. Additionally, both Industry and Railroad agree to keep their respective Segments free from debris, weeds, potholes, ice or snow, poles, temporary or permanent structures, other obstructions (Example: parked vehicles), and/or excavations. Railroad shall have the right, but not the duty, to inspect Industry's Segment.

5. CLEARANCES:

5.1 Industry agrees to provide and maintain: (A) the lateral clearance requirements (at least eight feet, six inches [8'6"] from either side of the centerline of the Sidetrack, as increased for flat curves, superelevated curves and approaches thereto); and (B) the vertical clearance requirements (at least twenty-two feet [22'0"] above the top of the rail), in accordance with the provisions of the Railroad's document entitled "Standard Guidelines and Specifications for the Design and Construction of Private Sidetracks," as amended, supplemented or superseded (hereinafter the "Specifications"), for the entire length of the Sidetrack. Any clearance not in compliance with the foregoing is a "Close" clearance. Each party further agrees to provide and maintain increased lateral and/or vertical clearances, to the extent required by applicable statutes or regulations. Lateral and vertical clearances for power poles and lines must also comply with the National Electric Safety Code (NESC).

5.2 Notwithstanding the foregoing, Industry may maintain Close clearances if: (A) Industry obtains a waiver from any conflicting Governmental Requirement(s); and (B) plans for such Close clearances have been provided to Railroad and are not rejected within sixty (60) days after the date of receipt. Industry agrees to install, maintain and replace (at its sole expense) any warning signs or lighting or make other adjustments regarding such Close clearances as may be required by Railroad or any Governmental Requirement(s).

5.3 Any gate installed by Industry across the Sidetrack must provide an appropriate clearance, as provided in the Specifications, and must be equipped with a double-end bar hasp so that Railroad may install its own lock. If Railroad is unable to open the gate to deliver or retrieve railcars, Industry shall reimburse Railroad for its costs of making an additional trip to the Sidetrack.

6. RIGHT-OF-WAY:

6.1 Industry is responsible for obtaining all necessary right-of-way (through ownership, easement, permit or otherwise), for its Segment of the Sidetrack that is not located on Railroad's right-of-way. The width of such right-of-way must be, at a minimum, sufficient to provide for the Sidetrack and clearances, cuts, fills, drainage ditches, walkways or roads, as determined by Railroad.

6.2 Industry shall not construct or allow the construction of any road (public or private), gate, tunnel, bridge, culvert, pit, gas-line, pipe or similar items on, over, under or along the entire Sidetrack or right-of-way without the written permission of Railroad. If Railroad's

permission is granted, Industry understands that a separate agreement might be necessary and that Industry shall be responsible for the construction, maintenance, repair and removal costs of the foregoing items and ancillary structures, unless otherwise stated therein.

6.3 Industry shall not block or permit the blockage of the sight view area of any road crossing over the Sidetrack.

7. RAIL SERVICE:

7.1 Railroad agrees, pursuant to the provisions of this Agreement, its tariffs, circulars, rules and rail transportation contracts, to operate over the Sidetrack in the delivery, placement and removal of railcars consigned to or ordered by Industry, at such times established by Railroad. Railroad may also use Industry's Segment of the Sidetrack for its own general or emergency operating purposes, so long as such purposes do not materially affect the use of the Sidetrack for rail service to Industry. Industry agrees to abide by all applicable provisions of this Agreement and Tariffs CSXT 8100/8200 Series, including, without limitation, those addressing responsibility for and payment of demurrage and other accessorial charges. Railroad reserves the right to cancel the Agreement for any breach of such provisions.

7.2 Industry shall not permit the use of the Sidetrack by or for the account of third parties without the written consent of Railroad. If such use occurs without such consent, Industry assumes the same responsibilities, as stated in this Agreement for such use as if for its own account. Railroad shall not be required to provide rail service to such third parties.

7.3 Railroad shall be deemed to have delivered any railcar consigned to or ordered by Industry when such railcar has been placed on Industry's Segment, so as to allow access by Industry, and Railroad's locomotive has uncoupled from the railcar. At that time, Railroad shall be relieved of all liability as a common or contract carrier or as a bailee, and possession of the railcar and its contents shall be transferred to Industry. Similarly, any obligation of Railroad as a common or contract carrier or as a bailee shall not begin until it has coupled its locomotive to the loaded railcar and departed the Sidetrack.

7.4 Industry is responsible for all railcars and their contents while in Industry's possession and assumes all responsibility for payment of all damage to any railcar and its contents, including re-railing if necessary, that may occur during that time, even if caused by third parties.

7.5 If Railroad is unable to deliver a railcar on the Sidetrack for loading or unloading due to the acts of Industry or any third party, then such railcar will be considered as constructively placed for demurrage purposes at the time of attempted delivery.

7.6 Industry acknowledges that the curvature in the Sidetrack may be too excessive (> 12 Degrees) to allow operation of railroad equipment and railcars of certain size and/or characteristics thereon. Industry, therefore, assumes all risks of loss, and all cost(s) of delay or nondelivery of any consignment, and agrees to make no claim against Railroad if Railroad is unable to operate any particular equipment or rail cars on Sidetrack because of said

curvature. Industry also recognizes that such degree of curvature may enhance the possibility or likelihood of derailment, and Industry also assumes all risk of loss, cost(s), damages or expenses resulting from such derailment.

8. HAZARDOUS MATERIALS:

8.1 Sections 8.3 and 8.4 herein shall apply when the Sidetrack is used for the delivery or tender of any dangerous, flammable, explosive or hazardous commodity (hereinafter "Hazardous Materials"), as determined by the U.S. Department of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, et seq.) and the Hazardous Materials Regulations (49 C.F.R. Parts 170-179) issued thereunder, as amended from time to time.

8.2 Excepting railcar shipments, no Hazardous Materials shall be placed: (A) on the Sidetrack; (B) within the clearance requirements established herein; or (C) within one hundred (100) feet of Railroad's connecting mainline track.

8.3 Industry shall comply with all recommended practices of the Association of American Railroads and all Governmental Requirement(s) regarding the loading, unloading, possession, transfer and/or storage of Hazardous Materials, including but not limited to the installation and use of pollution abatement and control structures and other equipment that is prudent or required under such practices and/or Governmental Requirement(s).

8.4 In the event of a Hazardous Materials leak, spill, or release, Industry shall immediately notify the appropriate Governmental Response Center and Railroad's Operations Center and, at its sole expense, take all appropriate steps to clean, neutralize and remove the spill.

9. ALTERATIONS:

9.1 Industry shall supply Railroad with construction plans of any addition, deletion or modification (hereinafter jointly the "Alterations") to Industry's Segment of the Sidetrack, and obtain Railroad's written consent (which will not be unreasonably withheld) prior to making any Alterations. The Alterations are also subject to the aforementioned Specifications.

10. SUSPENSION AND TERMINATION:

10.1 Railroad may temporarily suspend its operations over the Sidetrack if, in its sole opinion, the condition of Industry's Segment of the Sidetrack is unsafe or if such operations would interfere with its common carrier duties. Railroad may impose the suspension orally, but shall also provide a written notice to Industry regarding such temporary suspension.

10.2 Either party may terminate this Agreement upon the default of the other party. The party claiming a default must provide the other party with notice. If the default is not corrected within thirty (30) days of the date of such notice, the party claiming default may

terminate this Agreement upon written notice. Use of the Sidetrack by Railroad during any notice period shall not be considered as a waiver of any default claimed by it.

10.3 Reserved

10.4 This Agreement will terminate, without the necessity of further notice, upon the abandonment of Railroad's connecting mainline track.

10.5 Either party may terminate this Agreement by extending thirty (30) days' notice to the other party.

10.6 Upon the termination of this Agreement, each party may remove any portion of its Segment that rests upon the right-of-way of the other party. If not removed within sixty (60) days after such termination, title to that remaining Segment will pass to the other party, who may then remove it and restore the underlying right-of-way at the expense of the prior owner.

10.7 Railroad provides transportation service to Industry over the Sidetrack. Railroad may make changes in its signal and switching technology in response to changes in regulation. Railroad may invoice, and Industry shall pay, amounts Railroad deems necessary, in its reasonable discretion, for the installation of switch, signal and other upgrades associated with the Sidetrack which Railroad deems appropriate to meet Federal, State or local laws or regulations. Railroad will have the right to discontinue shipments over the Sidetrack or terminate this Agreement upon thirty (30) days advance written notice if Industry does not pay any amount invoiced by Railroad for upgrades pursuant to this paragraph.

11. LIABILITY AND INSURANCE:

11.1 Except as otherwise provided herein, any and all damages, claims, demands, causes of action, suits, expenses, judgments and interest whatsoever (hereinafter collectively "Losses") in connection with injury to or death of any person or persons whomsoever (including employees, invitees and agents of the parties hereto) or loss of or damage to any property whatsoever arising out of or resulting directly or indirectly from the construction, maintenance, repair, use, alteration, operation or removal of the Sidetrack shall be divided between the Railroad and Industry as follows:

(A) Each party shall indemnify and hold the other party harmless from all Losses arising from the indemnifying party's willful or gross negligence, its sole negligence and/or its joint or concurring negligence with a third party.

(B) The parties agree to jointly defend and bear equally between them all Losses arising from their joint or concurring negligence.

(C) Notwithstanding the foregoing, and irrespective of the sole, joint or concurring negligence of Railroad, Industry acknowledges that it is solely responsible for and agrees to indemnify and save Railroad harmless from all Losses arising from: (i) the failure of Industry to properly maintain its Segment of the Sidetrack; (ii) the construction, alteration or

removal of the Sidetrack by Industry; (iii) the presence of a Close clearance on Industry's Segment; or (iv) the explosion, spillage and/or presence of Hazardous Materials on its properties, facility or on Industry's Segment, but only when such Losses would not have occurred but for the dangerous nature of the Hazardous Materials.

(D) Railroad may be the lessee/operator of the mainline track that connects with the Sidetrack. In that event, the indemnities from Industry to Railroad under this section shall also include the lessor/owner of such track.

11.2 Industry at its sole cost and expense, must procure and maintain in effect during the continuance of this Agreement, a policy of Commercial General Liability Insurance (CGL), naming Railroad, and/or its designee, as additional insured and covering liability assumed by Industry under this Agreement. A coverage limit of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) Combined Single Limit per occurrence for bodily injury liability and property damage liability is required to protect Industry's assumed obligations. The evidence of insurance coverage shall be provided to Railroad and endorsed to provide for thirty (30) days' notice to Railroad prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

If said CGL insurance policy(ies) do(es) not automatically cover Industry's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Industry. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Industry shall arrange for adequate time for reporting losses. Failure to do so shall be at Industry's sole risk.

Securing such insurance shall not limit Industry's liability under this Agreement, but shall be security therefor.

11.3 RESERVED

11.4 Specifically to cover construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Industry shall: (a) notify Railroad; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

At Railroad's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Industry may pay Railroad, at Railroad's current rate at time of request, the cost of adding this Agreement, or additional construction and/or demolition activities, to Railroad's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Railroad's discretion and may not be available under all circumstances.

12. ASSIGNMENT:

12.1 This Agreement may not be assigned without the written consent of either party, but shall be assumed by their successors through merger or acquisition. Industry may sell or assign its Segment of the Sidetrack and right-of-way upon notice to Railroad, but such transactions shall not affect this Agreement or carry any rights regarding any rail service described in this Agreement.

12.2 Notwithstanding the provisions of Sections 12.1 or 10.4, Railroad may assign this Agreement to any new owner or operator of its connecting mainline track.

13. MISCELLANEOUS:

13.1 Each provision of this Agreement is severable from the other provisions. If any such provision is ruled to be void or unenforceable, the remaining provisions will continue in full force and effect.

13.2 Other documents may also describe and cover a portion of the rail service and other provisions of this Agreement. Should any conflict arise between such other documents and this Agreement, Railroad may designate which provision will control.

13.3 The section captions in this Agreement are for the convenience of the parties and are not substantive in nature. All words contained in this Agreement shall be construed in accordance with their customary usage in the railroad industry.

13.4 The failure of either party to enforce any provision of this Agreement or to prosecute any default will not be considered as a waiver of that provision or a bar to prosecution of that default unless so indicated in writing.

13.5 All notices shall be in writing, shall be sent to the address contained in the introductory section and shall be considered as delivered: (A) on the next business day, if sent by telex, telecopy, telegram or overnight carrier; or (B) five (5) days after the postmark, if sent by first class mail.

13.6 The late payment of any charge due Railroad pursuant to this Agreement will result in the assessment of Railroad's then standard late fee and interest charges at the rate of eighteen percent (18%) per annum, or at the highest lawful rate, until payment in full is received.

13.7 Industry agrees to reimburse Railroad for all reasonable costs (including attorney's fees) incurred by Railroad for collecting any amount due under this Agreement.

14. ENTIRE UNDERSTANDING:

14.1 This Agreement constitutes the entire understanding of the parties, is to be construed under the laws of the state in which the Sidetrack is located, may not be modified without the written consent of both parties, and has been executed by their duly authorized officials.

Witness for Railroad:

Richard Powers

CSX TRANSPORTATION, INC.

By: Bobbie League

Print/Type Name: Bobbie League

Director

Print/Type Title: Corridor Development

Witness for Industry:

Richard J. Berry
RICHARD J. BERRY

IRONWOOD, L.L.C.

By: Eliot D. Litoff

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Industry to the terms and conditions of this Agreement.

Print/Type Name: Eliot D. Litoff

President of Steelway Realty
Corporation
Managing Member

