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February 26, 2004



Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

VIA FED EX

**RE: STB Docket No. AB-55 (Sub-No. 568X)
CSX Transportation, Inc. -- Abandonment
Exemption in Franklin County, Pennsylvania**

Dear Mr. Williams:

We represent Petitioners Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox and New Franklin Properties, LLC.

Enclosed herewith please find an original and 11 copies of the Petitioners' Reply to the Affidavit Submitted on Behalf of the Borough of Chambersburg.

Please file the original and 10 copies, and stamp and return one of the copies to us in the enclosed self-addressed, stamped envelope.

If you need anything further from us to complete the filing of the Response, then please do not hesitate to contact me. Thank you for your courtesy and assistance in this matter.

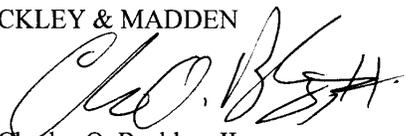
BECKLEY & MADDEN

Vernon A. Williams, Secretary
February 26, 2004
Page 2

Very truly yours,

BECKLEY & MADDEN

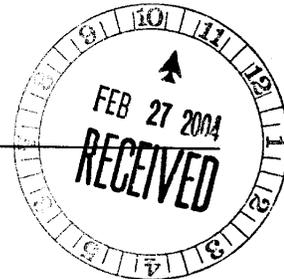
By:


Charles O. Beckley, II

cc: Natalie S. Rosenberg, Esquire (via Fed Ex)
Martha B. Walker, Esquire (via Fed Ex)
Thomas J. Finucane, Esquire (via Fed Ex)
Mr. Frederick Armstrong Fox

210176

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

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**REPLY OF PETITIONERS FREDERICK A. FOX, KAYE A. FOX,
FREDERICK ARMSTRONG FOX AND NEW FRANKLIN PROPERTIES,
LLC, TO THE AFFIDAVIT SUBMITTED ON BEHALF OF THE
BOROUGH OF CHAMBERSBURG, FRANKLIN COUNTY,
PENNSYLVANIA**

DATED: February 26, 2004

Thomas A. Beckley, Esquire
Charles O. Beckley, II, Esquire

BECKLEY & MADDEN
212 North Third Street
P. O. Box 11998
Harrisburg, PA 17108-1998
(717) 233-7691

Attorneys for Petitioners

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

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BOROUGH OF CHAMBERSBURG, FRANKLIN COUNTY,
PENNSYLVANIA**

AND NOW come the Petitioners, Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox (hereinafter referred to collectively as "the Foxes") and New Franklin Properties, LLC ("NFP"), who, by and through their attorneys, Thomas A. Beckley, Esquire, Charles O. Beckley, II, Esquire, and Beckley & Madden, of Counsel, file this Reply to the Affidavit Submitted on Behalf of the Borough of Chambersburg, stating as follows:

1. Admitted.

2. Denied as stated. It is admitted that the Board served a Decision on March 9, 1999, that relates to a section of CSXT's rail line in the Borough of Chambersburg , Franklin County, Pennsylvania, which section of line consists of three distinct segments, as found by the Board in its Decision served on January 20, 2004.

3. Admitted.

4. Paragraph Four of the Affidavit states the circumstances under which the Borough would withdraw its opposition to the Foxes' and NFP's Petition, and requires no response. By way of further answer, the Foxes and NFP wish to make clear that they are aware of the existence of the Main Street crossing, and are fully prepared to assume ownership of and responsibility for that crossing.

5. Petitioners have no knowledge concerning the current status of Segment 3 of CSXT's Line.

5. [sic] [The Borough's Affidavit contains two Paragraph 5's] Denied as stated. Segment 2 of CSXT's Line does lie between Segment 1 and Segment 3, and the Foxes did submit an Offer of Financial Assistance to purchase Segment 2 on March 12, 1999, for the price of \$54,572.00, which offer CSXT accepted. While the sale of Segment 2 to the Foxes has not yet been completed, Gaumer's Chassis Engineering has paid a nonrefundable deposit to CSXT in the amount of \$13,500.00. *See Affidavit of Frederick Armstrong Fox*, ¶8. The Foxes' Black Avenue properties are adjacent to Segment 2, as is the land owned by Chambersburg Little Leagues, Inc.,

which Frederick Armstrong Fox has a right of first refusal to purchase. *Id.*, ¶¶7-8, and Ex. A and B. While other individuals or companies own land that is adjacent to Segment 2, no individual or company other than the Foxes has ever expressed an interest in acquiring Segment 2 or a need for rail service. At present, the Foxes have no plans to sell any of their properties. After they consolidate their businesses at the former Chambersburg Engineering Company (“CECO”) facility, they plan to market their properties to potential tenants using an industrial/commercial park concept. *Id.*, ¶¶34-37.

6. Denied as stated. New Franklin Properties purchased the former CECO facility.

7. Denied. To the contrary, by itself Segment 1 can serve only the CECO facility. Segment 1 does not extend across Main Street to the Foxes’ Black Avenue properties. The Black Avenue properties are served by Segment 2, which is linked to CSXT’s railroad, and thereby to the national rail network, by Segment 1.

8. Denied as stated. The Commonwealth of Pennsylvania, Consolidated Rail Corporation, Norfolk Southern Railway Corporation, CSX Transportation, Inc., and the Borough of Chambersburg entered into a Reimbursement and Cooperation Agreement (“Cooperation Agreement”), a copy of which is attached as Exhibit B to the Borough’s Reply to the Foxes’ Petition to Amend their OFA. From the text of Paragraph Eight of Mr. Oyer’s Affidavit, it appears that the Borough no longer maintains that the Cooperation Agreement required CSXT to

sell Segment 1 to the Borough.¹ Rather, Mr. Oyer indicates that “[t]he Borough made a written offer to purchase [Segment 1] which the railroad declined to act on the offer [sic] while the Fox OFA requests related to Segment 1 were pending before the Board.” The Borough forwarded its offer to purchase Segment 1 to CSXT on September 11, 2003.² This was almost one month after the Foxes filed their Petition to Amend their OFA with the Board on August 15, 2003. On September 17, 2003, in response to a motion filed by the Foxes, the Board served a Decision which directed CSXT not to alter the status of Segment 1 while the Foxes’ petition remained pending before the Board.

Moreover, upon information and belief, the Borough had the draft purchase and sale agreement that it forwarded to CSXT on September 11, 2003, in its possession for almost two years. On May 1, 2003, Counsel for the Borough provided to the Foxes and their Counsel a draft Purchase and Sale Agreement that CSXT had sent to the Borough. The draft Agreement is “dated this _____ day of November, 2001....” The 2001 draft Agreement appears to be identical to the draft Agreement that the Borough forwarded to CSXT on September 11, 2003, except that on the Borough’s draft Agreement the month of November has been “whited out,” and the “1” in “2001” has been “whited out” and replaced with a handwritten “3.” (A copy of the 2001 draft Purchase and Sale Agreement is attached hereto as Exhibit A.)

It seems obvious that, when the Borough learned that the Foxes had sought permission from the Board to purchase Segment 1 of CSXT’s Line through the OFA process, the Borough hurriedly modified the draft Agreement that it had received from CSXT almost two years earlier, and sent it back to CSXT, in an effort to render the Foxes’ petition moot.

¹ The Cooperation Agreement contained no such requirement. Petitioners hereby incorporate herein by reference as though set forth in full Paragraph 20 of NFP’s Petition to Intervene in this proceeding. Paragraph 20 appears at pages 8-12 of NFP’s Petition.

² A copy of the Borough’s purchase offer, along with a transmittal letter, is attached as Exhibit A to the Borough’s Reply to the Foxes’ Petition to Amend their OFA.

9. Petitioners have no knowledge concerning the existence of a “force account” containing federal funds. The Board has already determined the Foxes to be financially responsible, and the Foxes and/or NFP are prepared to pay the cost to purchase and maintain Segment 1 of CSXT’s Line.

10. Petitioners have no knowledge concerning the Borough’s intent. As noted previously, Segment 1 serves only the former CECO facility, which is now owned by NFP. Segment 1 cannot, without Segment 2, serve the Black Avenue properties. According to CSXT, Chambersburg Engineering Company was the only shipper located along Segments 1 and 2. CECO no longer exists. Gaumer Industries and Gaumer’s Chassis Engineering are the only businesses situated along Segments 1 and 2 that have expressed an interest in maintaining rail service. While the Borough suggests in Paragraph 10 of Mr. Oyer’s Affidavit that the Borough intends to preserve rail service to the Black Avenue properties, in truth, on November 24, 1998, the Borough filed an interim trail use request that included Segment 2. The Borough originally intended to remove Segment 2 and use the right-of-way for a recreational trail.³ Petitioners hereby incorporate herein by reference as though set forth in full their reply to Paragraph 12 of Mr. Oyer’s Affidavit.

11. Denied. To the contrary, the Foxes have no plans to sell any of their properties. *See Affidavit of Frederick Armstrong Fox*, ¶¶34-37. Additionally, as noted above, the Borough has previously filed an interim trail use request for Segment 2. This seems inconsistent with an intent to maintain rail service to the Black Avenue properties.

³ The Foxes’ original OFA for Segment 2 displaced the Borough’s trail request for Segment 2.

12. Denied. To the contrary, if the Board permits the Foxes and/or NFP to purchase Segment 1 through the OFA process, then the Board will dismiss CSXT's petition for exemption insofar as it applies to Segments 1 and 2, and *both* Segment 1 *and* Segment 2 will remain part of the national rail network, and subject to the Board's jurisdiction. *See* 49 U.S.C. §904; 49 C.F.R. §1152.27(f)(2). The Foxes will have an obligation to provide rail service to potential shippers other than Gaumer Industries and Gaumer' Chassis Engineering, or, alternatively, if the Foxes fail to provide such service, then the Board could require the Foxes to sell Segment 1 and/or Segment 2 to a financially responsible shipper. *See* 49 U.S.C. §§10501; 10907; and 11101.

By contrast, if the Borough acquires Segment 1 outside of the OFA process, as it seeks to do, then the Board will have no jurisdiction over Segment 1, and Segment 2 will be isolated from the national rail network. *See* 49 U.S.C. §10906 ("The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks."); 49 C.F.R. §1150.22 ("The acquisition by a State of a fully abandoned line is not subject to the jurisdiction of the Surface Transportation Board.")⁴

Consequently, if the Borough acquires Segment 1, then the Borough will have no legal duty to maintain Segment 1 (which includes two bridges) in a condition suitable for rail service; the Borough will have no legal obligation to provide rail service to any potential shipper located along Segment 1 or Segment 2; and neither Gaumer Industries, Gaumer's Chassis Engineering, NFP nor any other shipper will have the right to petition the Board for relief. Access to rail service by the owners of the properties situated along Segments 1 and 2 will depend upon the whim of the Borough. This runs counter to the purpose of the OFA process, which exists to

⁴ The Board's regulations define the term "State" to include "States, political subdivisions of States, and all instrumentalities through which the State can act." 49 C.F.R. §1150.21.

ensure that financially responsible potential shippers (like the Foxes) can retain access to the national rail network at their own expense.

13. Denied as stated. It is admitted that the Foxes are not currently and have not been in the past rail customers. They anticipate, however, that the move into the former CECO facility, which will substantially increase the production capacity of their manufacturing businesses, will require that they maintain access to rail service, so that they can continue to purchase raw materials competitively. *See Affidavit of Frederick Armstrong Fox*, ¶¶2-6, 30-37. Additionally, access to rail service via Segment 1 is an integral part of the infrastructure of the CECO property. *Id.*

14. Denied as stated. While, as a technical matter, the Borough may hold title to a section of rail line that is completely unrelated to Segment 1 or Segment 2, the Lease Agreement entered into between the Borough and Chambersburg Industrial Track, Inc. ("CIT"), which is attached to Mr. Oyer's Affidavit as Exhibit A, makes clear that the Borough has no experience or interest in constructing, operating or maintaining a rail line. The Lease Agreement vests in CIT responsibility for the operation and maintenance of the "Lead" -- a section of railroad apparently constructed by the Chambersburg Area Development Corporation which links CSXT's and Norfolk Southern's (formerly Conrail's) rail lines and provides service to the Chambers-5 Business Park, which is situated south of the former CECO property -- and requires CIT to acquire the Lead from the Borough at the end of the Borough's required 10-year holding period:

As part of its development plan for the Chambers-5 Business park in the Borough of Chambersburg, Franklin County, Pennsylvania, ***Chambersburg Area Development Corporation ("CADC")***, through the Borough of Chambersburg's cooperation and

participation, *has brought about the construction and operation of an Industrial Lead Track ("Lead") through the park....*

* * *

It is the intention of this Lease Agreement to provide CIT with the leasehold authority and responsibility for operating the Lead independently of the Borough during such time as the Borough is vested with the ownership of the Lead, which was originally contributed to the Borough by CADC [Chambersburg Area Development Corporation] for the railroad project.

* * *

3. CIT will have full authority to regulate the use of railroad traffic on the Lead and, to the full extent of its contractual ability to do so, may establish tariffs, which tariffs shall be used solely for the operation of the corporation and the maintenance, repair, replacement, and renewal of the Lead. *The Borough shall have no obligation or authority with respect to the operation of the corporation or the Lead, except as otherwise herein provided.*

* * *

5. *The Borough does not expect any rental income from this Lease Agreement, nor does it obligate itself in any manner to provide financial assistance to the operation of the Lead for the purposes intended.*

* * *

6. CIT will indemnify and save harmless the Borough from any damage it incurs arising out of any claim, action or suit that charges the Borough with financial responsibility because it owns the land.

7. *At the end of the 10th year of this Agreement, CIT shall have the obligation to purchase the real estate above described for the purpose of operating the Lead free and clear of any interest of the Borough's ownership, the only consideration therefore [sic] being that CIT will pay for all direct costs of such acquisition.*

*Lease Agreement, ¶¶a, e, 3, 5, 6 and 7 (emphasis added).*⁵

⁵ The Borough did not attach to Mr. Oyer's Affidavit a copy of the various agreements relating to the Lead entered into between the Borough and Chambersburg Area Development Corporation, which agreements are referenced in paragraph c. of the Lease Agreement.

A fair reading of the Lease Agreement suggests that the Borough specifically does not wish to be involved in the business of owning, operating and maintaining a railroad.

Moreover, Mr. Oyer's Affidavit nowhere proffers any reason why it makes sense for the Borough, as opposed to the owners of both the properties served by the line and the businesses that have a need for rail service, to own Segment 1. *See Affidavit of Frederick Armstrong Fox*, ¶¶28-39.

15. Petitioners have no knowledge concerning the state of the Borough's finances. *Petitioners note, however, that the Borough has not stated in Mr. Oyer's Affidavit that the Borough is committed to using its resources to maintain Segment 1 in a condition suitable for rail service.* (Indeed, the Lease Agreement attached to Mr. Oyer's Affidavit indicates that the Borough does not wish to expend its resources to support rail operations.) Petitioners have stated unequivocally to the Board that they will maintain Segment 1, and the Board has already found the Foxes to be financially responsible. *See Affidavit of Frederick Armstrong Fox*, ¶37.

WHEREFORE, petitioners, Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox and New Franklin Properties, LLC, continue respectfully to request the Board: (a) to enter an order allowing the Foxes to amend their OFA to include Segment 1; (b) to reopen its Decision served on March 9, 1999, to permit the Foxes to file, *nunc pro tunc*, a new OFA that includes Segment 1; or (c) to reopen its Decision served on March 9, 1999, to permit New Franklin Properties to file its own OFA for Segment 1 of CSXT's Line.

DATED: February 26, 2004

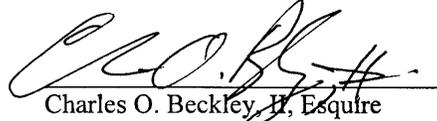
Of Counsel

BECKLEY & MADDEN
212 North Third Street
P. O. Box 11998
Harrisburg, Pennsylvania 17108-1998
(717) 233-7691

Respectfully submitted,



Thomas A. Beckley, Esquire



Charles O. Beckley, II, Esquire

Attorneys for Petitioners

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") dated this _____ day of November, 2001, by and between **CSX Transportation, Inc.**, a Virginia corporation ("CSXT") whose mailing address is 500 Water Street, Jacksonville, FL 32202, and the **Mayor and Town Council of the Borough of Chambersburg, Pennsylvania**, a Municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania ("Buyer"), whose mailing address is 100 South Second Street, Chambersburg, PA 17201-0909.

WITNESSETH:

WHEREAS, CSXT owns or has an interest in certain rights-of-way and associated property, and track/railroad facilities thereon, over which authority for abandonment of railroad transportation service was granted by the Surface Transportation Board ("STB") in a Decision and Notice of Interim Trail Use or Abandonment served on March 9, 1999 in Docket No. AB-55 (Sub-No. 568X); and

WHEREAS, CSXT desires to sell, and Buyer desires to purchase, the aforesaid right-of-way (hereinafter "Real Property") and track/railroad facilities (hereinafter "Rail Assets") for Buyer's receipt of railroad transportation service after the acquisition contemplated hereby; and

NOW, THEREFORE, CSXT and Buyer, intending to be legally bound, hereby agree as follows:

1. **Acquirer** - At Closing, Buyer shall have the requisite authority to enter into this Agreement and to acquire the below-described Real Property and Rail Assets in its own name and for its own account.

2. **Description of Property** - The property subject of this Agreement consists of approximately 2.19 acres being 0.24 miles of CSXT's right-of-way and associated property from approximately Railroad Valuation Station 1083+20 to approximately Railroad Valuation Station 1096+20, located in Chambersburg, Franklin County, Pennsylvania, as shown and described on Exhibits A through B, attached hereto and made a part hereof, including any and all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, signals, crossing protection devices, communication lines and poles that are affixed to the Real Property between the above described points as of the date of this Agreement (hereinafter collectively referred to as the "Line"). Excluded from this Agreement are any and all railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios, furniture, tools, inventories, materials and supplies, located on the Line as of the date of this Agreement or on the Closing Date. Subsequent to Closing, CSXT shall remove from the Line all excluded personal property.

3. **Purchase Price** - CSXT desires to assist in improving the general welfare of the citizens living in Chambersburg, Franklin County, Pennsylvania. Therefore, the purchase price of the Subject Property is **ONE and 00/100 DOLLAR (\$1.00)**, hereinafter the ("Purchase Price"); CSXT intending to make a charitable donation to Buyer of the fair market value of the Subject Property in excess of the Purchase Price.

4. **Sidetrack Agreement** – Buyer acknowledges that railroad transportation service shall be performed in accordance with the terms of a Sidetrack Agreement to be negotiated between the Buyer and CSXT, and said Sidetrack Agreement shall be executed prior to commencement of railroad transportation service.

5. **Conveyance** - Conveyance of the Line shall be made by Quitclaim Deed, without any warranty express or implied other than that the conveyance is free and clear of all mortgages, deeds of trust and other like financial liens, and shall be made subject to:

- a. Reservations, exceptions and restrictions of record;
- b. Building, zoning, subdivision and other applicable federal, state, county, municipal or local laws, ordinances and regulations;
- c. Property taxes and special assessments which may become due or payable on or after the Closing;
- d. Any and all encroachments which might be revealed from an inspection or proper survey of the Line;
- e. Any and all existing ways and servitudes, and rights of way, howsoever created, for roads, streets and highways;
- f. A reservation by CSXT for itself, its successors and assigns, a perpetual exclusive easement, hereinafter the "Occupancy Easement", in, over, under and along those portions of the Line encumbered by existing occupancies of every type and nature, together with the right to maintain, operate, use, replace, relocate, renew and remove such occupancies, TOGETHER WITH the further right to assign the Occupancy Easement, and/or the rights reserved pursuant thereto, in whole or in part, and to lease, license or permit third parties to use the Occupancy Easement and/or the rights reserved pursuant thereto.

Further reserving unto CSXT, its successors and assigns, a perpetual exclusive utility easement, hereinafter "the Utility Easement", in, over, under and along the entirety of the Line for future construction, maintenance, operation, use, replacement, relocation, renewal and removal of utilities including, but not limited to, water, sewer, natural gas, electricity, telephone, internet, fiber optics, communications systems and systems for the transmission of petroleum-based and other liquid and

gaseous products, consisting of cables, wires, lines, pipes or other facilities beneath the surface of the Line and all ancillary equipment and facilities (both underground and surface), and the rights to attach the same to existing bridges or poles on the Line, and such surface rights as are reasonably necessary to accomplish the same, TOGETHER WITH the further right to assign the Utility Easement, and/or the rights reserved pursuant thereto, in whole or in part, and to lease, license or permit third parties to use the Utility Easement and/or the rights reserved pursuant thereto; PROVIDED that the exercise of such rights does not materially and unreasonably interfere with the safe and efficient use of the Line, or any improvements thereon, by Buyer

Provided, that Buyer, its successors and assigns shall not disturb any existing facilities located within the Occupancy Easement or any facilities subsequently placed within the Utility Easement reserved hereunder, nor cause or permit any interference with the enjoyment or use of the rights, interests and privileges created under the Occupancy Easement or the Utility Easement, EXCEPT that Buyer (or any third party claiming through Buyer) may, with the prior written approval of CSXT or its successors or assigns, as the case may be, and the owner of the occupancy in question, which such approval may not be unreasonably withheld, relocate such occupancy within the Line at the sole risk, cost and expense of Buyer or its successors or assigns, as the case may be.

g. Subject to its right of termination in accordance with the provisions of Section 11, Buyer agrees to waive any defects in CSXT's title. Buyer shall bear and pay any and all costs and expenses for title inspection, subdivision approvals, surveys, transfer taxes, fees, stamps, charges, sales and use taxes and all documentary, recording or filing fees.

6. Proration of Taxes and Charges - All property taxes, special assessments and charges for water, sewer or other utilities assessed or payable in respect of the Line shall be prorated, adjusted and apportioned between Buyer and CSXT as of the Closing Date.

7. Assignment of Agreements –

a. No later than two (2) weeks before Closing, CSXT shall make available for review the contracts, agreements and leases pertaining to the Line set forth and described in Exhibit C hereto (the "Assignment of Agreements"). Except as noted below, at Closing, CSXT shall assign to Buyer all of CSXT's rights and interests in the Assignment of Agreements (unless applicable to an area greater than the Line, in which case Buyer shall be included as a party) and Buyer shall assume and be bound by all of CSXT's obligations and liabilities thereunder. Such Assignment of Agreements shall provide for CSXT's indemnification of Buyer for obligations and liabilities occurring under the Assignment of Agreements prior to the Closing Date and for Buyer's indemnification of CSXT for obligations and liabilities occurring under the Assignment of Agreements on

or after the Closing Date. Any and all prepaid fees, charges, rent or income under any of the Assignment of Agreements due or payable prior to the Closing Date and received by CSXT shall be retained by CSXT.

b. All interests in those contracts, agreements, leases, licenses and easements pertaining in whole or in part to the Line which are set forth and described in Exhibit D hereto shall be retained by CSXT (the "Retained Agreements"). It is understood by the parties hereto that the Retained Agreements, *inter alia*, may grant or confer to others, not party to this Agreement, rights, interests and privileges in or pertaining to the Line, and that, from and after the Closing Date Buyer shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in the Retained Agreements and Buyer shall not cause or suffer any breach of any of the Retained Agreements.

c. In the event that subsequent to Closing CSXT locates any contracts, agreements, leases, licenses or easements which should have been included in Exhibit C and Exhibit D but were omitted, the parties hereto shall amend Exhibits C and D to incorporate any such documents and Buyer shall accept assignment thereof in the manner designated for Assigned Agreements in Section 7a hereof, and in the manner designated for Retained Agreements in Section 7b hereof.

8. Inspection of Line -

a. Between the date of this Agreement and the Closing, CSXT shall provide Buyer access to the Line in order for Buyer to make such physical and environmental investigation and testing as Buyer may deem appropriate; provided, however, that (i) Buyer shall not disclose to any other party(ies) CSXT's confidential traffic or business matters and (ii) Buyer shall not disclose to anyone other than CSXT or Buyer's financing agency the results of such investigation or testing.

b. CSXT reserves the right to monitor and approve any environmental assessments, tests, studies, procedures, measurements or analyses performed by or for Buyer in, on, to or with respect to the Line ("Environmental Assessment"). Buyer shall include in any contract or bids for site Environmental Assessment of the Line a confidentiality clause limiting disclosure of any report(s) to Buyer, or to CSXT upon its written request.

c. With respect to any Environmental Assessment, Buyer shall (i) notify CSXT in writing no less than fifteen (15) days prior to initiation of any on site work, (ii) keep CSXT fully apprised of the progress of the Environmental Assessment and (iii) cooperate fully with any and all reasonable requests by CSXT with respect to the undertaking or carrying out of the Environmental Assessment.

d. Within five (5) days after Buyer receives results, assessments, reports and/or studies based on the Environmental Assessment, it shall furnish at its cost copies to CSXT.

e. If the Environmental Assessment reveals contamination of the Line in amount(s) and/or concentration(s) beyond the minimum acceptable levels established by applicable governmental authorities, or if Buyer is unwilling to accept the environmental condition of the Line as revealed by the Environmental Assessment, Buyer's **sole and exclusive remedy** shall be to terminate this Agreement. Buyer acknowledges that CSXT is not and shall not be required to correct, remedy or cure any environmental condition or contamination of the Line as a condition to Closing or as an obligation with respect to performance required after Closing.

f. If Buyer elects not to undertake or contract for an Environmental Assessment, or if Buyer does not elect to terminate this Agreement after receiving results of the Environmental Assessment, Buyer shall take the Line "**AS IS, WHERE IS**", with all faults and defects in its physical or environmental condition as of the Closing; and Buyer assumes all risks of the condition of the Line, regardless of the cause or date of origin of any environmental condition, and agrees to release all rights and/or claims against CSXT for any such condition or for the costs of remediation or cure of any such condition.

g. Buyer hereby agrees to defend, indemnify, and hold harmless CSXT, its officers, agents and employees, from and against any and all liability, cost and expense arising out of or connected with the exercise by Buyer, its officers, agents or employees, of the rights of access and investigation herein granted, regardless of whether such liability, cost and expense is caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of CSXT, its officers, agents or employees.

9. Waiver of Warranties as to Condition of Line - Buyer acknowledges that CSXT has made and will make no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Line, the physical, environmental or other condition thereof, or its merchantability or suitability for any use or purpose whatsoever.

10. Indemnity –

a. CSXT shall defend, indemnify, and hold harmless Buyer, its officers, agents and employees, from and against any and all liability, cost and expense arising out of or connected with any personal injury, property loss or damage occurring prior to Closing on or about the Line, except for any such liability, cost or expense arising out of or connected with any action of Buyer, its officers, agents or employees on or about the Line prior to Closing.

b. Buyer shall defend, indemnify, and hold harmless CSXT, its officers, agents and employees, from and against any and all liability, cost and expense arising out of or connected with any personal injury, property loss or damage occurring after Closing on or about the Line, except for any such liability, cost or expense arising out of or connected with any action of CSXT, its agents or employees on or about the Line after Closing.

c. Nothing contained in this Section 10 shall be construed as modifying the provisions of Sections 8 or 9 hereof. This Section 10 is not intended to create any obligation by CSXT to indemnify Buyer with respect to the physical or environmental condition of the Line, or its merchantability or suitability for any use or purpose whatsoever or for any liability, cost or expense arising out of or connected with the exercise of rights granted in Section 8 hereof.

11. Termination - This Agreement may be terminated prior to the Closing by either Buyer or CSXT, without further liability or obligation to either of them, in the event of any of the following:

a. Claims, litigation or work stoppage shall be threatened or pending in connection with the transactions contemplated by this Agreement;

b. The Closing has not occurred on or before sixty (60) days from the date of this Agreement, for any reason, including the issuance of an injunction prohibiting the consummation of the transactions contemplated herein; provided that a party in default hereunder may not utilize its own failure to close as cause for termination;

c. By the other party hereto based on the failure or inability of Buyer or CSXT, for any reason, to enter into the agreement for assignment and assumption contemplated under this Agreement;

d. The discovery by Buyer of any material defect in CSXT's title to the Line which would preclude Buyer from using the Line as an operating line of railroad; or

e. The right of termination with respect to environmental matters in accordance with the provisions of Section 8e hereof.

12. Closing - Subject to the rights of termination expressly provided in this Agreement, the Closing under this Agreement shall be held at a mutually agreeable location on a mutually agreeable date (the "Closing") on or before sixty (60) days from the date of this Agreement.

13. Entire Agreement - This Agreement and the Exhibits hereto shall constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all other prior understandings and agreements, both written and oral, between or among Buyer and CSXT with respect to the subject

matter of this Agreement. This Agreement may be supplemented, amended or modified at any time and in any and all respects only by an instrument in writing executed by Buyer and CSXT. Time is of the essence of this Agreement.

14. Partnership; Expenses - Buyer and CSXT understand that no joint venture or fiduciary relationship between or among them is contemplated by either Buyer or CSXT in connection with this Agreement. Except as otherwise provided herein, any and all expenses incurred by either Buyer or CSXT in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses. Neither CSXT nor Buyer has or will incur any obligation that would result in the other being liable for any brokerage, finder's fee or similar fee in connection with the transactions contemplated hereby.

15. Applicable Law - This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws principles.

16. Counterparts - This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument

17. Assignment, Survivors and Third Party Beneficiaries - This Agreement shall be binding upon Buyer and CSXT, and their respective successors and assigns; provided, however, that Buyer shall not assign this Agreement in whole or in part without the prior written consent of CSXT, which shall not be unreasonably withheld. The terms and conditions of this Agreement shall survive delivery of the Quitclaim Deed whether or not the Quitclaim Deed so states. Subsequent to Closing, this Agreement may not be terminated or rescinded unless mutually agreed to by the parties in writing. Nothing contained in this Agreement is intended to nor shall it be construed to confer upon any party other than Buyer and CSXT and their respective successors and assigns any right or benefit under or by reason of this Agreement. It is understood that the Line may be conveyed to Buyer at Closing subject to mortgages, deeds of trust or other like financial liens in effect prior to Closing, in which event CSXT shall remove or release same from the Line within a reasonable time after Closing at no cost or expense to Buyer.

18. Charitable Donation -

a. Buyer and CSXT believe the Purchase Price is less than the fair market value of the Premises, and CSXT, being interested in assisting Buyer, desires to make a charitable donation to Buyer of the difference between the Purchase Price and the fair market value. Buyer will provide CSXT with any documentation required by the United States Internal Revenue Service (IRS) to substantiate the donation to Buyer and the tax exempt status of Buyer, including Buyer's execution of IRS Form 8283, for land and a separate IRS Form 8283 for improvements attached hereto as Exhibit E, and the

Letter of Acknowledgment, attached hereto as Exhibit F, at Closing or thereafter as needed.

b. Provisions of this Section shall survive Closing and delivery of the deed, whether or not the deed so states, there being neither express nor implied merger hereof into said deed

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed and delivered this Purchase and Sale Agreement as of the day and year first above written.

ATTEST:

CSX TRANSPORTATION, INC.

Approved as to form

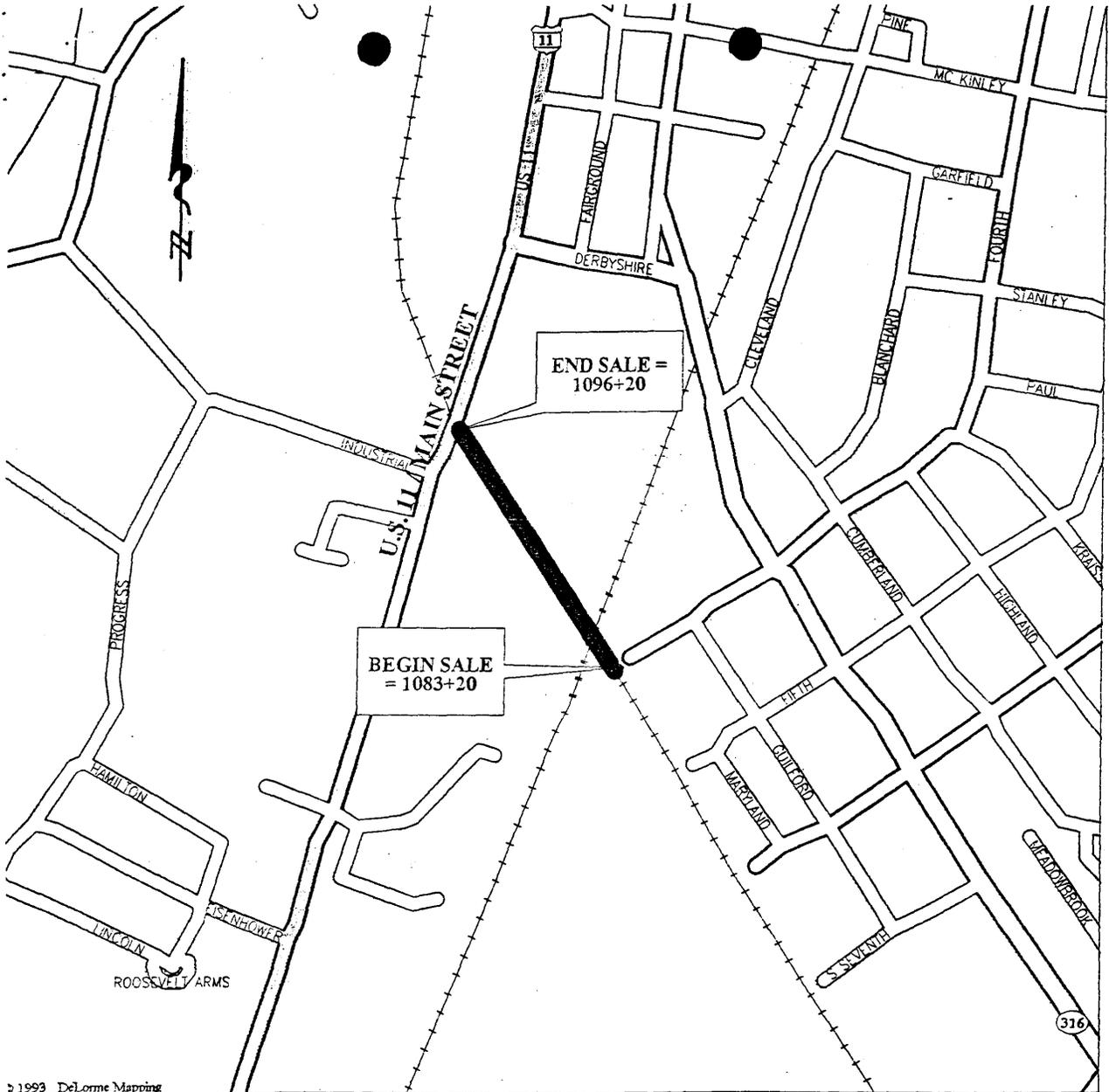
Assistant Secretary

By: _____
Print Name: _____
Print Title: _____

ATTEST:

**MAYOR AND TOWN COUNCIL OF THE
BOROUGH OF CHAMBERSBURG,
PENNSYLVANIA**

By: _____
Print Name: _____
Print Title: _____



© 1993 DeLorme Mapping

EGEND

-  US Highway
-  Population Center
-  Street, Road
-  Major Street/Road
-  Interstate Highway
-  State Route
-  US Highway

-  Railroad
-  RR Underpassing
-  River



AREA TO BE CONVEYED = 0.24 MILE +/- OR 2.19 ACRES +/-

CSX REAL PROPERTY, INC.

EXHIBIT - A

GENERAL LOCATION MAP
CHAMBERSBURG

FRANKLIN COUNTY
Vol. Map: V. 8-1 / 7
V. 21611
PINs: 42055-0014 & 42055-0035
SITE ID: PA-055-0995552

PENNSYLVANIA
Date: 01-08-01
By: JLS

Exhibit A-9

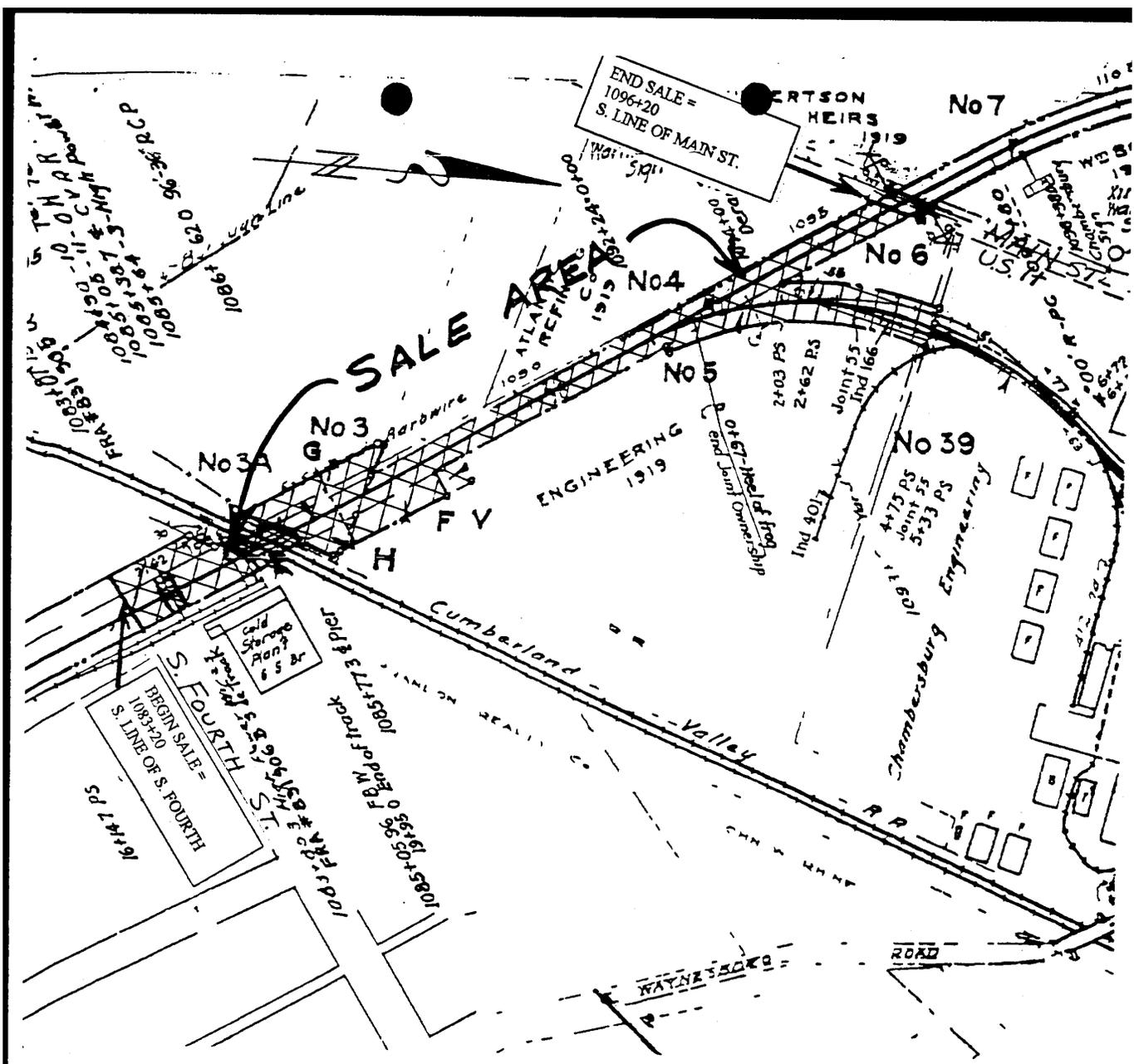
EXHIBIT B

Description of property at: Chambersburg, Franklin County, Pennsylvania

To:

CSXT Deed File No.: 42055-0014

A strip of land situate at or near Chambersburg, Franklin County, Pennsylvania, being a portion of Grantor's Lurgan Subdivision, lying on either side of the following described centerline: *BEGINNING* at the point of intersection of the centerline of Grantor's main line railroad track at or near Railroad Valuation Station 1083+20 with the southwesterly extension of the southerly line of S. Fourth Street, such *BEGINNING POINT* being indicated on a fragment print of Grantor's Railroad Valuation Map V.S. 8-1, sheet 7, marked Exhibit A-1, attached hereto; thence extending generally in a northwesterly direction along the centerline of Grantor's railroad track a distance of 0.24 miles, more or less, to the *ENDING POINT* at the point of intersection of the centerline of the railroad track at or near Railroad Valuation Station 1096+20 with the southeasterly line of Main Street, as indicated on Exhibit A-1; containing 2.19 acres, more or less, as shown in detail on Railroad Valuation Map V.S. 8-1, sheet 7, incorporated herein by reference.



▨▨▨▨ AREA TO BE CONVEYED = 0.24 MILE +/- OR 2.19 ACRES +/-

CSX REAL PROPERTY, INC.
EXHIBIT - "A-1"
 SITUATION PLAN AT CHAMBERSBURG

FRANKLIN COUNTY
 Val. Map: V. 8-1/7
 V. 21611
 PINs: 42055-0014 & 42055-0035
 SITE ID: PA-055-0995552

PENNSYLVANIA
 Date: 01-08-01
 By: JLS

1" = 200'
 Exhibit A-11

EXHIBIT "C"

FOURTH ST. TO MAIN ST.
CHAMBERSBURG, PA

<u>GIS #</u>	<u>CONTRACT NUMBER</u>	<u>LESSEE</u>	<u>DATE</u>	<u>PURPOSE</u>	<u>FULL/PART</u>	<u>STATUS</u>	<u>GENERAL</u>
21611	WM-L60203 WM-L60797 CSX-010458 WM-L64512	BOROUGH OF CHAMBERSBURG BOROUGH OF CHAMBERSBURG BOROUGH OF CHAMBERSBURG UNITED TELEPHONE CO. OF PENNSYLVANIA	12/01/1952 02/15/1963 07/18/1989 09/05/1988	PIPELINE POLE/ANCHOR LAND WIRELINE	FULL PART FULL FULL	ACTIVE ACTIVE ACTIVE ACTIVE	NO NO NO NO

EXHIBIT "D"

FOURTH ST. TO MAIN ST.
CHAMBERSBURG, PA

<u>GIS #</u>	<u>CONTRACT NUMBER</u>	<u>LESSEE</u>	<u>DATE</u>	<u>PURPOSE</u>	<u>FULL PART</u>	<u>STATUS</u>	<u>GENERAL</u>
							NONE

Form **8283**
(Rev. November 1992)

Noncash Charitable Contributions

CMB No. 1545-C908
Expires 11-30-95

Department of the Treasury
Internal Revenue Service

▶ Attach to your tax return if the total deduction claimed for all property contributed exceeds \$500.

Attachment
Sequence No. **55**

▶ See separate instructions.

Name(s) shown on your income tax return

Identifying number

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A—Include in this section only items (or groups of similar items) for which you claimed a deduction of \$5,000 or less per item or group, and certain publicly traded securities (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) Description of donated property
A		
B		
C		
D		
E		

Note: If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (d), (e), and (f).

	(c) Date of the contribution	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) Fair market value	(h) Method used to determine the fair market value
A						
B						
C						
D						
E						

Part II Other Information—If you gave less than an entire interest in property listed in Part I, complete lines 2a-2e. If restrictions were attached to a contribution listed in Part I, complete lines 3a-3c.

- 2 If less than the entire interest in the property is contributed during the year, complete the following:
- a Enter letter from Part I that identifies the property _____. If Part II applies to more than one property, attach a separate statement.
 - b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year _____
(2) For any prior tax years _____
 - c Name and address of each organization to which any such contribution was made in a prior year (complete only if different than the donee organization above).

Name of charitable organization (donee)

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

- d For tangible property, enter the place where the property is located or kept _____
- e Name of any person, other than the donee organization, having actual possession of the property _____

3 If conditions were attached to any contribution listed in Part I, answer the following questions and attach the required statement (see instructions):

- a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? _____
- b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? _____
- c Is there a restriction limiting the donated property for a particular use? _____

	Yes	No
a		
b		
c		

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 62299J

Form 8283 (Rev. 11-92)

1/11/93

Published by Tax Management Inc., a Subsidiary of The Bureau of National Affairs, Inc.

8283 I

EXHIBIT F

**SAMPLE LETTER OF ACKNOWLEDGMENT FOR
DONATION / SALE TRANSACTIONS**

TO BE WRITTEN ON DONEE/GRANTEE'S LETTERHEAD

DATE:

CSX Real Property, Inc.
301 West Bay Street, 8th Floor
Bellsouth Tower, J-915
Jacksonville, FL 32202

RE: Chambersburg, Franklin County, PA – Acquisition of land and track –
CSXT's Lurgan Subdivision – Railroad Line Segment between S. Fourth
Street and Main Street.

TO WHOM IT MAY CONCERN:

The undersigned Donee/Grantee hereby acknowledges receipt of certain CSX Transportation, Inc. ("CSXT") property and improvements situated between the southwesterly extension of the southerly line of S. Fourth Street and the southeasterly line of Main Street, in Chambersburg, Franklin County, PA.

This letter confirms that no additional goods or services, other than the consideration stipulated in the deed, were provided to CSXT in exchange for this contribution. The full amount of the donation should be tax deductible to the extent allowed by law for Federal tax purposes.

Very truly yours,

CERTIFICATE OF SERVICE

I Charles O. Beckley, II, Esquire, hereby certify that a copy of the foregoing document was served this day upon the persons and in the manner indicated below:

SERVICE BY FED EX:

Natalie S. Rosenberg, Esquire
Senior Counsel
CSX Transportation, Inc.
Law Department
500 Water Street
Jacksonville, FL 32202

Martha B. Walker, Esquire
Barley, Snyder, Senft & Cohen, LLC
247 Lincoln Way East
Chambersburg, PA 17201

Thomas J. Finucane, Esquire
Finucane Law Office, LLP
273 Lincoln Way East
Chambersburg, PA 17201

DATED: February 26, 2004


Charles O. Beckley, II, Esquire